Legislative Assembly,

Thursday, 14th November, 1935.

The SPEAKER took the Chair at 4.30 p.m. and read prayers.

QUESTION—YANCHEP PARK.

As to Proposed Hotel.

Mr. THORN asked the Minister for Justice: 1, Is it a fact that the chairman of the State Gardens Board or any other person is applying for a license at Yanchep Park under the Licensing Act, 1911-1928? 2, Is the land on which the proposed hotel is to be erected part of a Class A reserve? 3, If so, is it the intention of the Government to introduce legislation to authorise the use of the land for erecting licensed premises thereon?

The MINISTER FOR JUSTICE replied: 1, Yes. 2, Yes. 3, No.

QUESTION—MINING.

As to Steps to Reduce Accidents.

Mr. MARSHALL asked the Minister for Mines: In view of the ever-increasing number of accidents, both minor and fatal, in the gold-mining industry, is it his intention to take steps to invite all inspectors of mines to assemble at a given time and place in order to formulate a programme to reduce accidents to a minimum?

The MINISTER FOR MINES replied: It is the practice at present for all inspectors of mines, both district and workmen's inspectors, at Kalgoorlie, to meet each Saturday morning and discuss and decide what action they will take in regard to any practice which in their opinion is likely to affect the health of the workers. Consideration will be given to the matter of bringing together the whole of the inspectorial staff when a general conference is deemed necessary.

BILL—LEGAL PRACTITIONERS ACT AMENDMENT.

Second Reading.

THE MINISTER FOR JUSTICE (Hon. J. C. Willcock—Geraldton) [4.34] in moving the second reading said: This Bill provides principally for the establishment of an assurance fund to be contributed by legal practitioners to indemnify the public for any wrongful dealing by a member of the profession. There are many members who will say that legislation of this kind is long overdue. It is rather unfortunate that members of the legal profession as a whole should have to suffer for the sins of perhaps a few. Western Australia has probably been somewhat fortunate in not having had any number of defaulting practitioners. Nevertheless there have been instances, and serious hardships and loss have resulted to clients who have entrusted money to solicitors, or to clients on behalf of whom solicitors have collected money and have wrongfully withheld it from the people entitled to receive it. The kernel of the measure is the proposal to set up a mutual indemnity fund which will be subscribed by the legal practitioners themselves. Members are aware that the legal profession are in a peculiar position of trust. Any practitioner is likely to have a comparatively large sum of money placed in his possession in trust for other people. It often happens that clients know very little about solicitors. They do not advertise. A solicitor might be recommended to a client, or a man, walking along the Terrace, might see the name of a solicitor on a brass plate and resolve to do business with him. As a result a solicitor may become possessed, as a trust, of a considerable sum of money. On occasions the trust has been betrayed and people have been robbed, or perhaps I should say, money to which they were rightly entitled has been withheld from them. We should have some guarantee that will give the public perfect confidence in every practising member of the profession. The Bill provides for an assurance fund which is to be managed by three trustees, one appointed by the Governor, another by the Barristers' Board and the remaining member by the Western Australian Law Society. The Government feel

that a board thus constituted will be thoroughly representative of all sections of the profession. In giving the Law Society the right to nominate a member, the Government feel that they are giving the juniors in the profession, who constitute a majority of the practitioners, a voice in the management and control of the fund. The creation of a board of trustees will materially assist in keeping a check on the profession. The audit powers given to the trustees will enable them, when complaint is made about the conduct of any practitioner, to have a thorough audit and investigation made. From acts which in the first place might seem small, a solicitor perhaps starts on the downward road—as members remarked about money-lenders yesterday—and it is not long before such a man gets deep into the mire. When any complaint is made to the trustees—if made to either of the legal societies, it shall be referred to the trustees of the fund—an immediate investigation will be made as well as an audit of the books of the practitioner concerned. It is thought that by adopting these precautions, we shall give the public considerable confidence in the profession and will perhaps save members of the community from having money wrongfully withheld in the manner in which it has been withheld in the past. The trustees will have a fund to guard and it is apprehended that they will be alert in the conduct of any investigations necessary into the business of any solicitor against whom complaint has been made, especially if the complaint is one of dishonesty or fraud or even of unduly withholding funds belonging to other people. Legislation of this kind has been in force in New Zealand for some time. New South Wales has recently introduced similar legislation and Queensland has had an Act of this description for some years. The position of the legal profession in Western Australia is somewhat unique. In passing I feel that I can rightly pay a compliment to the members of the profession in this State who responded to the call some four or five years ago voluntarily to charge themselves for a practising certificate and, out of the money raised, to subscribe £500 towards the expenses of a Chair of Law at the University. I think that action was taken by the profession because the conduct of practitioners had come in for some criticism in the House and elsewhere. The statement was made at the time that the profession was too exclusive, that members did not do anything to assist others to enter the profession. In fact, I think they were accused of deliberately blocking people from gaining the right to earn a livelihood in the profession. As an earnest of their bona fides and their desire that persons who would prove an ornament to the profession should be allowed to enter it, they showed a readiness to contribute a sum of money for the establishment of a Chair of Law. It is proposed in the Bill that the practising fee may be increased so that out of the money that goes to the board, there shall gradually but surely be built up an assurance fund with which the trustees will be able to carry on the work of what I might describe as policing the profession—receiving complaints and investigating them and thus keeping the profession on a higher plane than perhaps it would otherwise occupy. The whole of this legislation has been very closely discussed with the Barristers' Board and the Law Society and the two bodies have expressed their accord with the policy of the Bill as framed. Of course I do not wish to convey that they are wholeheartedly enthusiastic about the idea of imposing the new burden, but I think it is generally recognised that this procedure will give the public considerably more confidence in the profession and will assist to maintain the reputation and probity of the profession. Other countries have recognised that legislation of this kind is advisable in the interests of the profession as well as of the public. In 1930 a member of this House directed attention to the New Zealand Act which had then been in operation for some years, and not long after, the board drew up a Bill which the then Attorney General, the late Mr. Davy, intended to introduce. Although a Bill was prepared, it did not see the light of day in this House. The present Bill is somewhat similar in principle, though with some modifications and alterations, not affecting the principle, as to the methods by which the funds are to be administered. The important feature of the measure is that each legal practitioner when dealing with funds other than his own shall keep them in a separate trust account. By the majority of members of the profession this is already done. How-

ever, it is felt that there will be a much greater degree of safety to clients whose funds are in the hands of lawyers if there is a statute providing that those funds shall be kept in a trust account and shall not be operated on except in the manner prescribed. The practitioner's private account and his trust account shall be kept separate, so that if investigation is required at any time, it will not be necessary to go into the legal practitioner's private business.

Mr. Marshall: If the solicitor does not place trust moneys in the trust account, what then?

The MINISTER FOR JUSTICE: If any person makes a complaint with regard to funds belonging to that person and held by a solicitor, an order can go to the solicitor concerned to place the money in the trust account. On the other hand, if no complaint is made no action will be taken, as the trustees cannot direct an auditor to go through the accounts of all solicitors in the State. No action will be taken by the trustees unless a complaint is made or unless there seems good reason for instituting an inquiry.

Hon. C. G. Latham: A person would run a great risk in making a complaint of that kind.

The MINISTER FOR JUSTICE: No. If the hon. member interjecting, for instance, instructed a solicitor to collect a debt for him and the solicitor collected, say, £100, the hon. member possibly would go along to the solicitor and ask, "What about that hundred pounds?" The solicitor might reply, "I have made arrangements in connection with it, but there are some formalities to be observed. I will fix the matter up in a week or two." Then suppose that the week or two extends into months or possibly a year. If the client gets no satisfaction from the solicitor, he can make a complaint to the trustees and the whole thing will be cleared up. Sometimes a proper statement of accounts is not furnished by the solicitor, or the solicitor makes all sorts of excuses for not closing up a transaction. As Minister for Justice I have received complaints from all over the world on the part of beneficiaries of persons who have died in this State to the effect that they cannot get any satisfaction in connection with a trust or an estate. Or it may be that an estate here is to be sold on behalf of beneficiaries under a will, and there might be a subdivision and it could not readily be determined how much of the estate had been sold. Then suppose one wants to ascertain the exact position, and inquiries addressed to the solicitor bring no satisfaction. When that stage is reached, there having been undue delay in the settlement or satisfaction of a claim, the trustees would make inquiries and obtain an order to inspect the solicitor's books. The enactment of this measure will give the public generally the knowledge that if there has been fraud or malpractice, this insurance fund is available to be drawn upon. It will be a good thing for legal practitioners, also, to feel that clients have protection in the case of delinquency. Under the Bill it will be an offence for a solicitor to mix trust funds with his own money, an offence for which he may be punished summarily by a fine before a court of summary jurisdiction or by attachment before the Supreme Court. Even though there be no fraud or trouble of any kind, the mixing of funds will constitute an offence which can be met by a suitable penalty dependent on the degree of delinquency. The principle having been established, it will be necessary to ensure that it is observed by everybody. Should there be any evasion of the principle, it will be like breaking the law in any other respect; a penalty may be inflicted and the law thus enforced. The auditors who may be appointed by the board of trustees to inquire into a solicitor's accounts or affairs will be under bond of secrecy. They will not be permitted to disclose information of any kind obtained by them, except for the purpose of carrying out their duties and of reporting to the trustees. The guiding principle of the Bill is to protect the public; and I may say that the measure will also, to some extent, protect a weak practitioner against himself, in addition to assisting materially to create and maintain public confidence in members of the profession. Unfortunately, at times some persons do enter the profession who should not do so. That cannot be avoided. In this connection it may be mentioned that the Bill contains a provision to the effect that a bankrupt shall not be allowed to practise unless he has a special certificate from the Barristers' Board.

Mr. Sleeman: Is a bankrupt solicitor allowed to practise now?

The MINISTER FOR JUSTICE: He may. Any lawyer who becomes bankrupt may go on practising his profession for the time being.

Mr. McDonald: He has to live.

The MINISTER FOR JUSTICE: Yes, certainly. A policeman, for example, is not allowed to become bankrupt. The same provision is to be found in Acts relating to the Commissioners of the Agricultural Bank, the Commissioner of Railways, and the Auditor General, for instance. Those officials cannot continue to hold their respective offices if they become bankrupt. However, the provision in this Bill will not prevent a bankrupt legal practitioner from obtaining a special certificate. On the other hand, if the board in their discretion consider that the practitioner should not be allowed to practise owing to extremely involved financial circumstances, they have the power to refuse him a practising certificate. Without entering into many details, I think I can show that a similar provision is to be found in the law of England; and it is felt that when we are tackling a subject like this in a comprehensive way it is advisable to adopt the principles of the corresponding English legislation. If in the opinion of the board it is inadvisable to permit a bankrupt practitioner to continue to practice, he will be refused the special certificate. When the fund has been built up to the sum of £20,000 contribution will cease, as it is anticipated that by that time the fund, because of its investment, will be self-supporting. When that happy time which is contemplated has been reached, there will be no occasion for additional contributions, as there will be no expense in connection with the matter. In the initial stages of the fund there must be some limitation of liability. It is provided that before the 30th day of June, 1942, the limit of liability in any one case shall not exceed £1,000; and the liability rises progressively by £250 in each year until the year 1947, when the maximum amount for which the fund will be liable in any individual case will be £2,250. Thereafter the limit of liability in any one case is set at that sum. The Bill is not being introduced as a substantive measure, but as a measure to amend the Legal Practitioners Act. It has been thought better to follow the latter course rather than the former because the laws relating to a profession should all be contained in one enactment. It will be much more convenient to have all legislation dealing with the legal profession and its relations with the public in one statute rather than in four or five unconsolidated enactments. I move—

That the Bill be now read a second time.

On motion by Mr. McDonald, debate adjourned.

BILL—INDUSTRIAL ARBITRATION ACT AMENDMENT (No. 2).

Second Reading.

THE MINISTER FOR WATER SUPPLIES (Hon. H. Millington—Mt. Hawthorn) [4.57] in moving the second reading said: The purpose of the Bill is to provide legislative machinery by which "Government officers" as defined therein shall have access to the Court of Arbitration in connection with the matters of salaries, allowances, and overtime payments. At the present time the salaries of those Government officers who are engaged under the Public Service Act of 1904 are dealt with by the Public Service Commissioner, who is required to issue a classification at least once in each period of five years. The salaries of the other "Government officers" within the purview of the Bill are now dealt with by the respective Ministers, commissioners, boards, or trusts, as the case may be. Briefly, "Government officers" within the meaning of this measure are employees who are eligible and qualified to become members of the Civil Service Association, and who are not eligible and qualified to become members of any registered industrial union. Railway officers and school teachers are of course excluded from the Bill, as they are covered by other legislation and have their own industrial organisations. The membership qualifications for the Civil Service Association are defined in the association's constitution as follows:—

Membership shall be confined to any person in the employment of the Government of Western Australia who (a) is a classified officer under the Public Service Act, or (b) is employed in a temporary capacity under Section 36 of the Public Service Act, 1904, or (c) is employed under Section 12 of the Agricultural Bank Act, 1906; the Forests Act, the Main Roads Act, or any other Act of Parliament now in force or hereafter enacted whereby any board, commission or other body is constituted to administer any such Act, (d) is otherwise employed on a daily or weekly wage, or annual salary, in any of the established branches of the Public Service, including State Trading Concerns, Business Undertakings, and Government institutions

controlled by boards, in a clerical, professional, or general capacity, and is not eligible to be a member of any industrial union registered under the provisions of the Industrial Arbitration Act, 1912-1925, or any amendment thereof.

Members are aware that in 1933 a referendum was taken of members of the Civil Service Association on the following question:—

Are you in favour of the Council of the Association taking such action as is necessary to bring the Service under the operation of the Court of Arbitration.

Out of a total of 1,709 members eligible to vote, 1,391 recorded their votes, thus representing an 81 per cent. poll. Of the 1,391 votes recorded, 1,301 were in the affirmative, 80 in the negative, and 10 were informal. Following upon the referendum, representations were made by the Council of the Civil Service Association to the Government and the Bill now before the House has been introduced for the purpose of giving effect to the wishes of the vast majority of the members of the association. For the information of the House, I propose to give some particulars of the various authorities operating in the Commonwealth and the Eastern States in connection with the fixing of salaries of Government officers. The particulars have been taken from the annual report of the Public Service Commissioner for the year ended the 30th June, 1934, and are as follows:—

Commonwealth.—The Public Service Board classifies and allots salaries. Associations or unions, if dissatisfied with the classification, may approach the Public Service Arbitrator, whose decision is final. Either the board or the department is cited as respondent by the Arbitrator, the union or association being the plaintiff. The Arbitrator deals with all questions such as classification, salary, allowances, overtime rates, etc. An individual cannot approach the Arbitrator, but an association can make representations in regard to an individual officer or class of officers. The Arbitrator can be overruled by Parliament.

New South Wales.—Since 1926 the Arbitration Court has had a limited jurisdiction over Crown employees. Industrial boards are constituted by the Minister on the recommendation of the court for any industry. A board, on any reference to it, may make an award fixing the lowest prices for work done by employees and the lowest rate of wages payable to employees. No award shall be made for payment of wages in excess of £15 a week (£750 per annum). The board also fixes the lowest rate for holiday pay, overtime, etc.

Queensland.—Section 17 of the Public Service Act, 1922-24, provides that the classification, salary, fees and allowances shall be determined by the Governor-in-Council on the recommendation of the Commissioner, but a further section provides that any officer or person in receipt of a salary or wages from the Crown shall be an employee within the meaning of the Industrial Arbitration Act, 1916, and subject to its provisions. In practice, classifications are determined by the Governor-in-Council on the recommendation of the Commissioner, but such classifications are subject to review by the Industrial Court when the unions apply for awards. Usually the court determine the fundamentals; for instance, basic wage and the automatic maxima for routine clerks, etc. The classification of the individual positions is dealt with in conference with the unions, the Commissioner representing the Government. Failing to agree, the matter is determined by the court.

South Australia.—Since 1924 all Government employees have had the right of access to the State Industrial Court. The classification of the service since 1926 is, however, made by the Classification and Efficiency Board, of which the Public Service Commissioner is chairman. It is open to sections or divisions of the service to file an application in the Industrial Court for an award covering any particular section.

Victoria.—The arbitration laws do not apply to the Public Service, the responsibility for classification and fixation of salary resting with the Public Service Commissioner.

New Zealand.—The administration is on the same lines as Victoria.

Tasmania.—The arbitration laws do not apply to the Public Service. The classification, however, appears to be controlled by the Governor, the Public Service Commissioner making his recommendation.

In order to give effect to the proposals contained in the Bill, three amending measures are necessary. One is the Bill now before the House to amend the Industrial Arbitration Act, and the two other Bills are consequential. One will be to amend the Public Service Act of 1904, and the other to amend the Public Service Appeal Board Act of 1920. For the sake of convenience, the amendment of the Arbitration Act will be effected by adding a separate Part to the principal Act. While the Bill is rather lengthy, many of of the clauses deal with matters of procedure. The Bill may be regarded to an extent as experimental in this State, and until greater experience has been gained, it has been deemed wise to disturb the existing arrangements as little as possible, consistent with giving effect to the desire of Government officers for their remuneration to be subject to a court of review. It is proposed to give the Arbitration Court power to fix salaries, classes and grades therein, allowances, and overtime rates for groups or classes of officers classified up to a maximum of £699 per annum. It will be recognised that the court could

not possibly be expected to deal with individual Government officers who number upwards of 2,000. Such a procedure could be achieved by the court only by sacrificing or unduly delaying other industrial work. Regarding the position of officers receiving over £699 per annum, it was thought advisable that permanent heads of departments and other high administrative and professional officers should remain under the jurisdiction of the present authority. It will be noticed that in New South Wales there is a limit of £750, and the Arbitration Court there deals only with Government officers who receive less than that amount. As the Civil Service Association of this State, by an overwhelming majority, expressed a desire that all their officers should have an opportunity to approach the court, specific provision has been made that any decision of the court regarding those in receipt of salaries below £699 shall be required by the constitutional authority—the Public Service Commissioner or other employer—to see that reasonable consistency is maintained throughout the service. Thus, although the Government desire to exclude heads of departments and other officers to whom I have made reference, we accede to the wishes of the association to the extent that the Public Service Commissioner or other employer, when reclassifying the service and fixing the salaries for the higher-paid officers, shall have regard to the decisions of the Court. It has to be recognised that the rates prescribed by the court must be the basis throughout the service. Under this measure there will be no inconsistency, although the court will deal only with officers receiving up to £699 per annum. There are approximately 54 officers under the Public Service Act who receive more than £699 per annum.

Mr. Doney: Do you propose to give any reasons for the differential treatment in respect of those 54 officers?

The MINISTER FOR WATER SUPPLIES: It must be apparent to members—I have indicated the practice adopted in the Eastern States—that, whereas the court does not specifically deal with those officers who are to be excluded, the decision of the court will in effect, influence the rates that will be paid to those higher officials. It was not considered advisable, however, that those officers should be brought before the court. I have already informed members that in New South Wales the Arbitration Court does not deal with officers whose salaries exceed £750 per annum. The Western Australian Railway Classification Board Act of 1920 excludes from the jurisdiction of the Classification Board, all heads and sub-heads of branches, so that is the practice in this State. We must stop somewhere, and it is not suggested that any difficulty will arise because of the exclusion of these officers. Provision is made whereby the Civil Service Association and the various employers—these will include the Public Service Commissioner, Ministers and others—shall have the same rights and privileges as industrial unions of workers or employers registered under the Industrial Arbitration Act. With regard to the constitution of the Civil Service Association, now that that body is to have access to the Arbitration Court provision is made that in future their constitution will be subject to review by the court in order to prevent conflict with unions that operate in practically the same sphere outside the Government service. Provision is made in the Bill that, should the association at any time after the commencement of this legislation desire to alter the constitution in any way, the approval of the Arbitration Court will have to be obtained. Notice of the proposed amendments will have to be served on the employers, and the president of the court is required to see that any industrial union which, in his opinion, might be affected by the proposed amendment or amendments, is given an opportunity to lodge an objection. Therefore the principle embodied in the recent amendment of the Arbitration Court Act in respect of registration will operate in regard to the Civil Service Association if they desire to amend their constitution. I may say that under the Bill industrial agreements are provided for, and therefore the usual procedure of negotiations with a view to agreement between the employers and the association will be resorted to, and only in the event of the parties failing to come to an agreement will the court be called upon to adjudicate. In Queensland, where the public servants have the right to approach the court, many agreements in respect of departments and sub-departments have been arrived at as the result of negotiation, and I think that is likely to become the practice in this State. When it has been found impossible to arrive at

an agreement by means of negotiation, the Arbitration Court will have the right to appoint any person or persons as a board of reference to consider the matters arising out of the dispute. Also the court may refer to experts for their opinion in matters of a professional or technical nature. The court, of course, will not be compelled to accept the views and recommendations made by such board of experts. It is also provided that, at the request of the court, representatives shall be nominated by the respective parties, and shall sit with the court and aid the court with their counsel. I think this is likely to prove a very important provision. The ultimate decision, of course, will rest with the court, but if the court feels that it needs expert advice from professional men or technical advisers, power is given for the court to engage such advice. Also assessors may sit with the court but, of course, as assessors only. Thus the court may have the advantage of the advice of such experts. Although it has not been availed of to any great extent in the past, it is, I assume, quite within the bounds of possibility that it may be found necessary where the court deals with cases cited by the Civil Service Association. The Bill also provides that in regard to salaries up to £500 per annum the court may order in its awards that the salaries shall be subject to annual adjustments in accordance with the variation of the basic wage, provided that no such salaries may be altered unless the aggregate amount of such variation is £5 or a multiple of £5. It will also be noted that the Bill makes adequate provision for the protection of the rights of industrial unions registered by the Court of Arbitration. Some of the unions were nervous that, as a result of the public servants approaching the court, some of the existing agreements might be interfered with. But the Bill is definite on that point, and in any case the court has jurisdiction in respect of the constitution of the Association, and adequate provision is made for the protection of registered unions which already have agreement under awards in operation. Except as modified by the jurisdiction now given to the court, the duties and responsibilities of the Public Service Commissioner and the powers of the Appeal Board will remain as at present. The point is that at present wages and salaries and conditions of work are fixed by the Public Service Commissioner, subject only to appeal to the Public Service Appeal Board. But the Arbitration Court now comes into the picture, and will operate as in industrial cases, fixing salaries and conditions of work. And, of course, in respect of that there will be no appeal, except as is provided for in the form of a review by the court in course of time, after a year or two, or whatever may be the period of the award. But in all other matters the Public Service Commissioner will carry on as at present. He will have to deal with the placing of officers, and will have to carry out the work he has carried out in the past. It will be remembered that only once in five years is a reclassification of the service made, when salaries and grades are altered. That is definitely removed by the Bill, but the Public Service Commissioner will still do all that is necessary in order that the men shall be placed, and will deal with their various duties and all other matters which are the responsibility of the Public Service Commissioner at present. The Public Service Appeal Board consists of a judge of the Supreme Court as chairman, with a representative of the division of the service concerned, and a representative appointed by the Governor.

Mr. Stubbs: Will there be necessity any longer for the Public Service Commissioner if the Bill becomes law?

The MINISTER FOR WATER SUPPLIES: Yes. As I have just explained, the court will fix the rates of pay and the conditions of work and, to an extent, will make a classification, but the court cannot possibly place all the members of the service, and so the Public Service Commissioner will still have to grade the public servants and deal with minor disputes, while the Public Service Appeal Board will operate as in the past, except that there will be no appeal against rates of pay or conditions fixed by the court. There is no appeal at present against an Arbitration Court award and, since the Public Service Association will now come under the Arbitration Court, to that extent there will not be any appeal. But, the court having given an award, it will become the duty of the Public Service Commissioner to place the men and inquire into grievances. Appeals against his decision will, as at present, be referred to the Appeal Board, whose decision shall be

final. There should always be a good reason for the introduction of a measure such as this. In this instance there are many good reasons, but if I were to give one alone it would be that some form of arbitration for the fixation of wages and salaries and conditions of work is in operation in every State of the Commonwealth, and in the Commonwealth itself. Therefore it can be said that it is the recognised policy of Australia. The Civil Service Association in this State have expressed a wish in no uncertain language, by a large majority vote secured at a secret ballot, to come under the provisions of the State Industrial Arbitration Act. The Bill will enable them to do so, and so, if the Bill becomes law, they will have achieved their desire. I am hopeful that this measure will simplify what appears to be a rather difficult question, the dealing with so many Government servants in various grades. But under this provision it will be possible for the court to do its work, and from then on the Civil Service Commissioner will do his part, and there will be access to the Appeal Board in cases of dispute and grievances. The drafting of the Bill is the result of long negotiations with the Civil Service Association, and I am hopeful that the Bill will do what is desired, namely provide the machinery for the fixation of wages and the conditions of labour, and at the same time leave to the Public Service the necessary machinery for the placing of the men.

On motion by Hon. C. G. Latham, debate adjourned.

BILL—PUBLIC SERVICE ACT AMENDMENT.

Second Reading.

THE MINISTER FOR WATER SUPPLIES (Hon. H. Millington—Mt. Hawthorn) [5.27] in moving the second reading said: This Bill is consequential on the Industrial Arbitration Amendment Bill, the second reading of which I have just moved. The purpose of the Bill is to make amendments to the principal Act necessitated by the proposal to grant to the Arbitration Court certain powers in regard to the salaries of officers employed under the Public Service Act of 1904. Apart from the purely consequential matters contained in the Bill, the only amendment proposed will be found in Clause 5. It affects Section 46A of the principal Act. That section now gives the Public Service Commissioner the power to grant increased remuneration to an officer when acting in a higher position and performing the work of another officer. Occasions arise, however, when officers are called upon to act in vacant positions, and it has been held that these cases cannot be considered as coming under Section 43A, because the acting official is not doing the work of another officer. I have in mind a test case which actually happened. The Public Service Commissioner when appointing an officer to an acting position, as for instance when another officer is away from duty, has power to give him an advance of salary because the officer is acting for the absent officer. Of course that advance will have regard to the salary paid to the higher officer. In the case I have mentioned this advance was given whilst the officer was absent. In the meantime the officer retired. The acting officer was, however, still acting in the same capacity, but the Act does not empower the Commissioner to pay the increased amount, because the officer was filling a vacant position. It seems a fine point. Mr. Justice Dwyer, who was Chairman of the Appeal Board, after hearing the evidence, gave his ruling that the Commissioner was right in refusing to give the officer the increased salary as he was occupying a vacant position.

Mr. Marshall: How could a position be vacant if an officer was occupying it?

The MINISTER FOR WATER SUPPLIES: It is vacant until a permanent appointment is made.

Mr. Marshall: That is what you call a vacant position filled.

The MINISTER FOR WATER SUPPLIES: Applications would have to be called for the vacant position. It remains vacant until the applications are received, dealt with and an appointment made. During this time the law does not permit an officer who is filling a vacant position to receive the extra salary. The only amendment in this Bill is to correct that anomaly. I do not think it requires any further explanation. The Bill is merely consequential on the other Bill I brought down. It makes the necessary amendments to the Public Service Act in defining the powers of the Commissioner. I move—

That the Bill be now read a second time.

On motion by Hon. C. G. Latham, debate adjourned.

BILL—PUBLIC SERVICE APPEAL BOARD ACT AMENDMENT.

Second Reading.

THE MINISTER FOR WATER SUPPLIES (Hon. H. Millington—Mt. Hawthorn) [5.33] in moving the second reading said: This Bill is purely consequential on the other Bill to amend the Industrial Arbitration Act. The Crown Law authorities have decided that three Bills are necessary for the purpose of simplification. The sole purpose of the Bill is to remove from the jurisdiction of the Appeal Board any dispute which under the Industrial Arbitration Act Amendment Act would be a matter entirely for the determination of the Arbitration Court. The Appeal Board cannot deal with appeals against the decisions of the Arbitration Court. The Appeal Board Act relates not only to officers employed under the Public Service Act, but also to school teachers and superannuation claims generally. The amendment only affects Government officers coming within the provisions of the new arbitration measure. It does not relate to school teachers. Apart from the consequential amendments the jurisdiction of the Appeal Board is not affected. I move—

That the Bill be now read a second time.

On motion by Hon. C. G. Latham, debate adjourned.

BILL—SUPREME COURT.

Second Reading.

THE MINISTER FOR JUSTICE (Hon. J. C. Willcock—Geraldton) [5.35] in moving the second reading said: This is a Bill for an Act to consolidate the amendments of the Supreme Court Act. I propose to explain the position with regard to consolidations and the reprinting of laws. People do not seem to be aware of the procedure. Except for a few matters mentioned in the memorandum in front of the Bill, all the clauses are at present the law of the land. There are a few instances to the contrary, where for the purpose of clarification some slight alterations have been made.

Mr. Sleeman: Will the Supreme Court fees be affected?

The MINISTER FOR JUSTICE: No. When it is deemed desirable to consolidate amendments to our statutes from time to time, the consolidated Act is printed and placed in the appendix of the annual volume of statutes published at the end of each session. These consolidations deal with Acts that are in existence and amendments thereto, and are reprinted with the amendments. The Farmers' Debts Adjustment Act and the Fremantle Harbour Trust Act, the Marriage Act, the Registration of Births, Deaths, and Marriages Act, for instance, have been reprinted in consolidated form. These consolidations did not require to come before Parliament as consolidations, because they were made up of the parent Acts and amendments thereto which had already received the approval of Parliament. If there are many laws dealing with the same subject and amendments thereto, they are consolidated and reprinted, so that we are gradually getting our laws compressed into a comparatively small space. These consolidations are what may be termed reprints with the amendments contained in them. They are made pursuant to the Acts Incorporation Act, 1923. It is not necessary to submit these to Parliament. They are published under the authority of that Act, and there is no alteration in the existing law. That is why many of these consolidations do not come before Parliament. In cases where the law is an old one, or it is a law which has come into the State by virtue of its having been an English law prior to the establishment of the State, and it is necessary to have a consolidation of Acts of this kind, they must come before Parliament, and be adopted by Parliament, before they can become the laws of the State. This Bill and the Land Act of 1933 are instances of consolidations which must necessarily be submitted to Parliament, because the enactments could not be consolidated without some amendments to the existing laws. When the Land Act went through I think some 30 amendments were made to the existing law. It was desired to make some slight alterations here and there, and add one or two features to the law in that consolidating measure when it was going through. That Bill had to come before Parliament, when the provisions contained in it were adopted, together with all the old law which had existed for many years.

Hon. C. G. Latham: We have frequently had to amend consolidated Acts.

The MINISTER FOR JUSTICE: Yes.

Hon. C. G. Latham: That was made easier by printing in italics the alterations made.

The MINISTER FOR JUSTICE: That was not necessary in this case because there are so few amendments which I will indicate. This Bill is a case in point, and must come before Parliament to be passed in the ordinary way. In Victoria the statutes were consolidated in 1890, 1915 and 1928. In the last-named year 178 Acts of the Victorian Parliament were brought together, consolidated, and printed in five volumes. We thus have all the laws of Victoria up to that time printed in that comparatively small compass. In the case of our statutes, we have 40 or 50 books containing the Acts which have been passed. I do not know that in the case of Victoria all the consolidations had to go through Parliament.

Hon. C. G. Latham: We have not the Victorian copies here.

The MINISTER FOR JUSTICE: They are in the Crown Law Department, printed in that way up to 1928. Instead of having the Industrial Arbitration Act, the Wages Board Act and all the other Acts of Victoria bound together in a number of volumes, they are now to be found in five volumes.

Mr. Stubbs: Is the consolidation of the Supreme Court legislation part of the work Mr. Sayer has been doing for the past year or two?

The MINISTER FOR JUSTICE: Yes. The re-prints of our statutes that are issued, or have been issued lately, are also the work of Mr. Sayer. A few historical facts will probably make it easier for members to understand the position. The colony of Western Australia was formed in 1829. All the English laws that were then in force in England were brought into operation in what was termed the Swan River Settlement, with the exception of such laws as were inapplicable to the circumstances of the new colony. An Imperial Act was passed in 1829 providing for a temporary Government of the colony on behalf of His Majesty the King, the colony being known as the Swan River Settlement. That Act went through the British Parliament. The settlement was officially known as the west coast of New Holland. His Majesty King George the Fourth, by virtue of that Act, was able to authorise three or more persons within the settlement to make such laws, and to institute such courts and offices as might be necessary for the good government of His Majesty's subjects within the colony. By an order made pursuant to that Act, the Legislative Council was established in Western Australia. One of the first Ordinances of the Legislative Council was No. 1 of 2 William the Fourth, by which a court of civil judicature was established. The temporary enactment of the Imperial Parliament by the Act of 1829 was continued from time to time by a series of Imperial Acts, until 1850, when an Act for the better government of Her Majesty's Australian colonies was passed. It was enacted by the Act of 1850 that for Western Australia there should be a Legislative Council, of which one-third of the members should be appointed by Her Majesty and two-thirds should be elected by the inhabitants of the colony. It was by the Governor and the Legislative Council constituted under the Act of 1850 that in 1863 the Ordinance to provide for the more effectual administration of justice by establishing a Supreme Court was passed. That Ordinance enacted that a Supreme Court should be established, to be constituted by one judge to be called the Chief Justice of Western Australia, who should be a barrister of the English or Colonial Bar, appointed by Her Majesty, her heirs or successors. That Ordinance of 1863 remains in force, as amended in 1880. By the Act of 1880 it was enacted that the court should be constituted of one judge to be styled as hitherto the Chief Justice, and such other judge or judges as Her Majesty might from time to time appoint; and the Supreme Court and the Court for Divorce and Matrimonial Causes, which had been established in 1863, were united. As far as the British courts are concerned the jurisdiction differs. The Court for Matrimonial Causes and the ordinary Supreme Court still operate in different courts, and there is one judge presiding all the time. The courts are distinct and separate. In Western Australia they are united. In New South Wales the courts are still separate. By the amending Act of 1880 provisions of the Judicature Act in England, which had then been recently passed, were adopted. By the Bill which I am now submitting we are not repealing any laws, but we are consolidating 42 separate Acts and Ordinances mainly for clarity, though perhaps where it may have been deemed desirable the verbiage has been slightly altered. The Bill is a good illustration of the effect on our innumerable legislative enactments of the consolidation of the statutes now in

progress. But this is not surprising when it is realised that on the passing of the Imperial Supreme Court of Judicature (Consolidation) Act of 1925 in England, no fewer than 106 Acts were repealed wholly or to the extent therein stated. A draft of this Bill when it was originally framed was submitted to the judges of our Supreme Court. The late Sir Robert McMillan devoted a considerable amount of time to it, and conferred with the draftsman upon it. It has also been considered and approved by the Law Society and the Barristers' Board. I have letters from those bodies which I should like to read. The letter from the Barristers' Board reads—

> 23rd September, 1935. To the Minister for Justice.—Sir, I have the honour by direction of the Barristers' Board to inform you that the Bill for an Act to consolidate and amend the law relating to the Supreme Court was duly submitted by the Solicitor-General, Mr. J. L. Walker, K.C., to the Board for its consideration. The Board has directed me to convey to you its approval of this Bill. Signed R. H. Goodman, Secretary.

The secretary of the Law Society wrote on the 12th October, 1935—

> I have been directed by my Council to make representations to the Minister for Justice urging that steps be taken as soon as possible to bring the newly drafted Bill to consolidate and amend the Supreme Court Act before the present session of Parliament. My council feel that this measure is of the utmost importance both to the profession and the public, and it has their whole-hearted support. They desire to point out also that Mr. Sayer has promised to revise the Supreme Court Rules, which at present urgently need revision, as soon as the Bill has been enacted, and it is desired that Mr. Sayer may be in a position to undertake this work as soon as possible. My council has also instructed me to point out that the subject matter of the Bill to amend the Divorce Act which is at present before the House as a private measure is covered by the provisions of Mr. Sayer's Bill, and my council are of opinion that it would be preferable to have the matter dealt with by the more comprehensive measure.

So here we have a Bill which has been considered by the judges, particularly by the late Chief Justice, Sir Robert McMillan, the Law Society and the Barristers' Board, and all approve of it. The Bill as I have already said is mainly a consolidating measure. The desire is that the existing law shall continue, but so far as any material amendments are concerned, these are referred to in the memorandum attached to the Bill. Our existing Rules of Court of 1909 were adopted from the Rules of the Supreme Court in England which were originally enacted by the Imperial Parliament as a schedule to the Judicature Act of 1876. The Bill confers the necessary statutory authority for Rules of Court and for the revision of those rules according to the law and practice in England so far as it may be deemed advisable to adopt the Rules of Court in England at the present time. The Bill has been prepared as a consolidation by Mr. Sayer, who for many years was Solicitor General and Parliamentary Draftsman. When he retired from the service he still remained attached to the Crown Law Department where office accommodation only was provided for him. He expressed the desire, on his retirement, that he might be permitted to continue to do some work which would be of service to the people of the State. He was prepared to undertake this task and I think we can say that the State is under a deep debt of gratitude to him for his labours, not only in consolidating the laws now under discussion, but consolidating other statutes which can be found reprinted at the back of the statutes each year. I have no wish to depreciate the work performed by other officers when I say that I do not think there is anyone better fitted to carry out these duties than Mr. Sayer. He was extremely pleased to be given the opportunity to do the work, and we are more than satisfied with what he has carried out so willingly and so thoroughly.

Hon. P. D. Ferguson: The State is indeed under a debt of gratitude to him.

The MINISTER FOR JUSTICE: Two or three years ago Mr. Sayer consolidated the road districts legislation, and having completed that he compiled a manual in connection with all matters dealt with under the Road Districts Act and all the laws administered by road boards. When the road conference met subsequently they passed a resolution expressing their gratitude to Mr. Sayer for what he had done. I think they also made some presentation to him as a mark of their appreciation. We, too, are extremely thankful to Mr. Sayer for what he has done and is still doing in the direction of consolidating the statutes. Though advanced in years he is still actively engaged in carrying out this work for the benefit of the people of the State. Reverting back to the Bill it may be a question as to the best manner of dealing with it in this House. It is of course a very technical Bill,

and, as I have already said, is mainly consolidating the existing law, in some instances altering the verbiage for the sake of clarity while not altering the principle. Naturally before agreeing to introduce the Bill I went through it carefully and was particularly insistent that where any new law was involved attention should be specifically drawn to those sections, and for the sake of accuracy and for informative purposes, these alterations are set out in the memorandum attached to the Bill.

Hon. C. G. Latham: There is also the Transfer of Land Act which could have been similarly treated.

The MINISTER FOR JUSTICE: The hon. member was in the House seven or eight years ago when I agreed to introduce that Bill to consolidate the law relating to the transfer of land. I devoted weeks of study to it so as to get an idea of its numerous provisions, and having thoroughly swatted it, I brought it down.

Hon. C. G. Latham: Then there was a change of Government.

The MINISTER FOR JUSTICE: No; that was two years before there was a change of Government. There was an entire and absolute disinclination to deal with the Bill, and adjournment after adjournment took place whenever the Bill was called up for debate.

Hon. C. G. Latham: That was what happened when the late Mr. Davy introduced it.

The MINISTER FOR JUSTICE: I do not think he did introduce it.

Hon. C. G. Latham: Yes, he did.

The MINISTER FOR JUSTICE: Anyway, it does not matter. It is a peculiarly intricate piece of legislation and there was a definite disinclination to do anything with it. Of course we do not know what is to happen in the near future, but if I am in charge of the Crown Law Department again next year, I shall submit the Bill to the House again.

Hon. C. G. Latham: No chance of that.

The MINISTER FOR JUSTICE: If there was a disposition on the part of the House to deal with legislation of that kind, I would not mind giving the necessary time to gain a knowledge of it, but it is not encouraging, after a Minister has given two or three months to the study of legislation outside the range of his own experience, to find the House disinclined to deal with it. Parliament constituted a joint select committee to deal with the electoral law, and in spite of the work done by that body, we now find that it is being done over again in another place.

Hon. C. G. Latham: That does not apply to this House.

The MINISTER FOR JUSTICE: No. However, I shall leave that theme before the Speaker calls me to order. Before securing leave to introduce this Bill, I went through it carefully to ascertain what the existing law was and what amendments were proposed. An explanation of the amendments is given in the memorandum attached to the Bill, and members will there find references to the clauses affected and thus be enabled to ascertain the effect of proposed alterations. I do not know whether the House might consider it better to refer the Bill to a select committee.

Hon. C. G. Latham: I think that would be the easier way to deal with it.

The MINISTER FOR JUSTICE: My object is to get the measure enacted, because I believe that it will prove extremely useful. Members might consider that it would be more expeditious to refer the Bill to a select committee.

Hon. N. Keenan: A select committee could deal with the details.

The MINISTER FOR JUSTICE: We have several legal members who, with others, could be appointed to consider the Bill and report. I am sure the Government would have their support in endeavouring to bring this measure into force. Members, on the other hand, might consider that as such a small amount of new law is involved, it could be dealt with in Committee. Whatever course members desire to adopt, I am prepared to meet them. This is not a party Bill, or one with which the Government are particularly concerned, except that it will place the law on a proper basis and be of great convenience to people having business with the courts. The object of the Bill is wholly commendable. It gives effect to a policy we have adopted of endeavouring to consolidate and simplify our laws, so as to prevent confusion and unnecessary expense when legal matters are dealt with. That is all I have to say on the Bill in a general sense. I do not propose to read the whole of the memorandum attached to the Bill.

Hon. C. G. Latham: Most of us have read it.

The MINISTER FOR JUSTICE: I read it and did not understand the whole of its

contents, and so I propose to explain one or two points not readily understandable owing to the language in which they are couched. It may be of interest to members to learn that when the original Chief Justice was appointed, his qualifications were definitely set out, but no qualifications were stipulated for other judges, and no qualifications are stipulated at present. So far as there being any qualification required under existing legislation, any layman could be appointed to the position of a judge of the Supreme Court. This measure will alter that and stipulate the qualifications. Instructions were given that the existing law should be adhered to as closely as possible. The law lays down that judges may be appointed from the English or Colonial Bar, and Colonial Bar would mean the Bar in the colony of Western Australia. If the existing law were retained, statutory authority would exist to appoint a judge only from the Bar in England or in Western Australia, and there would be no authority to appoint a judge from one of the other States. Thus we should be giving the British Bar preference over the Australian Bar; in fact there is no statutory authority to appoint anyone from the Australian Bar. In Committee I shall move to provide that members of the Australian Bar shall be put on an equal footing with members of the British Bar as regards eligibility for appointment to the Supreme Court of Western Australia. Most of the paragraphs in the memorandum to the Bill may be easily understood, but I direct attention to paragraph 8, which reads—

> By Clause 42, Section 6, of the Imperial Administration of Justice Act, 1933, relating to trial with a jury where a charge of fraud, or a claim in respect of libel, slander, malicious prosecution, false imprisonment, seduction, or breach of promise of marriage is in issue, is adopted.

In civil actions for damages under the present rules of court, application has to be made to a judge for trial by jury. This applies to torts or wrongs, slander, libel and other actions.

Member: A special jury?

The MINISTER FOR JUSTICE: No, a jury. We propose to enact the law prevailing in Britain and in Victoria that, without application to a judge, either party will have the right to have an action tried by jury. Paragraph 9 of the memorandum refers to another departure from existing practice—

> By Clause 59, Section 16, of the Supreme Court Act, 1880, relating to an application for a new trial or to set aside a verdict, is amplified by adopting provisions of Section 39 of the Tasmanian Civil Procedure Act, 1932.

On appeal to the Full Court, the judgment of a lower court might be set aside on the ground of inadmissibility of evidence, or because judgment has been given under a section of an Act inapplicable to the case. The amendment will give the Full Court the right, instead of sending a case back to the original trial judge, if all the necessary facts are before the Full Court, to give a determination itself. I hope members will consider the measure over the week-end and, if they consider it wise to refer the Bill to a select committee, I shall be prepared to meet their wishes. Owing to the highly technical nature of the clauses, I do not think the House would get very far if it embarked upon a discussion of the details. We have several legal men in the House and I think we can accept on trust much of what the Bill contains, because it is mainly a re-enactment of the existing law. The Chief Justice has looked through the Bill; both legal institutions are satisfied with it; the Solicitor General, the Parliamentary Draftsman and the Ex-Solicitor General (Mr. Sayer) have perused its provisions and they say that the measure is eminently desirable. I do not wish to be placed in the position of being asked to explain the meaning of all the clauses. I can tell the members the effect of the existing law, but I hope they would not expect me to enter into a detailed explanation of the provisions of an existing law contained in a consolidating measure. Members would naturally want to know the reasons for the alterations proposed and those reasons have been supplied. I move—

That the Bill be now read a second time.

On motion by Mr. McDonald, debate adjourned.

Sitting suspended from 6.15 to 7.30 p.m.

BILL—LIMITATION.

Second Reading.

THE MINISTER FOR JUSTICE (Hon. J. C. Willcock—Geraldton) [7.30] in

moving the second reading said: Earlier in the sitting I gave some information to the House with regard to consolidations and how Bills were reprinted in consolidated form. This Limitation Bill is brought down entirely and absolutely as a consolidation of the existing law. It is supplementary to the Supreme Court Bill. As it deals with some of the law that was in existence prior to Western Australia coming into being as a State or a Colony, it is necessary for Parliament to give its approval, because the law has never been adopted by the Parliament of this State. The Bill is a consolidation of the statutory provisions in force in this State, by which times or periods are described within which proceedings must be taken in the Supreme Court, or in courts of inferior jurisdiction—namely local courts or warden's courts—to enforce claims for the recovery of land and other causes of action. The first 35 clauses re-enact the provisions of the Real Property Limitation Act of 1878, relating to land and money charged on land. The remaining clauses deal with other causes of action, such as actions of contract or tort, or debts for rent payable under a covenant in a lease, or money payable under a bond or other deed under seal, etc., as set out in Clause 38. These provisions, from Clause 36, re-enact the effect of Imperial Acts in force in this State as having been passed prior to 1829, and later Imperial Acts adopted by Acts of Western Australia, and referred to in the marginal notes and in the Schedule of the Bill. Similar provisions to those contained in this measure were enacted by the Victorian consolidation of 1928. The clauses relating to land are found in Part IX. of the Victorian Property Law Act of 1928, and those relating to other causes of action are found in Division 7 of Part XI. of Victorian Supreme Court Act, 1928. These are based on the English law. This Bill does not affect the provisions of certain Acts referred to in a footnote to Clause 49, by which the time for proceeding to enforce claims under these Acts is specially limited. Many Acts which have been passed provide a limitation of the time within which action can be taken to recover land, money or other things. The proceedings to enforce claims under these Acts will not be affected by the Bill now before us. The period set down for taking action varies in connection with different causes. The right to recover debts is limited to a period of six years from the time when the cause of action first arose. The right to recover money owing under a bond or contract of sale is limited to 20 years from the time when the cause of action first arose. The right to recover land from a person who is wrongfully in possession is limited to 12 years from the time when the land was first wrongfully possessed. This refers to what is commonly known as "jumping" people's land. If a person establishes himself on land in undisturbed possession, and pays the rates for 12 years, he can claim the land by right of being in adverse possession of it. There are certain variations provided in this case where the plaintiff was an infant, or was out of the jurisdiction, when longer periods are allowed. The right to bring an action for false imprisonment or assault is limited to four years from the time when the wrongful act was committed. The right to bring an action for slander is limited to two years from the time when the cause of action first arose. The right to bring an action for seduction is limited to six years, and the right to bring an action for trespass is likewise limited to six years. These are only a few of the more important cases. There are many others. The law does not encourage what may be termed stale claims. It looks to a person to bring forward his action with reasonable promptitude, bearing in mind that if actions are withheld for many years, the evidence at the disposal of the parties sued may be lost to him. When a cause for action arises, such action should be taken within a reasonable time. This is the reason for the Bill. Nothing in the Bill applies to actions or proceedings in cases where the time is limited by special enactments. The Parliamentary Draftsman, at the bottom of Clause 49, has provided a list of all the Acts which exist in Western Australia where there is a limitation of time in any action or cause for action in the various Acts now upon our statute-book. It is not necessary for such a list to be put into an Act of Parliament, but I think the Parliamentary Draftsman desired to assist the public by giving this information. The Bill is entirely a consolidation of the existing law, and will not require much discussion. It was thought desirable to bring it down at the same time as the Supreme Court Bill.

Hon. C. G. Latham: Do you say it was extracted from the Victorian Act? Does it alter the principles of the State Act?

The MINISTER FOR JUSTICE: No. Our Act, as is the case with the Victorian Act, came out of the Imperial Acts. When the authorities consolidated the law in regard to the Statute of Limitations in Victoria, they passed a consolidation of the laws under the Imperial Act. The form adopted in Victoria is the form which has been adopted in this Bill. As there is no alteration in the law, there cannot be much discussion on the measure. I move—

That the Bill be now read a second time.

On motion by Mr. McDonald, debate adjourned.

BILL—RESERVES.

Second Reading.

Order of the Day read for the resumption from the 7th November of the debate on the second reading.

Question put and passed.

Bill read a second time.

In Committee.

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

BILL—WESTERN AUSTRALIAN TURF CLUB (PRIVATE) ACT AMENDMENT.

Second Reading.

Debate resumed from the 6th November.

MR. RODOREDA (Roebourne) [7.42]: I shall vote for the second reading of the Bill, chiefly because I consider it can do no possible harm and because I can conceive of occasions arising when it might do a great deal of good. Nothing I heard recently from the member for Nedlands (Hon. N. Keenan) has induced me to change this opinion. The hon. member put up a case which might have swayed a jury, but in my view he did not advance any argument of real weight. He suggested that a ridiculous situation would arise if the controlling body of any other sport had to submit its by-laws for Ministerial approval. However, I fail to perceive any analogy between the Western Australian Turf Club and the bodies controlling other sports. To begin with, those other bodies are in almost every case comprised of delegates elected by the various clubs participating in that sport, and thus are representative of the whole of the sport and of every club engaging in it. The Turf Club's position is very different. That club is practically a self-constituted body, and controls the whole of the sport of racing within Western Australia, being subject only to the Australian Rules of Racing. In any matter with which the rules of the Western Australian Turf Club conflict with the Australian Rules of Racing, the club is subordinate. Apart from that aspect, the club as a domestic body may pass any rules it deems suitable. Further, in the case of the Turf Club the public's money is involved; and in this respect the position is very different from that obtaining in most other sports. The member for Nedlands certainly gave a good reason why the insurance provisions mentioned by the mover of the Bill should be included in the rules of racing, and not in the by-laws. I see the point there. If those provisions were included in the by-laws, they would bind only the Western Australian Turf Club, whereas if they were included in the rules of racing they would bind every horse-racing body in Western Australia. The rules of racing permit the Turf Club to include any other club in Western Australia within the insurance provisions. Still, that fact is to me no reason why the rules of racing as well as the by-laws should not be subject to Ministerial approval. Suppose the Act governing the Western Australian Turf Club did not compel that club to submit its by-laws to Parliament. If such were the case and a member of this Parliament had brought in a Bill to make such submission of by-laws compulsory, the member for Nedlands would have put up the same argument as he advanced the other evening against the submission of the rules of racing. I see no difference whatever between the two cases. If the rules of racing are so perfect as the member for Nedlands would have the House believe, what earthly objection can there be to those rules being submitted? Assuming that the rules are perfect, there would be no reason for the Government to withhold approval of them. There is no reason to believe that if the rules of racing were submitted, the Government would raise objection to them. Without being fully informed as to how the insurance provisions affect persons con-

cerned in racing, I do not see that much fault can be found with them as they exist. What occurs to me is that the W.A.T.C. might be able to give greater benefits or lessen the amounts of premiums paid. The matter is one for investigation, and I am not prepared at the moment to express an opinion on it. While the present committee or the Turf Club may pass only such rules of racing as will meet with general approval, a future committee might possibly pass rules which would not be acceptable. From that aspect alone there is valid reason why the rules of racing should be subject to approval. For instance, there has been much argument whether inquiries by stewards should not be held in public, or at least whether the Press should not be admitted to those inquiries. I do not suggest for a moment that the racing public ought to be the arbiters as to whether decisions of stewards are right or wrong, but it must be remembered that the race-going public keeps the sport alive. Some members of that public argue that they are entitled to know the evidence upon which stewards base their decisions. All sorts of rumours fly about after every inquiry by stewards, and that state of things does the game no good. A decision of the stewards may be quite wrong. I have heard of a case, occurring within the last few months, in which an inquiry was held because of a protest lodged by the rider of the second horse. At the stewards' inquiry both jockeys, the one on the winner and also the one on the second horse, admitted that interference had taken place. Yet the protest was dismissed. I believe my information to be authentic, but am not prepared to assert definitely that it is correct. If the Press were admitted to these inquiries and the evidence published, the whole public would know whether such cases occur. Many other matters included in the rules of racing call for examination. Therefore I see no reason whatever why those rules should not, like the by-laws, be subject to Ministerial approval.

MR. SEWARD (Pingelly) [7.50]: In presenting the Bill to the House, the member for North-East Fremantle (Mr. Tonkin) said it was a straightforward measure designed to restrict the powers of the W.A.T.C. After perusing the Bill and listening to his speech, I do not think members will have any doubt in their minds regarding that objective. The only matter, therefore, that they have to consider is whether it is advisable, and in the best interests of the sport in Western Australia, to curtail the powers of the W.A.T.C. as proposed in the measure. First of all, the member for North-East Fremantle set out to demonstrate that the W.A.T.C. had exercised powers to which they had no right, and he assumed that, when the Act of 1892 was placed on the statute-book, there were no rules of racing in existence, otherwise they would have been mentioned in the measure. The member for Nedlands (Hon. N. Keenan) proved that assumption to be false because the rules of the W.A.T.C. date back to 1852 and they can be perused at the office of the club. I believe the rules of racing are mentioned in the Act of 1892, so the assumption by the member for North-East Fremantle in that respect was entirely wrong. I certainly know that rules of racing were in existence 40 years before that Act was passed.

[*The Deputy Speaker took the Chair.*]

Hon. C. G. Latham: The Act was passed to give the club their land.

Mr. SEWARD: And it was for other purposes besides. The member for Roebourne (Mr. Rodoreda) mentioned that the W.A.T.C. operated under two sets of racing rules and by-laws as well. It should be remembered that one of the sets of rules applies to the whole of Australia. It would be obviously ridiculous to suggest that rules of racing applicable to the whole of Australia should be subject to the approval of this Parliament. Conditions vary in the several States and the bodies controlling racing throughout the Commonwealth are in a better position to judge what is best for the sport. It would certainly be ridiculous to give the Queensland Parliament the power to veto the rules of racing under which the W.A.T.C. are operating. Residents of this State would very quickly object to that procedure; yet that would be one of the effects of the Bill if it were agreed to. Of course, the other set of racing rules refers to the control of the sport in Western Australia. Then, in addition, there are the club's by-laws. In his speech the member for North-East Fremantle stated that certain measures, which he mentioned—such as nomina-

tions for races—were dealt with under the by-laws and he characterised those matters as of minor importance. On the other hand, he claimed that major matters were dealt with under the rules of racing. He sought to prove that the object of including those matters under separate headings was to defeat the provisions of the Act whereby by-laws had to be submitted to the Chief Secretary for approval, whereas that requirement did not apply to the rules of racing. That is wrong. If the hon. member had known much about the subject, he would have realised that the benefit fund, which is provided for in the rules of racing, applies throughout the whole of Australia, whereas other matters such as nominations and exclusion from racecourses are purely local matters affecting the courses in Western Australia, and as such are dealt with in by-laws. In criticising the powers vested in the W.A.T.C., he referred to their right to exclude people from the racecourse and summarily to eject them. He contended that that was too great a power to place in the hands of the club. I entirely disagree with his contention. If any club conducting races in this State or elsewhere had not the power to eject persons from the courses, they could not carry on. The meetings take a matter of a few hours only and, if undesirable persons are on the course—under the rules certain people are prohibited from entering upon a racecourse—and the club had not the power summarily to eject them, the whole proceedings would become farcical. No one can reasonably object to such powers being vested in the W.A.T.C. The member for North-East Fremantle mentioned that a friend of his, who happened to be a member of the Legislative Council, was almost forced to leave a racecourse. I do not know who that member of the Legislative Council could have been, but I should have thought he would have been fairly well known throughout the State and in any case would have had his parliamentary badge, by means of which he would not have had much difficulty in establishing his identity. I do not think that argument will carry much weight with members. One of his main points was his contention that the Western Australian Turf Club had gone into the insurance business, and he claimed that that was outside the scope of the work that the club was entitled to undertake. I object to that statement because there is not the slightest doubt that the Western Australian Turf Club are not going into the insurance business in the usual acceptation of the term. They established a benefit fund solely for the assistance of their own members and that is entirely different from embarking upon the business of insurance. In establishing a fund for the benefit of their own members, the Western Australian Turf Club are doing what every trade union in this or any other State are endeavouring to do, namely, to provide their members with benefits they could not secure otherwise. In establishing their benefit fund the Western Australian Turf Club are doing what members sitting on the Government side of the House have been endeavouring to effect for years in their attempts to legalise the operations of the State Accident Insurance Office. They have endeavoured to secure that end because they claimed the premiums charged by the insurance companies were excessive and that the establishment of such a State utility would effect the reduction of outside insurance rates. That is the very reason why the Western Australian Turf Club established their own benefit fund. On that ground alone, the Bill should not receive the support of members on the Government side of the House. The member for North-East Fremantle and the member for Subiaco (Mr. Moloney) said that the club had gone outside their powers in the control of racing. They claimed that the Act of 1892 merely gave the club authority over racing conducted on their own course. That is not the position at all. If they peruse the provisions of the Racing Restriction Act of 1917, members will see that Subsection 1 of Section 2 reads—

> No race meeting, and no horse or pony race for any stake or prize, shall be held without the license in writing of the Western Australian Turf Club.

Clearly that gives the Western Australian Turf Club control over racing in this State. That provision is on a par with the conditions operating in the other States. In Victoria racing is under the control of the Victoria Racing Club. In New South Wales it is governed by the Australian Jockey Club, and the position is the same in the other States. That is only reasonable. Obviously, racing must be controlled by one body only in each State, and it must be controlled by an organisation familiar with the conditions necessary successfully to carry on the sport. In this State the Western Australian Turf Club function in that respect.

I want to recall to the minds of members a case that was heard here a few years ago. I think it was mentioned by the member for Nedlands (Hon. N. Keenan) the other night. I am going to read an extract from the finding of the judge. It reads as follows:—

The original claim was for a declaration that rule No. 91 of the rules of racing—referring to the establishment of the benefit fund—was ultra vires of the Turf Club and of no effect. The plaintiff also by his reply raised objections in law to the defence and to certain contentions there set out, by further pleading that the Turf Club, which is the virtual defendant, has no power to make any rules except by-laws; that a by-law enabling them to alter rules of racing from time to time is outside of their statutory power; and that in carrying on the so-called insurance scheme it is also acting ultra vires; and he further says the relative rules are illegal, that the alleged agreement between the plaintiff and defendant is illegal by reason of the Federal Insurance Acts of 1932, and of the Club's failure to deposit a security with the Federal Treasury.

That statement, as I say, is taken from the judgment of Mr. Justice Dwyer. Until I re-read that judgment I was unable to determine exactly the motive behind the introduction of this Bill. I could come to either one of two conclusions, one being that the sponsor of the Bill is desirous of taking over the control of racing in this State, or at any rate having an effective voice in that control and, not being a member of the W.A.T.C. committee, he decided to exercise the power of his position as a member of Parliament. The other alternative was that the sponsor of the Bill was the spokesman for somebody else, and not the chief mover in the matter at all. The plaintiff's case in that action is exactly the Bill we have before us. When I read the Bill and noted the activities of certain members in the corridors of the House during the past few days, I was forced to the conclusion that the sponsor of the Bill was the mouthpiece of somebody else in bringing down the Bill. It will be for him to prove that such is not the case.

Mr. Hawke: Why should he prove that?

Mr. SEWARD: So the Bill is simply an endeavour to bring into effect by an Act of Parliament what the judge refused to give them in the action I have just referred to. I wish to touch briefly on the question of insurance, because it is simply a successful effort on the part of the W.A.T.C. to give a benefit to their own members. Years ago the W.A.T.C. were in the habit of insuring the jockeys and apprentices with an insurance company, but the premiums rose rapidly and so the club decided it would be better to do their own insurance. Consequently they have established this fund. Under the Commonwealth Insurance Act it was necessary for them to lodge a deposit with the Commonwealth authorities, unless they could convince the Commonwealth authorities under the section in the Commonwealth Insurance Act that they were in a position to conduct this business. Apparently they did convince the authorities of that, and so got exemption in lodging the deposit when they established the fund. I should also like to draw attention to the fact that under the Act of 1892 it is incumbent on the club to lodge with the Registrar General every year an audited balance sheet, which can then be inspected by anybody on payment of a fee of 1s. In addition, they have their meetings open to the Press, and so if there is anything of a weakness it can be brought to notice and rectified. So far nothing of that description has occurred. The Commonwealth authorities are satisfied with the position of the club to carry on the insurance fund, for the club have paid everything they were required to pay and are still functioning in a very satisfactory manner. The sponsor of the Bill pointed out that under this benefit fund the owners and trainers have to contribute a certain amount every year, the owners £2 and the trainers £1. In return for that, the jockeys and apprentices are insured against accident.

Hon. C. G. Latham: Is not that only while they are on the course?

Mr. SEWARD: No, while they are employed in their duties. The hon. member declared that if he as an owner or a trainer were not satisfied with the insurance and desired to take out a cover under the Workers' Compensation Act, he would be penalised to that extent, that is to say, he would lose £2 or £1 as the case might be. But I say he would have good grounds for being quite content to pay his £2 or £1 instead of turning to the Workers' Compensation Act. Under the benefit fund the jockeys and apprentices are covered whenever they are engaged on work connected with their calling. And there is no difference as to whether the jockey is riding in a flat race or in a hurdle race, the £2 or the £1 is all that has to be paid to cover him. But if he had to take out a policy under the

Workers' Compensation Act with one of the companies, these are the premiums he would have to pay:—For flat racing 10s. per cent. per mount. That means that if he had four rides in one day he would have to pay £2 per cent. If he were engaged in hurdle racing or steeplechasing he would have to pay £3 15s. per cent. per mount, or £7 for the day if he had two mounts. So we can see the benefit the members of the club enjoy. There is one insurance company which quotes 8s. per cent. per mount as against 10s. per cent. or, in the case of steeplechasers 60s. per cent. instead of 75s. per cent. And the jockey or apprentice is covered only from the time he weighs out until he weighs in again. So we can see the huge benefit the club have been able to give to their members. I say they were fully justified in bringing that fund into being. Casual employees are not provided for. That was pointed out by the sponsor of the Bill. The job of insuring casual employees is the job of the owner or trainer concerned.

Hon. C. G. Latham: What is the meaning of the term "casual employees"?

Mr. SEWARD. Really, stable boys. As a matter of fact, under the insurance policies all are casually employed, all are casual employees. There was the case mentioned by the sponsor, that of a boy who was killed when taking a horse to the course. He was a casual employee.

Mr. Moloney: The owner has to pay in such a case.

Mr. SEWARD: Yes, but he was not insured. The rates quoted for casual employees are £9 per cent. on the wages paid; that is the rate quoted by the company I have referred to, while with other companies it is £7 4s. per cent. I would also point out that the benefits paid by the Turf Club under their insurance scheme are greater than those that would be paid under the Workers' Compensation Act. Under the Workers' Compensation Act, so much is paid per week with a limit equal to half the annual earnings, whereas the Turf Club have no such limit, except of course in the case of death. That is the position as regards the rates of premium and the benefits, and I venture to say that the Turf Club have done much for their members in establishing and conducting that fund. Another matter to which I wish particularly to refer, because it is bound up with the insurance fund, is that of control. We know that under the Workers' Compensation Act insurance is made compulsory, but we also know that an accident frequently occurs, and that the employer is not insured. If the employer is not a man of substance, the unfortunate relatives of the person killed receive no compensation and have no redress. It is no use saying that the employer has to meet his responsibility. If he does not do so, that is the end of it. The benefit under the Turf Club rules is that no man—owner or trainer—can start a horse until he has paid his fees, so that the club know that when a jockey goes out on a horse he is covered. If insurance were effected under the Workers' Compensation Act there would be no such control, and probably when some unfortunate man had been killed or severely injured, it would be discovered that the particular trainer or owner had allowed his policy to lapse, or had not taken out a policy at all. Hence the control is far greater and far more effective under the rules of the Turf Club than it would be under workers' compensation insurance. What the Bill seeks to do is to require every rule and by-law of racing to be laid on the Table of the House, and thus transfer the control of racing in Western Australia from the controlling body to Parliament. I venture to say it would be a sorry day if Parliament had to undertake the control of racing. Surely to goodness it is not seriously suggested that this House should waste its time in exercising control of racing in this State! As pointed out by the member for Nedlands the other night, if Parliament undertook the control of racing, some crank would come along because somebody had said something about body-line bowling and we would be asked to take over control of cricket, and later control of football, and goodness knows where it would end. The function of Parliament is to lay down the general rules and appoint a body conversant with the sport or activity in question to exercise control, and leave the matter to that body. I would like to ask members to consider the position if we passed the Bill and if every by-law and rule of racing had to be laid on the Table of the House. If a particular by-law did not meet with the views of a certain member, he would object to it. After he had objected, the Minister, probably the Chief Secretary, conceivably a man who would not know a racehorse from

a ploughhorse, would be asked for a ruling. He would have to consult somebody. Whom would he consult? Obviously the W.A.T.C. Thus we would have the W.A.T.C. making the rule, a member objecting to it, and the Minister going to the Turf Club and asking what about it? What a ridiculous position!

Mr. Rodoreda: Why go to the Turf Club?

Mr. SEWARD: He must go to the ruling body. If the Turf Club, or the controlling body, have failed in their control of the sport, the proper thing to do is to take control out of their hands and place it in more competent hands. I claim that there has been no indication whatever that the responsible body cannot control the sport. I think they have given evidence that they control the sport here just as well as it is controlled in any other State of the Commonwealth, and therefore we should repose confidence in them, and leave them to carry on the business, provided it is properly conducted. So far I have failed to glean from any of the speeches any evidence whatever that the club are not able successfully to control the sport in this State.

Mr. Rodoreda: Very few people go to their course now.

Mr. SEWARD: That is another matter, which is wrapped up with the admission charges, etc., and must affect the W.A.T.C. or any other club. The previous speaker mentioned that all other sports are controlled by bodies elected by the various clubs, whereas racing was controlled by the W.A.T.C. That statement was quite wrong. At I pointed out, the Act of 1917 gives the club control over racing in the whole State, but everyone knows that the Turf Club each year hold conferences to which country clubs send their delegates. They have an agenda, discuss matters connected with racing, and fix dates for country meetings, and the whole business is conducted in the same way as is any other sport.

Mr. Rodoreda: They have not a say in a by-law or rule of racing.

Mr. SEWARD: The committee of the W.A.T.C. do not live in Perth. Some of them come from the country, and committeemen attend most of the country meetings.

Mr. Rodoreda: That proves my statement.

Mr. SEWARD: A meeting held at Albany, Narrogin or Northam is attended by a committeeman of the W.A.T.C. almost invariably, and thus the committee are conversant with what is happening. Surely such men are much better able to control racing than, for instance, I would be, because they are so closely in touch with it. If a by-law or rule of racing were tabled in the House, a committeeman would know much better than would 80 per cent. of members of Parliament what should be done. If they cannot control racing successfully, it would not be of much use this House undertaking the job. The only alternative to the Minister's referring to the W.A.T.C. when a rule of racing was objected to would be to establish a department of racing, and I cannot believe that that would be desirable.

Mr. Rodoreda: You are getting ridiculous now.

Mr. SEWARD: It is not ridiculous. Ministers come and go; the Chief Secretary of to-day might not be the Chief Secretary of to-morrow, and he might not know anything at all about racing. If he were not to consult the W.A.T.C. when a rule of racing was objected to, he would need to establish a department of racing.

Mr. Rodoreda: How many of their by-laws have been objected to by Parliament?

Mr. SEWARD: If no by-law has been objected to, why the need for introducing the Bill? If the sport is being satisfactorily controlled, why make a change? At all events, the endeavour to transfer the control of racing from the Turf Club to Parliament is simply wasting the time of this House, and I hope that members will not agree to the second reading of the Bill.

MR. HEGNEY (Middle Swan) [8.18]: The Bill concerns, to some extent, people living in the electorate I represent. Most of the racecourses are in the Middle Swan electorate, and a fair number of people resident in the district are engaged in the horse-racing industry, either as a business or as a sport, and to that extent they are interested in the measure now before us. I am no racing fan and I know nothing of the racing business, but it is my duty to endeavour fairly to interpret the opinions of the people I represent. Any observations that I make will not be personal

opinions, but will be an attempt to interpret the opinions of the people in my district. I wish to narrate a few facts to the House regarding the antecedents of the Bill. Twelve months ago the secretary of the Owners, Breeders and Trainers' Association came to me and desired, as the representative of that body, to place certain facts before the Minister controlling the Turf Club Act. I arranged a deputation to the Chief Secretary, before whom the matter in which the secretary and one or two others were interested was discussed. The Minister pointed out that he could not give effect to what was desired, and that he had no power under the Act to disallow the rule of racing to which objection was being taken. We were advised that the best thing to do was to bring a test case before the law courts. Arising out of the deputation it was suggested that we should endeavour to meet the deputy chairman of the Western Australian Turf Club, in conjunction with the member for Brown Hill-Ivanhoe (Mr. F. C. L. Smith). Accordingly we had an interview with Mr. Winterbottom and discussed the pros and cons of the situation. We desired to ascertain whether it would be possible to arrive at an understanding between the two bodies without going to the court. We also wanted to see if we could overcome the difficulty existing between the two bodies, and if the Club would be willing to give the association the right to run their own benefit fund. Mr. Winterbottom was unwilling to agree to either of the proposals. We then tried to arrange that he should meet the representatives of the association, but he was unwilling to do that, and particularly unwilling to do so if the secretary was present. The secretary of the association then said he would like to have a test case to ascertain where they stood in respect to the law. During that time he had many interviews with me both at home and in the street. He had encountered great difficulty in selecting someone to constitute the test case. He told me that many people who were affected were afraid that if they made themselves the test case it might interfere with their business. Mr. Pitcher eventually agreed to constitute the test case before the court. The secretary also said he was having difficulty in securing counsel to present the case. I think he said that at least five solicitors had agreed to take the matter up, but had returned the brief to him. I know some solicitors, and the difficulties that many of them are having in making a living out of their profession. It seems incredible that solicitors should be unwilling to take up a case before the court. The member for Nedlands (Hon. N. Keenan) scoffs at the idea, as if solicitors were so affluent they could afford to return a brief to a probable client. Eventually the case reached the court. Mr. Justice Dwyer dealt with the matter and gave his decision. He decided against Pitcher on many grounds, but particularly on the ground that he had no connection with horse-racing. A portion of his judgment is as follows:—

> Even if the plaintiff has not entered into an agreement to race under the rules of the club, what right had he to come to that court and ask for a declaration and an injunction against the club? He (his Honour) did not think that the plaintiff had any such interest that would entitle him to maintain an action for a declaration and injunction. Those were not remedies that were open in every case. They were open only in a very restricted class of cases. In this particular case the plaintiff's horse-racing experiences were of a most isolated character, and the redress asked for would be in the highest degree inappropriate. For those reasons the action must fail.

Following upon that adverse decision representations were made to me that I should arrange for another deputation to the Chief Secretary. I did this in all good faith. The Minister said he did not know what he could do, but was not unwilling to meet the deputation. I was unable to be present myself, but two people met the Minister, namely, the secretary of the association and Mr. Pitcher. The Minister advised them he could do nothing, and suggested they should ask some member to move a motion in the House. Mr. Pitcher eventually got into touch with me, and asked me to make an appointment with him. He wanted me to move a motion in the House, and said I was bound to get the support of the Country Party, because the Country Party conference then sitting was favourable to the Workers' Compensation Act. That was not a very sound argument. The views of the Country Party concerning the Workers' Compensation Act had no bearing on a case of this kind. Up to then I had been dealing with the secretary of the association, who had many interviews with me, and I facilitated his appearance before the Minister. I did these things in good faith. I told Mr. Pitcher that up to then I had dealt with the secretary and could not deal with

the other man. I also said that neither gentleman was in my electorate, and that I did not intend to do anything more until I had met the people concerned who were living in my electorate. I told the secretary I was not willing to go any further until I had met my electors who were concerned. He made the excuse that it was very difficult to get them together. From that day until the member for North-East Fremantle brought down this Bill I heard no more of the matter. As I desired to vote one way or the other, I was anxious to know what the position was in my electorate. Up to then I thought the secretary of the association had made out a fairly good case. I was not committed to anything except that I was the political representative of the district, and it was my job to arrange for electors to come before the Minister. I did not know anything about the Bill until it came before this House. Discussion ensued. The members for Subiaco (Mr. Moloney) and Nedlands (Hon. N. Keenan) spoke. Thereupon I thought my best course would be to get in touch with racing opinion as to how the Bill affected the interests of those on whose behalf it was submitted. I interviewed the man who is supposed to be president of the Owners, Trainers, and Breeders' Association. He informed me that he did not desire any change in the existing arrangement, and that the association had not held a meeting for 18 months. I approached various other trainers in the district who are known to me, and the same opinion was expressed by each of them. To make doubly certain that the opinion given by those men was not one-sided, and in order to come in contact with as many as possible of those interested, I rose at half-past five one Thursday morning and went to where the horses were being exercised at Belmont. Thus I was able to consult many men engaged in the business of racing. Of all those with whom I spoke—and from information supplied to me I believe I saw at least 30 per cent. of the persons to be considered—not one expressed himself in favour of the Bill. Each and every one of them in turn, and at different places, expressed himself as content to work with the Turf Club under the existing arrangement. Those men stated that when from time to time they had desired any alteration of rules, they had always received fair treatment from the Turf Club. Being a Labour member, I discussed the insurance phase of the subject with them. The Bill has a direct bearing on the benefit insurance fund. Under the measure, if it is passed, any Minister who so desires may disallow those Rules of Racing which deal with the benefit fund. If the Owners, Trainers and Breeders' Association were in existence to-day—and it is not—and this has been told me by reliable men in the racing business, men who are really good Labour supporters——

Hon. C. G. Latham: You mean that they gave you reliable information?

Mr. HEGNEY: Yes. Some of them have their own political viewpoint, and are not Labour supporters. My only desire was to obtain reliable information, and as member for the district to voice the opinion of those affected, and not my own opinion. I take it that on a subject of that nature, it is my job to get the right thing done to accord with the opinion of my constituents. On the insurance aspect many of the men said that the benefit fund would have difficulties if the system were altered. As has been stated, the owner of a horse pays £2 and the trainer pays £1 annually towards that fund. Upon such payment having been made the man is listed in the Racing Calendar as a person who would be indemnified in respect of any accident occurring on the course. Further, every time a jockey mounts a horse on the course, the owner or owner-trainer contributes 2s. to the benefit fund. That fund also obtains support from other sources. There is a Distressed Jockeys Fund, and the Turf Club committee can transfer money from that fund to build up the benefit fund.

Hon. C. G. Latham: Do not all fines go to the benefit fund?

Mr. HEGNEY: The Distressed Jockeys Fund obtains fines imposed on the course. As pointed out by the member for Nedlands, in respect of every race meeting that is held an amount of seven guineas has to be paid into the fund. I discussed the question from that aspect; and the information I received was that every man affected was desirous that if anything was done, it should be done under the auspices of the Turf Club, and not by a body apart from that club. Possibly the member for North-East Fremantle (Mr. Tonkin) will argue that as the Trotting Association

conduct a benefit fund successfully, there is no reason why the Owners, Trainers and Breeders' Association, if in existence, should not run a similar fund, and run it profitably. There was a frank discussion of that phase with the men interested, and they all declared that what had proved successful in the case of the trots would not work satisfactorily in the case of the gallops. Some of them would like an extension of the benefit fund to cover hands employed in racing stables. I am informed that it would be extremely difficult for the Turf Club to impose uniform charges in that event. Take the case of Burns as a trainer. He may have six stable hands this week and they may have worked for him for three months. In a couple of months' time he may have discharged half of them, possibly having no work for them because of horses going out to the paddock grazing. The discharged stable hands go elsewhere. Burns said, "If I have to pay the charge for a period, and then in two or three months the hands covered by the charge have gone, I have to bear a heavier burden; whereas a trainer employing only two or three stable hands gets off more lightly." The present charges are uniform, irrespective of whether an owner or a trainer enters 10 horses in a race or only one. It is asserted that there are many difficulties in the way of increasing the charge, or of imposing differential charges according to the number of horses. Under the Rules of Racing the only persons covered, as has been pointed out by the member for Nedlands, are jockeys and trainers. The member for Nedlands contends that owners as such are not engaged in the business of racing, and that if a jockey employed by an owner is killed or injured on a racing day, the owner is not compelled to provide any compensation for him.

Hon. C. G. Latham: Are not apprentices covered as well?

Mr. HEGNEY: Yes. The contention of the member for Nedlands is that the Workers' Compensation Act would not apply to jockeys and apprentices. He added that the Turf Club in its wisdom had established a fund out of which cover was provided. I asked the men I have mentioned, "What about the stable hands working for you? Are they covered?" Several of them informed me that they had their stable hands covered apart from the insurance provided by the Turf Club. It is, of course, their business to provide cover for the stable hands and others working about the place. My position is as follows: I am not concerned as to the merits of the Bill, but I am concerned with the fact that as representative of the district affected I have no knowledge of any reliable body of opinion in that district favouring the Bill. I state definitely that according to information obtained by me from members of the organisation, when it was in existence, anything the secretary of the organisation has done he has done off his own bat, and that he has co-opted Mr. Pitcher as representative of the people affected, but that Mr. Pitcher is not their representative. Consequently I cannot support the Bill. I am expressing the opinion of those I represent. Let me cite the position regarding the Bill that is before Parliament to deal with the marketing of eggs. What would we think of the member for South Fremantle (Mr. Fox) if he had not consulted an interested organisation before he submitted the Bill to Parliament? I am certain that he would not of his own volition have attempted to bring forward such a measure. Arising from the fact that he consulted with the members of the organisation concerned, who had expressed a desire that certain legislative action should be taken, he introduced his Bill. In this instance, the Bill now under discussion has no substantial body of opinion behind it and the only person prompting it is the individual who was supposed to be the secretary of an association that is now non-existent. Because of the position as I know it, I shall oppose the second reading of the Bill.

MR. TONKIN (North-East Fremantle—in reply) [8.41]: The Bill seeks to subject the activities of the Western Australian Turf Club to more strict supervision. I suppose it is but natural that the member for Nedlands (Hon. N. Keenan), who is a member of the Western Australian Turf Club, should evince the most opposition to the measure.

Mr. Marshall: He looks sleepy enough to be a member.

Mr. TONKIN: The member for Nedlands, to use his own words, hoped that this most undesirable Bill would be dropped. No doubt the hon. member expected that after the very heavy fire to which he subjected

the Bill, I would be obliged to capitulate. I desire to tell him that the Bill will not be dropped, because the ammunition he used comprised for the most part blank cartridges.

Mr. Thorn: There were not too many blank cartridges in the ammunition used by the member for Middle Swan.

Mr. TONKIN: We will see about that.

Mr. Marshall: Anyhow, the member for Toodyay would not be able to recognise blank ammunition.

Mr. TONKIN: The member for Nedlands said he would oppose the Bill for the three reasons that it was based on wrong premises, its provisions were unworkable, and it was unnecessary and undesirable. I ask the House to support the Bill because it is based on correct premises, its provisions are extremely simple and will not present any difficulty, and it is very necessary and most desirable. The member for Nedlands pointed out that the Western Australian Turf Club was founded in 1852 to hold races and arrange conditions of competition. There was nothing in the law at that time to prevent the club from doing so, nor, the hon. member contended, was there anything in the law now to preclude them from doing so any more than there is to prevent ordinary persons associated together to promote sport from making rules of competition to govern their particular game. Hence, he said, the rules of racing were simply conditions of competition. Before dealing fully with that argument, I would point out to the hon. member that he failed to observe that the Western Australian Turf Club are governed by a special Act of Parliament, whereas ordinary persons associated together to promote football, cricket and other sports are not. As a matter of fact, the rules of racing are not strictly conditions of competition, as I shall show. I have here an entry form issued by the W.A.T.C., inviting entries for a programme of races that are named. At the bottom of the form are these conditions, "To be run under the rules, regulations and by-laws of the W.A.T.C." So the conditions of competition regarding racing in Western Australia are not merely rules, but rules, by-laws and regulations. I shall show that there is no difference, actually speaking, between all three.

Mr. Marshall: But there ought to be.

Mr. TONKIN: The member for Nedlands, in his judgment, said there was no more difference in the matter of the rules of racing than there would be regarding any other conditions of competition promoted by any ordinary individual for the conduct of sport on any suburban ground. That is very true, provided such rules deal only with the conditions of competition and are confined to that phase. They would be just as invalid in both instances if those conditions of competition infringed the rights and privileges of the public. It may be that certain very onerous and wrong provisions not strictly rules of competition are imposed under the guise of rules of racing when they are really more properly subject matter for by-laws. If such rules are not subject to scrutiny and veto, how are we to remedy such an undesirable state of affairs? The member for Nedlands pointed out that a breach of a by-law rendered a person liable to a fine and possibly imprisonment, but that position was not involved in the rules of racing. Therefore, he said, there was no possible comparison.

Mr. Moloney: What about the man who is disqualified for life?

Mr. TONKIN: The member for Nedlands said there was no possible comparison between rules of racing and by-laws and marvelled that I had failed to observe that vital difference. But is the difference so vital and so great? It is true that a person cannot be prosecuted and imprisoned for an infringement of the rules of racing. I admit that, but the rights of the individual as a citizen may be seriously curtailed under such rules. His means of livelihood may be taken away from him. If he is a jockey, he is physically unfitted for hard work and he may have followed his calling for a period of ten years or more. That man may be suddenly disqualified for life. His means of livelihood are taken away from him, and he will find it most difficult, because of his stature and training, to fit anywhere else in the scheme of things. That can be done under the rules of racing, and there is no provision for a fair trial according to the law of the land. There is this difference between rules of racing and by-laws—I marvel that the member for Nedlands did not observe it—that if a person is summoned before a court of summary jurisdiction for a breach of a by-law, he is afforded a fair trial according to the law of the land, but that is not always possible when a person is dealt with under the rules of racing.

And prior to the Lauder case it certainly was not the position. Lauder's action established that the stewards had to permit a man to call evidence and to cross-examine witnesses. Prior to Lauder taking action there was no such provision and a man could be disqualified simply by the stewards calling him in and saying to him, "You are disqualified for two years," or five years, as the case might be. And that was done under a rule of racing. But because Lauder challenged that rule, we now find in the racing calendar this notice from the W.A.T.C. to the other clubs—

> Before seeking to impose any penalty it is necessary that an opportunity be afforded to the accused person of hearing the evidence and cross-examining the witnesses, and also of being heard and producing evidence in his own defence. The neglect of this precaution may render nugatory any punishment so imposed.

The reason for that is that the W.A.T.C. know that the clubs which have been racing under these rules previously agreed that no such fair trial had to be given, and it was the practice to disqualify a man without a trial. But after the Lauder case, it was established that a fair trial had to be given, and so the W.A.T.C. published the notice, notifying clubs that if they did not comply with those conditions, whatever they might do might be rendered invalid. The member for Nedlands pointed out that in one case, that of a by-law, a club is entitled to make by-laws which possibly could affect the liberty of the subject, but only with the approval of the Governor-in-Council. But in the case of conditions governing competitions—as for instance hockey, football, cricket and the like—those in control can make their own conditions of competition, and there is required no sanction from anybody other than themselves in order that those conditions shall rule the sport. I point out that in this case rights are taken away without the approval of the Governor-in-Council. So far as by-laws are concerned, a person's liberty may be taken away, but only with the approval of the Governor-in-Council. So there is a safeguard. But here, under a rule of racing, a persons rights may be taken away without the approval of the Governor-in-Council. That is what I am objecting to. There is another feature of those rules which I marvel that the member for Nedlands did not observe.

Mr. Marshall: You would not marvel at him now.

Mr. TONKIN: Those conditions apply to competitions on racing days, and not only that, but also to everyday happenings in the business of racing men. They are called conditions of competition, but they extend even to dealing with the employment of stable hands. How a man's employment of stable hands can be deemed to be a condition of competition, is beyond me. Let us examine Rule 78 of the Australian Rules of Racing, which reads as follows:—

> No trainer shall engage any stable lad or stable servant without a clearance in writing from his last employer.

That is supposed to be a condition of competition. We are told that is similar to a rule which a football club or a cricket club might make for governing its competition. The rule continues—

> Any trainer continuing to employ any lad or stable servant after notice has been served on him that such lad or stable servant has not fulfilled his engagement with his previous employer may, on complaint being made to the committee, be disqualified or fined.

I fail to see that that is a condition of competition. The rule continues—

> Any lad or stable servant leaving his owner before the terms of his engagement are complete may be disqualified or fined.

Rule 79 reads—

> Any lad or stable servant prevented from obtaining employment by the preceding Rule shall have the right of appeal to the committee.

I can visualise the position where a stable lad is inhumanly treated by a trainer until that stable lad absconds and looks for a job elsewhere. The W.A.T.C. may disqualify that lad under their rules of racing and so-called conditions of competition, and that disqualification may have the effect of preventing that lad from getting a job anywhere else. We know how difficult it would be for a lad in such circumstances to establish that it was owing to inhuman treatment that he had to run away. Courts will act on the rules of evidence, but in this case the lad would not get before a court, but would be judged by the W.A.T.C. and I am afraid that justice would not always be done; and so it might happen that the lad would unjustly lose his means of livelihood, simply because he had been dealt with under a rule of racing, whereas if that provision were a by-law, such a lad would be afforded opportunity for a fair trial in a court. There appears to be no limit to the things that can be dealt with

under the rules of racing. Again, it may be said that the conditions of employment for apprentices and stable lads are conditions governing competition. Those are the rules which set down the conditions regarding the employment of stable lads and apprentices, and are called rules of racing. We are told that rules of racing are the conditions governing competition. I do not think that by any stretch of the imagination we can call such a rule as that a condition of competition. The member for Nedlands pointed out that the position here in regard to the power to make rules of racing was exactly the same as those in Victoria and New South Wales; and he compared the statutes and showed how the provisions were identical for the making of by-laws and the imposition of penalties for breaches of by-laws, and in the matter of exemption from incorporation. He pointed out that the Western Australian Turf Club were not incorporated, and that the racing bodies in New South Wales and Victoria likewise were not incorporated. He showed also how the Australian Jockey Club, since 1873, had exercised their rights to make certain conditions governing their own competitions. But he did not tell the House how the Australian Jockey Club failed to prevent Rufe Naylor from entering a racecourse after they had disqualified him under the rules of racing. He said they had the right to make their conditions of competition, and that the same rights existed here, but he did not venture to say that the club sought to use their power which they had taken under a rule of racing and were told by the court that they could not do so. Let me quote from the judgment in the case reported in the "West Australian" of the 8th May, 1934—

Racing Case.

Disqualification of Naylor.

Judgment for Plaintiff.

Sydney, May 7: Reserved judgment was given in the Equity Court by Mr. Justice Long Innes to-day on the motion by Rufus Theodore Naylor for the continuation of the injunction granted, ex parte, on March 31, restraining the Australian Jockey Club from preventing him entering and remaining on Randwick Racecourse as a member of the public and subject to any disqualification by the Australian Jockey Club. His Honour came to the conclusion that on the evidence, the disqualification of Naylor by the Australian Jockey Club was without jurisdiction, and was invalid. The plaintiff had to be regarded as an ordinary member of the public who was under an invalid disqualification and, therefore, the club's by-law refusing admission to any person under disqualification did not apply.

As to the further by-law by which it was stated that any person whom, in the opinion of the committee, it was desirable not to admit, could be excluded, his Honour pointed out that the committee had deliberately refrained from exercising any power it might have had under that by-law and had, instead, elected to deal with Naylor under the rules of racing, and was therefore bound by its election.

The A.J.C. slipped badly. They thought they had a certain power under a rule of racing and elected to use it, and failed, and when they failed, they tried to use power under the by-laws. That is my objection to the present position. The clubs frame rules and take powers in excess of their statutory authority, and use the power to the detriment of the people, and go on using the power until their action is challenged. It should not be necessary to challenge their power. When they are challenged, it is proved in almost every case that the racing bodies have taken powers under the rules of racing which they had no right to take. The judgment continued—

The reason for the decision that the disqualification of Naylor was invalid was that Naylor had not agreed to be bound by the rules of racing and relinquish his legal rights, whatever they might be.

I am concerned about the rights of the public. Members can see that the clubs seek to impose disqualifications upon members of the public and to take away those rights under the rules of racing, and they have no power to do so. While on the subject of law, it would not be out of place to give the member for Nedlands a little more, since he elected to quote one or two judgments for my benefit. Let me deal with the same case, Naylor v. Stephens. This is the judgment of Mr. Justice Long Innes in Naylor's favour and I ask members to pay particular attention to this because it is very important. He said—

In Myers v. Casey, a somewhat similar case to the present, Isaacs, J., said—"It may at some time become a serious question, should it ever be raised, whether a mere rule of racing affecting the land, made without the formality and free from the supervision provided by the Act, is consistent with the statutory trusts upon which Parliament vested the land, or whether the club can thereby effectually and validly enact any binding provision or insist on any stipulation with respect to the right of the public who are the *cestuis que trust* at to enter the land."

His Honour proceeded to point out that in the case then under consideration, neither in

the statute nor in any by-law was there any reference to the making of rules of racing other than by strict method of by-law—an observation which applies to the present case—but added that the point did not call for decision in that case.

The Chief Justice said that neither in the statute nor in any by-law was there any reference to the making of rules of racing. The member for Nedlands and the member for Pingelly have told us that ever since 1852-53 the racing bodies have had the power to make rules. The judge said there was nothing in the statute to show that they had any power to make rules other than as by-laws. Mr. Justice Long Innes continued in the Naylor v. Stephens case—

> That precise question calls for decision now. I am far from suggesting that the rules of racing may not affect the legal or equitable rights of persons not subscribers to such rules, etc. But as regards the question stated by Isaacs, J., I think the rules of racing, unless incorporated by by-law, have no greater effect upon a person who has not agreed to be bound thereby, or who is not estopped from asserting that he is not so bound, than the rules of any other club or voluntary association.

That is clear enough. So far as a member of the public is concerned, he has not expressly agreed to the rules of racing, and the powers which the clubs attempt to wield are ultra vires. This Bill seeks to alter the position so that excess powers cannot be taken as they are being taken at present under rules of racing. So I submit that the Bill is not based on wrong premises, as the member for Nedlands asserted, but that the premises upon which the Bill is based are correct. Now for the second objection.

Hon. C. G. Latham: Have you only just reached the second?

Mr. TONKIN: The member for Nedlands spoke of the multitudinous matters and all the enormous detail that could not or should not be submitted to any Government authority to investigate and determine upon. The multitudinous matters! All the enormous detail! Such statements are calculated to frighten the House. But what exaggeration! The hon. member stated that the rules of racing formulated in 1852 existed to-day, so we can make a start from that point. That is when the rules of racing were first made. There are 111 local rules of racing. To that we must add 187 Australian rules, which make a total of 298 rules of racing, dealing with all these multitudinous matters and this enormous detail. It has taken us since 1852 to make these 298 rules, that being a matter of 83 years or an average of approximately four rules each year.

Hon. N. Keenan: Which of the four were made last?

Mr. TONKIN: It is not a stupendous task to deal with an average of four rules a year if they come up in that way. The hon. member infers that the great bulk of the rules were made at once. That may be so, but they were made years ago. We could scrutinise them all at once. Very few rules would be made in any one year from now on, so that the additional work would be infinitesimal. So much for the multitudinous matters and the enormous detail. There are also 122 by-laws, and the by-laws are larger than the rules of racing. The statute now provides that the by-laws must be submitted. If it is possible to scrutinise 122 by-laws, it is equally possible and not an arduous task to scrutinise 298 rules of racing, seeing that most of them have been in existence since 1852, and are well known. We have reached the position when very few new rules of racing are made. I suppose there would not be an average of four new rules every year. Once we go through the rules already in existence, very little work will remain to be done. Now I come to the question of uniformity. The hon. member said that if we subjected these Australian rules of racing to the scrutiny of the Chief Secretary, that would be the end of uniformity, and that was undesirable. My reply is that we cannot submit in Western Australia to unfair rules of racing merely in the interests of uniformity. If we find that the rules are unfair, we should either alter them, or tell the club to alter them and make them fair, and for the sake of uniformity let other clubs in Australia adopt them.

Mr. Hawke: The hon. member argued your way about Federation.

Mr. TONKIN: True. The hon. member went on to say I was wholly in error in imagining that jockeys and apprentices who took part in riding were covered by the Workers' Compensation Act in every case. He said that neither the jockey nor the apprentice was covered by the Act unless he was employed by a person whose business

was racing. The hon. member is a lawyer of standing and I am a layman. I am not going to pit my opinion against his, and must accept it. All I can say is that when the lad Davies was killed he was a casual employee and was taking a horse to the racecourse. He was not insured. He did not come under the benefit fund. Mrs. Davies, however, issued a process out of the local court under the Workers' Compensation Act claiming compensation from the trainer and the owner, Mr. Vincent. All I know is that when the process was issued, Mr. Vincent paid the claim. Whether he paid because there was a liability, or he wished to be generous to the widow, I am not in a position to say. I quote that case in answer to the opinion given by the hon. member.

Hon. N. Keenan: You have the Workers' Compensation Act. Read what is a liability.

Mr. TONKIN: Mr. Vincent was the owner of the horse, but his business was not that of racing.

Hon. N. Keenan: A worker does not include a person whose employment is of a casual nature and who is employed other than for the purpose of the employer's trade or business. If the employer's trade was the business covering the employment, the casual worker is entitled to compensation, but not otherwise.

Mr. TONKIN: I accept that opinion but there is a doubt in my mind. Mr. Vincent's business was not that of racing, but, after the process was issued for a claim under the Workers' Compensation Act, he paid up. Whether he paid because there was a liability or did so out of a spirit of generosity, I do not know. Seeing that he waited until the process was issued, I cannot help thinking his lawyer's advice was to the effect that it would be advisable to pay. I put this forward as an answer to the hon. member, who said that in very few instances were jockeys and apprentices covered when they rode in a race here, that is, covered under the Workers' Compensation Act. I put this question to the hon. member: In what way does the Turf Club become entitled to set up a fund for compensation under the Workers' Compensation Act? They are not licensed insurers as is the case with the A.J.C., with which the hon. member compared them. The A.J.C. are licensed insurers. I have here a letter signed by the secretary of the A.J.C. which says—

> Re insurance: We are licensed insurers, and our business in that regard is confined to jockeys, apprentices, and stable hands and direct employees of racing clubs and associations. We are bound by the provisions of the Act and the rules and regulations of the Workers' Compensation Commission.

That is the reason why the A.J.C. can conduct a fund of this nature. The Turf Club have not conducted a fund under any powers conferred upon them, as is the case with the A.J.C. Are they employers? That would be the only way in which they would be entitled to set up such a fund. Regulation 5 in connection with the Workers' Compensation Act makes this provision—

> Every application by an employer for exemption from the provisions of Section 10 of the Workers' Compensation Act shall be in accordance with form E, and shall state the following particulars:—The amount of the fund established; the number of employees; the annual amount of wages or salaries of the employees coming within the provisions of the Workers' Compensation Act; the general nature of the business carried on by the employer; the number of accidents, etc.

First, the Turf Club set up the fund because they are employers of jockeys and apprentices. If that is so, and they consider they are employers in every case, will the jockeys and apprentices be covered under the Workers' Compensation Act when they ride? I do not think it can be said that the Turf Club are the employers. I, therefore, fail to see how they have any power to create the fund they have established. If the position were properly tested, I think it would be found they have no such power.

Hon. N. Keenan: That was the point in Pitcher's case.

Mr. TONKIN: The case did not go to appeal. Quite a number of judgments in Western Australia, I think more than 75 per cent., have been upset on appeal.

Hon. N. Keenan: Prima facie the judgment is good. It may be upset, but prima facie it is good.

Mr. TONKIN: I will reply to the hon. member in words which he himself has used here, that it often resolves itself into a question of who has the last guess. The local judge has made the first guess. I daresay that if the case went to appeal, the appeal judge, having the last guess, would reverse the decision.

Member: That can be said about other judges we have here.

Mr. TONKIN: True, but that is the final appeal, the last say.

Mr. McDonald: What you quoted was a joke made by one of the High Court judges.

The TONKIN: The member for Nedlands then proceeded to show how philanthropic is the Turf Club. He pointed out that although in many instances there is no legal obligation to indemnify, nevertheless the club has paid compensation out of the special fund. Thus, he maintains, there is conferred a benefit on jockeys and apprentices who would not otherwise be covered. Now let us see how philanthropic the Turf Club people really are. The club has two funds—one for distressed and disabled jockeys, which is £7,000 in credit, and a benefit fund to which the member for Nedlands referred, saying that out of it were paid moneys going as compensation to injured jockeys and apprentices. Some time back the jockey Len Hall had a fall off "Grey Label" at Helena Vale. He fell on his head, and his skull cap was badly smashed. He felt no serious effects immediately after the accident, but a little time later he went completely blind. I would take it that a jockey completely blinded would be a disabled jockey and would be a distressed jockey. I know for a fact that Len Hall's home circumstances, when he was deprived of his occupation by reason of his disability, were distressed circumstances. Now, did the philanthropic Turf Club hurry along to assist Len Hall out of the benefit fund or the fund for distressed and disabled jockeys? Seven thousand pounds in credit was that fund for distressed and disabled jockeys, and here was a blind jockey with a wife and family, and he got nothing. For eight months he had to go without a penny, and seven thousand pounds was in the fund, and this philanthropic institution was handling the fund. After eight months, a little agitation having been started, the Turf Club decided to pay something out of the fund. I am glad to say that Len Hall to-day has recovered his sight, and has a license and can continue his work as jockey or trainer. He was a trainer, but also rode in hurdle races. I want to make it clear that when Hall was injured he was a licensed jockey. Only two months of his license period had run; he still had 10 months to go. So his license was current. But he was blinded, he was distressed, and here was a large fund for distressed and disabled jockeys, and here also was Len Hall going without anything for eight months. So much for the philanthropic Turf Club which goes out of its way to compensate people not legally entitled to compensation. Here is the club's rule. It says the club will not pay any indemnity, even where there is a liability, if an owner admits to an injured jockey that he is liable. That is to say, if a jockey is injured and the owner says to the jockey, "I realise that I am liable to compensate you for your injury," in such case, the Turf Club declares, no payment will be forthcoming from the fund. The next point raised by the member for Nedlands rather mystifies me, because as a rule that hon. member is most meticulous. He said the income of the benefit fund was about £700 a year.

Hon. N. Keenan: From that source.

Mr. TONKIN: What source?

Hon. N. Keenan: The seven guineas a day represents about £700 a year.

Mr. TONKIN: What about the owner's £2 and the trainer's £1 per annum?

Hon. N. Keenan: I was speaking of the seven guineas per day.

Mr. TONKIN: What point does the hon. member make when quoting simply portion of the income of the fund?

Hon. N. Keenan: I was referring to that part.

Mr. TONKIN: In point of fact, the income of the fund is nearly £2,000 annually. I have here the balance-sheet showing the figures of the Distressed and Disabled Jockeys Fund and the Benefit Insurance Fund. The balance-sheet distinctly states subscriptions totalling £1,960 for the year ended 30th April, 1935. On the debit side are shown relief granted, reserves for outstanding claims, salaries, administration expenses, and then a surplus for the year of £99 12s. 8d. That is the surplus on subscriptions totalling £1,960; so practically the funds make a profit of about five per cent. Now I come to the hon. member's third objection, that the Bill is unnecessary and undesirable. It all depends upon the point of view. If one is expressing the Turf Club's point of view, of course the Bill is undesirable. If one is expressing the point of view of the public, the measure is desirable. I think that from what I have shown it is plain that the Bill is not only highly desirable, but also highly necessary,

because it seeks to impose a check upon clubs which exceed their powers under the rules of racing: clubs, that is to say, which take powers they have no right to take. I refer hon. members again to the judgment of Mr. Justice Isaacs. I could quote several judgments bearing on the same point, but I do not wish to weary hon. members with them. I have here judgments by Lords Justices Lindley, Bowen, Cave, and Cottenham declaring it is not right that incorporated companies and so on should seek to exceed their statutory powers by means of regulations, rules, etc. In point of fact, is there any difference whatever between a by-law and a rule or a regulation? The Interpretation Act contains the following:—

"Regulation," "rule," or "by-law" means regulation, rule, or by-law (as the case may be) made under the Act wherein the term is used.

The W.A.T.C. is governed by a special Act wherein those terms are used, so I take it that rules, regulations and by-laws amount to the same thing. Section 36 of the Interpretation Act provides that all rules, regulations and by-laws made under any statute of Western Australia must be either laid on the table of both Houses of Parliament or approved by the Governor, before they can have effect. It also sets out in subsection 5—

In this section the term "regulation" includes rule and by-law.

So it seems to me that if the matter were really tested and taken to appeal, it would be proved that the rules of racing made by the W.A.T.C. are really by-laws, and should be submitted for approval in the same manner as other by-laws. To remove the doubt, however, I ask members to agree to the Bill, which simply provides that the rules of racing shall be submitted to the same scrutiny as by-laws. Some members appear to assume that the benefit fund of the W.A.T.C. will be wiped out if the Bill is passed. How does that necessarily follow? It would follow only if it were quite obvious that the benefit fund should be wiped out, and in those circumstances the Minister would take the first opportunity to see that it was terminated. Of course, it does not follow at all that that would be the result. I merely ask that the rules, such as they are, and any future rules shall be submitted for approval and, if it is found that they are unreasonable or embody powers that are not acceptable, steps can be taken to have the rules altered. I cannot resume my seat without referring to one or two remarks by the member for Pingelly (Mr. Seward). He said that I was either the mouthpiece of some persons who have been in the lobbies of the House, or I felt I was doing something in the nature of a public duty. I am rather surprised at the hon. member's dirty insinuation. When this matter was placed before me, I was not concerned with individuals at all. I was satisfied that a wrong existed. I do not care who wanted the wrong righted. I take the view that I hope I always shall, namely, if it is possible to do something to right a wrong, everything should be done with that end in view. That is why I introduced the Bill. The member for Middle Swan (Mr. Hegney) said that some owners and trainers to whom he had spoken did not desire the Bill. I am not concerned a snap of the fingers about that opinion. I am concerned about the rights of the public at large, and it has been conclusively proved that racing clubs are doing things that take away the rights and privileges of the public by means of their rules of racing. I claim that is wrong, and that is why I have introduced the measure. If it is a matter of the opinion of trainers and owners, I have spoken to a number of them, and they want the Bill. Those to whom I spoke were not big owners and trainers, but small battlers in the game who felt they could do very much better if they had control of a benefit fund of their own. If it does so happen that they gain control of the fund, they may benefit, but, on the other hand, it may be that there will be no alteration effected at all. The member for Pingelly indicated to members what a wonderful scheme the benefit fund of the W.A.T.C. was, what cheap insurance it afforded and what advantages it bestowed. I remind the House that years ago when unregistered racing was permitted, the owners and trainers who participated in racing at Bicton, Kensington Park, Goodwood, and at Lakeside and Somerville on the goldfields, formed a fund of their own, as required under the Workers' Compensation Act. They administered the fund themselves and provided benefits for all employees, not merely apprentices and jockeys. Later on,

under the provisions of the Racing Restriction Act of 1917, those unregistered courses were amalgamated and the number of race meetings per year limited. In the circumstances it became necessary to wind up the benefit fund. It was then found that it was possible to return to contributors 13s. 4d. for every pound they had paid in. The owners and trainers had been covered all the time they had been contributing to the fund and, notwithstanding that all employees were covered, the distribution of the surplus funds was on the basis I have indicated, namely, 13s. 4d. in the pound. I want members to compare that position with what is being done under the W.A.T.C. benefit fund. The Club contend that they could, if they so desired, close the fund and pay the whole of the money into their revenue. If that be so, then the owners and trainers will never get any of their money back from the fund. What is more, that fund covers only apprentices and jockeys. Why does it not cover stable hands and other employees? The member for Pingelly said it would be most difficult to do that, and almost impossible. The member for Middle Swan suggested that if a trainer had six stable hands one week and three during the next week, it would make the position difficult with regard to the fund. The same difficulty must present itself in the Eastern States, and yet the Australian Jockey Club fund covers all employees of the racecourse—jockeys, apprentices, stable hands, farriers and so forth. It is idle for members to suggest that it would not be possible for the Western Australian Turf Club fund to cover all employees. If a proper fund were established, all racecourse employees would be covered. The member for Nedlands and the member for Pingelly quoted the opinion of Mr. Justice Dwyer in the Pitcher case, and said that His Honour decided that Pitcher had no right to come before the court to question the rules of racing of the club. Mr. Justice Dwyer reversed his decision in a small space of time, because, when the Western Australian Turf Club applied to him in Chambers to prevent the case from going to court, they urged that Pitcher had no case but Mr. Justice Dwyer said that he had and that the case should go to court.

[*The Speaker resumed the Chair.*]

Mr. McDonald: That is not a matter of reversing his decision. A judge does not come to decisions in Chambers.

Hon. C. G. Latham: It would be improper if he did.

Mr. TONKIN: Why so?

Hon. C. G. Latham: The man should at least be given a chance.

Mr. TONKIN: The judge decided that the case should go to court, and when it was dealt with there he told Pitcher that he had no right of action. If that was so, why did not the judge indicate that at the outset, and so save expense?

Mr. McDonald: But no judge would decided such issues in Chambers. He would merely deal with interlocutory matters.

Mr. TONKIN: Then the Western Australian Turf Club must have been optimistic when they applied to the judge in Chambers.

Mr. McDonald: They must have thought they had a good case.

Mr. TONKIN: Of course I am not versed in the devious ways of lawyers. Coming back to the suggestion by the member for Pingelly that I was the mouthpiece for certain individuals, it crossed my mind, when he made the remark, that it was possible he himself was the mouthpiece for an organisation, that he was putting up a case for the W.A.T.C., and I hope I do him no injustice when I say that it appeared to me the W.A.T.C. had supplied him with quite a lot of the information he used.

Mr. Rodereda: That was quite obvious.

Mr. TONKIN: Now, just one point in conclusion: the member for Middle Swan (Mr. Hegney) sought to make the point that before the member for South Fremantle (Mr. Fox) brought down his Marketing of Eggs Bill, he went to the persons concerned and found out how they felt about it; and the hon. member suggested that I also should have gone to the persons concerned, the owners and trainers, and found out how they felt about this Bill. But I submit there is no analogy. The member for South Fremantle was introducing a Bill that was going to confer a direct benefit on producers, and so he went to those producers to see what they thought about it. But is my Bill going to confer a benefit on any one section? Its purpose is to safeguard the public.

Mr. Hegney: Its purpose is to make business for the insurance people.

Mr. TONKIN: I am not concerned about what individuals are seeking to get, but I am concerned about this, and I tell the hon. member that the reason why this Bill was introduced was, not because certain indivi-

duals desired its introduction, but because I in conjunction with some other members saw that a wrong did exist and that it needed righting. I hope the House will pass the Bill so that we can control the racing body. It is not asking for very much; it simply says that the rules which have been made and the rules that will be made in the future shall be submitted for scrutiny, just as by-laws are at present. It does not necessarily follow that any of those rules of racing will be disallowed.

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

Ayes	15
Noes	14
Majority for	1

AYES.

Mr. Clothier	Mr. Raphael
Mr. Coverley	Mr. Rodoreda
Mr. Hawke	Mr. Sleeman
Mr. Marshall	Mr. F. C. L. Smith
Mr. Millington	Mr. Tonkin
Mr. Moloney	Mr. Willcock
Mr. Munsie	Mr. Cross
Mr. Nulsen	(*Teller.*)

NOES.

Mr. Cunningham	Mr. Mann
Mr. Ferguson	Mr. Sampson
Mr. Hegney	Mr. Seward
Mr. Johnson	Mr. Thorn
Mr. Keenan	Mr. Watts
Mr. McDonald	Mr. Welsh
Mr. McLarty	Mr. Doney
	(*Teller.*)

PAIR.

AYE.	NO.
Mr. Collier	Mr. Latham

Question thus passed.

Bill read a second time.

In Committee.

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

Third Reading.

Mr. TONKIN: I move—

That the third reading of the Bill be an Order of the Day for the next sitting of the House.

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

Ayes	14
Noes	15
Majority against	1

AYES.

Mr. Clothier	Mr. Nulsen
Mr. Coverley	Mr. Rodoreda
Mr. Cross	Mr. Sleeman
Mr. Hawke	Mr. F. C. L. Smith
Mr. Marshall	Mr. Tonkin
Mr. Moloney	Mr. Willcock
Mr. Munsie	Mr. Raphael
	(*Teller.*)

NOES.

Mr. Cunningham	Mr. North
Mr. Ferguson	Mr. Sampson
Mr. Hegney	Mr. Seward
Mr. Johnson	Mr. Thorn
Mr. Keenan	Mr. Watts
Mr. McDonald	Mr. Welsh
Mr. McLarty	Mr. Doney
Mr. Mann	(*Teller.*)

PAIR.

AYE.	NO.
Mr. Collier	Mr. Latham

Question thus negatived.

House adjourned at 9.53 p.m.

Legislative Council,

Tuesday, 19th November, 1935.

The PRESIDENT took the Chair at 4.30 p.m., and read prayers.

MOTION—HEALTH ACT.

To Disallow Meat Inspection Regulation.

HON. C. F. BAXTER (East) [4.33]: I move—

That Regulation No. 4, made under "The Health Act, 1911-33," as published in the "Government Gazette" on 1st November, 1935, and laid on the Table of the House on 13th November, 1935, be and is hereby disallowed.

The framing of legislation is a serious responsibility that is placed on the shoulders of legislators. In many cases when Acts of Parliament have been passed through the