

Legislative Council

Wednesday, 25 November 1981

The PRESIDENT (the Hon. Clive Griffiths) took the Chair at 10.30 a.m., and read prayers.

LEGISLATIVE COUNCIL

150th Anniversary: Statement by President

THE PRESIDENT (the Hon. Clive Griffiths): As previously advised, I had given approval for photographs to be taken in the Chamber as part of the 150th anniversary celebrations.

I now advise members that tomorrow morning a Channel 9 camera crew will be in the galleries for a period, filming Parliament at work.

The resultant film will form part of six two-minute documentaries which Channel 9 is producing in recognition of the 150 years of parliamentary Government in Western Australia.

ADJOURNMENT OF THE HOUSE: SPECIAL

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [10.41 a.m.]: I move—

That the House at its rising adjourn until 10.30 a.m., Thursday, 26 November.

Question put and passed.

ST. CATHERINE'S HALL, GREENOUGH, BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by the Hon. Margaret McAleer, read a first time.

Second Reading

THE HON. MARGARET MCALEER (Upper West) [10.42 a.m.]: I move—

That the Bill be now read a second time.

St. Catherine's Hall, which is of historical significance, is situated at Greenough and forms part of the Greenough Hamlet, which was the original Town of Greenough. With the exception of St. Catherine's Hall, St. Catherine's Anglican Church, and St. Peter's Catholic Church, the town has been taken over by the National Trust and restoration work has been carried out on the majority of buildings.

St. Catherine's Hall is held freehold in certificate of title volume 64 folio 169 in the name of Messrs Robert Elliott, Arthur Clinch, Reuben

Backshall, David Duncan, and Charles Duncan. These persons were registered as proprietors on 5 January 1895, and, with the exception of Robert Elliott, the dates of death are known.

The registered proprietors of the land were the original committee members of the St. Catherine's Hall committee, the function of which it appears was to maintain the hall in a reasonable standard of repair and make it available to the public for general use. The minute books of the committee have been obtained and have been examined to clarify the intent and purpose of the original committee.

A St. Catherine's Hall committee still exists today and the present members are Kenneth Harrison, Septimus Morrell, Cyril Thomas Ducas, Alec Vince Charles Duncan, and Thomas Clinch.

The present committee members wish to give the hall to the National Trust, but the trust cannot outlay funds for badly needed repairs to the hall until it has secured title to the land. It should be noted that the present committee members do have possession of the duplicate certificate of title.

It may be possible to transfer the hall to the National Trust if, amongst other things, the date of death of the Reverend Elliott could be determined. An extensive search of the Registrar General's records and those of the Anglican Church have failed to reveal anything. Battye Library records show only that he had a wife and daughter.

This means that contact would need to be made with the executor of the last surviving registered proprietor and, if that person was willing, thereby effect a transfer of the hall to the National Trust. There are many problems associated with this procedure, the most significant of which is that the date of death of the Reverend Elliott cannot be determined. Another potential problem is that probate may not have been granted on the will of the last surviving registered proprietor—or letters of administration in the case of an intestacy—and, further, the executor—or administrator—may himself be deceased or unable or unwilling to act.

The matter has been discussed between the solicitors for the trust and the Deputy Registrar of Titles, and the conclusion has been reached that there is no alternative means within the terms of the Transfer of Land Act to effect a transfer of the land to the National Trust. The only alternative, therefore, is this special Act of Parliament.

I commend the Bill to the House.

THE HON. J. M. BROWN (South-East) [10.45 a.m.]: This is a private members' Bill and it is perhaps a practice in this House to give favourable treatment to private members to expedite legislation that affects their electorate in particular.

The Hon. Tom McNeil: Hear, hear!

The Hon. J. M. BROWN: As explained by the Hon. Margaret McAleer, St. Catherine's Hall is of historical significance in the town of Greenough. Almost the whole town is vested in the National Trust, and to complete this it is desirable, at the local level, to have St. Catherine's Hall vested in the trust. However, this cannot be done administratively and, therefore, it has been necessary to introduce the private members' Bill. The Registrar of Titles has not been able to find any alternative means of vesting except to introduce this special Act of Parliament. Opposition members commend the member for bringing this forward and give it their full support.

THE HON. V. J. FERRY (South-West) [10.46 a.m.]: I have pleasure in supporting the Bill. It gives me a brief opportunity to express my admiration for the work done by the National Trust in this State. The trust contributes in a wonderful way to our Western Australian heritage. This is another example of its interest in historical buildings and places in Western Australia.

I have had the pleasure, as I know a number of members have, of visiting the Greenough Hamlet, and I commend everyone concerned for the outstanding work that has been done in that complex. In my own area of the south-west the National Trust has for many years taken a great interest in historical places and buildings and features of early Western Australian life. This is an ongoing endeavour for them. It has my full support.

THE HON. H. W. GAYFER (Central) [10.47 a.m.]: I support the Bill introduced by the Hon. Margaret McAleer, but on reading it through I am a little apprehensive of the part the National Trust will be able to afford to play in respect of the heavy commitments that it is making in many directions in order to preserve our heritage. The National Trust relies mainly on grants to inject funds into programmes that are contemplated, but none of these ventures can get off the ground unless it receives total community support.

In my electorate we have a town of great historical significance, the Town of York, and alongside this town is a farm also of great

significance, which is historically known as Balladong Farm. In fact, it is the first farm that was ever utilised for this purpose outside Guildford. Recently the people concerned have run into great financial problems and, looking at it from the outside and watching instrumentalities at work such as the Museum committee, the National Trust, and the York Shire Council, if we are not careful it will reach a stage where these places will fail through lack of money being injected from the community, which is not desirous of going beyond a certain figure in its rating for the district. The ventures would then close. Beyond that, the National Trust does not seem to have enough funds to be able to keep the exercise going.

In respect of St. Catherine's Hall in the hamlet of Greenough, no doubt community support will assist the National Trust in what it is doing. When it was decided to get Balladong Farm off the ground the community of York gave its support. I do not want to sound too pessimistic concerning this matter, but, before things fall into decay, it is imperative that the National Trust be behind this proposal.

The Hon. G. C. MacKinnon: Bring Whitlam back—there will be plenty of money then!

The Hon. H. W. GAYFER: I do not know what the answer is, Mr MacKinnon. The position is becoming clear—

The Hon. Lyla Elliott: Perhaps that is why Fraser has to get loans!

The PRESIDENT: Order!

The Hon. H. W. GAYFER: I do not know what this has to do with my simple explanation which I thought would make some sense, even to the Hon. Lyla Elliott. If we are not careful we will enter into so many commitments that nothing will be done properly; everything will be half done. That is my simple message, and if members of Parliament are not willing to accept it, I cannot do any more. All I can do is have it placed on the books and perhaps when things go haywire and nothing is completed, members will take heed of what I have said today.

THE HON. TOM McNEIL (Upper West) [10.52 a.m.]: I support this private member's Bill.

The Hon. R. G. Pike interjected.

The Hon. TOM McNEIL: I will bear in mind the interjection by Mr Pike. I would like to comment on the remarks presented by the Hon. Jim Brown. We should do everything to encourage private members' Bills to go through both Houses of Parliament. I have unsuccessfully introduced two private members' Bills in the past.

As the Hon. R. Pike knows, one was eventually proved justified in a court of law, and the second which was deferred by this Government for 12 months was finally brought back and passed in this place at some considerable expense to those who would have benefited by the Bill had it been passed at the time I introduced it.

St. Catherine's Hall is an important part of the Greenough Hamlet concept. I realise it was necessary to have a private member's Bill to have an Act of Parliament passed in relation to this matter, and I believe we should have more private member's Bills in this House. We should do everything within our power to deal with them in the proper manner, whether they are moved by members of the Government or members of the Opposition.

THE HON. N. E. BAXTER (Central) [10.53 a.m.]: I support the Bill and its concept. Strange things happen in connection with the transfer of land.

I recall one case where a lady was brought up by a couple who never adopted her. Subsequently, she and her husband paid rates on a fairly valuable block of land in the Bullsbrook area, and many years passed before they finally obtained the title deeds and were able to do anything with it. This seems to be a quicker and more simple method of handling the transfer of a title; that is, by dealing with it in a private member's Bill.

Many problems and much expense could be saved by small Bills being brought to Parliament to deal with issues where land should be transferred to people where certain circumstances arise. This Bill concerns one of those circumstances. I can envisage no other way to deal with it except to allow a long waiting period during which probably efforts would be made to trace the date of demise of the late Robert Elliott. As the date of his death is unknown even more time would be necessary between the time of the application for transfer and the date it was actually made.

This method should be adopted on more occasions when difficult situations exist.

THE HON. MARGARET McALEER (Upper West) [10.55 a.m.]: I thank the House for its support of the Bill and I also thank members for their contributions which will give great encouragement to the National Trust. Perhaps it was a little unfair of the Hon. Jim Brown to suggest that this Bill was brought in as a favour to a Government back-bench member. The Bill was, in fact, introduced by Mr Reg Tubby of Greenough. As it happened, the National Trust approached Mr Tubby with a view to obtain title

to this particular building—it was on the advice of the trust's solicitors, with the support of the Crown Law Department, that it was presented as a private member's Bill because it was thought that would be the best way to handle it. This proposal was put to Cabinet and was accepted. It is a public Bill and it will benefit the National Trust and the State of Western Australia. One could say that since it is well supported by the National Estate it is of benefit to Australia.

Members will be aware of the work that is being done at Greenough by the National Trust in restoring the hamlet, and they will realise that it is practically unique. In some respects it is similar to the work that has been done at Port Arthur and Norfolk Island. It is being done carefully with great attention being paid to the period involved. Excellent craftsmen are carrying out the necessary work and it will be something very special to our heritage.

A considerable amount of funds has been made available through the National Estate. The project has attracted somewhere between \$227 000 and \$250 000. The National Trust has spent some of its own money on acquisitions, some land has been vested in the Trust, and some money has been given to it as a gift. However, most of the money has been made available by the Commonwealth Government and it will be ongoing for future years—certainly in the coming year.

I must make mention of the churches that have not been taken over by the National Trust. They are St. Peter's and St. Catherine's, and both of them are in use and a considerable amount of money has been spent on their restoration by the church bodies.

I hope I have allayed the fears Mr Gayfer appears to have in relation to the funding of the Greenough Hamlet. The Balladong Farm concept is a slightly different case because it was taken over by the National Trust at the request of the York Shire Council. Although it was realised at the time that no funds could be allocated to it by the National Trust it was considered it would be in the interests of the preservation of the farm that the trust take it over.

The Hon. H. W. Gayfer: Perhaps I oversimplified my example. I was talking about the principle as a whole.

The Hon. MARGARET McALEER: I understand that the National Trust collects funds for special projects and has already received hundreds of thousands of dollars. Members will be pleased to know that such donations are tax

deductions and members who feel strongly on these matters may wish to donate to the Trust.

The Hon. H. W. Gayfer: An examination of subscription lists will reveal members of Parliament invariably head the lists.

The Hon. MARGARET McALEER: I thank the Hon. Tom McNeil and the Hon. Norm Baxter for their support of the Bill, and on behalf of Mr Tubby I thank the Attorney General for his assistance in preparing the Bill.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

Third Reading

Bill read a third time, on motion by the Hon. Margaret McAleer, and passed.

ACTS AMENDMENT (JURISDICTION OF COURTS) BILL

Third Reading

Bill read a third time, on motion by the Hon. I. G. Medcalf (Attorney General), and transmitted to the Assembly.

PRISONS BILL

Third Reading

THE HON. G. E. MASTERS (West—Minister for Fisheries and Wildlife) [11.02 a.m.]: I move—

That the Bill be now read a third time.

THE HON. H. W. OLNEY (South Metropolitan) [11.03 a.m.]: Probably, I should have raised this small matter last night; however, I did not wish to lower the standard of debate by taking nit-picking points. I raise the matter in the knowledge that the Bill must go back to the Legislative Assembly for the approval of amendments the Council made during Committee. When that happens, perhaps the Minister in another place will examine the matter.

I refer specifically to clause 111 of the Bill, the marginal note of which is "Protection from liability". The clause states—

No action or claim for damages shall lie against any person for or on account of anything done, or ordered or authorized to be done, by him which purports to be done for the purpose of carrying out the provisions of

this Act, unless it is proved that the act was done, or ordered or authorized to be done, maliciously and without reasonable and probable cause.

The 1903 Prisons Act, which this legislation is to repeal, contains a very similar section. I refer to section 75, part of which provides—

75. No action or claim for damages shall lie against any person for or on account of anything done or commanded to be done by him, and purporting to be done for the purpose of carrying out the provisions of this Act...

The difference here is that, whereas before the protection against liability was accorded to a person who performed acts done or commanded to be done by him, under this legislation the protection is in respect of anything done or authorised to be done by him. There appears to be a subtle difference, although I hope there is not; it may be that there is no intention to make any difference.

I am concerned to ensure the common law duties of a gaoler to exercise reasonable care for the safety of his prisoners is preserved. The Minister may or may not be aware of a matter litigated in the Supreme Court in 1974. The case of Dixon and the State of Western Australia v Lees involved an inmate of the Broome Regional Prison who was seriously injured when another inmate attacked him with a pick handle. The other inmate had a history of mental instability and violent behaviour, which was brought to the attention of the prison authorities on his admission. However, notwithstanding that, no steps were taken to ensure he did not continue with that type of behaviour. The Supreme Court held that the person in control of that inmate had failed to exercise a duty of care to the injured prisoner by taking steps to ensure that sort of conduct did not occur, and that the plaintiff (Mr Dixon) was entitled to damages against the State of Western Australia and the prison officer.

It is fairly obvious that section 75 of the 1903 Act provides no bar to such an action. However, I am not certain that would be the case under clause 111 of this Bill. I ask the Minister for Fisheries and Wildlife to refer my comments to the responsible Minister in another place and ask him to provide this House with an assurance that the rephrasing of this provision has not been designed to avoid the sort of liability demonstrated in the Dixon case.

THE HON. G. E. MASTERS (West—Minister for Fisheries and Wildlife) [11.09 a.m.]: I do not argue whether one word is better than the other.

To my layman's mind the words "ordered and authorised" are quite clear. There may be a reason for the word "commanded" being in the existing legislation. However, from my reading of the legislation, and having listened to the debate on this matter, it is quite obvious prison officers at times are ordered to carry out certain duties and are authorised by the Act to take certain actions.

The Hon. H. W. Olney: I am talking not about positive acts, but about negligent acts.

The Hon. G. E. MASTERS: I take the honourable member's point. The wording seems to me to be fairly clear. This sort of provision is contained in a great deal of legislation. However, I undertake to carry out his wish, and refer the matter to the responsible Minister.

Question put and passed.

Bill read a third time and returned to the Assembly with amendments.

ACTS AMENDMENT (PRISONS) BILL

Third Reading

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

GOVERNMENT SCHOOL TEACHERS ARBITRATION AND APPEAL AMENDMENT BILL

Second Reading

Debate resumed from 19 November.

THE HON. R. HETHERINGTON (East Metropolitan) [11.12 a.m.]: The Opposition has made some inquiries and understands that all parties concerned are in agreement with the need for this Bill. This is one case where the Minister and his department have consulted the Teachers' Union. The amendments to the Act are desired because they will improve the legislation. That being the case, the Opposition has pleasure in supporting the Bill.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

Third Reading

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

EDUCATION AMENDMENT BILL

Second Reading

Debate resumed from 19 November.

THE HON. R. HETHERINGTON (East Metropolitan) [11.15 a.m.]: I am afraid I cannot say the same about this Bill as I said about the previous one. This is a most obnoxious and objectionable Bill and the Opposition opposes it vehemently. It is objected to by the Teachers' Union and by individual teachers, and it contains features objected to by the Legislative Review and Advisory Committee of 1979. I am referring now to regulation 134.

This Bill arises out of the confrontation the present Minister for Education has had with school teachers. I very carefully say "school teachers"; it is not just confrontation with the Teachers' Union. It arises out of attempts in the past to write into the regulations, provisions which have been considered by some people to be *ultra vires* the Act, so that some of the regulations are now before the courts. I am glad to see the Bill at least does not retrospectively get rid of the litigation before the courts, because that would be just too much.

Before I move on to the main objection the Opposition has to the Bill I shall refer to proposed new section 7B. This proposed section is symptomatic of the Liberal Party's paranoia and attempts to control Governments of the future to make them move in the direction the Liberal Party believes they should, because it believes it is the repository of divine truth and that this is the way all Governments should go.

Currently there is no policy of the present Government that there should be preference to unionists. There is no policy of the Labor Party that there should be preference to members of the Teachers' Union in the Education Department. The shadow Minister for Education for the Labor Party has specifically said that we do not intend to put it in our next policy speech; in other words, we have no intention of introducing such a policy.

It is true there was an attempt by the Tonkin Government to bring about preference for unionists in the Education Department, but that did not work very well, and we have learnt from the past. I suppose from that point of view the attempt by this Government to decide what shall happen in the future is of minor importance; but it is unfortunate that here the Government is trying to write into this legislation a clause which says there will be no preference to unionists. I will comment further on this during the Committee stage.

This attempt is to make sure no future Labor Government can do anything about this matter even if conditions change; even if after the election after the next—after representations by the teachers and after all things have been taken into consideration—we have a thumping majority. By writing this provision into the legislation now when it is not necessary and is not likely to be necessary in the foreseeable future, the Government is making sure that this Legislative Council—which is still assured of its anti-Labor majority—with the kind of electoral system we have, which has been reintroduced and made worse to make sure the gerrymander will let this House control a future Labor Government—

The DEPUTY PRESIDENT (the Hon. R. J. L. Williams): Order! It is improper to reflect upon a debate which previously took place in this House during this session. The member is reflecting on a vote taken in such a debate.

The Hon. R. HETHERINGTON: I would point out to you, Mr Deputy President, that there is litigation at present before the courts and that I am not thinking so much about the last vote as the general system that has applied since 1890.

Certainly it is true that in the foreseeable future it is unlikely that the Labor Party will get a majority in this House even if, as in the last election, we got a majority of votes in the metropolitan area but did not get a majority of the seats. The Government is making sure it can always control what a Labor Government does. I find this undesirable and unnecessary. It is certainly symptomatic of the right-to-rule syndrome which has always been inherent in conservative parties in Great Britain and Australia. This present Government is a true inheritor of the obnoxious conservative tradition we have inherited from Great Britain. This particular attempt is obnoxious and objectionable in principle and has no real practical application. From that point of view I am not particularly concerned about it.

Of far greater concern is the attempt to write present regulation 134 into the Act, because there is some doubt whether it is *ultra vires* and there is a great deal of doubt whether it is desirable. Certainly it is undesirable, and this is particularly so of proposed section 7C (2) (e), which is paragraph (e) of regulation 134 which was introduced in 1979 and which I tried to persuade this House to disallow.

I would like to read the report of the Legislative Review and Advisory Committee on this subject, although I have done so previously; however, some members may not have read this

report. The committee was established by the present Government to provide an additional check on legislation, because in its heart of hearts the Government realised that, despite all the rhetoric, this House is not a sufficient check and balance on legislation and regulations that are put through by this Government.

At the time this was done—I do not think I was a member of the House then—I thought it was undesirable and it would have been much better had we remodelled Parliament in order to achieve a better system of committees so we could provide our own checks and balances, so that there would be less rubber stamping of legislation and more review and examination of it. At that time I was talking of general theory and I have learnt since I have been here that general theory does not seem to apply very much in this place. We develop our own rules.

The Legislative Review and Advisory Committee made a report which was tabled in this House on 2 October 1979. That report referred to regulation 134(1). I will not read the regulation because it is identical to the provision in the Bill. The committee said—

This regulation is clearly authorised by the terms of Section 28 of the Act which, by paragraph (d) empowers the Minister to make regulations "prescribing grounds including such moral grounds, whether connected with the employment and functions of teachers or not, as the Minister thinks fit, which for the purposes of (this) Act amount to misconduct and for which a teacher may be dismissed from the Education Department". It does however raise two matters for comment.

First, notwithstanding that the form of regulation follows the form of the empowering provisions it cannot be regarded as entirely satisfactory. Having provided by subregulation (1) that a teacher who is guilty of misconduct is liable to be dismissed, the regulation goes on in subregulation (5) to make it clear that dismissal is only one of a number of possible penalties. Although it is a matter of drafting rather than a matter of substance, it would be preferable to omit the words "and is liable to be dismissed" at the end of subregulation (1).

This is the part I want to stress—

Secondly, and cause for greater concern, regulation 134(1)(e) provides that a teacher who "engages in disgraceful or improper conduct, whether during or connected with his employment and functions as a teacher or

not" is guilty of misconduct and is liable to the penalties provided for in the regulation.

The concept of "disgraceful or improper conduct" in a professional respect is well known and it is well accepted—see, for example, the *Dental Act 1939-1975* Section 23 ("infamous or disgraceful conduct in a professional respect"), the *Legal Practitioners Act 1893-1978* Section 25 ("illegal or unprofessional conduct"), the *Architects Act 1921-1978* Section 22A ("infamous or improper conduct in a professional respect"), and the *Medical Act 1894-1976* Section 13(1) ("infamous or improper conduct in a professional respect").

The emphasis in each of these cases is on the relationship between the conduct in question and the particular profession.

The "disgraceful or improper conduct" which is said to "amount to misconduct" under the Education Regulations should bear some relationship to the work of the person concerned as a teacher. It should, for example, indicate that he is not suitable to teach children or otherwise indicate that his conduct requires him, as a teacher, to be disciplined. It may be said in answer that the regulations will be administered in this way but, having added the words "whether during or connected with his employment and functions as a teacher or not", the scope of the provision has been unnecessarily widened, conceding the desirability of extending the regulations to cover conduct outside the school premises. It is the view of the Committee that as presently drawn regulation 134(1)(e) "unduly trespasses on rights or liberties previously established by law or inherent in the traditional freedoms of Her Majesty's subjects in Western Australia".

That was signed by Mr Kennedy; Sir Ross Hutchinson, who was a former Liberal Speaker of the Legislative Assembly; and Professor Gordon Reid, the Deputy Vice-Chancellor of the University of Western Australia.

When I moved to have the regulation disallowed, the Hon. Norman Moore, speaking not for himself—and I am not criticising him in the least, otherwise I would think very carefully about it at this time—made a few comments. I refer now to page 3154 of the 1979 *Hansard* where he said—

We now come to the criticism levelled by the Legislative Review and Advisory Committee in relation to regulation

134(1)(e). This topic was raised by Mr Hetherington, who used it as the main part of his speech yesterday. It was, and still is, the intention of the Government that a teacher's conduct outside school hours and outside school premises in certain circumstances will be subject to this regulation. For example, teachers are involved in a multitude of activities outside school hours. They relate to the coaching of school teams, visiting parents in their homes to discuss the progress of their children, and so on. Therefore teachers can be involved in all sorts of situations when they carry out their functions related to teaching, but not on the school premises or during school hours. It is because of this that the Government feels there should be a regulation governing the behaviour of teachers under these circumstances.

If that was what the Government intended, I could understand, but the intention should be made clear in the regulation or the Act. Mr Moore then went on to say—

However, the Minister has advised me that, in view of the report of the Legislative Review and Advisory Committee, he will have another close look at the regulation. It must be borne in mind that the committee was formed by the Parliament to review regulations, and to present its views to the Parliament. In these circumstances, the committee has seen fit to criticise regulation 134 under the Education Act, and in particular it criticises subregulation (1)(e). In view of this criticism, the Minister has a strong obligation to consider the point of view of the committee.

I should reiterate that whilst it is the Minister's intention to give proper regard to the report, it is also the intention that the regulation will still apply to the behaviour of teachers outside school hours and off school premises.

I do not know whether the Minister has made a close consideration of the regulation, but his response to the Legislative Review and Advisory Committee was to leave in the offending subclause which remains as obnoxious as it ever was. He will not alter it or consider specific provisions to cover the specific questions he mentioned in 1979 through the mouthpiece of Mr Moore. All he intends to do is incorporate the regulation in the legislation so that the regulation cannot be challenged. I hope members of this House take note of what the Legislative Review and Advisory Committee said, and of the

Minister's abandonment of his obligation. I hope members join with me to reject this clause, which is more than obnoxious because it goes beyond what is known, and beyond legal norms in regard to what is disgraceful or improper conduct outside working hours.

The assessment of that conduct is subjective. When I was a boy at school, a long time ago in the happy depression years of the 1930s, teachers would have been dismissed instantly for engaging in conduct in which many teachers today openly engage outside school hours. As a matter of fact, I remember that at the University of Adelaide during the immediate post-war period an attempt was made to dismiss a professor because he was a co-respondent in a divorce case. He was not a professor of human morality, but a professor of human physiology. As a result of public outcry he was not dismissed.

Areas of a person's private life are not the concern of an employer. How are we to decide or describe what is disgraceful or improper conduct? We describe many things as disgraceful. Sometimes I have thought the conduct of Ministers in this House was disgraceful because of the legislation they have introduced. I have said many a time that legislation has been disgraceful, but I have not thought Ministers should be discharged. Where do we draw the line? At one stage if two school teachers were cohabiting but not married they would have been regarded as engaging in disgraceful or improper conduct, but these days I would suggest unless the teachers advocate that course as desirable for their school children to follow, it is not disgraceful or improper.

How do we decide what is disgraceful or improper? By way of this provision the person allowed to describe conduct is the director general. I hope nobody in this House gets up to tell me that the provision is sufficient because the director general is an honourable, decent, and good person. Of course he is, but—

The Hon. Neil Oliver: I'll get up and say that about you.

The Hon. R. HETHERINGTON: —the director general quite often is wrong.

The Hon. A. A. Lewis: He doesn't have a hold on that.

The Hon. R. HETHERINGTON: All of us quite often are wrong, but a matter as sensitive as this one should not be left to any director general, even Dr Mossenson for whom I have great respect. I know of various State Governments which have thought that their directors general were good when they were appointed, but people

can make mistakes. The decision as to what is disgraceful or improper conduct should not be left to the determination of one person, and should be spelt out in the legislation.

If it is the intention of the Government to do what Mr Moore said in 1979 was its intention—to have regulations that relate to a multitude of activities outside school hours, such as coaching school teams, visiting parents in their homes to discuss the progress of their children, and so on—I might not have any objection if the regulation were spelt out clearly. I may have an objection to such a regulation, but that would depend on the wording used. As this House knows, including the Minister for Fisheries and Wildlife, quite often I do not like the words written in Bills even though I may agree with the intention of the Bills in question.

This provision is far too broad; it means a whole range of a person's private activities can be regarded as disgraceful or improper. Not only because of what I am now, but also because of what I was—a political scientist who had some interest in the theory and practice of democracy—I am particularly sensitive to the whole question of civil rights and the rights of individuals, especially the right to privacy. We must be careful when we introduce legislation that can interfere with those rights; we should be quite specific.

I am aware also that the climate can change. In that regard I mean the intellectual climate, the values of the community. Different things can become disgraceful or improper at different times. It may be regarded as disgraceful or improper if a school teacher is a member of one of the multitude of split Communist parties. It may be regarded as disgraceful or improper if a teacher is openly a member of the Labor Party. I do not know where people will draw the line as to what is disgraceful or improper.

As this matter is not covered by common law we should leave well enough alone. It would be a good idea for the Minister for Education and his department, and whoever has been advising him on this matter and wants this disgraceful clause in the legislation bulldozed through Parliament, to take advice from lawyers about this matter. I suggest they take advice from Liberal Party lawyers; I do not want them to go to the good Labor lawyers if they do not want to. Plenty of lawyers support the Government and plenty are members of the Liberal Party. Some lawyers who are members of the Liberal Party I would expect to defend my civil rights to the hilt.

The Hon. I. G. Medcalf: Some such lawyers are members of both parties.

The Hon. R. HETHERINGTON: For the Labor Party it goes without saying that it has such lawyers, but I am conceding it is true also of the Liberal Party. I would be quite happy to have one particular lawyer-member of the Liberal Party defend me in court on any day because I trust him.

The Hon. Neil Oliver: I know who that is.

The Hon. R. HETHERINGTON: I trust the member does. I always have respected and trusted this man as an eminent lawyer and a person who believes in civil rights. What makes me sad in the Government's bringing down this legislation is that I believe the Attorney General believes in civil rights. I do not know what the Attorney General said during Cabinet discussions on this matter; I hope he objected to the provision because I find it most objectionable.

I appeal to the Minister in charge of the Bill in this House to have progress reported, look at page 3154 of *Hansard* for 1979, and go along to the Minister for Education and say, "Did you say this?" I believe he would have said this because the Hon. Norman Moore is a truthful person; he would have relayed the Minister's words exactly. If the Minister for Education did say these things, the Attorney General should ask him what he will do about the situation. Will the Minister for Education say, "I examined it very thoroughly. I looked at it, and the more I did the more I liked it because I have to have some way"—I think this was reported somewhere—"to get rid of school teachers who engage in pornographic practices or such things." Of course there are plenty of provisions to get rid of teachers acting beyond the pale. Ways of getting rid of inefficient teachers were not always plentiful; of course, the desire to get rid of inefficient teachers in the first place brought forward this regulation, but inefficient teachers are a different problem. I find it just unbelievable that the regulation has been made a provision of the legislation when the regulation was condemned so thoroughly by the Legislative Review and Advisory Committee in 1979.

I find it ironic to find reported—I suppose if it were reported it must be true—that the Minister for Education said somewhere else, "Well, the regulation has been there for a long time, since 1979, therefore it must be all right". I was thinking only the other day that it was time—one tends to forget things that one needs to do—I rose to ask a question of the Hon. David Wordsworth, representing the Minister for Education, in these terms: "Has the Minister kept his promise of

1979 to consider the obnoxious regulation 134, and will the Minister now do something about it?". But lo and behold we had this Bill come before us which showed that the Minister is doing something about the regulation, and that is to enshrine its obnoxiousness in the legislation. Therefore I strongly oppose the clause.

The whole episode is quite shameful. It was considered by eminent people. We cannot regard Mr Kennedy, Sir Ross Hutchinson or Professor Reid as wild radicals. Some people may regard me as a wild radical trying to subvert the Constitution. However, we cannot regard as wild radicals the people to whom I have just referred; they are sensible people, and I would think generally conservative and responsible.

The Hon. I. G. Medcalf: We appointed them for those reasons.

The Hon. R. HETHERINGTON: I know why the Government appointed them, and it was right because they are prepared to do what they were appointed for, which is to bite the hand that feeds them. That is one of the things about a system of Government that pretends or tries to be, or is moving towards being, democratic; it must expect watchdogs that bite the hand that feeds them. It must expect to have a whole range of people prepared to criticise the Government that pays them. These people in doing that are not disloyal, they are doing their jobs.

The Hon. A. A. Lewis: Are you sure that doesn't come under the Dog Act?

The Hon. R. HETHERINGTON: Another matter to which I object is the whole question of the director general being able to suspend a person and that person not being paid; unless it is at the discretion of the director general. It is almost inevitable that sooner or later a teacher will be charged with an offence before the court and if he is found guilty it will cause him to be dismissed. That is allowed for in the regulations and I am not arguing about that, but if that case should go on for an inordinate length of time—sometimes they take up to 12 months—it could be that under this legislation the teacher is suspended for 12 months without pay.

I do not know what a suspended teacher is supposed to live on. He should be paid until the case or the matter has concluded. We were talking about a person under these circumstances last night. He is an innocent person who has not been convicted of a crime. It may be thought that he should be suspended because he might be a bad influence on the children and it may be an alleged offence which concerns children; but a teacher has to live in the meantime. It is one thing

to suspend a teacher, and it is another thing to suspend him without pay in case he may be found guilty in the future. It seems to be highly unsatisfactory and unfair that this should be left to the director general.

The final point to which I take exception is one which my friend the Hon. Howard Olney pointed out was *ultra vires*. Anyway, as a regulation it is undesirable because it happens nowhere else. It is possible for the director general to impose a fine and have it deducted from a teacher's salary. He may well impose a fine which is being appealed against but it will still be deducted from the teacher's salary. This does not apply elsewhere and it should not apply to school teachers.

If a fine is imposed and the teacher does not pay it, the director general should go to the court to recover it. It is suggested in this Bill that the fine may be collected as a debt to the Minister in any court, and I have no objection to that; but I certainly object to the fact that a person who is tried, judged, and fined, must pay that fine by the order of the same person and have it deducted from his salary.

There must be a sort of madness which has hit the Government at the end of this session because the repressions are multiplying, as we mentioned in the debate last night.

The Hon. G. E. Masters: That was wrong.

The Hon. R. HETHERINGTON: I do not think it was wrong; I am not convinced. Presumably, there is a tendency to move towards repression which comes about as a result of fear. I have found it sad to observe over the years the fear and suspicion that has grown up between the successive Ministers for Education and the Teachers' Union. It is no mean feat to manage to get the Teachers' Union to call teachers out on strike. Even the most militant stirrer on the left could not do that, but the Minister managed to do it.

That reminds me of another part of the Bill I do not care for; that is, teachers who decide they will supervise will automatically have deductions made from their pay. This may have the opposite effect to what is intended. This action is unwise because it may be found that instead of supervising and looking after children the teachers might go on strike. If they are treated like strikers they may behave like strikers.

The Teachers' Union has been cut down in size, but that may have made it more militant. Some people seem to be upset because the Teachers' Union has joined the Trades and Labor Council. I think that is a sensible move because the Trades and Labor Council is a sensible body. I point out

that the Trades and Labor Council is not affiliated with the Australian Labor Party. There are a number of unions which are not affiliated because they do not like the Labor Party and will not have anything to do with it.

The Minister for Education should receive full credit for persuading the teachers to go on strike. It may not have been something he set out to do, but something quite different from what he intended occurred.

For the reasons I have mentioned, I oppose this Bill and I feel particularly outraged that the old regulation 134(1)(e), which was condemned by the Legislative Review and Advisory Committee and which the Minister intended to look into, is placed in the legislation. I believe it would have been quite legitimate to alter the regulation, but it has been written into the Bill in the same way as the regulations which may be *ultra vires* the Act with respect to the collection of fines. There is not the usual clause in relation to retrospectivity about legislation at present under challenge before the courts.

The Opposition opposes the Bill most strongly.

THE HON. NEIL OLIVER (West) [11.55 a.m.]: The subject of education is very close to Mr Hetherington because he has spent a long time in that profession; but it is quite surprising that he has had to use 100 words when 10 words would have sufficed. The matter could have been put to the members of the House in a simple manner.

The Hon. R. Hetherington: We can rely on you for simplicity.

The Hon. NEIL OLIVER: Teachers are well regarded in the community because they are involved in a long-respected profession. The occupation of teachers is very much a profession and, naturally, any manner of behaviour in a profession is under scrutiny; as is the case with dentists, medical practitioners, and architects. Any misconduct or improper conduct which reflects upon the profession should be subject to disciplinary action. It is written into the appropriate Acts for most professions that a certain standard is required in general of that person's conduct.

The status of the teaching profession is upheld by the manner in which the regulations are to be incorporated in the legislation. I would have expected the teaching fraternity to be pleased about this, because it is indicative of the esteem in which the community holds the profession of teaching.

Recently, a case has been heard concerning a medical practitioner of Kalgoorlie, a Dr Udechuku, who, when collecting rent at some

premises in Coolgardie, became involved in an argument with the tenant and some form of violence occurred. Consequently, he was convicted of a minor offence.

He was then brought before the Medical Board and has been disbarred from practising medicine for four calendar months. He has been denied the opportunity of income from his profession for that time, and quite rightly so.

I have heard Mr Hetherington refer to the fact that the greatest asset of this country is its children. I have heard that expression time and time again. Reflections have been made upon the Minister for Education, stating that he is jeopardising this country's only real asset, its children. I cannot support those comments of the Opposition and I cannot support the comments of the Legislative Review and Advisory Committee.

The legislation has ample precedent. When professional people have engaged in improper practices or misconduct, they have been disciplined.

The Hon. R. Hetherington: Are you able to define "improper"? Just give me a chance to reply!

The Hon. P. G. Pendal: The wording is included in those other Acts.

The PRESIDENT: Order!

The Hon. NEIL OLIVER: I do not intend to go any further. Those are my comments. It took me only two minutes to describe my attitude. I did not intend to give a lecture on the matter for an hour and a quarter.

I support the legislation.

THE HON. H. W. OLNEY (South Metropolitan) [12.01 p.m.]: To some extent, I can be blamed for this Bill in that on 5 August of this year I made a speech in the House suggesting that regulation 134, or that part of it which purported to authorise the imposition of penalties on teachers for alleged misconduct, was *ultra vires* the Education Act. Although at the time that really was not the issue under debate, I stand by the assertions I made then.

In his second reading speech, the Minister told the House that the issue of the validity of that regulation, or of several parts of it, is the subject of litigation which will not be affected by this amendment. One feels that the Government may even be prepared to concede now that regulation 134, or the significant parts of it, was in fact *ultra vires* the Act, and hence the need for this legislation. One could hardly imagine that the Government, faced with a claim in the court that a regulation was invalid, could maintain the

validity of that regulation and, at the same time, seek to enact virtually an identical law into the Statute in order to make sure that it did the job the regulation was intended to do.

This brings me to comment in passing upon a subject I have mentioned more than once, and that is the role of the Legislative Review and Advisory Committee. I suggest the committee is better than no committee; but it does have only a very limited role. I urge that serious consideration be given to changing its role and allowing it, or some substituted tribunal, to have a more decisive role in the consideration of delegated legislation.

We have the odd situation that Mr Hetherington is advocating what the committee said in 1979 with respect to the term "disgraceful or improper conduct", but I am disagreeing with what the committee said about regulation 134 being clearly authorised by the terms of section 28. I would have thought only part of the regulation was clearly authorised; and that throws some doubt on the extent to which the Legislative Review and Advisory Committee has considered a very important factor of the validity of the delegated legislation that went before it.

I express concern that, in the face of provisions in other legislation whereby the Government will soon seek to give retrospective application to legislation which will have the effect of taking away a right to have an issue litigated in the Supreme Court, in this case with some virtue the Minister is able to say, "Look, we are not giving this amendment retrospective effect. It will not affect the matter before the court". Of course, the two situations are quite different, in that we have a situation that in July some teachers were penalised under what appears to be, and what appears to be accepted by the Government to be, an invalid regulation; but the Government appears to be requiring those teachers who are challenging that point to run the gauntlet of the Supreme Court in order to prove their point and to have the status quo restored.

While forcing the teachers to proceed with their action in order to vindicate their position under the existing law, the Government is saying, "We are going to stitch it up for the future". I ask the Government seriously to consider, in view of its obvious grave doubts—I am not asking it to say positively that regulation 134 is invalid by being *ultra vires* the Act but the Minister has said there is some doubt, and I suggest there must be grave doubt—whether the Minister for Education would be prepared to accept that a number of teachers may have been penalised in July under a regulation which appears to have been lacking in validity. Therefore, would it be fair and sensible

for those penalties to be remitted and the money refunded?

The PRESIDENT: Order! There is far too much audible conversation. I do not know the situation with *Hansard*, but certainly I am having difficulty hearing the speaker who is addressing the Chamber legitimately.

The Hon. H. W. OLNEY: In that way, the teachers' records would be cleared in respect of their previous conduct.

I make this plea for the teachers previously penalised, in all sincerity. I ask that the matter be considered in the spirit in which it is raised. I do not doubt that the Minister in this House does not have the authority to make a definitive decision on that point; but hopefully he may be able to give some sort of response through the Minister for Education.

As I said earlier, probably I was the cause of this legislation being brought in by having raised the question as to the validity of the regulations. I have a fairly good record for the same sort of activity. I claim responsibility for section 54B of the Police Act, which was passed immediately following the successful contest against certain then existing traffic regulations some years ago.

On that occasion, the Government's response was to hit us for six in stitching up the loophole well and truly. On this occasion, the response has been a little more moderate. The Government proposes to legislate in terms of the existing regulations. To that extent, I do not raise any objection. The Government is here to govern; and it is much better to have in the Act a provision which goes to the very substance of a person's ability to follow his occupation. Such provisions are better placed in Statutes where they are much more readily accessible and knowable, and where there is no doubt of their validity, as compared with having them stuck away in small print in regulations that are virtually impossible to obtain, and which are amended so often that probably only two or three up-to-date sets are available in the State.

To the extent that the disciplinary provisions we are now dealing with are being moved out of the regulations—out of the delegated legislation—into Statute law, I would not raise any objection. However, I do express the same concern that my colleague, Mr Hetherington, has expressed with regard to the content of part of the proposed new section—particularly, of course, that content that deals with disgraceful or improper conduct.

I agree that teachers must, in this present time, be regarded as professionals—people who

command an important position in the community; people to whose professional education the taxpayer contributes in some way; and people upon whom the whole community is absolutely dependent for the continuation of our education system and the continuation of our community standards and way of life. Those people must be seen at all times to be responsible, and they must conduct themselves always in a way that will not undermine their ability to perform the functions for which they are trained and in which they are employed.

Doctors, dentists, veterinary surgeons, lawyers, physiotherapists, chiropractors, and a multitude of other professional people enjoy a special status in the community and are expected, in return for the standing that the law gives them, to place some restraints on their behaviour. In the same way, teachers owe the community a standard of conduct appropriate to their status and appropriate to their important role.

I would not be particularly concerned if the proposed Statute gave the employing authority or the disciplinary authority power to take action in respect of a teacher's professional conduct. Here again we have a difference from the other professionals in that the employer is the discipliner, whereas in the other learned professions the discipline is imposed by an outside body, and normally by the professional person's own peers.

That point aside, I would not be very upset to have some properly worded provision which made something in the nature of improper, disgraceful, or unprofessional conduct punishable if it were done in connection with the practice of the person's profession. By relating the type of conduct to the profession, although not specifically, in effect, we would be setting criteria.

Of course, this gets back to the problem of the director general effectively being the person who sets the standards. It may be appropriate that some consideration be given to having some other decision-making authority established which will enable these professional people to be judged by their peers in the same way as are other professional people. Therefore, there would be the inbuilt provision that what is considered within the profession to be improper conduct is being decided by the people who really know what is expected of a professional person.

Unfortunately, there is not that degree of independence here, which other professional people enjoy, with respect to the position of disciplinary measures. However, to provide as does this provision, that disgraceful or improper

conduct, whether or not during or connected with the employment and functions of a teacher, is to be regarded as misconduct, of course, says only that, if the director general does not like something a teacher does, he may discipline him or her. I would suggest that opens up so much potential for abuse that we ought not to countenance inserting such a provision in our laws.

In Committee I propose to put a series of propositions to the Minister to test whether in fact the Government has thought out the full implications of this regulation, because, if the Minister introducing the Bill is unable to say that certain described conduct would be regarded as disgraceful or improper, how can we, with confidence, say we have passed a law which is readable and understandable by the general public?

I shall leave that to a later part of the proceedings, but I simply put it to the House at this stage that, without some criteria to indicate what it is that the clause seeks to prohibit, we are virtually saying to the director general, "Any time that you don't like anything a teacher does, you can impose one of these penalties". Of course, one of the penalties that is recommended is that the teacher be sacked—that is the ultimate penalty.

For those reasons, we oppose the Bill.

THE HON. W. R. WITHERS (North) [12.20 p.m.]: I will not vote against the Bill at the second reading; however, one provision disturbs me and it has been alluded to already by previous speakers from the other side of the House.

I am concerned about proposed new section 7C(2)(e). I intended to foreshadow an amendment, but possibly during the luncheon recess I can discuss this matter with the Hon. Howard Olney, because I consider when anybody seeks to judge improper or disgraceful conduct, there must surely be a consistent understanding of those words. Unfortunately, I have found that throughout history people place their own meanings on words and once the majority of people start to accept a particular meaning of a word, that becomes the meaning in general use.

However, if we look at the meaning of the word "improper" we find it can mean "inaccurate or wrong". The word "disgraceful" means "loss of favour or bringing dishonour", while the word "misconduct" means "improper conduct".

In my opinion the meanings of the words contained in the Bill are far too loose. What may be improper to some people may be of no consequence to the majority of the community. What is disgraceful to some may bring great

delight to others who are law-abiding and respected people.

I could not go along with any piece of legislation which caused an employee of the State to be embarrassed by the moral judgments of other people who may actually be in a minority and who do not understand fully the meanings of the words used to charge another person, in this case a school teacher.

I should like to discuss this with Mr Olney and possibly with the Minister also. A Minister in front of me who has a sense of humour has written some words on a piece of paper which he has shown to me to remind me that he and I attended a show in London called "Let's Get Laid" and I might add everybody did, bar the audience!

The Hon. P. G. Pendal: That is disgraceful!

The Hon. W. R. WITHERS: I used that example deliberately to show that, to some members, the name of the show would not mean much, but to others it would be disgraceful. That proves the point I wish to make and, therefore, I indicate I will not support that provision.

THE HON. TOM McNEIL (Upper West) [12.22 p.m.]: Like the Hon. Bill Withers, I do not intend to vote against the second reading of the Bill but I object to the same provision to which the honourable member referred.

Proposed new section 7C(2)(e) says, "...engages in disgraceful or improper conduct, whether during or connected with his employment and functions as a teacher...". The next two words are vital and they say, "...or not".

We are deciding to give the director general enormous power, because he would be able to suggest that, as a result of the fact that a person earns his livelihood as a teacher, he is under the public microscope for the rest of his days at all hours of the day and night.

As the honourable member who has just resumed his seat said, the words "misconduct" or "improper conduct" are open to interpretation. It is inconceivable to me that one person could sit in judgment on the proper lifestyle and personal mannerisms of people who are engaged in the education profession. I also agree that teaching is a profession:

If we look at the provisions contained in the report of the committee relating to lawyers and doctors, it can be seen reference was always made to behaviour as it related to the profession; but the private conduct of a person engaged in that profession was not mentioned. I am sure that the authority which examines professional

misdeemeanours from time to time would be concerned only about the operation of the particular person within his profession. It would have to be a rather hideous sort of crime before that person was struck off the register or disbarred, or whatever occurs.

I cannot accept unlimited power being granted to the director general to make a decision as to what is right or wrong. I cast back my mind to the halcyon days of Victorian football when I was involved in a fracas with some North Melbourne players and was quite wrongly suspended for two weeks, because of those dirty North Melbourne footballers.

Several members interjected.

The Hon. TOM McNEIL: I would hate to think that, had I been a teacher, the fact that I had to sit in the sin bin for a couple of weeks would have meant a person could sit in judgment on my professional competence to teach children. It is true that one should not strike another with one's fists, but, in the heat of a football game or whatever—

The Hon. R. G. Pike: When it is the other bloke's fault!

The Hon. TOM McNEIL: I do not think these powers should be granted to anyone. I referred to football, but there are probably a number of other situations to which this would apply. We can refer to the Hon. Mick Gayfer's unfortunate run-in with the RTA and there are probably other members of Parliament who have stepped over the line in one way or another.

Having defended myself from the scurrilous remarks by members who suggested I deserved two weeks' suspension, I point out the amendments we are considering have been introduced as a result of the recent teachers' strike. While I did not in any way, shape, or form, support the teachers' actions in that matter, it is clear these amendments will take care of some of the problems which arose at that time. However, the power we seek to give is too far-reaching and I could not accept the provision to which I have referred.

I hope the Hon. Bill Withers and the Hon. Howard Olney, in discussion with the Minister, will arrive at a compromise situation to the effect that, while the director general has the power to control the actions of teachers, that power should not be so far-reaching.

THE HON. W. M. PIESSE (Lower Central) [12.27 p.m.]: I support the Bill. I have listened with some interest to the arguments against it. The point that has been lost sight of is that teachers are under scrutiny at all times and they

must be, because it is implicit in their profession that part of their responsibilities is to set an example to the children whose care is in their hands. We really must take a very serious look at that fact.

It is pertinent to examine the situation which exists in other countries, for example, in Singapore which I have visited. In that country it is a high honour to be a member of the teaching profession and, in years gone by, it was considered a rather high honour in this country. More is the pity that seems no longer to be so and I wonder why that set of circumstances has come about.

We have to return to the attitude that the position of teachers is a responsible one. It demands great respect and, therefore, teachers must be worthy of that respect.

In Singapore not only are the capabilities in relation to the actual work of teachers watched diligently, but also, if at any time a teacher offends against society in what we might consider to be a rather minor manner, that teacher is no longer classed as being suitable to teach children.

As I understand it, this provision does not go that far. Safeguards are written into the legislation to demonstrate the kind of respect of which we hope our teaching fraternity will be worthy.

I support the Bill.

THE HON. D. J. WORDSWORTH (South—Minister for Lands) [12.29 p.m.]: I thank most members for their support of this legislation. The only objection raised related to the conduct of teachers. Compulsory unionism was mentioned in a minor way by Mr Hetherington and it appeared that he had to admit that even Mr Tonkin had similar views on that matter. However, the main arguments presented today related to proposed new section 7C(2)(e).

Sitting suspended from 12.30 to 2.05 p.m.

The Hon. D. J. WORDSWORTH: Before the luncheon suspension I was speaking to the amendments in this Bill which are expressed in almost the same wording as the former regulation, which was introduced on 4 May 1979. While the Legislative Review and Advisory Committee may not have liked that principle on the grounds of its unduly trespassing on the rights and privileges previously established by law, it is inherent in the tradition of Her Majesty's subjects in Western Australia. The report nevertheless argues that it is largely a matter of drafting.

During the debate, Mr Moore said that the Minister should have a close look at the matter, following the review committee's report. The

Minister was obliged to examine the findings of the committee. I do not think anyone could argue that Mr Grayden has not had a good look at it; indeed, he has introduced a Bill into this House to support the exact wording in that regulation.

The union was consulted at the time of the introduction of the regulation, and Mr Hetherington acknowledged that fact when I interjected upon him during his speech at the time of the debate on the motion to disallow the regulation.

Most school teachers are willing to and do wish to live up to a code of ethics higher than that which is currently expected by the community. I believe our society is very reasonably tolerant on these matters. Nevertheless, the standards required under the Bill are not higher; in fact, to the contrary the Bill refers to "any conduct or practice which is contrary to accepted practice". I believe teachers are willing to abide by a higher standard and the Bill is not demanding that higher standard but is saying that it should not be less.

Our school system endeavours to give everyone an education equal to that which may be gained at a private school. Regardless of income, no-one will be disadvantaged as far as education is concerned. We have in our Government schools lower class sizes and we have poured money into improvements in schools. However, we still find many of the public wish to send their children to private schools. Even ardent supporters of Labor are strong advocates of private schooling and seem to endeavour to obtain private education for their children. We see Hawkes and Frasers at the same school and in this Chamber we are constantly reminded that the Dowdings and Lockyers were at the same school.

The Hon. P. H. Lockyer: It was not my choice.

The Hon. Peter Dowding: You were only a kid in short pants.

The Hon. P. H. Lockyer: You were the school brat.

The Hon. D. J. WORDSWORTH: In many private schools the facilities do not come up to the standards of those in Government schools, but when we consider the two systems I do not believe the qualifications of teachers at private schools are any higher than those of teachers at Government schools. However, teachers at private schools can be dismissed if they do not set a fine example.

Teachers are not ordinary people, they are very special people because they are looking after our children. The personal standards of teachers will affect our children for the rest of their lives.

However, I will not go to the length of comparing them with church leaders who are also expected to have above average moral standards.

The Hon. D. K. Dans: Would you say church leaders are supernatural or ordinary?

The Hon. Peter Dowding: Should they have higher standards than Ministers of the Crown?

The Hon. D. J. WORDSWORTH: Teachers in private schools, who may be dismissed because of misconduct, are not paid any more than teachers in Government schools. They accept their positions knowing that if they do not abide by a reasonable standard of conduct they will be dismissed.

Perhaps for a different comparison we should look at the American education system so we are not looking at a certain privileged few. In American schools a high standard is expected from teachers because they are employed by the community. The community has the right to sack them if it is considered the moral standards of the teachers are not high enough.

I believe that the Teachers' Union is quite happy to live with this regulation.

The Hon. Peter Dowding: What do you base that on?

The Hon. D. J. WORDSWORTH: There was a time in 1979 when it negotiated with the Minister—

Several members interjected.

The PRESIDENT: Order!

The Hon. D. J. WORDSWORTH: —on the formation of this regulation.

The Hon. Peter Dowding: They accepted it.

The Hon. D. J. WORDSWORTH: The Teachers' Union has become publicly motivated over the last couple of years and now it is putting on a show, and is being stirred on by the Labor Party.

The Hon. R. Hetherington: What a lot of nonsense. Don't try that sort of stupidity.

The Hon. D. K. Dans: He is not even good at that.

The Hon. D. J. WORDSWORTH: If members refer to the Bill they will find it states, "Where it appears to the director general..."; in other words he is not making a decision on standards. It appears to me that the Bill provides that the director general shall cause an inquiry to be held by an authorised person. Therefore, in other words, literally two checks are made.

The Hon. Peter Dowding: What are they?

The Hon. D. J. WORDSWORTH: First of all there is the personal view of the director general, and, secondly, of course, there is an inquiry. So two checks are available. If the teacher feels offended he has the opportunity to appeal to the Teachers' Tribunal and then he has the further protection of the courts; if necessary he can go to the Supreme Court.

The Hon. Peter Dowding: To do what?

The Hon. D. J. WORDSWORTH: To decide this; it is not just one person making a decision. The opposition of the Labor Party is based upon a report of the Legislative Review and Advisory Committee which is charged with drawing Parliament's attention to regulations that go through this House and often are found to be not fully examined by members of Parliament. It has drawn our attention to this particular regulation. We are now reviewing that regulation.

The Hon. Peter Dowding: Who is doing the reviewing?

The Hon. D. J. WORDSWORTH: I hope Mr Dowding is; that is what he is charged with.

The Hon. Peter Dowding: Why don't you explain what he can do in the Supreme Court?

The Hon. D. J. WORDSWORTH: Mr Grayden has looked at this regulation and has chosen to bring it to Parliament to give it further endorsement. We are masters of our own destiny, and we have the right to endorse a regulation should we feel there is need for change. In order to protect our children a provision should be included in the Act to enable teachers to be charged with various offences relating to misconduct if we feel there is need to make them.

During this debate members have been given examples of misconduct and I thought that some of those were ridiculous, especially those relating to football and things of that kind. There are far worse offences as we all know. I remind members that it is compulsory by law for children to be in the presence of and taught by these teachers. I am referring to the real misconduct of teachers rather than the frivolous examples presented to this House.

Question put and a division taken with the following result—

Ayes 18

Hon. V. J. Ferry	Hon. P. G. Pandal
Hon. Tom Knight	Hon. W. M. Piesse
Hon. P. H. Lockyer	Hon. R. G. Pike
Hon. G. C. MacKinnon	Hon. I. G. Pratt
Hon. G. E. Masters	Hon. P. H. Wells
Hon. Tom McNeill	Hon. R. J. L. Williams
Hon. Neil McNeill	Hon. W. R. Withers
Hon. I. G. Medcalf	Hon. D. J. Wordsworth
Hon. Neil Oliver	Hon. Margaret McAleer

(Teller)

Noes 8

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

(Teller)

Pair

Aye	No
Hon. N. F. Moore	Hon. R. T. Leeson

Question thus passed.

Bill read a second time.

In Committee

The Chairman of Committees (the Hon. V. J. Ferry) in the Chair; the Hon. D. J. Wordsworth (Minister for Lands) in charge of the Bill.

Clause 1 put and passed.

Clause 2: Sections 7A, 7B, 7C, 7D, and 7E inserted—

The Hon. R. HETHERINGTON: I move an amendment—

Page 2—Delete new section 7B.

This Bill is another piece of window dressing by the Government and it serves no purpose whatsoever. It is just another bit of huffing and puffing by the Minister.

The Hon. D. J. WORDSWORTH: The Government does not agree to this amendment.

Amendment put and negatived.

The Hon. R. HETHERINGTON: I move an amendment—

Page 2—Delete paragraph (e).

My argument stands unanswered by the Minister, and I ask the Committee to support the amendment.

The Hon. H. W. OLNEY: In his reply to the second reading debate the Minister made two fairly profound statements in a legal sense, one of which was complete nonsense.

The Hon. G. C. MacKinnon: How could it be both profound and nonsense?

The Hon. H. W. OLNEY: It was so way out and unrealistic the Minister must have taken a long time to think it up. His nonsensical comment was that teachers could appeal to the Supreme Court.

However, his second point was a very good point; indeed, he did not appreciate how good it was because he demolished the whole of his argument. He made the good point that teachers in private schools could be dismissed for misconduct. In fact, any employee can be dismissed for misconduct. The term "misconduct" is one which is well known to trade unionists, union officials, employers, industrial lawyers, and courts. It has been adjudicated on by every court in the land from the lowest to the highest, and to the Privy Council and back again. There is no difficulty in being able to determine what are the principles in assessing whether an employee has been guilty of misconduct.

Section 44 of the Public Service Act provides that any officer who, amongst other things, commits any act of misconduct is guilty of an offence for which he may, amongst other things, be dismissed. However, the Government did not see the need to define "misconduct" in the Public Service Act because it knew that anyone who knew anything about industrial law would understand the meaning of the word "misconduct" in the context of employer-employee relationships.

However, not so under the Education Act; in this legislation, "misconduct" is defined in a very specific way. In fact, it goes far beyond what is generally accepted as misconduct in employer-employee relationships in the ordinary sense. So, when the Minister says, "Let us compare private schools with Government schools: Teachers in private schools can be dismissed for misconduct, therefore this clause is not objectionable" he is talking about two different things. If, indeed, the Bill simply provided that a teacher who was guilty of misconduct was liable to be penalised, in the same way as a public servant is liable to be penalised, this whole debate would be unnecessary and I do not think anybody in the teaching profession or in the Teachers' Union would raise any real objection.

However, this Bill extends the accepted term of "misconduct" to include a lot of things that are not normally included within the meaning of the word and it is for that reason the Opposition seeks the deletion of paragraph (c). It will have the effect of putting Government school teachers in a vastly different position from teachers in private schools.

I gather from the Minister's comment that to send one's children to a private school is the ultimate aspiration for all responsible parents. I do not share that view.

The Hon. D. J. Wordsworth: I did not say that at all.

The Hon. H. W. OLNEY: Nevertheless, I accept that private schools do expect and maintain a high standard of conduct from their teachers—and, quite rightly so. Likewise, the Education Department should and does demand a high standard of conduct from its teachers.

What the Government is asking is that the Parliament authorise the employing authority virtually to be able to say, "Not only would you be liable to dismissal if you are guilty of misconduct in the ordinary sense but also you may be dismissed if you do anything the director general does not like". That, really, is the nub of our objection.

The Hon. D. J. WORDSWORTH: I believe the member is playing with words. The Bill provides that a teacher shall be guilty of misconduct if he engages in disgraceful or improper conduct. That was the terminology I used in respect of teachers at private schools.

Amendment put and a division taken with the following result—

Ayes 9

Hon. J. M. Berinson
Hon. J. M. Brown
Hon. D. K. Dans
Hon. Peter Dowding
Hon. Lyla Elliott

Hon. R. Hetherington
Hon. Tom McNeil
Hon. H. W. Olney
Hon. F. E. McKenzie

(Teller)

Noes 17

Hon. N. E. Baxter
Hon. Tom Knight
Hon. P. H. Lockyer
Hon. G. C. MacKinnon
Hon. G. E. Masters
Hon. Neil McNeill
Hon. I. G. Medcalf
Hon. Neil Oliver
Hon. P. G. Pandal

Hon. W. M. Piesse
Hon. R. G. Pike
Hon. I. G. Pratt
Hon. P. H. Wells
Hon. R. J. L. Williams
Hon. W. R. Withers
Hon. D. J. Wordsworth
Hon. Margaret McAleer

(Teller)

Pair

Aye

Hon. R. T. Leeson

No

Hon. N. F. Moore

Amendment thus negatived.

The Hon. W. R. WITHERS: I am quite happy with clause 2 until we reach proposed section 7C(2)(c). As I said in my second reading speech, a person can be improper merely by being inaccurate; he can be disgraceful just because he loses favour, all according to the *Oxford Dictionary*. It is possible for a person to be improper and yet still be considered a suitable person to be a teacher, and that is the basis for my amendment. The provision, if my amendment were made, would read, "he engages in disgraceful or improper conduct which renders that person unfit to be a teacher".

I will tell members of an experience I had as a member of Parliament when I acted improperly

and disgracefully. This happened while I conducted a study tour of the USSR. I was in the city of Tashkent and I did something before 500 people for which I ought to be thoroughly ashamed, because at the time I was acting as a private ambassador for Australia.

Some members might know that as a youngster in the RAAF I was the welterweight boxing champion in 1951, and so I should never hit a man in anger. Unfortunately that is exactly what I did. For the first time since my teenage years I hit a man in anger. There were reasons for this: he had endeavoured to physically remove me from my table in such a way that I momentarily lost my temper and placed him in a position where he was not able to act any further.

The Hon. Tom McNeil: You should have been suspended for two weeks.

The Hon. W. R. WITHERS: Both the Hon. Tom McNeil and I have given an analogy in support of my amendment. While I may have acted disgracefully and improperly, I still believe my action did not make me a lesser person as a representative of the people in North Province. That action did not make me unfit to be a member of Parliament.

I agree with the intent behind the Minister's phraseology, but I do not agree with the phraseology itself. My amendment goes along with the Minister's and the Government's intent and is still fair to the teaching profession. I move an amendment—

Page 2, lines 35 to 37—Delete all words from and including the word "whether" down to and including the word "not" and substitute the words "which renders that person unfit to be a teacher".

The Hon. D. J. WORDSWORTH: This is the second instance where a member has placed himself in the position of a teacher and referred to some minor act of misconduct and read into this provision that such an act would have prevented his continuing to be a teacher. That is not necessarily the case.

The Hon. Peter Dowding: But it could be.

The Hon. D. J. WORDSWORTH: First of all, an act must appear to the director general—a very responsible person—to be an improper act. Obviously he is considering the responsibility of a teacher to set an example. There also has to be an inquiry with the right of appeal, with or without court action, which I am led to believe can still take place.

I remind members that the Teaching Service Act of the Commonwealth contains an almost

identical provision. The legislation in New South Wales and South Australia also contain similar provisions. The 1980 Acts in those two States provide that a teacher can be dismissed if he or she takes part in disgraceful conduct.

The Hon. Peter Dowding: Did they include the words "in or out of employment"?

The Hon. D. J. WORDSWORTH: In both cases the Acts are silent on whether this conduct is or is not limited to the teacher's actual teaching duties. In both States the provision has been applied to cases of teachers convicted of crimes undertaken outside and not directly related to school.

While Mr Withers might have a conscience about hitting a Communist, there are such things as child molestation, child pornography, and drug peddling at the other end of the scale. This provision is required to remove people involved in such things from the schools attended by our children.

The Hon. H. W. OLNEY: I will give an example which is possibly half way between the example of someone in Russia hitting a Communist and being sent to Siberia, and someone being a child molester or a purveyor of child pornography. My hypothetical case centres on a 22-year-old female high school teacher who, for the sake of the argument, is a teacher at Swanbourne Senior High School because that is in Mr Hassell's electorate, an area where everybody is respectable. One would not doubt that if the teacher disrobed in front of her year 12 class of young males, she was guilty of improper or disgraceful conduct—no-one would argue about that.

The Hon. R. Hetherington: The young males wouldn't argue either.

The Hon. H. W. OLNEY: On a Sunday afternoon the same teacher may go one kilometre from the school to the beach nearby at which hundreds of males and females disrobe to take in the sun. This teacher may well know that many of the young fellows in her class go to that beach also on a Sunday afternoon to get a suntan. The conduct is the same. In the first instance it would be disgraceful or improper, but can the Minister say that in the second the teacher acted disgracefully or improperly? The teacher may well know that young men whom she will face in the classroom the next day will be at that beach, but would she be acting disgracefully or improperly? That sort of situation could arise, and one can imagine parents going to the principal to say, "That hussy, I saw her at

Swanbourne on Sunday and now she's up there teaching my kid".

The Hon. G. E. Masters: What would the mother have been doing down there? Probably she was doing the same thing.

The Hon. P. H. Wells: She was simply on the beach by accident!

The Hon. R. Hetherington: She was looking for her son.

The Hon. H. W. OLNEY: Possibly she was looking for her husband; however, the matter is serious, and the situation I have outlined could arise. The director general would have to determine whether the teacher acted disgracefully or improperly. No doubt he would conduct an inquiry to obtain a report so that he could make his determination. If the director general were in the position of having to make a determination on the facts before him, can the Minister say—after all, he represents the Minister for Education who, in cases of misconduct, ultimately makes the dismissal decision—whether he believes the conduct to which I have referred would be disgraceful or improper? I ask whether he has formed a firm opinion, and, if so, what that opinion is.

The Hon. R. HETHERINGTON: I am worried about the Minister because he keeps saying the same things time and time again. The Minister will not face the fact that disgraceful or improper conduct can be established whether or not it is connected with a teacher's employment or work functions. I cannot understand why this clause will remain; why the Government wants it in; or why the Government will not include something more specific. Never have I been terribly happy about accepting amendments off the top of someone's head, but it is obvious to me that Mr Withers' amendment very much improves the clause. For that reason the Opposition will support the amendment, and I hope it has a quick passage through the Chamber.

I hope other members of the Government parties think seriously about the amendment and what the Legislative Review and Advisory Committee said. I hope those members think about the arguments put forward; about the fallacious arguments put up by the Minister, and the valid arguments put up by Mr Withers and Mr Olney. After that consideration, I hope members support the amendment. I am not prepared to support the concept that the decision as to whether conduct is disgraceful or improper be left with a director general, and I am sure nobody else is.

Mr Olney's example is very good. Obviously these days if a teacher disrobed in front of her class in the classroom she would be guilty of disgraceful or improper conduct, although the day might come that she is able to disrobe when she is conducting an art lesson.

The Hon. P. G. Pental: Is that why you took an interest in Claremont tech?

The Hon. P. H. Wells: You said that in 1979 the Teachers' Union was happy to leave it with the director:

The Hon. R. HETHERINGTON: I did not say that.

The Hon. P. H. Wells: You said in your speech that the Teachers' Union had accepted this regulation.

The Hon. R. HETHERINGTON: I pointed out that the union accepted the regulation, but under protest.

The Hon. P. H. Wells: It was only in relation to whether or not the conduct was in the school grounds.

The Hon. R. HETHERINGTON: The union never has been happy about the regulation, whether or not it has related to teaching duties. The union was not happy about the part of the regulation relating to out-of-school activities, but it accepted the regulation. Even if the union comes cap in hand to say, "We like this regulation", I would oppose it because it is wrong. After all, in the final analysis, I am here to do what I think is right and develop arguments which I think should be developed—I am doing just that.

The decision as to whether a conduct is disgraceful or otherwise is subjective. As Mr Olney pointed out, a teacher may disrobe in front of members of her class, but do so at Swanbourne Beach. Is that disgraceful or improper? I would not think so, but some people may. The question is dubious, and we need a regulation other than this one to cover such matters.

I oppose the Government's proposal and indicate on behalf of the Opposition that we are prepared to accept Mr Withers' amendment as a decided improvement.

The Hon. W. M. PIESSE: I oppose the amendment. I was somewhat intrigued by the example Mr Olney put before us. It seems to me the whole question does not rest on whether a teacher disrobes at Swanbourne Beach, in a classroom, or anywhere else; the point is whether a teacher blatantly breaks the law. If the law says that Swanbourne Beach may be used for nude bathing, no quarrel exists. It is quite appropriate

for a teacher in her own time to go to an area set aside for nude bathing. It may be undesirable, but her conduct could not be considered disgraceful or improper.

The Hon. J. M. Berinson: This clause is not restricted to breaches of the law, as you understand.

The Hon. W. M. PIESSE: I am saying the clause indicates that the misconduct must be a breaking of the law in the instance of a disrobing; whether the conduct was disgraceful or improper would hinge on whether the teacher was breaking the law.

The Hon. J. M. Berinson: But that question can only be answered by deciding whether disrobing is disgraceful in that environment.

The Hon. W. M. PIESSE: In the proper place, no-one would complain about it. For instance, it would be quite proper to disrobe to get into the bath.

The Hon. G. E. Masters: Don't you do that Mr Berinson?

The Hon. W. M. PIESSE: Another instance where disrobing is quite proper is at a nudist colony. It would not be misconduct to disrobe there. If we go on splitting hairs with this kind of nonsense, we cast a little slur on our intelligence.

We must consider also whether such conduct renders a person concerned unfit to be a teacher. Here again, as I have said before, we must look at the whole range of teaching. Teaching involves setting an example. There can be no denying that.

The Hon. J. M. Berinson: Don't you think that Mr Withers' amendment acknowledges that?

The Hon. W. M. PIESSE: No, I think Mr Withers' amendment may well be taken to refer to the teacher's ability; that is, that the teacher has the necessary knowledge and that he or she has the ability to impart it in the school room. Such a person would be fit to be a teacher, never mind anything else, under the terms of Mr Withers' amendment. The amendment gives no indication of the sort of example which the teacher should give to his or her students. This is a very important aspect of the Bill.

Anyone who has reared children will know that for a very great part of a child's educational years, he or she will come home and tell his mother, "Mum, I saw Mr Berinson, who is my teacher, do something or other".

The Hon. I. G. Pratt: 'Tsk 'tsk!

The Hon. W. M. PIESSE: "I would like to be like that, and I will do the same thing".

The Hon. J. M. Berinson: Well said!

The Hon. G. E. Masters: You have made him blush now.

The Hon. R. G. Pike: He shows a good example.

The Hon. W. M. PIESSE: The child thinks that because Mr Berinson has done something it must be all right. That is the way children regard their teachers, and it is the kind of thing we are talking about. We must look at the overall picture of the examples set by the teacher to his students.

The Hon. J. M. BERINSON: The latter part of the Hon. Win Piesse's speech—

The Hon. H. W. Olney: Deny everything! Don't say anything more.

The Hon. J. M. BERINSON: —was so appealing it feels almost ungracious to disagree with her point of view. I think it really has to be said, however, that the intransigence on the Government's part in rejecting the amendment moved by Mr Withers is difficult to understand. The amendment surely meets any legitimate purpose which the Government would have in proposing this part of the definition of "misconduct".

In addition to that, it has the advantage of removing some of the ambiguity of this provision in the Bill. As if those two advantages were not enough, it also sets out clearly the basis on which the Teachers' Tribunal would almost certainly approach any question which was put to it relating to the administration of this provision if enacted.

If memory serves me correctly, earlier regulations contained provisions which are either identical with or very similar to the wording of proposed subsection 7C(2)(e). Under those regulations a number of teachers were in fact dismissed by the department for a range of convictions. In a whole series of cases the Teachers' Tribunal ordered the reinstatement of the teachers concerned. A number of different situations were involved but I think the overall approach of the tribunal was practical and reasonable.

Firstly the tribunal recognised the seriousness of the offence of which the teachers had been convicted. Secondly, it recognised the peculiar importance of the example which teachers provide to students by way of their own conduct, but having taken both these aspects into consideration, in a large proportion of cases, the tribunal came down in favour of reinstatement. When all was said and done, on the facts of the particular cases I am referring to, the tribunal found that the actions of the teachers had not rendered them unfit as teachers. That is the

approach which the tribunal has consistently taken in the past.

I know that certain amendments have been made to the form of the regulations in recent years, but I cannot believe that the tribunal's approach to a question of this sort would now be any different than it was then. Certainly there is nothing in the words of the Government's Bill which would require the tribunal to change its approach. The question is whether the conduct, disgraceful or improper as it might be, taken in isolation, is so serious—given the person's profession as a teacher—as to warrant his dismissal or discipline in some other way.

That is the approach which the tribunal has taken, and really, for the Government to proceed so pigheadedly, in support of its original wording, is to deny the reality. Whatever the wording we adopt now, I cannot believe that the end result will be any different. If I am right in that, why not do a better job by specifying the particular conduct against which we wish to legislate?

At least it can be said of Mr Withers that his amendment goes part of the way towards improving the position. It defines the situation more closely. It removes some of the ambiguity. To return to my original point, the amendment surely meets any legitimate objective which the Government could be seeking in the provision under discussion.

The Hon. P. H. WELLS: I wish to make two remarks only. Firstly, frequently when Mr Hetherington discusses the Government's actions, he says that the Government has not taken the people into consideration. I would like to refer to comments he made in this Chamber on 3 October 1979, when the regulations relating to teachers were being discussed. On page 3157 of *Hansard* of 1979 the Hon. R. Hetherington said—

... according to the information I obtained from people who attended the negotiations

...

On that occasion the honourable member was referring to subregulation (1) (e) and the Teachers' Union said that it wanted to add the words "absent from school without leave". I notice those words appear in proposed section 7C(2)(c) in the Bill before us. On the earlier occasion, the Hon. Robert Hetherington also said—

I know the Teachers' Union has accepted this regulation. It appears to me that at that stage the union was prepared to accept the director and the department's handling of misconduct cases.

I happened to note an article in this morning's Press which referred to a teacher in New South Wales who had been charged in connection with homosexual offences with a child. Such cases arise from time to time in schools, and I imagine that if that charge were proved in court, the Hon. Robert Hetherington would agree it was disgraceful and improper conduct.

The Hon. R. Hetherington: Of course it is.

The Hon. P. H. WELLS: And that is not on the school property; it is outside the area. What the Minister has been saying is reasonable.

According to the information that I have before me, the teachers had plenty of discussion in connection with this regulation before it was made. Now the regulation is being moved into the Act, which is what the Hon. Howard Olney said before. I have heard members on the other side saying that we should have regulations enumerated in Acts; and the Government is doing that.

The amendment proposed by the Hon. Bill Withers adds nothing to the clause. I cannot see how it would have any effect, and I disagree with it.

The Hon. D. J. WORDSWORTH: The Government believes that the wording of the Bill is more suitable than the proposed amendment, which was prepared rather quickly. Our wording has been proved, it is understood, and it is used in other States. It has an accepted result.

Mr Berinson suggested that the tribunal would act in its own way, anyway. On the examples he gave, no-one would argue against that.

This clause has not been used very often; but now and then a very definite demand is made for it to be used.

The Hon. Win Piesse spoke as a mother as well as an elected representative. She pointed out that we are concerned for the protection of the children who attend the schools involuntarily. Their parents have no choice. Therefore, a high standard has to be maintained, and the wording of this clause is the most suitable to meet that point.

The Hon. W. R. WITHERS: I thank the members who supported my amendment. Some of the speakers in opposition did not realise fully the importance of the amendment, nor of what they were saying.

The Hon. R. Hetherington: I did not think so, either.

The Hon. W. R. WITHERS: Firstly, the Minister said that the members who had spoken had put themselves in the place of the teachers in

respect of non-punishment under those regulations.

I agree that it is not necessarily so that a teacher would be punished under this clause, but it could happen.

Let us face it: The interpretation of what we do in this Committee will be made by people in the future, when we are long since dead. We have Statutes that were made by people who are now in their graves. We place an interpretation on the words of those people, and so do courts of law; so it is important that all the words we put in Statutes have meanings which can be interpreted in the future.

The Hon. Peter Dowding: I must say I am awfully glad to hear you say that.

The Hon. W. R. WITHERS: Thank you, Mr Dowding.

Over the years I have been saying to people, "You must use words with the correct meaning". That applies particularly in this Chamber, because if we do not use the correct words people will misunderstand, and they will misinterpret.

The Hon. Win Picse said that teachers must set an example. I agree. The amendment will enable that. However, if a teacher has a momentary lapse—and it happens; as the old preachers used to say, "We're all sinners; we've all sinned at some stage"—he should not be dismissed unless he is proved to be unfit as a teacher.

The Hon. W. M. Picse: But you are disregarding the rest of the Bill.

The Hon. W. R. WITHERS: Sometimes a charge is laid on one person's say so; and the teacher is told, "That's it. You're dismissed".

The Hon. Peter Dowding: You can look only at the words.

The Hon. W. R. WITHERS: The Standing Orders require me to disregard the rest of the Bill in moving an amendment. However, the amendment is an integral part of the whole Bill. In fact, it gives strength to the Bill and it does not detract from the Government's intentions.

I agree with the Government's intentions. It is necessary for us to ensure that, when this Bill is passed, it has wording which can be interpreted by people in the future in a way which will allow teachers not to be punished unfairly.

I repeat that a teacher could be punished unfairly purely on the moral judgment of a Minister or a citizen who makes a complaint to the department. I explained that when I moved my amendment.

The Hon. Peter Wells said that the Teachers' Union had considered these regulations. Later he said that the teachers had wanted to add something in 1979 which is now in a separate part of the regulations. If that is the case, what the Teachers' Union looked at in 1979 was not the set of regulations before us now.

The Hon. R. Hetherington: I will put him right in a moment. He misquoted me.

The Hon. W. R. WITHERS: Very well.

This amendment does not detract from the intention of the Government. It still gives coverage in a way that the Government would require; but also it gives coverage in a way which would not be unfair to teachers. This is very important.

The Hon. R. HETHERINGTON: I am afraid that, by selective quotation, the Hon. Peter Wells has misquoted me. Therefore, I would like to read what I said on Wednesday, 3 October 1979, at page 3157 of *Hansard*—

I know the Teachers' Union has accepted this regulation. I am aware that during the negotiations the provisions I have talked about were objected to. Finally, according to the information I obtained from people who attended the negotiations, the Teachers' Union said it did not want included in subregulation (1) (e) the words, "whether during or connected with his employment and functions as a teacher or not". The union wanted to add to the words, "absent from school without leave".

That is what I said, and that is in line with everything I said today. The teachers accepted it, but not happily. They objected to these words, but they were offered the regulations as they stood or nothing. They had already negotiated some undesirable features out of the regulations, and so they accepted them, but not happily.

Those were the remarks I made in 1979, so although the Hon. Peter Wells has not done so deliberately, he has misled the Committee.

The Hon. P. H. Wells: I said they were not challenging "disgraceful and improper conduct". That is what you said then.

The Hon. R. HETHERINGTON: The teachers objected to the use of the wording, "disgraceful or improper conduct whether during or connected with his employment and functions as a teacher or not". If the honourable member had listened to me—

The Hon. P. H. Wells: I have been here all the time, and listening to you. I always do.

The Hon. R. HETHERINGTON: He must have missed this point. In quoting the Legislative Review and Advisory Committee, I did say that "disgraceful and improper conduct" in a professional way was understood by the courts. It is disgraceful or improper conduct, whether in his employment—that is, professionally as a teacher—or not to which we are objecting.

I object to that and Mr Withers has been able to see the sense of this objection, and that is why he has moved his amendment. I should like to remove the whole subclause, but I can see there is something to be said for it. Mr Withers has in fact removed the words to which the Teachers' Union objected at the time, so perhaps he was closer to them than I was then. I am not sure of the position now. However, I suggest to members that they support the amendment.

Unfortunately it does not matter what example is used; one seizes on it and worries away at it when there are all sorts of other examples which may be used. The political ones are the ones which worry me. A whole range of things can be used against teachers which may be regarded as disgraceful or improper when teachers are not involved in their employment.

There are some matters I would regard as being disgraceful and improper, but which I would not see as making a teacher unfit for teaching. The Hon. Win Piesse seems to think we must expect all teachers at all times to behave in the way she wants her children to behave. Unfortunately we cannot do that, because I am quite sure there are many people I respect who behave in a way the Hon. Win Piesse would not like, but I would. I am not sure I would always behave in the way the honourable lady would like, either. That does not mean, as far as I am concerned, I am behaving disgracefully or improperly. It means our values differ and that relates to the subjectivity of this clause.

I suggest members have another look at what Mr Withers' amendment actually says, because I cannot see how they can object to it, and it would serve the Government's intention quite well. Indeed, the words would read better.

The Hon. W. R. WITHERS: I am almost tempted to ask the Minister to report progress on this, because the Hon. Bob Hetherington is right; many members do not appear to know what the amendment means. For example, the Hon. Peter Wells, by way of interjection, stated the school teachers did not object to the words "disgraceful and improper conduct" and I make the point that nor does this amendment.

The Hon. P. H. Wells: The Hon. Bob Hetherington asked for the deletion of those words.

The Hon. W. R. WITHERS: The Hon. Bob Hetherington commented in relation to a previous amendment which this Chamber rejected, but I am referring to this amendment alone within Standing Orders. My amendment does not challenge the words "disgraceful or improper conduct". All it does is qualify the words in a way that justice can be done or can be seen to be done. That is all. In fact, as I have said previously, I agree with those words "disgraceful and improper conduct" and with the intent of the Government; but I am saying there has been an error.

The Hon. P. H. Wells: You want to limit it to the school, do you?

The Hon. W. R. WITHERS: No, I have not said that at all. That is the problem—members are not reading the amendment correctly. It is not limited to schools at all.

The amendment says that if a person does something which is improper or disgraceful which renders him unfit to be a school teacher, regardless of where it is committed, he should face a tribunal or be subject to the decision of the Minister or Director General of Education. Of course, that fits in with the intent of the Government legislation.

I cannot reveal my source, but I know, as a result of information obtained outside this Chamber, that the Education Department at the moment is not really happy with this wording. Indeed, were it happy with the wording, it would not be working towards a possible amendment next year. Therefore, I ask members: Why not do it correctly now? I probably will not be here next year; therefore, I cannot sit here and vote for a piece of legislation when I may not be present when the sensible legislation is introduced.

If we are not to report progress, I plead with members to look at the amendment and realise it agrees with the intent of the Government's Bill, but there has been a mistake in the wording and the amendment will correct that.

Amendment put and negatived.

The Hon. R. HETHERINGTON: I move an amendment—

Page 3, line 26—Delete the word "not".

This amendment merely makes it mandatory that an innocent person who has been charged and suspended be paid until such time as his guilt or innocence is proved. As the person is innocent, he should be paid during the time of suspension. Once the person is found guilty, it is a different

ball game. In the interests of justice, members should support the amendment.

The Hon. D. J. WORDSWORTH: This provision prevents a person involving himself in a number of appeals in relation to the charges, and if he loses the final appeal, there is no way the money can be reclaimed. Under this provision, if a person proves he has a case, he receives his money; but why should he be continued to be paid if he is no longer teaching?

The Hon. PETER DOWDING: That is a grossly unsatisfactory answer from the Minister and it does not even reflect the true position. The Minister should be aware of that. This is another example of the sort of legislation we were called upon to pass last night. In fact, on reading the speeches on the Prisons Bill, I was struck with a sense of *deja vu* when I entered the Chamber and heard the Minister's comments in relation to this Bill.

The Government does not really want to create a system of justice for teachers. It does not want to recognise their professional status. The Government wants a hammer with which to hit teachers over the head if they step out of line in accordance with Grayden's law.

The Hon. R. J. L. Williams: That is not right.

The Hon. PETER DOWDING: The Hon. John Williams has shown he would not know and the classic example of his ignorance—

The Hon. R. J. L. Williams: Read it again.

Point of Order

The Hon. R. J. L. WILLIAMS: I do not intend to take any more abuse from that member about my ignorance when he displays his appalling ignorance and breaks every Standing Order of this Parliament. Either he comes to order or I shall move a motion.

The CHAIRMAN: Order! Honourable members know the provisions of Standing Orders and they should adhere to them.

Committee Resumed

The Hon. PETER DOWDING: This is a piece of legislation which does not recognise that which people like the Hon. John Williams should surely recognise, being in a Government of which Mr Grayden is himself a Minister, and the very point that the Hon. Bill Withers made is people at times behave outside the terms of their employment in a way that they may subsequently regret.

The Hon. P. G. Pendal: You have been dying to say that for days.

The Hon. PETER DOWDING: Mr Grayden, who went to the Sheraton Hotel and ended up punching a police officer and being charged—

The Hon. P. G. Pendal: That is disgraceful!

Several members interjected.

The CHAIRMAN: Order! The question before the Chair is that the word proposed to be deleted be deleted and I do not think the comments made in respect of members of this Parliament have very much to do with that proposition. I ask members to confine their remarks directly to the question before the Chair.

The Hon. P. H. Lockyer: People in glass houses should be very careful.

The CHAIRMAN: Order!

The Hon. PETER DOWDING: The point I am making in relation to proposed section 7C(6) is that a person in Mr Grayden's position, if he were acting as a teacher, would have been without a salary from the time his action came to the notice of the Education Department until he was either dealt with by conviction or acquittal. If he were acquitted—as Mr Grayden was not—at a later time and found innocent of the charge, he may have been in a position where he was without a salary for six months or longer. In that time his hire-purchase commitments, his family obligations and home mortgage commitments may have involved him in enormous financial detriment. How can it be said that it is justified to do this on a *prima facie* basis? If the boot were on the other foot—Mr Williams told us all about his boots in his speech last night—

The Hon. R. J. L. Williams: One boot.

The Hon. PETER DOWDING: If the boot were on the other foot—I did not believe it anyway—

The Hon. R. J. L. Williams: You never believe anything. You were dragged up in the slum and act like it.

The Hon. PETER DOWDING: If the boot were on the other foot and the Education Department had to establish that there were grounds for the termination of his salary, in extreme circumstances perhaps it is justified; but here it certainly is not justified, and if honourable members opposite pause to think about it for a moment—

Several members interjected.

The Hon. R. J. L. Williams: Go on.

The CHAIRMAN: Order!

The Hon. PETER DOWDING: I can hear muttered threats from the other side of the Chamber which turn me into a cowering,

timorous person who will now obey Mr Williams' directions!

The Hon. R. J. L. Williams: They are not idle threats.

The Hon. PETER DOWDING: If the boot were on the other foot and the Education Department had the right in extreme circumstances to terminate a person's salary during the period in which that person is in fact by law innocent, although I know honourable members opposite—no doubt Mr Williams is one of them—would like to see the end to the presumption of innocence—

The Hon. P. G. Pental: Rubbish!

The Hon. P. H. Lockyer: Totally wrong.

The Hon. R. J. L. Williams: Rubbish!

The Hon. PETER DOWDING: How do those members explain it? None of them has bothered to get up and speak. The Hon. Norman Moore is not here to defend his profession.

The Hon. R. J. L. Williams: He is not here because he is on Government business.

The Hon. PETER DOWDING: How does the Government explain and justify it? Members have not bothered to speak on proposed section 7C(6). The answer is that it is not justifiable and that is why none of them has risen to his feet to justify it and support his own Minister. It is outrageous that the department should be in a position to bring a person to his knees for a charge which at that stage is unproven and which ultimately may be proved to have been false. We all know what happened to the member for Morley when recently, on a completely unsubstantiated basis—

The Hon. R. J. L. Williams: Do not bring that into the Chamber.

The Hon. PETER DOWDING: Why should I not?

The Hon. R. J. L. Williams: Because the man is innocent.

The Hon. PETER DOWDING: If the member would listen he would see that is precisely the point I am making.

The Hon. R. J. L. Williams: Do not dare bring that into the Chamber. Do not bring it in.

The CHAIRMAN: Order! I will not tolerate the cross fire of interjections at this level. We are not completely deaf. I ask the Hon. Peter Dowding to moderate his tone of voice, to say the least, so my eardrums are left in one piece. I do not know how *Hansard* is getting on.

The Chamber is acting in a very unruly way this afternoon, which is not customary. Possibly it

is because the end of the session is nearly upon us. I hope it is fast approaching.

The Hon. PETER DOWDING: I maintain that the man is innocent, and have made that point. He was perfectly innocent and was dragged into the courts in a most scurrilous manner over outrageous allegations which were without any basis and were shown to be unfounded without there being even a *prima facie* case against the man. Had this man been a teacher, he would have lost his salary for a period of seven months. That is what the member is going to support tonight.

The Hon. R. J. L. Williams: Who said that?

The Hon. PETER DOWDING: If he were a teacher, his wife and family and his mortgage payments would have gone up the creek because the Education Department, through its Minister, has adopted a holier-than-thou attitude and wants the power to take a person's money from him. It is outrageous.

The Hon. R. J. L. Williams: Look at Jesus Christ over there! Unholier than thou, a great man, always king.

The Hon. R. Hetherington: That would be all right.

The Hon. D. K. Dans: I have great confidence in him.

The Hon. PETER DOWDING: These pathetic little mumbblings from the Hon. Phil Lockyer and the Hon. John Williams show how little they know about the basic freedoms of this society.

The Hon. P. H. Lockyer: We care about the discipline of the Chamber.

The Hon. R. J. L. Williams: Do not talk rubbish!

The Hon. PETER DOWDING: The member knows it too.

The Hon. R. J. L. Williams: Rubbish!

The Hon. PETER DOWDING: That is why he is not leaping to his feet to defend the teachers.

The Hon. R. J. L. Williams: We do not have to. We are not implicated by something that is sensational, not for a second.

The CHAIRMAN: Order, please! The Hon. John Williams will come to order. There has been a constant barrage of interjections.

The Hon. R. J. L. Williams: I apologise, Mr Chairman.

The Hon. PETER DOWDING: It is a pity that honourable members opposite who make the pretence of caring about democracy and who believe in it, do not bother to defend it when the chips are down. This Bill is an attack on democracy. If it were the case that a member of

Parliament was accused of improper conduct and suspended before the charge was proved, and if he were not to receive a salary during the period of suspension, the situation might continue until the case was heard and determined perhaps in his favour, for anything up to 12 months. How is that person meant to live in the circumstances?

The Hon. P. G. Pendal: What do you base that on, to use one of your silly retorts? Why do you say they could be held up for 12 months?

The Hon. PETER DOWDING: Because that is the time it can take between the alleged commission of an offence and the matter being dealt with in a court.

The Hon. P. G. Pendal: Have you shown any occasion where an Education Department disciplinary matter has taken 12 months to be dealt with?

The Hon. PETER DOWDING: It does not necessarily follow—

The Hon. G. E. Masters: Show us, do not just talk and make comment after comment. Show us the facts instead of grandstanding.

The Hon. PETER DOWDING: That just shows how pathetically silly the reading of this legislation has been by some members opposite. The Hon. Phil Pendal has exerted himself today and has not bothered to read it through properly.

The Hon. P. H. Lockyer: He has exposed you!

The Hon. P. G. Pendal: I have thought it through.

The Hon. R. Hetherington: You did not get very far, did you?

The Hon. P. H. Lockyer: Sit down and let us get on with it.

The Hon. PETER DOWDING: Let me put to the Hon. Phil Pendal the position of someone who assaults a police officer in the Sheraton Hotel, or is alleged to have done so.

The Hon. P. G. Pendal: Why do you keep bringing that up?

The Hon. R. J. L. Williams: Was he a member of the teaching profession?

The CHAIRMAN: Order, please! The honourable member will come to order. The honourable member is transgressing against Standing Order No. 87 and is making reflections upon a member of a House of this Parliament, and has used an analogy to make a point of it. I was rather tolerant in that, but I believe his persistent line in this vein is not becoming of him as a member of Parliament, nor is it in keeping with the Standing Orders of this Chamber. I believe he can contribute to the debate without

using those examples. Would the honourable member please continue?

The Hon. PETER DOWDING: If one assumes the position of a person who assaults a police officer and is therefore charged with aggravated assault—that, Mr Chairman, makes it different from the case to which I was referring.

The CHAIRMAN: I will be the judge of that.

The Hon. PETER DOWDING: It does. I was making a point to you, Mr Chairman, with respect.

The CHAIRMAN: With respect, I want the member to respect the Chair.

The Hon. PETER DOWDING: I was seeking to explain that I have not previously alluded to the position of a member of the public who was charged with aggravated assault as a result of assaulting a police officer. A member of the public who did that should be charged and, if such a person were a teacher, no doubt he would be charged; and if he were a teacher and was charged, the department could take a certain view.

The Hon. R. Hetherington: Disgraceful!

The Hon. PETER DOWDING: Disgraceful or improper conduct. He may determine that an inquiry should be held and under new section 7C(5)(b) he would be a teacher charged with an offence against another Act and it would then be necessary—I hope Mr Pendal is listening to this—

The Hon. P. G. Pendal: I am listening very closely.

The Hon. PETER DOWDING: I hope the member is. It would then be necessary for the director general to act. He could, if he wished, exercise his discretion and immediately suspend that teacher, who could wait months until the charge was heard and the department, having had it heard and determined, could then conclude the inquiry, and during that time the teacher would not receive his salary. Am I right or wrong?

The Hon. D. J. Wordsworth: That is correct.

The Hon. P. G. Pendal: Absolutely correct.

The Hon. D. J. Wordsworth: And you think he should be paid for that time even though he may not be teaching.

The Hon. PETER DOWDING: Why is he not teaching?

The Hon. D. J. Wordsworth: Because he has been suspended.

The Hon. PETER DOWDING: Because he has an allegation against him of which he is innocent.

The Hon. D. J. Wordsworth: Not necessarily. He is not innocent.

The Hon. R. Hetherington: He has not been found guilty.

The Hon. PETER DOWDING: Well, for goodness sake, of course he is innocent. Does not the member understand presumption of innocence?

The Hon. P. G. Pental: You do not understand it because you may be preventing someone being dealt with according to the process of the law.

The Hon. PETER DOWDING: The member is raising it. He is innocent until he has been convicted and found guilty.

The Hon. P. G. Pental: You keep making him pay for it.

The Hon. PETER DOWDING: I do not do that at all. All I wish to do is to illustrate the gross unfairness of those members opposite who adopt a holier-than-thou attitude. We on this side admit human frailties.

The Hon. I. G. Pratt interjected.

The Hon. PETER DOWDING: That is an excellent contribution. We happen to admit human frailties and we recognise that the world is not perfect. We do not agree with a piece of legislation which penalises a person before he is convicted. The member is worrying about reflections on a man who has been convicted; what about thinking of the person who has not been convicted and may have to wait up to 12 months to have his case heard and in that time is prevented from engaging in the teaching profession—although the offence may have nothing to do with his behaviour in the classroom—and is further penalised by not receiving his salary during that period?

The Hon. P. G. Pental: Does not that also apply to a person who is arrested and remanded in custody. That person does not earn a living, either.

The Hon. PETER DOWDING: That is why we have a system of bail.

The Hon. P. G. Pental: Yes, I was saying—

The Hon. PETER DOWDING: Would the member like to see—

The Hon. P. H. Wells interjected.

The Hon. PETER DOWDING: Honourable members opposite seriously justify a man, in that circumstance, being deprived of his livelihood and ultimately being acquitted of the charge or perhaps the charge is dismissed under section 669 or section 137, or whatever it is, of the Justices Act? What if he spent an entire year without

receiving a salary? His whole economic life is destroyed; what does he do then?

The Hon. P. G. Pental: Explain to me how you would expand your argument to a remand prisoner who does not get bail?

The Hon. PETER DOWDING: What does that have to do with it? Does the member want to reduce the entire professional teaching staff of the State school system to the level of someone who has not enough wherewithal to raise bail?

The Hon. P. G. Pental: What has that to do with this?

The Hon. PETER DOWDING: It happens to relate to the Bill before us. I am sorry members opposite take this outrageously narrow view of a man in the situation I have described being deprived of his salary during the period in which the charges have not been proved, and before he has any guilt attached to him.

If members look at new subsection (5)(b) they will see the effect of the charge is sufficient to warrant suspension. The director general does not have to inquire as to the substance of the charge; the likelihood of success of the charge; whether it is going to be substantiated; or whether, if substantiated, it would attract a heavy penalty, and members opposite are quite happy to vote for that.

All I can say is it is a reflection of a sick Government, a sick Cabinet and a very sick Government side of this Chamber. Either they think the argument I am putting is incorrect—in which case they are palpably wrong—or they think my argument has no force in it—in which case I do not admire their judgment.

Amendment put and negatived.

The Hon. R. HETHERINGTON: I move an amendment—

Page 6, lines 11 to 13—Delete paragraph (a).

In moving this amendment I merely want to make teachers like other people so they cannot be fined by their own department and then have the fine deducted from their salaries. I think the proper way to recover a fine, if a person is not prepared to pay it, is through a court. I have no objection to the fine being recovered, as the Minister indicated, in a court of jurisdiction, but I do disapprove of the opinion that a person can have deductions made from his salary. This cannot be done to other employees unless a court order is issued, and it should not be done in the case of teachers simply because the director general so rules. In some of these cases a person may wish to appeal, but this does not stop the fine being

deducted. I commend the amendment to the Committee.

The Hon. D. J. WORDSWORTH: The Government does not agree to this amendment.

The Hon. R. HETHERINGTON: I see that we have reached the sausage machine stage where all the Minister has to say is, "We do not agree to the amendment" and members have got tired of the debate. I suppose that is not surprising. It looks as though this Bill is going to finish up as a bad Act. I am sorry about that, but I can do no more than to commend the amendment once more to the Chamber.

Amendment put and negatived.

The Hon. R. HETHERINGTON: I move an amendment—

Page 8, lines 4 to 7—Delete all words from and including the word "but" down to and including the word "ground".

As far as the Opposition is concerned, this clause narrows too much what the appeal tribunal can do. It is an attempt to lay down narrowly that if a teacher has done a certain action he will be guilty of misconduct, and the tribunal is not allowed to do anything but decide on the facts of the action. It cannot judge the action in any further context, and the clause as it now stands and the words I want to remove exclude everything else from the tribunal.

If the Minister decides to "get" a teacher and the director general has laid down that despite an order being put to him the teacher has or has not obeyed that order, he may be dismissed. It is an attempt to bring teachers to heel so that they can be fined and taken to court more easily than now is the case. It is a continuation on the road to confrontation which has marked the whole period since the last election. It would be a lot better if we removed the words so that the tribunal can deal with appeals in their broadest sense.

Amendment put and negatived.

The Hon. R. HETHERINGTON: I move an amendment—

Page 10—Delete new section 7E.

Amendment put and negatived.

The Hon. PETER DOWDING: I regret we are now faced with a piece of legislation which is designed to be an iron fist to keep teachers in line, despite occasions arising when they might see that their professional obligations, both to the children they teach and to the parents of those children, conflict with the duties imposed upon them by the State Government's adopting unreasonable and unfair policies.

This piece of legislation is designed not only to keep teachers in line in circumstances where, clearly, there is no conflict being pursued by the teachers, but also to ensure that the Government is not reliant on the professionalism of teachers to ensure a high standard of education in our schools, but rather on a sense of fear so, in the event that if teachers depart from the standards the Government sees as desirable, they can be penalised.

Teachers have been much maligned by this Government and by members of this place and the other place. Members have chosen to ignore the very valuable role they play in the community. It is a measure of the value of the role that many parents, students, and interested members of the community turned out in pouring rain at Parliament House a few months ago to support the teachers.

It is very easy for the Government to speak in terms of the teachers being the pawns of the Labor Party; that in itself is contradictory and untrue and is offensive to teachers' professionalism. There is no doubt that this piece of legislation has only one specific end; namely, to ensure that teachers are not free to express a range of views essential to be expressed by a group which considers itself a professional group with professional responsibilities.

It is a mark of the pervading view of the Government; it is obviously the view of the Minister for Community Welfare; it clearly is the view of the Minister for Education—goodness knows, he would be the last person who should adopt that view—and, clearly, it is the view of a disintegrating Cabinet which is desperately clutching at straws in order to save its party at the next State election. It will lose the next election, not because the Labor Party is manipulating any sections of the community, but because people in this community—

The Hon. G. E. Masters: We have no worries with people like you who have vile tongues, putting forward the Labor Party point of view.

The Hon. PETER DOWDING:—who have not previously been politicised are sick and tired of being criticised by people who want to do nothing but decry their honesty and professionalism and their sense of responsibility.

The Hon. I. G. PRATT: I have kept out of this debate until now because I believe one should not become too closely involved in matters relating to one's profession or former profession. That is why I do not believe lawyers should get too involved in discussions about law, because they all seem to disagree on the matter. Similarly, teachers should

not become too involved in matters to do with education.

The attitude of the Education Department has always been to have the utmost sympathy for teachers who may be experiencing personal problems. Where people are experiencing difficulties in their family life or get into a spot of bother of some sort, they are not persecuted by the Education Department and the Minister. They receive the utmost sympathy. Often, things like transfers and leave are granted to help people get over such situations. I see no reason that this situation will change as a result of this legislation.

Unfortunately, there are those in the profession—as in any profession—who abuse the privileges available to them and, to cater for such situations, fairly stern measures need to be available to the Education Department. However, such measures would not be used on every occasion. The passing of this Bill will not change that situation. I am confident teachers can continue to look forward to the same sympathetic consideration they have received in the past from the Education Department. However, for those people who step way out of bounds—and, to warrant the sort of treatment provided for in this Bill, they would have to step a long way out of bounds—stern measures must be provided.

The Hon. Peter Dowding: Where is that safeguard written into the Bill?

The Hon. I. G. PRATT: The Bill says “may”. No responsible Minister would use that provision unwisely. During this entire acrimonious debate we have not been given any examples of where the provision has not been used wisely, and where teachers have been hounded out of the department and unduly disciplined. There are ways that this could be done—

The Hon. Peter Dowding: It has not been the law.

The Hon. I. G. PRATT: —without the law. However, the law makes quite clear just what areas of behaviour are acceptable.

I am an ex-teacher. It is interesting that if any controversial matter upsets the teaching profession, generally I hear about it pretty quickly.

The Hon. Peter Dowding: They are upset about this piece of legislation.

The Hon. I. G. PRATT: The honest, hard-working teachers who take their job seriously—the people who do the day-to-day job of teaching children without standing on soap boxes and trying to create trouble—have not been bothered by this. They are not worried about it at

all. Of course, those who are at the other extreme want complete freedom. They think that any restriction or any obligation on them to obey guidelines of behaviour is a restriction on their personal freedom. They stand on the highest soap boxes and scream as loud as they possibly can.

The honest, hard-working, decent, sensible teacher has nothing to fear from this Bill. In fact, it cements the honour and the prestige of his profession. The person who acts reasonably, sensibly, and honestly has nothing to fear from this. He has everything to gain for the standing of his profession.

Sitting suspended from 3.51 to 4.00 p.m.

The Hon. R. HETHERINGTON: I do not want to delay the Committee much longer, but it seems to me that Mr Pratt made the kind of speech which illustrates our whole objection to the Bill. He said that teachers are alright if they are not “way out”, whatever that means. Apparently a teacher is “way out” if he stands on a soap box to make his point. I am interested in the provisions in the Bill and what actions can be taken under the Bill, not whether we have a nice, paternalistic Education Department. As far as I am concerned this unamended clause is still as objectionable to me as it was when we began the debate.

The Hon. I. G. PRATT: Like the Hon. Robert Hetherington I will not waste the time of the Chamber; what I say is correct.

The Hon. D. K. Dans: In Mr Pratt’s opinion.

The Hon. I. G. PRATT: I did not say, as the Hon. Robert Hetherington suggested, that the legislation intends to deal with people who stand on soap boxes to put their points. Those who want complete freedom are to my mind often the people who stand up on soap boxes and scream to the world about what they think is happening. If the member wants to refer to my remarks I ask that he do so accurately.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

THE HON. D. J. WORDSWORTH (South—Minister for Lands) [4.03 p.m.]: I move—

That the Bill be now read a third time.

THE HON. R. HETHERINGTON (East Metropolitan) [4.04 p.m.]: I find this Bill quite unacceptable. The Opposition finds it

unacceptable and we hope that in due course the Government will have second thoughts and bring forward better legislation. We have been told that members of this House have nothing to fear because the worst clauses will not be used in an objectionable way, but that is not correct. The Opposition remains completely opposed to this Bill.

Question put and passed.

Bill read a third time and passed.

STATE ENERGY COMMISSION AMENDMENT BILL

Second Reading

Debate resumed from 19 November.

THE HON. R. T. LEESON (South-East) [4.05 p.m.]: The Bill includes several amendments, some of which I will explain in detail. The staff of the State Energy Commission will be enlarged by two officers: firstly, a deputy commissioner, and, secondly, an associate commissioner. The appointments are deemed necessary because of internal management problems and a considerable increase in the commission's work load as determined by the SEC. From our point of view we could not disagree with that determination; we are not in a position to know exactly what goes on at the commission, but common sense must prevail. We realise a big increase has occurred in Western Australia's power generation capacity over the last few years, and naturally go along with these types of appointments.

Another amendment will make it easier for the SEC to borrow money overseas. The commission feels that the intricate accountancy problems it has experienced make the amendment necessary. We support that view, especially in view of the cost of installing generators and the like that must be provided in these times for power generation. Large amounts of money are borrowed by the commission from various sources. At present there is great competition between all sorts of companies for the money available from lending institutions. The SEC has as big a problem as anybody in borrowing the money it requires. From day to day we see full-page advertisements offering fairly lucrative interest returns for money invested. If the commission deems the amendments necessary, certainly we should agree to them.

One amendment will enable contracts in excess of \$200 000 but not more than \$1 million to be entered into by the SEC without the Governor's consent. We do not see anything out of the ordinary in that amendment when referring to an

enterprise as large as the SEC. An amount of \$1 million does not go very far in this day and age.

Another amendment will allow the SEC to appoint someone by writing under its common seal to execute deeds or documents on its behalf that are binding on the commission as if they were entered into under its common seal.

An amendment of great interest to country members and people living in country areas relates to farmers who require extensions to electricity mains for properties that are—in some instances—a considerable distance from existing mains. When contracts are entered into, the present system is that the payment is made immediately the contract is written, but by way of this amendment a period of three months may elapse after the contract is completed after which period the farmer must pay the bill. Some of these accounts are considerable; they run into many thousands of dollars. Many occasions arise—my colleague Mr Jim Brown would be readily aware of them—in which it takes many months for the job to be completed. Under the present system, farmers pay the money but have to wait until the job is completed for a return on their outlay. It is only right that a farmer pay for a job when it is completed. This applies particularly to country people in farming communities well outside the metropolitan area.

Another amendment will increase penalties imposed upon people who steal power. I am sure members have read recent newspaper publicity about this matter. I have read a number of articles on this matter and I have been concerned about it because I read that most people who steal power are usually the people who cannot afford to pay for it. This may be correct in some instances but I have made a few inquiries with people who know a little about this problem and I have been told that most of the power stealing is done by large companies and businesses which can really afford to pay for their power.

I suppose because this is occurring, the burden is not being spread evenly amongst the people in Western Australia and those who cannot afford to pay for it are paying an inflated price. We have to take a strong hand in the matter of power stealing, which must amount to a large sum annually. I believe there is a need for more control in this area. We have no objection to the increase in the penalties for this offence.

Another aspect I wish to mention relates to the public relations of the commission. Since the SEC has taken over the role of power supply in Kalgoorlie, a considerable number of people in my province have called in to my office to make

complaints about the public relations of the commission. This point must be considered because the SEC is taking up the control of power throughout the State. I believe that Carnarvon is due to go over to the SEC.

I am a little concerned about the problems because, having worked in the power generation industry on the goldfields when it came under the Kalgoorlie Town Council, I am aware of the problems which can arise. We now have the situation with the SEC where it has rules and regulations and there is no room for flexibility when dealing with the everyday life of the people in Kalgoorlie.

Many people have been told, "Sorry, that is what we do and we cannot change it, goodbye". On the main highways through country towns there is often a situation where the road transport vehicles catch what they term "run-ins" which are the wires that run from the poles into the houses. Often these vehicles catch these wires and continue on their merry way without reporting it to the SEC. The SEC naturally carries out the work but hands the bill to the people to whose house the wires are coupled. This sort of thing is not new, it has been going on for many years; but the Kalgoorlie Town Council has always replaced those cables without any further charge to the home owner. It was one of the things it believed was a fact of life.

However, the SEC does not do this because I understand there are regulations which prescribe that the wires should be a certain height above the road. Unfortunately, in the goldfields we have such wide roads that the light poles run down the middle and the run-ins are in the way of transport. It would cost a tremendous amount to relocate those poles.

The SEC should do a little more about publishing these regulations because new buildings are going up in parts of Kalgoorlie and these run-ins are certainly far too low. Indeed they would be far lower than the regulations provide. The SEC could elevate its image. It seems that it has become too big and has got too far away from the consumer and the general public when dealing with their needs.

The Hon. R. G. Pike: It is one of our most efficient statutory authorities.

The Hon. R. T. LEESON: I hope it is efficient because, after all, we are paying the dearest electricity charges in Australia. I am pleased to be assured that the SEC is doing everything in its power to keep the price of electricity down.

There are seven amendments in this Bill and the Opposition has no objection to them.

However, I hope the SEC will take a look at its public relations image and ensure that people receive a fair go.

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [4.19 p.m.]: I thank the honourable member for his summing up of the main parts of this Bill. He has obviously looked at it very carefully and he has pointed out the need for the SEC to move into the modern age in terms of commercial practices and has also pointed out the benefits which will accrue to the farming community, who have to connect up to the power lines by virtue of the fact that they will now be given time to pay the quite high contributions to enable them to connect to the scheme.

Reference was made also to the stealing of power and the fact that it is usually the more learned of the SEC's customers who engage in stealing power rather than the ordinary housewife or citizen who would not know how to manipulate a meter. The member is quite right when he says we must tighten up the provisions to ensure that the ordinary customer does not pay more than he should.

On the question of public relations, I have noted the points raised by the member and I draw to his attention the fact that when a relatively small body such as the Kalgoorlie corporation hands over to an enormous corporation such as the SEC, there must be problems of this kind, particularly when people are used to dealing with a local organisation. However, no doubt this matter can be attended to and I will draw to the attention of the Minister the matter of the local people having to pay when a truck interfered with the lines and brought them down. The customers should not have to pay for something which is no fault of theirs. I will inform the Minister also of the member's comments in regard to publicising the regulations.

I thank members for their support of the Bill, and I commend it to the House.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

Third Reading

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

LOTTO BILL*Second Reading*

Debate resumed from 19 November.

THE HON. PETER DOWDING (North) [4.23 p.m.]: The Opposition does not oppose this piece of legislation, but I wish to make some brief remarks about it.

Members should be aware that this legislation is to validate the illegal actions of the Lotteries Commission which was acting illegally in running lotto games in this State. That illegality was pointed out by Mr Jamieson, the member for Welshpool, about April of this year. The Government has now acknowledged that there was no authority for the actions of the Lotteries Commission, and there was no authority for agreements to be entered into with interstate operators of lotto games. The only way to describe the prior and present events in relation to lotto is that they were and are illegal activities.

It is a mark, I think, of the "ad hockery" and capricious nature of the Government's conduct that it was prepared to permit an illegal act to be conducted by the Lotteries Commission for so long. It is an example of the deteriorating ability of this Government to manage the affairs of Western Australia to ensure that its public utilities and Government instrumentalities do not break the law. We saw another example recently in relation to the investment of public funds, and the illegal actions of Government instrumentalities were validated subsequently by amendments to the Public Moneys Investment Act. Another example of this situation was the position of prisoners who were held under indeterminate sentences. There has been a need to amend the Act relating to prisoners also because what was occurring was not proper.

These are only three examples of the numerous instances that have arisen during this year, and in particular in this part of the session, where legislation has been necessary because capricious decisions taken by the Government had to be shored up at some later stage with validating legislation.

The Hon. Neil Oliver: You ought to look a bit further because—

The PRESIDENT: Order!

The Hon. PETER DOWDING: I take it the honourable member is not suggesting that the actions of the Lotteries Commission were legal?

The Hon. Neil Oliver: You were referring to others.

The Hon. PETER DOWDING: Was the honourable member suggesting that?

The PRESIDENT: Order!

The Hon. Neil Oliver: I said there are others—

The PRESIDENT: Order! I ask the honourable member to cease his interjections, and I ask the honourable member addressing the Chair to do so.

The Hon. PETER DOWDING: Mr President, I am glad the honourable member is not making that suggestion. No doubt when he reads the Bill—which I hope he will do in due course—he will recognise that what I have said is absolutely correct. At least the Minister in another place had the grace to make those admissions.

The Government ought to have obtained advice before it permitted the Lotteries Commission to embark on the game of lotto and before it permitted the Lotteries Commission to enter into agreements with interstate organisation. The Government should have used the opportunity of the agreements to introduce legislation to permit that game to take place, and it is a measure of the contempt with which this Government treats the people of Western Australia and Parliament that it chose to embark on that action without referring it to Parliament. Had the Government engaged in the proper action and brought the matter to Parliament for ratification, the subject would have been aired in the proper forum. This problem would not have arisen, and the need for the legislation to validate illegal actions would not have occurred. It is consistent with the Government's general view that it makes announcements of decisions of an important nature to the public through the media and through its vast Press machine. It chooses not to use Parliament, and it acts in a way which is, in my submission, irresponsible.

The Hon. P. H. Lockyer: Rubbish!

The Hon. PETER DOWDING: I thought that towards the end of the session, after having sat here for so many days, the Hon. Philip Lockyer may have found himself another word to use. I hoped he may even have made a speech occasionally. One will always live in hope, and no doubt he will make that speech one of these days.

If the Government used Parliament in the way Parliament ought to be used, and not merely as a rubber stamp to validate the Government's actions, *ex post facto*, this situation would not have arisen, and the illegality would not have occurred.

THE HON. N. E. BAXTER (Central) [4.29 p.m.]: I find myself on this occasion agreeing with some of the remarks of the Hon. Peter Dowding.

The Hon. R. Hetherington: Chalk it up!

The Hon. N. E. BAXTER: One cannot help but be honest, and so I must say that I agree with some of his comments. From a reading of *Hansard* it appears that the member for Welshpool in another place raised questions about the validity of the conduct of lotto back in March of this year.

I was not aware of this and so I asked a question on the subject on 4 August after the session had opened and after I had studied the Lotteries (Control) Act and found that the provisions in the Act were not being complied with. I asked a question about the permits that were issued for lotto and the answer I received gave me what could be termed a "bum steer". My question 317 and the Minister's answer is as follows—

- (1) Is Lotto or Tatts-Lotto a lottery or game of chance?
- (2) Under what section of the Lotteries (Control) Act, 1954-1972, did the commission have the right to—
 - (a) Introduce and conduct Lotto; and
 - (b) transfer the operation and drawing of Lotto to Tatts-Lotto?
- (3) Is Tatts-Lotto a foreign lottery according to the definition of foreign lottery in section (4) of the Act?

The Hon. G. E. MASTERS replied:

- (1) The Chief Secretary advises that both are lotteries as defined by law.
- (2) (a) Section 7.
 (b) There has been no transfer of operations to Tatts-Lotto. By agreement, Western Australia, South Australia, and Victoria joined together to form what is known as Australian Lotto Bloc. Each State retained its individual identity—for example South Australia retains Cross Lotto, Victoria retains Tatts-Lotto, and Western Australia retains Lotto—and they merely pool the prize money.

The agreement sets out that Victoria for the initial six month period telecasts the lotto draw. This matter is to be reconsidered at the expiration of that period.

- (3) Yes.

I was not satisfied with those answers because it indicated to me that Lotto was entirely illegal. I followed up this question with a further question

on 12 August and it and the Minister's answer read as follows—

Adverting to question 317 of Tuesday, 4 August 1981—

- (1) Are applications made to the Minister for a permit to conduct Lotto, in accordance with subsection (1)(a) of section 7 of the Lotteries (Control) Act, for each week's Lotto lottery?
- (2) If so, is a permit for each individual Lotto applied for, or is a series applied for?
- (3) Do the applications to the Minister conform with subsection (1)(b)(i) by stating the number of tickets to be offered for sale in the Lotto lottery, or the total number of subscriptions proposed to be called for?
- (4) If so, how does the chairman or secretary of the commission assess the number of tickets or subscriptions when there is no limit set on the number of entries for each drawing?
- (5) How can the permit applied for under subsection (1)(b)(iii) of section 7 of the Act state the total amount of prize money to be distributed when the number of entries and subscriptions is unlimited, and also includes subscriptions in other States?
- (6) Does the fact that Lotto is drawn in Victoria by Tatts-Lotto which is a foreign lottery, conflict with section (6) subsection (1)(a) of the Act, which only authorises the commission to conduct lotteries in the whole or any part of the State of Western Australia?

The Hon. G. E. MASTERS replied:

- (1) Yes.
- (2) A series of ten is applied for each time.
- (3) Yes.
- (4) No assessment of the total number of tickets is made. Approvals are sought for an unlimited number of tickets.
- (5) The permit states that the prize money for distribution is 60 per cent of subscriptions received.
- (6) Not as the law is presently understood.

It transpired that in a very short time the Chief Secretary found out that lotto was being conducted illegally in this State. The transfer to Lotto Bloc in Victoria was also illegal.

The Bill is before us because the Minister was given incorrect advice. I cannot understand why the Secretary and the Chairman of the Lotteries Commission did not wake up to the fact that lotto

should not have been introduced in this State without an amendment to the Lotteries (Control) Act. They went ahead and introduced lotto without looking at the Act. They also entered Lotto Bloc without consulting the Act.

The Hon. Peter Dowding: I do not think the Minister was given the advice.

The Hon. N. E. BAXTER: Section 6(1)(a) of the Lotteries (Control) Act reads—

6. (1) The Commission has and shall exercise the following powers and duties—

(a) to conduct lotteries in the whole or any part of the State in order to raise money for charitable purposes;

That does not and never did mean that the commission, in conjunction with other States, can conduct lotteries conjointly in another State of Australia. That was the second illegality; the first was that lotto was introduced at all. Section 7(1)(a) and (b)(i) reads—

7. (1) (a) Where the Commission desires to conduct a lottery, it shall, at least fourteen days before the proposed opening date, make application to the Minister in the prescribed form for a permit.

(b) The chairman or secretary of the Commission shall sign the application for the permit which shall state—

(i) the total number of tickets to be offered for sale in the lottery or the total number of subscriptions proposed to be called for in the lottery;

Lotto did not conform with this because the commission could not state the total number of tickets to be sold and the total number of subscriptions proposed to be called for; so, again, it was illegal. Section 7(b)(iii) says, “the total amount of the prize money proposed to be distributed in the lottery”. There was never any total amount; the amount was always undefined and depended on how much was invested. On those grounds alone the whole arrangement was entirely illegal from the start. The system should never have got off the ground without an amendment to the Act.

I was surprised when I saw the Government had introduced an entirely separate Bill to cover lotto. I thought that when the Government woke up to what had happened it would amend the Lotteries (Control) Act. Apparently it found it difficult to amend the Act and so introduced this Lotto Bill. It parallels the Lotteries (Control) Act in the conduct of lotteries.

What worries me is that, since the Chief Secretary discovered that lotto was being conducted illegally—not just that it was being conducted at all but it was conducted as part of Lotto Bloc—nothing was done about it.

The Hon. Peter Dowding: There were no admissions made in his second reading speech.

The Hon. N. E. BAXTER: Nothing was done about the matter until this Bill was introduced in another place. Even then, until this Bill is proclaimed, lotto will operate illegally. When the Minister discovered the operations of lotto were illegal, he should have suspended them until the Parliament had passed legislation to regulate the situation.

If anyone else conducted an illegal lottery, he would very quickly find himself in hot water. Therefore, the Minister should have suspended the operations of lotto until this legislation was proclaimed.

Section 23(1)(c) of the Lotteries (Control) Act sets out the penalty for conducting an illegal lottery as follows—

Imprisonment for three years, or on summary conviction
imprisonment for six months or a fine of one hundred pounds;

It could be the Chairman and members of the Lotteries Commission are liable to be penalised for conducting an illegal lottery in the same way as anyone else is liable. I maintain they should be. When the commission found out lotto was illegal, the operations should have been suspended. I cannot understand why the Minister did not insist that be done.

The Lotto Bill contains a penalty for the conduct of an illegal lottery similar to that to which I have just referred in the Lotteries (Control) Act. The penalty in the Bill allows for a period of up to three years' imprisonment; but the penalty in the Act refers to “imprisonment for three years”; therefore, a person cannot be imprisoned for a shorter period.

The Hon. Peter Dowding: That is the upper limit. It would mean up to three.

The Hon. N. E. BAXTER: That may be so, but it does not say that. The Bill and the Act provide for imprisonment for six months on summary conviction or a fine of \$200 or £100. That fine was inserted in the Act in 1954, and no Government or Minister has seen fit to update it in the meantime. I am amazed the Government has introduced this Bill and has not taken the opportunity to update the fine for the conduct of an illegal lottery.

The Hon. Peter Dowding: Clause 13 is retrospective.

The Hon. N. E. BAXTER: There is another peculiar provision in section 23(2) of the Lotteries (Control) Act which reads as follows—

The offences set out in paragraphs (a) and (b) of subsection (1) of this section are crimes, those set out in paragraphs (c), (d), and (e) of that subsection are misdemeanours.

In the first two instances a person can be arrested without a warrant, but in the other three cases—those relating to a misdemeanour—a warrant must be obtained before a person can be arrested. As far as I am aware, the same provision does not appear in the Lotto Bill. I should like to know why it was not included.

I want to raise the matter of the remuneration of the Chairman and members of the Lotteries Commission, because it is provided for under the Lotteries (Control) Act and the Lotto Bill provides for it also. In one case remuneration is set out by regulation and, in the other case, it is set by the commission itself and it is laid down in the section which provides that the total amount of expenses shall not exceed 25 per cent.

I wondered whether, bearing in mind there are two separate pieces of legislation, the commission may have two bites of the cherry. In other words, it is possible the chairman and members could receive two lots of remuneration, one for running lotto and the other for running lotteries, despite the fact that they are run jointly. One wonders whether this could create confusion in the area of remuneration of the commission.

I was concerned also about the prize money for lotto comprising 60 per cent of total investment. The legislation does not lay down how much shall be paid out in the way of prize money after the necessary deductions have been made. Clause 6(1)(e) refers to the fact that the commission must ensure that the total expenses of conducting games of lotto in any one year shall not exceed 25 per cent of the gross amount received from subscriptions. Subclause (2) refers to the fact that the commission shall pay into the special account at the Treasury 20 per cent of all moneys received. However, nowhere is the commission authorised to pay out 60 per cent of the net proceeds in prize money. I wonder why a provision of this nature was not inserted in the legislation to safeguard people who participate in lotto.

Lotto has been operating for quite a lengthy period, albeit it has been operating illegally; therefore, one has to support this measure which

ratifies what has been done. However, it does not leave a very good taste in one's mouth to think lotto has been conducted during a period in which the Government was aware its operation was illegal. Indeed, lotto is still continuing to operate. It appears 14 lottos have been conducted over 14 weeks; therefore, if the Minister had allocated 10 permits initially, it is clear he would have issued further permits in the knowledge that lotto was illegal. The Minister should have suspended the operations of lotto until this Bill was proclaimed. However, I cannot do anything other than support the legislation.

THE HON. G. E. MASTERS (West—Minister for Fisheries and Wildlife) [4.48 p.m.]: I thank members of the House for supporting the legislation. As has been mentioned by two previous speakers, it is validating legislation. It is obvious the Minister received advice which later proved to be incorrect. At least two members of Parliament, one from each House, drew to the Minister's attention the fact that there was a degree of uncertainty in this area, therefore, he has taken the necessary action.

This Bill seeks to regulate the activities of lotto in order that it may continue. The Hon. Peter Dowding is right in suggesting a clause in the Bill validates the past actions of lotto and, although members do not like to consider validating legislation when it can be avoided, in this particular case, we have no real choice. There is no doubt that charities gain a great deal from the operation of lotto and large sums of money are made available to charitable institutions.

I cannot see where the legislation sets out that 60 per cent of the money collected shall be allocated to prizes; but the amount of money which can be spent on expenses and that which may be set aside for charitable organisations is certainly set out clearly in the Bill.

The Hon. Norman Baxter is correct in saying that about 40 to 45 per cent is the maximum that can be put aside in those areas and the rest goes to prize money. It is to the Government's credit that it has developed this lotto game, considering the sums of money and the increased investment in these areas which will obviously improve all the time. Consequently hospitals and the like will be enthusiastic about its continuation.

I cannot say I understand the reason for the Opposition members' concern, but this Bill is necessary. The benefits more than overcome those problems we are encountering and I have no doubt it will be proclaimed and be put into operation as soon as possible.

Question put and passed.

Bill read a second time.

In Committee

The Chairman of Committees (the Hon. V. J. Ferry) in the Chair; the Hon. G. E. Masters (Minister for Fisheries and Wildlife) in charge of the Bill.

Clauses 1 to 12 put and passed.

Clause 13: Validation—

The Hon. PETER DOWDING: This Bill illustrates that the Government's laws on gambling are absolutely in tatters and disarray and that they are in urgent need of attention and, in many cases, of repeal and re-enactment. Tonight's *Daily News* has a cartoon which all members should read because it confirms what we already know, that this toleration of illegal gambling is a policy which cannot work in the present form and half the population did not know—indeed, the Minister and his officials did not know, according to what the Minister for Fisheries and Wildlife has just told us—certain actions were illegal. It illustrates that one cannot pretend that the gambling laws are in anything else but utter disarray. The complications that Mr Phil Adams, QC mentioned seven years ago are occurring. Surely this brings home to the Government that it is about time we brought our gambling laws up to date in line with what the public want. It is a pity the Government did not take the bull by the horns and try to do something about this other than appoint its own political party members to have a chat about it in the party room.

The Hon. G. E. MASTERS: I dispute the honourable member's comments as far as the Government's policy is concerned. The answers to questions have been quite clear in this Chamber. It is true the Government has set up a committee to investigate and reconsider the situation and the reports that are available. I argue that in fact the Government is very clear on its policies and will pursue those policies throughout.

The Hon. H. W. OLNEY: I do not want to get into the discussion between my colleague and the Minister, but wish to comment on clause 13, to the extent that it is a validating provision having retrospective effect. Parliament, being the paramount lawmaker within the scope of its constitutional ability, can do this and does it quite often. During this session we had a number of Bills before the Council which have had a similar purpose. In an earlier debate I suggested, and received scorn for doing so, that some thought ought to be given to setting up a more satisfactory basis for the activities of statutory authorities, and that there ought to be perhaps a statutory authorities' Act which gives these parties sufficient power to do the job they are intended to do.

It may be that in the case of the Lotteries Commission, the proposal would not have gone far enough to enable the lotto agreement to be made, but notwithstanding that, we are frequently confronted with the situation where the Minister brings to this place a Bill and says, "Now, when we did it we had advice that it was right. Now we have advice that it is not right. We can do one of two things".

The Hon. Peter Dowding: Tell him to get rid of the adviser. That might be one thing.

The Hon. H. W. OLNEY: "We could validate it, or wait until we get other advice to say it is right". Today's debate over the continuation of management has much the same history. We had the question raised in 1979 of the validity of regulations, and at that time the Government had the advice of the Legislative Review and Advisory Committee that the regulations were valid. Subsequent advice has indicated that those regulations were invalid and there does not seem to be any real scrutiny of the validity or legality of delegated legislation and the activities of statutory corporations, and that is a fundamental weakness in our system.

I suggest an easy answer to it is that we, as legislators, ought to seriously consider that some steps be taken to ensure that when we pass a law it will be sufficiently flexible to enable the real intention of our decision to be carried out without the need to keep coming back time and time again to fix up mistakes.

The Hon. G. E. MASTERS: I am particularly pleased to hear the Hon. Howard Olney say that something should be flexible and should be taken on its intent. I will bring those words up in future debates, no doubt.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

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

QUESTIONS

Questions were taken at this stage.

House adjourned at 5.08 p.m.

QUESTIONS ON NOTICE

EDUCATION: NON-GOVERNMENT SCHOOLS

Enrolments: Projects

761. The Hon. D. K. DANS, to the Minister representing the Minister for Education:

Further to question 753 of 19 November 1981, concerning non-Government enrolments, and drawing the Minister's attention to his reply to question 626 on 27 October 1981, I ask—

- (1) If the Education Department does not make a direct projection of enrolments in the non-Government sector, on what basis was the estimate of an approximate 4.7 per cent increase in enrolments made and budgeted for in 1981-82?
- (2) Will the Minister make public these estimates of projected non-Government enrolments which are apparently suitable for the purposes of budgeting?

The Hon. D. J. WORDSWORTH replied:

- (1) and (2) The projection was made on the basis of the difference between the actual 1980 and 1981 enrolments as a possible trend for 1982.

HOUSING: FLATS

Emergent: Victoria Park

762. The Hon. R. HETHERINGTON, to the Minister representing the Minister for Housing:

Will the Minister inform me what is the maximum waiting period for people listed for emergency allocation of flat accommodation in the area administered by the Victoria Park office of the State Housing Commission?

The Hon. G. E. MASTERS replied:

The waiting period for an emergent applicant suitable for flat accommodation can vary from time to time, but is presently about two months in the area administered by the Victoria Park regional office.

In the other metropolitan regional areas some flat accommodation is presently available almost immediately.

However, where an applicant requires a specific area or floor and/or it is necessary for the commission to locate a unit that is more suitable to a particular applicant, this period may lengthen.

ABATTOIR: ROBB JETTY

Employees

763. The Hon. D. K. DANS, to the Minister representing the Minister for Agriculture:

- (1) How many workers are currently employed at the Robb Jetty Abattoir?
- (2) How many of them pay into the superannuation scheme?

The Hon. D. J. WORDSWORTH replied:

- (1) The total number of persons employed at Robb Jetty is 425.
- (2) 156.

HOUSING: ABORIGINES

Aboriginal Housing Board

764. The Hon. R. HETHERINGTON, to the Minister representing the Minister for Housing:

- (1) How many applicants for housing have been referred to the Aboriginal Housing Board since 1 January this year?
- (2) How many of these have been housed?
- (3) What has been the maximum and minimum periods for which the successful applicants have had to wait before being housed after being referred to the board?
- (4) How many applicants are at present awaiting the allocation of accommodation?
- (5) How long have these applicants been waiting?

The Hon. G. E. MASTERS replied:

- (1) to (5) The information will take some time to collate and the member will be advised by letter.

TOTALISATOR AGENCY BOARD

Laverton

765. The Hon. N. F. MOORE, to the Minister representing the Chief Secretary:

- (1) Has the TAB approached any persons in Laverton with a view to opening a TAB agency in that town?
- (2) If the TAB decides to open an agency in Laverton, how will it decide who operates the agency?

The Hon. G. E. MASTERS replied:

- (1) Yes.
- (2) Selection will be on the basis of suitability after taking into consideration economic, business and personal factors.

EDUCATION: NON-GOVERNMENT SCHOOLS

Registrations: New

766. The Hon. D. K. DANS, to the Minister representing the Minister for Education:

Will the Minister provide details of discussions which arose out of the October meeting of the Australian Education Council, particularly those relating to the review of criteria for the registration of non-Government schools?

The Hon. D. J. WORDSWORTH replied:

All Ministers agreed that it was important to achieve common up-dated rules governing the registration of non-Government schools and steps were taken to involve the Schools Commission and the State departments in meetings seeking to achieve these ends if possible.

TRANSPORT: BUSES

MTT: Running Times

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

- (1) Is the Metropolitan Transport Trust currently doing a run re-timing?
- (2) When were the existing running times established?
- (3) If the trust is currently doing a run re-timing, what is the estimated cost of the exercise?

The Hon. D. J. WORDSWORTH replied:

- (1) Yes, in conjunction with the union.
- (2) 1968-69.
- (3) The Minister is advised that the estimated cost of the study is \$19 000.

FUEL AND ENERGY: ELECTRICITY

Power Line: Perth-Pilbara

768. The Hon. F. E. McKENZIE, to the Minister representing the Minister for Fuel and Energy:

Referring to an article in *The West Australian* on Wednesday, 11 November, titled "Power Idea Rejected", and in view of the findings of the committee chaired by Sir David Zeibler, does the State Government still endorse the proposal to connect the Pilbara region to the Perth metropolitan grid with an HVDC transmission line?

The Hon. I. G. MEDCALF replied:

The justification of the interconnection of power systems normally requires a substantial difference in the cost of generation between the systems to recover the high investment and operating costs required for the necessary transmission equipment. In the case of the interconnection of the Eastern States' systems, investigated by the Zeidler committee, the difference in costs of supply were not sufficient to support a firm proposal for interconnection.

The large difference between the cost of oil-based generation in the Pilbara, and coal-based generation in the south-west, has provided the impetus to examine the possibility of an HVDC transmission line from Perth to the Pilbara. Future studies will continue to take into account changing circumstances within the Pilbara and the south-west but, on present indications, the HVDC transmission line cannot be economically justified at this time, due to present uncertainties in future load growth in the Pilbara area.

EDUCATION

Priest Report

769. The Hon. D. K. DANS, to the Minister representing the Minister for Education:

- (1) Has the Government made any decisions relating to recommendations of the Priest report?
- (2) If so, could the Minister please supply details?

The Hon. D. J. WORDSWORTH replied:

- (1) and (2) The Minister is awaiting the response of the Board of Secondary Education to the report and will defer decisions on the recommendations until the board's response has been received.

RAILWAYS: FREMANTLE-PERTH

Facilities

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

- (1) What is the current value of the fixtures, land, and the double line railway track between Perth and Fremantle?
- (2) Of the total valuation, how much is attributable to—
 - (a) the land;
 - (b) the track and ballast;
 - (c) the signalling;
 - (d) the formation;
 - (e) the bridges and subways; and
 - (f) other items?
- (3) Would the cost of replacement of the line vary from the valuation?
- (4) If so, what is the variation in relation to each of the items mentioned in (2)?

The Hon. D. J. WORDSWORTH replied:

- (1) The current value of the assets is unknown. However, the remaining (depreciated) book value (historical cost basis) recorded in Westrail's assets ledger at 30 June 1981 was \$3.5m.
- (2) \$ (Million)
 - (a) 0.7
 - (b) 0.9
 - (c) 0.3
 - (d) 0.2
 - (e) 1.3
 - (f) 0.1
- (3) Yes.

- (4) This information is not available and could only be provided by a detailed study.

TRANSPORT: BUSES

MTT: Morley Depot

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

- (1) Because of noise pollution problems, will the MTT be eventually forced to vacate its Morley depot?
- (2) Was the depot built on its current location before residential properties were constructed in the immediate vicinity?
- (3) If so, will its relocation costs be compensated for by the MRPA or by a grant from the Government?
- (4) When is it likely that the depot will be relocated?
- (5) What is the estimated cost of relocation?
- (6) Has a site been selected?
- (7) If so, where is it?

The Hon. D. J. WORDSWORTH replied:

- (1) The future of the Morley depot is currently under review but no decision has been made on the matter at this stage.
- (2) Yes.
- (3) to (7) These matters cannot be determined until such time as the present review is completed.

TRANSPORT: BUSES

MTT: Chairman

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

- (1) Is the Chairman of the Metropolitan Transport Trust a full-time position?
- (2) If it is not a full-time position, would the Minister give details on the conditions and remuneration applicable to the position?
- (3) Is he supplied with a motor vehicle?
- (4) If so—
 - (a) is it for use on trust business only; or
 - (b) for trust business and personal use?

(5) If he is supplied with a motor vehicle, has it been changed over since the present chairman has held office?

(6) If so, on how many occasions?

The Hon. D. J. WORDSWORTH replied:

(1) No.

(2) A fee of \$5 000 p.a. plus an expense allowance of \$1 000 p.a.

(3) He has the use of a trust vehicle with two-way radio.

(4) (b) The appointment is part time, but the chairman is expected to be involved with MTT responsibilities every day, seven days a week.

(5) No.

(6) Not applicable.

RAILWAYS: FREIGHT

Wheat: Increase

773. The Hon. H. W. GAYFER, to the Minister representing the Minister for Transport:

(1) Would not the Minister agree that it is totally unreasonable in view of all the statements made by him in respect of rail freight increases and negotiated rail freight agreements, that wheat delivered to Jubuk siding this season will attract an increase of 17.68 per cent over that of last year?

(2) How is it that Bulyee, which is closer to Perth than Jubuk by some 15 miles, attracts a 10.26 per cent increase, and Corrigin further by some 15 miles than Jubuk, attracts an 11.11 per cent increase?

(3) Was it not a fact that no rail freight increase was to be more than 15 per cent, or be below that which applied in 1980-81?

The Hon. D. J. WORDSWORTH replied:

(1) and (2) As the member is no doubt aware, the calculation of the growers' deduction rate is a complex question and has been influenced by more than one factor for the 1981-82 season. Rail

freight increases, road carriers' rate increase and the effect of the reduction in Government subsidy all have a bearing on this rate. It should also be appreciated that Jubuk and Bulyee are not situated on railway lines and therefore a mixture of road and rail haul would be involved.

However, the Minister is having this matter examined further and will advise the member of the outcome.

(3) Yes.

EDUCATION: TEACHERS

Criminal Conduct

774. The Hon. PETER DOWDING, to the Minister representing the Minister for Education:

(1) Has any teacher been convicted of an assault on a police officer since the present regulation 134 has been in force?

(2) Was that teacher dealt with?

(3) If so, in what way?

(4) Is such teacher in breach of the regulation and liable to dismissal?

(5) Upon what criteria does the director or the Minister determine that a person convicted of such offence should be dismissed?

The Hon. D. J. WORDSWORTH replied:

(1) No.

(2) to (5) Not applicable.

QUESTION WITHOUT NOTICE

SEWERAGE: COUNTRY AREAS

Rates

211. The Hon. F. E. McKENZIE, to the Minister representing the Minister for Works and Water Resources:

(1) What are the country towns without sewerage scheme where unimproved value is used?

- (2) What country towns have been revalued for gross rental value purposes since 1 July 1980, and which are those still valued on the estimated net annual value basis?

Albany
Peppermint Beach
Capel
Bunbury

The Hon. G. E. MASTERS replied:

I thank the member for notice of this question, the answer to which is as follows—

- (1) There are no towns rated under the Country Areas Water Supply Act on unimproved values.

The following towns are rated for drainage on unimproved values:

- (2) There have been 78 towns revalued since 1 July 1980 on a gross rental value basis.

There are 243 towns still using values which were originally assessed under the estimated net annual value basis. The list of these—considering their large number—was not compiled but can be supplied separately to the member if he so wishes.

