at that time to advise against a general fluoridation of tap water. Since then we have gained more practical knowledge from the experiments in Norrköping and as these have given no negative results, but on the other hand the caries frequency has gone down by 50 per cent. among the school children getting fluoridated water, I think it well worth while to continue the Norrköping experiment for another period of time.

Yours sincerely,

Hugo Theorell.

Mr. Tonkin: I would not object to that, if an experiment were in progress. It is most desirable in order that finality might be obtained.

Mr. ROSS HUTCHINSON: I can see that both the honourable gentlemen opposite would like to read their own interpretation into this and, of course, they are entitled to do so.

Mr. Tonkin: I do not think you are entitled to read into it that he is now in favour of fluoridation.

Mr. ROSS HUTCHINSON: There are so many things he says about it not being dangerous; that it should continue; and that it is giving benefit to people.

Mr. Tonkin: It is strange that in 1963 he said he was opposed to fluoridation.

Mr. ROSS HUTCHINSON: The very least I claim after having given the House the benefit of this is that it is substantially different from the story conveyed by the Deputy Leader of the Opposition when he spoke during the second reading debate.

Mr. Tonkin: I do not agree.

Mr. ROSS HUTCHINSON: In conclusion I would like to say that we again have an opportunity to implement a health reform of quite considerable magnitude. Whether it is in the right priority or not, as was suggested by some member, it is a health reform of great quality and is a very worth-while step to take. On this occasion I hope we do not allow the Bill to lapse or to be lost.

In respect of our being accused of giving poison to people, I might say—as has been said by other members on this side of the House—that we could well accuse those who fanatically oppose this health reform of being people who are denying good dental health to the people of our State.

Question put and passed.

Bill read a second time.

In Committee

The Chairman of Committees (Mr. W. A. Manning) in the Chair; Mr. Ross Hutchinson (Minister for Works) in charge of the Bill.

Clause 1 put and passed.

Progress

Progress reported and leave given to sit again, on motion by Mr. I. W. Manning.

BILLS (3): RECEIPT AND FIRST READING

1. Optical Dispensers Bill.
2. Optometrists Act Amendment Bill.
3. Medical Act Amendment Bill.

Bills received from the Council; and, on motions by Mr. Ross Hutchinson (Minister for Works), read a first time.

EDUCATION ACT AMENDMENT BILL

Returned

Bill returned from the Council without amendment.

House adjourned at 2.44 a.m. (Thursday)

Legislative Council

Thursday, the 13th October, 1966

CONTENTS

The PRESIDENT (The Hon. L. C. Diver) took the Chair at 2.30 p.m., and read prayers.

QUESTIONS (2): ON NOTICE

OVERSEAS AND INTERSTATE TRADE

Particulars

1. The Hon. H. K. WATSON asked the Minister for Mines:

   (1) In respect of Australia's overseas trade during the year ended the 30th June, 1966, what were—
   (a) the amount of Western Australia's excess of exports over imports; and
   (b) the net collective result of all the Australian States and Territories, other than Western Australia?

   (2) In respect of Western Australia's interstate trade during the year ended the 30th June, 1966, what were—
   (a) the total amount of imports;
   (b) the total amount of exports?

The Hon. A. F. GRIFFITH replied:

(1) (a) An excess of exports over imports of $147,800,000.

(b) An excess of imports over exports of $326,200,000.

(2) (a) Interstate imports: $394,600,000.

(b) Interstate exports: $120,600,000.

FLUORIDATION OF WATER SUPPLIES

Qualifications of Dr. G. L. Waldbott

2. The Hon. N. E. BAXTER asked the Minister for Health:

(1) Does the Minister know of Dr. George L. Waldbott, who is presently a consulting physician in allergy at Harper and Women's Hospitals in Detroit, U.S.A.; a member of the American Medical Association, the Michigan State and Wayne County Medical Societies; a Fellow of the American Academy of Allergy, and the American College of Physicians?

(2) Is the Minister aware that Dr. Waldbott has written several books, including one titled *A Struggle with Titans?*

(3) Has the Minister read the aforementioned book, the subject matter of which is fluoridation of water supplies?

(4) Is the Minister of the opinion that Dr. George L. Waldbott is—

(a) an authority on allergic diseases;

(b) a competent doctor in research;

(c) a crank;

(d) a charlatan; or is he

(e) irresponsible?

The Hon. A. F. GRIFFITH (for The Hon. G. C. MacKinnon) replied:

(1) Yes.

(2) I am aware that he has written several articles and that he is alleged to have published something under the dramatic title referred to.

(3) No.

(4) (a) I am aware that he has been referred to as an allergist.

(b) to (e) The honourable member is advised:

(1) To refer to the answer to a similar question asked by the member for Melville in another place on the 7th August, 1963.

(2) To study the report of the New Zealand Royal Commission on Fluoridation, which rejected Waldbott's opinions.

(3) To read the judgment of Justice Kenny (High Court of Dublin, 1962), which condemned Waldbott's testimony.

PUBLIC WORKS ACT AMENDMENT BILL

Report

Report of Committee adopted.

FISHERIES ACT AMENDMENT BILL

Second Reading

Debate resumed from the 12th October.

THE HON. R. THOMPSON (South Metropolitan) [2.39 p.m.]: I have no complaint whatsoever to make about this Bill. It is a measure which corrects some of the omissions which occurred when substantial amendments were made to the Act in 1965.

I took the adjournment of the debate on this Bill yesterday afternoon, and last evening I tried to fit the proposed amendments into the Act to see how the Act would read when amended. However, I found that the words proposed to be inserted were completely out of context with the lines mentioned in the Bill. It was not until early this afternoon, and with the good offices of our Clerk, that I discovered there is a reprint of the Fisheries Act. I have just received a copy from the Government Printer and I have not, as yet, had time to examine it to see if the proposed amendments fit into the Act. I imagine that they were designed to fit into the reprinted Act. It would have saved a lot of work had the Minister mentioned that.

The Hon. G. C. MacKinnon: I did not find out myself until this morning.

The Hon. R. THOMPSON: The amendments dealing with the fishing industry are only to tidy up the position and make the Act a little more watertight than it is at the moment. There is also an amendment to the Act to control the commercial exploitation of seaweed and I think this is a good move.

I was able to do some limited research into the seaweeds that are found around our coastline; and I was amazed to find that on our south-western coastline we have some 500 different seaweeds plus 11 seagrasses. It is interesting to note that the seaweeds that will probably be exploited, farmed, or taken from along our shores, will be of the kelp variety. According to information I have received kelp is an important source of jelly-like substances used in the manufacture of plastics and other commodities. Kelps were also a commercial source of iodine, soda, and potash until about 1850, when the Stassfurt mineral deposits and the Chili soda deposits became much cheaper sources of these materials.

The Hon. J. G. Hislop: Has kelp any percentage of iodine?

The Hon. R. THOMPSON: Yes. It was the main source of iodine until cheaper methods of extracting iodine from nitrates were discovered. Another species of seaweed is called *Eucheuma speciosum*, but its common name is jellyweed. It is a red algae with tough, finger-like branches growing to about 8 in. high. The branches bear small club-like outgrowths which bear the spores. This algae was used by the colonists of Western Australia as a source of jelly. The fresh plants were boiled, the extracted liquid jelly strained, cooled, and set in shallow trays. This jelly was flavoured and used as we now use jelly crystals for table deserts. The gel obtained from red seaweeds is called agar and is produced on a large scale both in Japan and America. Agar is used in the preparation of canned foodstuffs, cosmetics, and in the scientific field for the culture of bacteria in hospital, public health, and agricultural laboratories.

I have with me a very good article on further uses for seaweed but I do not intend to quote all of it. Apparently an extract from seaweed is used in cough medicines but I do not know whether we have that type of seaweed on our coastline.

The Hon. N. McNeill: It is found only on the north-coast of Ireland, I think.

The Hon. R. THOMPSON: If the honourable member is speaking of the same cough mixture which is put out by a patent medicine firm, the answer is "Yes."

The Hon. G. C. MacKinnon: Children used to do some seaweed collecting during the war in order to get the jelly, I believe. I was away at the time.

The Hon. R. THOMPSON: According to the article, seaweeds are used in many ways. The article reads—

> These are used for making viscous liquids and jellies, which are in turn used for stabilising emulsions, making hand creams, shoe polishes, leather dressings, sizes for cloth, thickening for colours in print and a host of other uses where gels are required. It is also used in a certain kind of cough mixture but, as I don't get paid extra for advertising, I won't mention it.
>
> Agar is a well sought after substance obtained from a seaweed. It was made mainly in Japan and other Eastern countries before the war. The war cut off supplies from those countries and a world-wide search found it elsewhere including Western Australia.
>
> The substance is a shredded looking weed which, on boiling, completely dissolves and on cooling sets in a firm but brittle jelly.

Further on the article states—

> Its other uses, however, include a glycerine substitute, an ointment base, making moulds for artificial limbs, artificial sausage skins, canned meats and fish, jelly in meat pies, thickening in soups, a laxative medicine, clearing agent for wine and beer, sizing medium for paper and textiles, mixed with graphite as a lubricant and in the manufacture of electric lamp filaments.
>
> It is used as a constituent in high-grade adhesives for plywood, and the manufacture of shatterproof glass. Photographic films are made from it.

The extract from seaweeds can be used in the manufacture of paint, plastic, and virtually whatever one likes to mention; there is some use for the by-products of seaweed in almost every commodity. Therefore, I feel we are doing the right thing by covering seaweed under the Fisheries Act, otherwise there will be indiscriminate taking of seaweed along our coastline.

I believe a type of dredge is used for picking the seaweed up off the bottom of the sea, and if this sort of thing were not controlled it could seriously disrupt our crayfishing industry, and probably some of our fish spawning grounds, particularly fish such as herring which come to our shores to lay their eggs each year.

I have nothing but support for the Bill and trust that no restriction will be placed on people who gather seaweed along our shores for use in gardens. This type of seaweed would be of no use commercially and it is only commonsense to say that people who gather seaweed or algae which is cluttering up our beaches and riverbanks are doing a service to the community instead of a disservice to any industry which might be established. Therefore I support the Bill.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (The Hon. F. D. Willmott) in the Chair; The Hon. G. C. MacKinnon (Minister for Fisheries and Fauna) in charge of the Bill.

Clauses 1 to 13 put and passed.

Clause 14: Section 39 amended—

The Hon. J. G. HISLOP: I would like to know whether there is any control exercised in the obtaining of algae and other seaweed, because I feel the pulling of these seaweeds could lead to their diminution; whereas if they were cut the plants might be preserved. Could the Minister tell us how these seaweeds will be gathered?

The Hon. G. C. MacKINNON: I understand that the seaweeds are pulled or raked off the bottom by means of a farm-

ing process. An area of weed is cleared and it is then left for a time to regenerate. I gather this method has been found to be satisfactory. It all depends, however, on the species, and in many cases the plant does not regenerate.

But this is a matter of commercial exploitation, and if the bed is denuded and the seaweed does not grow again it will not be possible to harvest it. The company would wish to use a method whereby the seaweed would regenerate itself. In the main, these processes are fairly intelligently handled, because of the capital expenditure involved. There must be an assurance of a continuity of supply. It is all very well to say we have a long coastline, but the cost factor does enter into it and care must be exercised in handling and stripping these plants. I will, however, refer Dr. Hislop's question to the department in order that the matter can be confirmed with the various people concerned.

Clause put and passed.

Clause 15 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

STRATA TITLES BILL

Second Reading

Debate resumed from the 12th October.

THE HON. W. F. WILLESEE (North-East Metropolitan—Leader of the Opposition) [2.55 p.m.]: Any Bill which seeks to advance the theory based on a situation that has applied for nearly 100 years—and I refer to the application of the principle of the Torrens title—must surely be an important piece of legislation both for the Government and for the Parliament of Western Australia; because the principle of the Torrens title has been almost foolproof for that period of time. It has answered all the calls made upon it in normal procedure and development of land until the issue before us arose, and this has created a problem outside the principles envisaged in the Torrens title.

In any principle concerned with a Torrens title it is possible to subdivide land. That principle of subdivision means, of course, that anything upon the land goes with the title; so that we could have parallel subdivisions or vertical subdivisions *ad lib* if they fitted in with the thoughts of the governing authority of the day.

But the Strata Titles Bill is concerned with an approach to horizontal subdivisions, which is an entirely new concept in that the land is more or less divorced from the principle of one structure upon another. I applaud the fact that this Bill is concerned only with the problem of the issue of strata titles.

It is not a measure which takes in the problem of the terraced house; and in principle it is not a Bill dealing with home units. It is one that sets out in a legal manner to subdivide buildings horizontally. In effect, it separates one floor from another.

Under the present Land Act it is only possible to have a piece of land registered with a title, so anything which stands above the land goes with it. The Bill before us gives to people a title to a piece of building; and this piece of building can, in succession, be superimposed upon another building. So if the Bill is to take effect it is essential that there be at least two storeys involved, and that is how we get the principle of a horizontal subdivision.

The Minister advised us that the Bill before the House is essentially identical with the one introduced by him last year; that the basic and fundamental principles of the measure stem from those principles which are in operation at the moment in New South Wales and Queensland. I think it can be said that this basic legislation is functioning quite well in those States.

The approach of the Government in connection with this legislation has been as fundamentally sound as one could wish it to be in a democracy. The Government gave every opportunity for prior consideration of this legislation by all the parties interested. The Government submitted this legislation 12 months ago and has allowed that time to elapse in order that the Bill might be studied. It sought a report on the Bill from the people associated with Government departments—those who would have the closest connection with this legislation when it became law. These people, including the Commissioner of Titles, the Town Planning Commissioner, the Secretary for Local Government, and officers of the Crown Law Department, did not submit a comprehensive unanimous report. Rather did they submit a report which, in my opinion, contained the broad problems which would be encountered by the various departments.

This was a sturdy background and a good one upon which to formulate this legislation, because knowing the problems of the major departments, it was then possible to write into the proposed legislation provisions which would meet these difficulties. Therefore, finally, we will be able to place upon the Statute book an Act which will be workable.

During the period of, shall I say, limbo—that is, in the period which has elapsed since the Bill was first submitted to us for study—two very important organisations have associated themselves with it and have apparently decided that it is a good basis for legislation. Those two organisations are the Law Society and the Real Estate Institute of Western Australia. The

Law Society obviously will be most concerned with this legislation. That society must be able clearly to interpret the provisions of the legislation in order to arrive at logical opinions which will give equality to all involved.

The Real Estate Institute of Western Australia is obviously another very important and prominent organisation which will be concerned in the negotiations for titles of this type.

Having gone this far, only one logical step remained for the Government to take and that was to present the legislation to Parliament for its concurrence. Ultimately we must always have these matters presented to us in legislative form so that we can discuss them and pass them in order that they might be placed on the Statute book.

The provisions in this Bill are, in my view, comprehensive. They are somewhat difficult to understand, possibly because this legislation is setting a precedent. The first step to be taken to have a strata title registered is to have the land divided by registering a strata plan. However, before such a plan can be registered it must be accompanied by a certificate from a registered surveyor to indicate that the building shown on the plan is within the external boundaries of the parcel; a certificate of compliance under the Local Government Act, 1960; and a certificate under the hand of the Chairman of the Town Planning Board to indicate that the proposed subdivisions of the parcel shown in the plan have been approved by the board. Those certificates constitute safeguards. If those involved are unable to obtain one or more of the certificates from the appropriate authorities, they have the right of appeal.

Having effected the necessary registration, the proprietors of the various buildings to be erected, one upon the other, become a body corporate, known as a company. This must be the most convenient form of company ever arranged. No fees of incorporation or registration are involved and a set of model by-laws is incorporated in the schedule at the end of the Bill.

It is obvious that at this point the company takes over the management of its own affairs, and the policy to be followed in the every-day management of the company is outlined in the legislation. This seems to me to be the most convenient method to use to commence operations, compared with the normal procedure to be adopted for the registration of a company.

I will not delve into the background of home units and all the problems and disadvantages associated with them which have been responsible for the introduction of this legislation. Of course, only time will prove whether this legislation will be effective, but I am certain that many of the present problems will be solved under its provisions.

For instance, the destruction of agreements will be obviated and protection from the courts will be available. Ownership will be recognised and those concerned will have the right to sue and be sued. Also under this Bill, legal redress will be possible for trespass and ejection. Local organisations will know where they stand, and companys and people lending money will know exactly what securities are involved. They will merely have to turn to the legislation to ascertain the exact position and will not be under the rule-of-thumb which has applied up to now.

There is little doubt that over the last 10 years a great demand has been forthcoming along the lines of the home unit; that is, the strata building, duplex homes, and the like. As each year goes by these buildings are becoming more evident within the city block.

I think it would be fair to say that, up to the present time, the legislative machinery of the State has not kept pace with the demand in this particular field. Therefore, this legislation must be classed as "improvement legislation." A logical consequence of the introduction of this legislation will be that greater confidence will be given to investors in matters of this nature. The demand for these home units will continue, but, if there is a clear understanding of the law applicable to such units, one could reasonably expect the demand to increase.

After all the due consideration which went into the preparation of the legislation, I feel—as, obviously, does the Government—that this measure should now be launched. Any new problems that will arise can only arise through the application of the legislation and the factors of trial and error. The result of trial and error is the benefit of experience and, from experience, we will prove the merits of this legislation. Mr. President, I wish this legislation well.

Debate adjourned, on motion by The Hon. J. G. Hislop.

COMPANIES ACT AMENDMENT BILL

Second Reading

Debate resumed from the 12th October.

THE HON. H. K. WATSON (Metropolitan) [3.13 p.m.]: As the Companies Act was completely overhauled as recently as 1961, this amending Bill of 44 pages seems to me not to merit very much congratulation. The bulk of it is employed in rewriting part IX of the Act; that is, the part relating to official management. The existing part IX was adopted for the first time in 1961 and it was copied almost

verbatim from the judicial management provisions of the Companies Acts of South Africa and Southern Rhodesia.

The subject was recently and rather exhaustively discussed in a paper by Dr. E. J. Hajek, Senior Lecturer in Commercial Law at the University of Queensland in which he reached the following conclusions:—

> The concept of an official or, for that matter, a judicial management has not proved successful in practice. According to information available, the South African experience with the judicial management has been anything but encouraging, it has been a rare exception when a judicial management did not end in liquidation. This experience presumably influenced a committee preparing a draft Companies Bill for the recently dissolved Federation of Southern and Northern Rhodesia and Nyasaland not to include judicial management, contained in the Companies Act of Southern Rhodesia, in the proposed draft.
>
> It is doubtful whether the device of placing a company in financial difficulties under some kind of external management with a view of recovery can be a success. There is no ground for believing that a management by a part-time manager, unacquainted as he invariably will be with the company's business, will be the cure for the company's ills. The position of an official manager is at best only a part-time occupation and it cannot be expected that an *ad hoc* administrator will exert himself in the performance of his functions to such a degree and show such dedication to the company as would the directors who may have vital interests, financial and other, in the continuing existence of the company. Also, it is not likely that a person without an intimate knowledge of the nature and intricacies of the company's business would be more suitable as a manager than directors with perhaps a lifelong experience and who are not infrequently the founders of the company. The position of an official manager is a difficult one, he is not to liquidate—a comparatively simple operation of selling the assets—but to manage a company, a task for which he may not have the required expertize. Last but not least, a company already in a tight corner is burdened with the additional costs of official management.
>
> These and other considerations prompt a question whether official management is at all desirable. When the company has foundered, liquidation is the obvious solution, and if the company is in what appears to be temporary difficulties, some arrangement between the company and its creditors or members, for example under s. 181, may be a more suitable remedy.

I am inclined to share those views and I think it would be informative if the Minister, in his reply, would advise the House how many companies have been put under official management; how many of them have recovered; and how many of them have subsequently gone into liquidation?

One point not without interest in the Bill is that it provides that, in any voting by the creditors of a company on this question as to whether it shall or shall not be put under official management, the creditors which are companies related to the subject company are prevented from voting on any resolution under this part.

That is of interest because to a small extent—probably only 5 per cent.—it is a recognition of the principle which was affirmed by this House in 1963, and it is a small journey taken towards the acceptance of the proposition that was submitted to this House and affirmed by it in 1963.

The Bill provides that when a subsidiary of a holding company—or, as they are often called, related companies—is a debtor of this holding company, the holding company shall not have a vote at the creditors' meeting. It will be recalled that in 1963 this House, by a very democratic vote which was contrary to the wishes of the Government, passed a Bill to provide that where the holding company was a creditor of its subsidiary, then upon the liquidation of the subsidiary company the creditor company, in respect of its claims, had to stand aside until the claims of the ordinary creditors had been met. Unfortunately the Government caused the defeat of that Bill in another place and the possibilities, under the existing law, of working nothing more than a swindle still remain.

In 1963, the Minister, in opposing the Bill, assured us the matter would be considered by his committee of Attorneys-General in the ensuing period. Three years have passed and so far nothing has been done to recognise the principle, except the taking of this very small step which will provide that the holding company, when it is the creditor of the subsidiary company, shall not be entitled to vote on the question of the appointment of an official manager. Meanwhile the Act is wide open for any company so minded to form a subsidiary company in this State, have a paid-up capital of $4 lend the company $400,000, take security over the company's assets for that amount, and permit the subsidiary company to incur as many debts as it likes with no prospect of the ordinary creditors being paid one cent in the dollar.

To my mind this question has become even more important in recent times when, in regard to the Exmouth Gulf operations, is was found that several

American companies had formed subsidiary companies in this State with virtually no capital, but had loan moneys from the parent company, and that now all is not well. At the outset the average tradesman, the average merchant, and the average manufacturer in Western Australia, not unnaturally was prepared to rely on the strength and character of the parent company, but it has been seen in many respects that American companies, even though they have the reputation and the means are, in many instances, no better than they ought to be.

Even at the moment there are in this State many merchants and manufacturers who are lamenting the result of having supplied goods on credit to certain American companies and their subsidiaries. So I am not without hope, having gone 5 per cent. of the way towards the principle we affirmed in 1963, that by the year 2003, we may see the remaining 95 per cent. of the journey completed.

Another provision in the Bill deals with partnerships. At the moment the Act provides that a partnership shall consist of not more than 20 persons. Among members of the accountancy profession there has been a growing trend towards mergers between firms of accountants in this State and those in the other States, and then there have been further extensions and further mergers between those firms and firms in the United States of America and the United Kingdom, with the result that when all the partners are numbered they do, in fact, in some firms run into hundreds.

To meet this particular problem of auditors and accountants the Bill provides that when the partnership is one of a professional nature, it may have 50 partners instead of the general maximum of 20. On the question of such an increasing number of members of a partnership, there is room for a difference of opinion on whether the move is beneficial. With the small partnership there is a closer relationship between the auditor and his client. In a large partnership the consideration of the client's affairs does tend to become a rather abstract and impersonal matter.

For the benefit of these large partnerships this amendment of the Act will make their operations workable without the law being breached. The Bill also provides that the Registrar of Companies shall have power to refuse the registration of a prospectus if he considers any statements contained therein are misleading. That power is well bestowed on the registrar because a good example can be cited, even with the reputable and large finance companies. In their prospectuses these companies have thought it quite proper to advertise and to mention in a most prominent way that 49 per cent., 59 per cent., or even 100 per cent. of their shares were held by such-and-such a bank.

The ordinary mortal reading such a prospectus could well imagine the inference was that that company was backed by a bank, and that the bank was responsible for the repayment of any moneys loaned to the finance company. Of course this was not so; the banks were purely shareholders of the company, and in no way guaranteed the finance company.

That is just one illustration as to how a prospectus could mislead a prospective investor, and there are many other instances. It will be left to the good sense, and to the vigilance of the registrar to refuse the registration of a prospectus if in his opinion it contains a misleading statement.

In New Zealand a couple of years ago there occurred litigation in respect of home units. A dispute arose between two sections of members who were shareholders in a home-unit company, and who had leased their respective flats from that company. In one way or another the dispute finished up in court. One of the unexpected decisions made by the Supreme Court of New Zealand was that a lease which was granted by a home-unit company to a shareholder in that company was, in effect, a reduction of capital and was, in effect, an illegal and an unauthorised reduction of capital, and was therefore null and void. The sum substance of that decision in effect was that a home-unit scheme, under company arrangement, was unworkable.

Following that decision steps were taken by the Parliament of New Zealand to override it. It will be observed that the Bill before us contains express provisions prescribing that the grant by a company administering a home-unit scheme to any of the shareholders of the right to occupy or use a home unit, being part of the property owned or held on lease by the company, does not amount to an unlawful return of capital to the shareholder, or to a reduction of capital of the company. To my mind that is a very necessary and desirable provision, having regard to the contents of the Strata Titles Bill which the House was dealing with a few minutes ago.

The only other point of moment in the measure before us is the increase in the fees which are chargeable on the lodgment of annual returns of companies. It will be recalled the Act provides that each year, within 28 days after the holding of the annual general meeting of a company, it must lodge its annual return giving particulars of its directors, shareholders, and other information. The return is lodged for the benefit of the general public, and not for the benefit of the company; but in lodging the return a fee is charged.

I draw attention to the fact that up till 1961 the filing fee was 5s., or 50c. In 1961 it was increased to $4, and the Bill proposes to increase it to $6.

The Hon. A. F. Griffith: With an expressed purpose in mind.

The Hon. H. K. WATSON: I am not concerned with the purpose. I am merely drawing attention to the substantial increases which are being made all the time.

The Hon. A. F. Griffith: You could not fulfil the expressed purpose without increasing the fee.

The Hon. H. K. WATSON: I hope the rate prescribed in the Bill will be the ceiling, because it is a charge made for the lodgment of a document which a company is compelled to lodge for the benefit of the Registrar of Companies and the general public; but it is the company which has to pay the fee of $6 each time it submits a return.

In conclusion, I would like to emphasise this to the House: Although the Bill before us is being put through by the Minister and by this House with but a superficial knowledge of its contents and full implications, there are bodies of men, particularly company secretaries, who have to get these contents into their systems as part of their normal duties.

In this connection I would like to quote an extract from an address recently delivered by Mr. W. R. McComas, LL.B., to the New South Wales branch of the Chartered Institute of Secretaries, and this is reported in the last issue of *The Chartered Secretary*. In the course of his remarks Mr. McComas had this to say—

> It is the function of the lawyer to interpret and advise on what the law is, and in this context the function of the secretary is to be aware of that law and to ensure compliance with it by his charge; it lies in the hands of the legislature to determine and pronounce upon what the law ought to be in the light of known defects and in the interests of better providing for the well being and protection of society in this field. It is incumbent upon the legislature, however, to prescribe with precision in its enactments what it intends the law to be and to spell it out in clear language. To do so would relieve many of the problem areas now existing in the field of company law and enable lawyers to advise more confidently on what is expected of corporations and their management within that field.
>
> Since the current Companies Act came into force in New South Wales on 1st July, 1962, two amendments of immense significance have been made to it and we are now anticipating further amendments as legislatures, under social and political pressures, try to codify the rule of law to govern the behaviour of corporations and of directors and officers in their administration and management thereof. Let us hope that this state of one-by-one and *ad hoc* revision of what the law ought to be will shortly calm down to a more ordered pattern so that we will all be in a position to know that what we do today will not be outlawed by amendment introduced tomorrow.
>
> This is not to say that the state of the current law is satisfactory in all respects. It is not to say that in considering what the law ought to be one can overlook the natural sociological pressures for change in any developing society, but it is merely to say that one could reasonably expect the lessons of the past to have imprinted themselves sufficiently upon the minds of those entrusted with the regulation of our freedom within the law to have enabled them to pronounce the law clearly and without the need for correction from day to day.
>
> After all, the Companies Act 1948 of England has stood for some eighteen years without significant amendment, although it is acknowledged that, in the light of the recommendations of the Jenkins Committee Report, it is now overdue for revision.

I would earnestly commend these views to the House, to the Minister, and to his committee of Attorneys-General, from whom most of these amendments these days emanate.

Debate adjourned, on motion by The Hon. W. F. Willesee (Leader of the Opposition).

SUPPLY BILL (No. 2)

Receipt and First Reading

Bill received from the Assembly; and, on motion by The Hon. A. F. Griffith (Minister for Mines), read a first time.

Sitting suspended from 3.42 to 4.3 p.m.

LAND PREJUDICIALLY AFFECTED BY RESUMPTIONS OR OTHER ACTIVITIES

Inquiry by Select Committee: Motion

Debate resumed, from the 24th August, on the following motion by The Hon. R. Thompson:—

> That because of the many instances of hardship or inequity caused to persons whose land is resumed or prejudicially affected through town planning, road or railway construction, public works or industrial activity, this House agrees to the appointment of a Select Committee to investigate the position and make recommendations for an equitable solution of the problems involved.

THE HON. L. A. LOGAN (Upper West—Minister for Local Government) [4.3 p.m.]: I know that over the last few days, when we have been dealing with the Public Works Act, a fair amount has been said with regard to land resumptions. However, this motion moved by Mr. Ron Thompson, is for the appointment of a

Select Committee. The department has gone to some considerable trouble to draft an enunciation of the general problems of land resumption by the land resumption section of the Public Works Department. I think it is worthy of record and I apologise to the House for the length of the notes. However, to cut any of them out would lose the sequence of the explanation and, therefore, with the indulgence of the House I will read all of the notes supplied to me. For the benefit of those who have copies of my notes, pages 17 and 18 have been replaced. The notes are as follows:—

> It has been stated in this House that the Public Works Act is an unjust Act and that it permits the payment of inadequate compensation, or in other words it does not provide for the payment of adequate compensation. Such an indictment is based on personal opinions as to what is adequate or inadequate compensation.
>
> The Act as it stands provides for the payment of adequate compensation based on reasonable criteria, and it is for this House to decide whether there is scope and justification for consideration to be given to payment of more than adequate compensation. I will seek to clarify this aspect for the information and guidance of members.
>
> The bases and resultant principles for the assessment of compensation for the compulsory acquisition of land have been firmly established by judicial decisions with reasons both for and against over the last century. While these principles are subject to particular statutory provisions relating to the subject in each country and can be varied by appropriate legislation, all such legislation is now reasonably uniform.
>
> Research has shown that the Public Works Act in this State already compares favourably with similar legislation in other enlightened countries. Statutorily and judicially the assessment of compensation is covered by three main headings—
>
> (1) Value of land (property taken).
> (2) Injurious affection of the claimants' remaining lands (if any) by the taking and the proposed work.
> (3) Increase in value of the claimants' remaining lands (if any) arising from the proposed work (to be set off against (1) and (2)).
>
> Currently, concern is primarily in respect to (1), the substance of compensation resting on the term "value" the interpretation of which has been established as value to the owner comprising not only market value but embracing any special value to the owner covering disturbance, removal costs and contingent losses arising from the compulsory taking.
>
> Value to the owner is therefore consonant with replacement value to the extent that it places the dispossessed owner in the same financial position he was in before the resumption. Compensation should provide finance for purchase of another property, similar in condition and value, in addition to allowances for disturbance, removal costs, contingent losses, etc. It would be wrong, and could be construed as a misuse of public moneys, if a greater value than this form of replacement value as just described, is paid.
>
> It is therefore the application of this interpretation in the practice of assessing these elements which appears to have given rise to the present motion for a Select Committee. This resolves itself to the extent to which the valuer should go in assessing compensation for replacement of the dispossessed owners. Judicially it is the financial position of the claimant which has to be restored, and it would be impracticable to legislate specifically to provide compensation in excess of this to meet individual cases.
>
> As one learned judge put it—
>
> > The statutory compensation cannot, and must not, exceed the owner's total loss, for if it does it will place an unfair burden on the resuming authority and it will transgress the principle of equivalence which is at the root of statutory compensation — the principle that the owner shall be paid neither less nor more than his loss.
>
> It will no doubt be agreed that this principle of equivalence should be the guiding light in the basic assessment of compensation. This State is practically alone in retaining any additional allowance for compulsory taking. I will enlarge on this element later.
>
> Reverting to the extent to which compensation should provide for replacement of a dispossessed owner, it is held, and should be agreed, that the basis of this is limited to the most reasonable and economic method by which the owner could replace the asset taken. This does not stipulate that the owner must re-establish himself by purchase of another similar property, but only that this element of compensation is assessed on this basis. In addition to the intrinsic value of the property taken this element embraces allowances for disturbance, removal, contingent losses, or expenses resulting from relocation. Allowance for compulsory taking is an added factor for consideration.

It rests with the owner concerned to decide how he will apply the compensation, and claimants generally take advantage of the acquisition to improve their position by using for this purpose much of the compensation received, mainly the 10 per cent. for compulsory taking. It should not be regarded as equitable for the intrinsic value of the property taken to be expanded to cover purchase by the claimant of a better property at higher value.

As an example, if a dwelling worth, say, $2,000, is acquired and the resuming authority is prevailed to allow, say, $3,000 as a concessional value—in addition to contingent allowances — to enable the claimant to purchase a better home and he does purchase such a property but sells it again, would he not make a cool profit of $1,000, and would not this transgress the principle of equivalence?

To meet this difficulty when pensioners are dispossessed of their home, it has been Government policy since 1950 to assist them to purchase a better home by offering loans up to a reasonable amount, entirely free of interest and repayment while the pensioner requires the new home for his or her occupation, but repayable in full—that is, principal only—when it becomes not so required. It is found, however, that some elderly people do not wish to purchase another home, but prefer to seek rental accommodation so that they can retain the compensation money for other purposes.

That means, they could take a trip around the world, and then buy a home when they returned.

The Hon. R. Thompson: That would get rid of some of the surplus money.

The Hon. L. A. LOGAN: To continue the notes—

If additional compensation is paid to some people to enable them to purchase better homes, how would those in similar circumstances who desire to retain the cash be treated? It is axiomatic that compensation cannot, or should not, be varied according to the personal intentions of individual claimants, and it is imperative that some semblance of consistency be maintained.

It is the duty of the valuer to discern the most economical way of restoring the financial position of the dispossessed owner and to assess compensation accordingly, it being left to the claimant to do as he wishes with the money. On a number of occasions the department enlists the co-operation of local estate agents to submit to claimants alternative accommodation available for purchase or renting. A good deal of success has been achieved in this way, but it has been found that some claimants are hard to satisfy, it transpiring after much effort by agents and by officers of the Land Resumption Office that they do not want to buy another property anyway. It is for the claimant to make his own decision and selection in securing alternative accommodation by purchase or renting.

The department, in making its valuation and assessment of compensation, does inquire into sales and availability of other properties which, in the opinion of the valuer, compare reasonably with that taken, but while drawing claimants' attention to such properties and offering advice, the department must be careful to avoid applying undue influence in a claimant's decision concerning his future welfare. It must be agreed that departmental officers must not usurp the mantle of property salesmen.

In addition to the principles involved, it would be quite impracticable for the department to undertake a definite obligation to replace properties acquired, because of the multiplicity of properties affected by acquisitions, the unending task of trying to satisfy some claimants, responsibility for defects in the new premises which might subsequently come to light, the resultant increase in staff entailed or, alternatively, the delay in commencement of urgent works. Can it not be envisaged that if this obligation were placed on the resuming authority, a number of owners of properties required—and tenants for that matter—would sit back and laugh at all efforts to re-accommodate them and would refuse to fend for themselves?

Would not this impair the ready co-operation which has always been forthcoming from a large majority of owners involved in acquisition? Or will it be deemed feasible to legislate to assist the small minority of necessitous persons—for example, pensioners. Generally, pensioners are represented by next-of-kin or personal friends, and it is very seldom that the claimant has to rely solely on the efforts of a resuming authority. However, the department is always ready to assist people really in need of help.

In isolated cases the department has been able to offer other premises (acquired but not immediately required for public works) as temporary rented accommodation to allow dispossessed owners to take their time to consider their more permanent re-establishment.

It is the policy of the department to avoid forcing dispossessed owners to make hasty decisions to purchase

alternative properties. This raises the matter of ample notice of acquisition and possession for construction work to commence, and I will refer to this aspect later on.

Another feature of "value" arises when improvements have become redundant, e.g. a substantial residence in a decadent residential area or dwellings on land zoned for industry.

In the first case the owner would normally have no prospect of realising full replacement value for the residence on the open market—he probably would have paid substantially less if he had purchased it after the area became depressed—and it would be over-generous for the resuming authority to compensate appreciably more than market value plus additional allowances mentioned previously.

In the case of dwellings on land zoned for industry, the value of the property lies in the land for industrial sites and not in the buildings which are of little or no value for industry. Here the departmental practice is to compensate the owner on the basis of industrial value of the land (when it is higher than *in situ* residential value), plus a provisional allowance to cover a return from the buildings for a limited period, it being held that the buildings have reached or are approaching the end of their economic life. It is surely not reasonable for the resuming authority to pay, over and above this higher assessment, a specific sum to cover purchase by the owner of another dwelling in a residential area with a much longer expectancy of economic life.

This principle also applies when higher valued residential or industrial land is occupied for a lesser use, such as market gardens or poultry farms.

It has been held judicially that to realise the higher value for the land the owner must abandon his lesser usage at break-up value.

But if the higher land value does not cover the lesser value of the existing usage including disturbance, removal costs, and contingent losses, then the latter assessment prevails.

The maxim is that the owner cannot have it both ways—to realise one value he must forgo the other. He certainly would have no prospect of realising both values on the market.

The value of a lessee's interest has also been raised.

Based on sound reasoning, it is quite definite that the measure of a lessee's interest is the value of the premises to him for the unexpired term of the lease, subject to the conditions of his contract, irrespective of his expenditure thereon.

As an example: If a person has a lease of land for, say, 50 years for the purpose of erecting substantial improvements thereon, and he does so, his expenditure therein is immediately past and done with, the value of his lease being based on the return to be derived from the premises for the remainder of the term.

If the income from the premises over the period of the lease over and above normal outgoings is not sufficient to cover a remunerative interest and replacement of capital invested by the lessee, then his venture is not a financial success. The returns from the premises are, of course, subject and susceptible to market demands.

In the case cited the lessee expended money on reclamation of Crown Land and erection of buildings, with a provision for removal of the buildings by him and reversion of the reclamation to the Government on termination of his lease.

This lease is based on a contract in accordance with the specifications calling tenders for reclamation of a specific area of Crown Land in return for a lease of portion of the reclaimed land area for a period of 10 years for the erection of a fishmarket thereon. It was for tenderers to undertake to carry out the reclamation at their own expense and to quote the annual rental they were then prepared to pay for the lease.

The present lessee's tender was accepted and he completed his part of the contract.

Although a formal lease agreement has not been executed (the lessee disputing the term of 10 years) the department acknowledges his right to such a lease as specified in the contract.

The Hon. H. K. Watson: Normally when a 10-year lease is granted, what provision is there for a continuation thereafter? Is it for three months, one month or 12 months?

The Hon. L. A. LOGAN: I think it all depends on the circumstances.

The Hon. H. K. Watson: It is shown in the document, is it not?

The Hon. L. A. LOGAN: It all depends on whether it is for 10 years, full stop. However, if one thinks there is a possibility of re-leasing the property for a further period, there might be a provision in the lease that it is subject to a lease for a further period of years, if so required. To continue—

> The construction of the standard gauge railway and side road has reduced the area available to the lessee. The lessee contends that on the basis of his discussions with representatives of the Government in 1957 he had been assured of a lease of 21 years, but I have a copy of the same Government's

decision to call tenders as specified above, in culmination of any such previous discussions.

I shall now read a Cabinet minute—

The Hon. Premier:

In pursuance of Cabinet decision of the 2nd instant, the Hon. Minister for Fisheries and I have given consideration to the two questions which were referred, and recommend as follows:—

1. Tenders be invited for the area applied for by Mr. Cicerello, numbered Item 17 on Drawing No. 1 of the plan submitted by the Town Planning Commissioner for the proposed development of the south foreshore and fishing harbour, on the following conditions:

   The land to be reclaimed by the tenderer to be subject to a ten years' lease with the undermentioned conditions—

   (i) No public access to be permitted for vehicles to the site or to the reclaimed area between the proposed building and the railway.

   (ii) Existing reclaimed area, Item 16 on the plan of the Town Planning Commissioner, to be excluded from the lease and left in public ownership for pedestrian movement around the entrance of any proposed building, the necessary levelling and grading work on the reclaimed land to make it suitable for pedestrian movement to be carried out at the expense of the tenderer.

   (iii) Compliance with the Health Act regarding disposal of waste and refuse.

2. A lease for ten years to be granted to the Fremantle Fishermen's Co-operative in connection with the site which the Co-operative now occupies.

It is signed, "John T. Tonkin, Minister for Works" and is dated the 13th December, 1957. Then follows a note—

Hon. Minister for Works,

Cabinet agrees, subject to the further condition that buildings be erected by the tenderer within 12 months and to the satisfaction of the Minister.

That was signed "A.H. Premier." The notes continue—

It, of course, rests with the lessee to seek to establish a longer term than 10 years if he has a case, but it is patent that in face of the then Government's decision this cannot be conceded by the department, or for that matter I would think by anybody.

It has been acknowledged that a substantial proportion of the business carried on on the leased premises stemmed from concessions granted by various authorities (Fremantle City Council, Railway and Public Works Departments) to assist the lessee financially in his venture, and it has been suggested that he should be compensated for their withdrawal. The first two of these concessions were duly terminated by the Fremantle City Council and the Railway Department, and the third was not formally authorised so that it was terminable at will.

In these circumstances the department holds that little or no compensation is payable for these losses. However, the lessee has been informed through the Hon. Mr. Ron Thompson that the department is prepared to give this aspect some consideration upon submission of trading accounts of the business for relative periods, i.e., before and following this disturbance. Surely this is more than reasonable.

The Hon. R. Thompson: May I correct you? He was not informed through me; he was informed through Mr. H. A. Fletcher, M.L.A.

The Hon. L. A. LOGAN: I am only reading the notes supplied to me. Apparently he was informed by a member of Parliament. The notes continue—

Also to assist the lessee financially the department condoned and ultimately formally approved the unauthorised subletting by the lessee of portions of the premises for business purposes extraneous to the conditions of his lease, and having done this the department has expressed willingness to consider losses in this respect in its assessment of compensation.

It has been admitted by or on behalf of the lessee that the substance of these extraneous businesses on the premises stemmed from the temporary concessions enjoyed by the lessees, for the withdrawal of which the department holds no compensation is legally payable. In fact, it is reasonably apparent that but for these concessions the extraneous businesses would not have been established at all.

The lessee has no entitlement, legally or equitably, to any recoup of his initial expenditure on reclamation other than the effect on his future income from the premises of the variation of the department's contractual obligations to him.

It is the department's duty to establish the legal and basic principles in a case such as this, and having done so it will no doubt exercise some discretion in favour of the lessee in the ultimate settlement of compensation.

As I have said, these principles are based on sound logical reasoning and very serious consideration would have to be given to any legislation to the contrary, particularly if it is designed to meet an individual case such as this. I trust members will not lightly think of putting these principles aside to meet this or any individual case.

Reference has been made to the effect of the standard gauge railway on a property at Moylan Road, South Coogee.

This assessment was protracted and subject to progressive variations because of increase in area to be taken, clarification of responsibility for construction of a future road through the residue of the property, electricity supply thereto, and location of level crossing access to meet the wishes of the owner.

Although the owner or his representative disputed the basic land value adopted by the department neither produced any evidence of any higher value and it was left to the valuer to make further investigations in this respect.

A detailed soil classification carried out by the departmental valuer showed approximately 16 acres of good garden land remaining—not only five acres, as has been stated.

It will be seen that assessments of this nature should be examined on the basis of true facts and not uninformed opinion.

The insinuation of undue pressure being applied by departmental valuers in effecting settlements is entirely without basis and cannot be too strongly rebutted as completely unworthy.

The Hon. R. Thompson: I will give the answer to that one.

The Hon. L. A. LOGAN: To continue—

The effects of the railway on such properties were fully and frankly discussed with the owners concerned and settlements would not have been effected if they had not been completely satisfied. In the course of discussions several of them followed the department's advice to consult an independent but qualified valuer if they were in any doubt.

Reference has been made to "premium" value of particular sites. A very basis of valuation practice is the measure of the value at the time of the benefit of ownership of the land with all its future potentials or defects.

Special value of a parcel of land for use in conjunction with or for extension of adjoining premises held by the same or another owner is an integral element in market value.

Similarly, if a parcel of land has potential for a special use, such as an hotel, service station or such other purpose, this again is part of its market value. However, this potential must be reasonably patent and not too remote. There have been sites held for years by hotel interests but this potential has not materialised and the land has been developed for other purposes.

Again, all sites with major road frontage cannot have potentiality for service stations, despite protestations to the contrary by individual claimants.

I should imagine nearly everybody in the metropolitan area who owns a corner block wants to sell it for £15,000 or £20,000 as a service station site, judging by the number of applications we have had in this regard. The notes continue—

Where a site patently has the potential, such as at major road intersections, some allowance is considered according to the prospectivity of such development.

This interpretation and application of special value does not need any legislative support.

It has been suggested that assessments of compensation should be based on "premium" value for the purpose for which the Crown requires the land.

It must be realised that it is value or loss to the owner which has to be assessed and not value to the resuming authority. This has been established by numerous judicial decisions and has been written into legislation in other countries, and surely it makes commonsense anyway.

Where, however, the site has a special value to the resuming authority which could have been exploited by a private person (the owner or a purchaser) then compensation is payable accordingly.

Generally it can be said that land required for public works has no special value to the owner for that purpose, and if he is compensated for his loss why should he be paid on the basis of a special value for land which was of no use or value to him and which value he almost certainly did not foresee? Assessment of special value to a resuming authority would, of course, be extremely difficult and contentious if not impracticable for want of a tangible basis. It has been suggested that the measure of special value to the resuming authority is the saving in cost by the adoption of that site or location, but what alternative site or location is to be considered as a basis?

Even when the location of a work, for instance, the route of a railway or

road, is altered as the result of objections to resumption or independent review by the constructing authority, the difference in estimated costs could hardly be used as a basis for compensation payable to owners finally affected.

Constructing authorities are bound, in the expenditure of public funds, to explore all practical alternatives and to adopt the most economical location for works, having regard to construction and operating requirements, together with the disruption of ownerships and occupancies of land affected and compensation payable therefor.

Numerous alternative locations for such works as railways and roads are investigated, and even pegged on the land, and preliminary estimates of all costs prepared before the final location is established.

There would not be much point in all this preliminary work and planning if upon adoption of the most economical location the resuming authority had to pay compensation on the basis of savings thus effected. Surely after due consideration no one would class acquisitions for public works with special purchases for commercial purposes.

It is seldom that properties resumed have special or, shall I say, unique value for other purposes, and when they have, this element would be reflected in the valuations.

Acquisitions for public works affect a multiplicity of properties, so there must be some semblance of consistency in the assessment of compensation according to the value of the properties taken, and if any special value to the resuming authority is to be allowed on the basis of prices paid for isolated commercial sites, the added cost of public works can only be imagined and could hardly be justified in the expenditure of public funds.

It is now generally held that an allowance for compulsory taking transgresses the principle of equivalence which I have mentioned, and the Western Australian Act is one of the few, if not the only one, which retains this provision—that is, a maximum of 10 per cent.

It appears that allowance for compulsory taking stemmed from initial legislation of modern times which conferred rights to acquire land upon the private railway companies at the beginning of the railway era in England, and while it was considered that such companies should make such an allowance to dispossessed owners, it has since been recognised that this concession is not appropriate in acquisitions for public works, and the provision has generally been deleted from the relevant legislation.

The South Australian Compulsory Acquisition of Land Act, 1925, states categorically that "no allowance shall be made on account of the acquisition being compulsory." If there are any shortcomings in the assessment of compensation, the remedy lies in the application and measure of value and not in increasing the allowance for compulsory taking.

This is a duplication of what I said yesterday. To continue—

> This allowance is only a palliative and will not remove any contention in the basic valuation and assessment of compensation. The existing provision in the Public Works Act is not mandatory. An allowance not exceeding 10 per cent. may be made. Although it is departmental policy generally to add the full 10 per cent. it would be impracticable to make an allowance of even this percentage mandatory.
>
> Some discretion must be allowed. A 10 per cent. addition to an assessment of, say $200,000, is equivalent to a gift of $20,000. It is constantly impressed on constructing authorities that negotiations for the acquisition of properties acquired must be commenced at the earliest possible moment in order to afford dispossessed persons ample time to re-establish themselves.
>
> It has been pointed out that even if agreements for purchase or settlement of claims are readily forthcoming, time must be allowed for owners and occupiers to consider future plans and secure, even to the point of building, alternative accommodation.
>
> The maxim in the land resumption office is that it is never too early to acquire land for prospective works. But this desirability is subject to the following two factors:—
>
> > Firstly, the necessity of comprehensive planning and then final design in order that land requirements can be delineated.
> >
> > Secondly, the necessity for construction of the work to be authorised and for funds to be allocated to the project.
>
> Under conditions prevailing since the present Government took office—when there is so much accelerated development to meet an expanding population and establishment of industries, and major works have to be planned, designed, financed, and completed to meet stringent schedules dictated by economic requirements—it is extremely difficult to provide as much time as may be desired to complete land acquisitions.

It has only been by dint of co-operation between the various departments and valuers concerned and, I emphasise, the property owners generally, that the way has been cleared for construction of such major works as the standard gauge railway, Mitchell Freeway, and numerous schools, hospitals, etc., to proceed on schedule.

Surely it will not be suggested that such important developmental works should be retarded because of the few owners or occupiers who are reluctant to co-operate in meeting requirements. I suggest such difficulties can well be left to the discretion of the departments concerned and the Minister controlling them.

It is the policy of the Department, at the Minister's direction, to do everything possible to minimise disturbance of occupancies, even to the extent of deferring construction of the work.

It would certainly be extremely dangerous to contemplate legislation which would obstruct development for the benefit of the community and, in fact, the whole of the State, to meet objections of a very small minority who would never be satisfied in any case.

The Hon. R. Thompson: Would you have any idea how many people accept the first offer made by the department?

The Hon. L. A. LOGAN: I would not know.

The Hon. R. Thompson: None, I would say.

The Hon. L. A. LOGAN: Some of them do. Some are quite satisfied. I think Mr. Strickland knows of one. To continue—

Although I have sought to avoid citing individual examples of the application of the principles and practices in the assessment of compensation, I feel that I have generally covered the particular cases recently mentioned by members appertaining to the Public Works Act.

Other examples could be quoted demonstrating the logical and practical interpretation of the term "value." It remains for this House to consider whether there is any scope and justification for amplification of the established basis for the assessment of compensation.

Actually, paragraph (aa) of section 63, which was inserted by this House in 1955 and which sets out certain specific items to be considered in the assessment of compensation, is redundant and superfluous as such elements are covered by the interpretation of "value" and it was already the department's practice to take them into account accordingly.

The term "value" is all-embracing, subject to application by valuers for claimants as well as for the resuming authority and claimants have recourse to competent valuers. Because of the variations and complexities presented by individual cases it has been truly said that the only recourse claimants have in settlement of claims for compensation for the acquisition of land is through the valuers.

Any difference of opinion between valuers can readily be resolved by amicable discussion or, failing that, by adjudication. I will explain the methods for determination of claims later.

The Hon. H. K. Watson: Is that determined by the tossing of a coin?

The Hon. L. A. LOGAN: It would be all right if it were a two-headed coin. To continue—

It is unfair exaggeration to the point of being untrue to suggest that departmental valuers adopt a take-it-or-leave-it attitude. The valuer may, and no doubt should and does, explain to a claimant that the assessment submitted is the best he can do as a valuer and that on the evidence available he can see no justification for any increase, but that he is still prepared to consider any factual evidence of higher value or loss presented to him.

Legally, the onus of proof is on the claimant, but the department recognises its responsibility in this respect and has always been ready to investigate and consider any pertinent submissions made by or on behalf of claimants.

Departmental valuers recognise that they are public servants representing claimants as well as the Government, and it has long been established that it is not their duty to acquire land as cheaply as possible, but on the basis of fair valuations and reasonable assessments of compensation.

The strengthening of the staff and qualification of its officers as valuers and membership of the Commonwealth Institute of Valuers has enabled the department to take a more personal and realistic view of each claim for compensation.

Inquiry will demonstrate that the valuers of the Public Works Department are held in very high regard by eminent members of the valuing and legal professions. If claims cannot be settled by amicable discussion with the claimant, his representatives or valuers, the Act provides—

And not with a two-headed penny either—

—for determination in the following ways:—

i. Reference to an independent valuer or arbitrator (Section 52).
ii. Action in a court of competent jurisdiction—a judge or magistrate acting without a Jury (Section 47D).
iii. Reference to a compensation court (section 50) comprising a judge or magistrate as president, assisted by two assessors (one appointed by each party).

Records show that of some 8,500 claims settled by the Public Works Department over the last 20 years, only eight have been subject to adjudication as provided by the Act in the above ways.

In furtherance of its policy of avoiding expense to the claimant, the department has, in isolated minor cases, entered into agreements with claimants to accept determination of claims by independent valuers acting as informal arbitrators; and taking this a step further it became departmental policy some two years ago, in appropriate cases subject to the Minister's approval, to meet the basic costs of such informal arbitration if the claimant agrees to accept the decision as final.

For the information of this House, I would like to cite other concessions to claimants outside the ambit of the Act, which have been established as departmental policy and some of which have subsequently been written into the Act. These are as follows:—

i. Payment of the departmental assessment when it is in excess of the claim.
ii. Agreement to amendment of claim by the claimant.
iii. Payment of compensation as an act of grace when a claim is Statute barred because of the effluxion of time.
iv. Continuance of negotiations for settlement when the claimant has failed to reject the formal offer and it is deemed accepted under section 47; even to the extent of reference to an arbitrator (a court would have no jurisdiction).
v. Advance payments before insertion of section 46(3) and subsequently despite the implied restriction therein.
vi. Adoption of a date for valuation subsequent to the date fixed by the Act.
vii. Loans to pensioners, which I have already explained.

It remains for this House to consider sensibly and soberly whether there is any scope and justification for amplification of the established bases for the assessment of compensation.

I think it has been shown that the term "value" is all-embracing and that it would be most injudicious to attempt to tamper with the principles of valuation.

The only alternative is to consider legislation to meet isolated cases of hardship if it is found that such do really occur. This would involve specific provision to cover individual cases which would be difficult, if not dangerous, to specify or define, and discretion in administration and application would still have to be left to the Minister for Works through his departmental officers.

In all claims for compensation, even for land acquisition, it is the claimant's legal duty to take action to ensure that his loss is kept to a minimum, and it is the function of the assessor to discern the most economical means of restitution.

It is axiomatic that there is no scope for profit in claims for compensation of any nature. This does not mean that if a claimant has bought a property below value current at the time of acquisition he does not realise the interim increment in value.

The Hon. R. Thompson: After listening to this it makes one wonder why people complain about the values.

The Hon. L. A. LOGAN: They will complain whatever is done. To proceed—

The allowance for compulsory taking is, of course, a pure additive to a full assessment of compensation otherwise ascertained and can only be regarded as a profit from the acquisition. It has been suspected that astute people have considered purchasing land in anticipation of resumption primarily to profit by this allowance.

The Government believes that there is no necessity for a select committee, and that while there must be a proper appreciation of the rights of owners, there also must be a balancing appreciation by members of the very real requirement for public works of all kinds for the common good.

Having said all that, might I remind members that when he introduced this motion Mr. Ron Thompson said—

I would like to pay a sincere compliment to the resumption officer who has carried out the resumptions in this area. He could not have been fairer or more obliging in his dealings with the people concerned. He made himself available on Sunday mornings and at night times to suit my convenience, and I pay him a sincere compliment for what he has done.

The Hon. R. Thompson: I said a bit more than that. Quote the lot. I quoted the taxation value.

The Hon. L. A. LOGAN: In 1955, at page 1751 of *Hansard*, Mr. Tonkin said—

> I claim for the amending Bill that it will bring our legislation at least abreast of similar legislation elsewhere in the world and possibly in advance of it in some instances. Because of that, I feel it must commend itself to members.

Then he went on to say that this was being done with no intention of altering the existing administrative procedures but to bring the Act up to date with them; and the same procedures are operative at the present time. He said at page 578 of the same *Hansard*—

> . . . . the administration of the Act today was a very generous interpretation of it and payments were expedited as much as possible and the interests of the payments were well looked after . . . . So my proposition is to bring the Act into line with present administrative practice.

The same administrative practices apply today. The same Act is in force, but we have improved it.

The Hon. F. R. H. Lavery: It has gone out of date. It required amendment then, and it requires it now.

The Hon. L. A. LOGAN: We have amended it. We amended it yesterday.

The Hon. F. R. H. Lavery: Not very much.

The Hon. L. A. LOGAN: I have not said that no-one has cause for complaint; but surely these people themselves have an avenue of approach to the department through members of Parliament.

What good would a Select Committee do? All it would do would be to inquire into these particular cases; and in regard to some of them the Select Committee would try to override the valuers; and do not try to tell me that those on the Select Committee would know more about values than the valuers themselves! I cannot see that the Select Committee would get very far.

The Hon. F. R. H. Lavery: Therefore, as is the practice at present, sick people will still be unable to go to hospital on account of the costs, and likewise people with resumption problems will not be able to go to the courts because of the costs involved.

The Hon. L. A. LOGAN: I have not said that.

The Hon. F. R. H. Lavery: That is what it means.

The Hon. L. A. LOGAN: I have said they all have avenues open to them and they know where to go. On more than one occasion anomalies have been overcome as a result of representations to the department and the Minister. Surely that procedure can continue. This is our democratic way of doing these things.

I can see no value which could be derived from the appointment of a Select Committee. We have an Act of Parliament which has been proved to be as good as anything else in operation in the world. What will a Select Committee find out? Nothing! So I cannot see any value in the appointment of a Select Committee and I must, therefore, oppose the motion.

THE HON. H. C. STRICKLAND (North) [4.49 p.m.]: I support the motion because I believe that much could be achieved if a Select Committee were to inquire into these valuations. I have made no secret of the fact that I have had personal experience of valuers and valuations. I received a departmental valuation of £16,000 for a property, but three sworn valuers of very prominent and long-standing firms in the city valued the same property at amounts ranging from £20,000 to £30,000, which represents a tremendous variation. These sworn valuers have been operating for years and some of them commenced long before the last war. Therefore one has to ask: what is the value of the valuer?

The Hon. L. A. Logan: We would have some funny valuations without them!

The Hon. H. C. STRICKLAND: I have mentioned in this House before that it is my firm opinion that people whose properties are being resumed for public works should be able to submit their cases to a court established for that purpose.

The Minister has explained the generosity of the department in certain cases. He just told us, through the notes supplied from the department, that in minor cases the department is prepared to go to arbitration provided the property holder is prepared to accept the decision; and that that procedure would be undertaken at no cost to the property owner.

However it is quite a different proposition if a valuable property is involved. The Government does not guarantee that it will accept the decision of the court. The land resumption officer will give no guarantee in that respect—absolutely none; and, after all, why should he? It is not costing him anything. He is spending the taxpayers' money and he is prepared to finish up at the Privy Council if necessary. How is the property owner to follow the case there?

In my opinion a special court with no costs to the property owner should be established because so much acquisition and resumption is taking place, and so much more will take place. Thousands of properties are yet to be acquired in the metropolitan area in connection with the Stephenson-Hepburn plan.

I can visualise nothing fairer than an inquiry which would gather some evidence as to what does take place. I have been a Minister myself and I know that unfortunately the majority of Ministers defend the officers in their departments. They

are advised by those officers and they will defend them through thick and thin. I often wonder what sort of mess the railways might have been in if, when I was Minister for Railways, I had defended my departmental heads instead of dispensing with their services.

I do not think it is fair or reasonable that departments should be able to present a statement to members in this House and that we must accept it as gospel. I do not think that is fair or reasonable at all.

The Hon. R. F. Hutchison: Of course it is not.

The Hon. H. C. STRICKLAND: Members would be well advised to pass this motion so that a Select Committee could make its own inquiries to find out whether or not action is really desirable.

On a debate here yesterday the Minister quoted advice from a department in connection with what other members and I had said on another matter. The department advises the Minister, of course, on a very narrow thread. It draws the long bow, so to speak, and can humiliate members in this House. The Minister reads the opinion from the department and we are expected to take it as being gospel.

That is not the function of this House. We are entitled to make up our own minds in relation to what takes place and what is expected to take place. That is why we were elected. It is our job.

I am going to refer to one particular remark made by the department and presented to us by the Minister. I am not blaming the Minister personally for this.

In the notes supplied to the Minister yesterday on the amendments to the Public Works Act, the departmental head referred to my remark concerning a valuation in the hills. I said I would not mention the name of the person concerned but that he had a doctorate and he gave a valuation which was less than the unimproved value of the land. The departmental officer said that the department did not have a doctor working for it. That is only drawing the long bow. I have here the correspondence between the two parties concerned. The owner of Lot 36, Ozone Terrace, Kalamunda, was advised by the Metropolitan Region Planning Authority, on the 22nd January, 1965, as follows:—

> The Authority is awaiting a report from a valuation specialist, Dr. Murray.

He is a valuating specialist. The following advice was sent by the Under-Secretary for Public Works—or at least was initialled for him in his absence; he may never have seen it, but it comes under his authority—

> An investigation has been made of current values in the area and I am now authorised to make an offer of £2,550 for the property.

The unimproved value of that property was £2,800. When the departmental officer advised that no-one in his department was a doctor, he was quite right; but he must certainly have known of Dr. Murray in the other department.

The Hon. L. A. Logan: He is recognised as one of the best valuers in Australia.

The Hon. H. C. STRICKLAND: In whose eyes?

The Hon. L. A. Logan: He comes from the Eastern States.

The Hon. H. C. STRICKLAND: I am saying this is wrong. This is an instance where the value placed on the property is less than the Taxation Department's unimproved value. After all, a valuation is only an opinion. The only true valuation is the market price obtained if the property is submitted for auction. The true value of a property is what it will bring under the hammer.

The Hon. L. A. Logan: That means that every block of land you want to resume must first be put up for auction to obtain the valuation of it.

The Hon. H. C. STRICKLAND: I am not suggesting that.

The Hon. L. A. Logan: That is what you are saying.

The Hon. H. C. STRICKLAND: I am saying that valuers should be guided by the price which land in the near vicinity is bringing—the price obtained at the most recent sale. Then, of course, all sorts of details must also be considered.

For instance, the value of a block in Hay Street has always been considered to be much more than a block in Murray Street. To give an illustration, how values can slump, members should have a look at what is known as the city block; that is, Hay Street, William Street, Murray Street, Barrack Street, which streets comprise the inner block. Members will find that values there are about three times higher than values on the west side of William Street or the east side of Barrack Street. This example will serve to illustrate how values of blocks, which are just on the opposite side of a street, can slump. However, in Hay and Murray Streets the values of the blocks may be approximately the same on both sides of the street, but definitely this is not so in the cases of William Street and Barrack Street.

There is no set rule for a valuer and valuations can only be based on the experience of sales in the area.

The Hon. H. K. Watson: I think that is a fair proposition.

The Hon. L. A. Logan: That is what the valuers work on; it is laid down.

The Hon. H. C. STRICKLAND: Mr. Ron Thompson made an interjection when the Minister was speaking. He asked if the Minister could tell him how many initial offers which were made by the department were accepted. I was not sitting in my seat at the time but the Minister said

he thought Mr. Strickland knew of one. I do know the case the Minister had in mind, but I would remind the Minister that in the case I discussed with him, that was not the initial offer—that was the final offer. By no means was it the initial offer—it was the final settlement and the price finally paid.

In my experience, I do not know of many cases—possibly I know of 10—but I can say, quite honestly, that not one of those owners accepted the initial offer because it was a long way below the final settlement; that is, the final offer agreed upon.

Although the Government tries to be fair, to my mind one of the greatest objections to the system is the long delay and the haggling in between the initial offer and the final agreement. I think that could be overcome by a court to which those who are losing their properties had free access. I think a court should be established for the purpose and that type of court would study offers, would have the records on its files, and would be able to do something about the situation.

Debate adjourned, on motion by The Hon. W. F. Willesee (Leader of the Opposition).

House adjourned at 5.4 p.m.

Legislative Assembly

Thursday, the 13th October, 1966

CONTENTS

The SPEAKER (Mr. Hearman) took the Chair at 2.15 p.m., and read prayers.

QUESTIONS (12): ON NOTICE

1. *This question was postponed.*

HOUSING

Jarrahdale: Current Programme

2. Mr. RUSHTON asked the Minister for Housing:

   How many houses does the State Housing Commission intend to build at Jarrahdale this financial year?

   Mr. O'NEIL replied:

   Seven dwelling units.

CANNING DAM

Landscaping and Picnic Facilities

3. Mr. RUSHTON asked the Minister for Water Supplies:

   (1) Is it intended eventually to landscape the surroundings of Canning Dam and improve the picnic facilities?

   (2) If "Yes," when is it expected this work will commence?

   Mr. ROSS HUTCHINSON replied:

   (1) Yes.

   (2) When funds are available for this purpose without prejudice to works of a more urgent nature.

KARNET REHABILITATION CENTRE

Recreation Hall: Provision

4. Mr. RUSHTON asked the Chief Secretary:

   (1) Is it intended to provide a recreational hall at the Karnet Rehabilitation Centre for use by the staff and their families?

   (2) If "Yes," when is the hall expected to be built?

   Mr. CRAIG replied:

   (1) Yes.

   (2) Plans have been drawn and the project will be commenced as soon as the necessary finance can be arranged.

SWAN RIVER DRIVE

Commencement of Construction

5. Mr. MARSHALL asked the Minister for Works:

   (1) Has any decision been made on the construction of the Swan River drive to relieve traffic congestion on Guildford Road?

   (2) If "Yes," when is it anticipated work will commence?

   Mr. ROSS HUTCHINSON replied:

   (1) No. The consultant firm of De Leuw Cather & Company is at present undertaking a planning study for the Main Roads Department, which will enable the Gov-