Legislative Council
Thursday, the 12th November, 1970

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

QUESTION ON NOTICE
TOURISM
Promotion in Southern Areas

The Hon. V. J. FERRY, to the Minister for Mines:

(1) What research facilities are available to the Western Australian Tourist Development Authority in respect of assessing projects considered to be of importance to the future of the tourist industry of this State?

(2) Have comprehensive surveys been made of the needs and expectations of tourists in—
(a) the South West; and
(b) the Great Southern areas?

(3) If so, what do the results reveal?

(4) What other steps by the Authority to further promote tourism in Australia are being taken to further promote tourism in Australia?

The Hon. A. F. GRIFFITH replied:

(1) Projects submitted by municipalities are inspected on behalf of the Tourist Development Authority. The report of the inspecting officer is submitted to the Authority for its consideration and decision. Feasibility studies commissioned by the Authority have been carried out in a few special cases. A research officer appointed earlier this year is at present carrying out a survey of accommodation in the principal towns of the South-West and Great Southern areas of the State and preparing a model for a visitor survey which, with local cooperation, could provide useful information for the Authority and private enterprise.

(2) No comprehensive surveys have been made of the needs and expectations of tourists in the South-West or Great Southern areas.

(3) Answered by (2).

(4) The Authority carries out extensive promotion campaigns in New South Wales, Victoria and South Australia and lesser campaigns in Queensland and Tasmania. It also co-operates with the Australian Tourist Commission in the provision of all forms of publicity material for distribution through the overseas offices of that Commission and by assisting, during their visits to Western Australia, publicists, photographers and travel agents sponsored by the Commission.

SALE OF LAND BILL
In Committee

The Deputy Chairman of Committees (The Hon. F. D. Willmott) in the Chair; The Hon. A. F. Griffith (Minister for Justice) in charge of the Bill.

Clauses 1 to 4 put and passed.

Clause 5: Interpretation—

The Hon. I. G. MEDCALF: Members will recall that during the second reading I referred to this clause and said there would be situations in which its provisions might be too restrictive and might, in fact, include a cash sale which is within the definition of "terms contract." The definition "terms contract" as set out in the Bill states that it is a contract in which the purchaser is obliged to make two or more payments to the vendor over and above any deposit.

I pointed out that a deposit is sometimes broken up and because the purchaser may not immediately have the total funds required for the deposit, which would normally be in the vicinity of 10 per cent., he might pay something which is treated as being an initial or part deposit and then subsequently pay a further deposit, thus making the full deposit.

This is frequently availed of so that the parties can in fact sign a binding contract even though the purchaser does not have immediately, the cash available to make up the deposit.

In those circumstances it seems to me that the second part of the deposit which he paid could be treated as one of the other payments thereby making a cash sale which would come within the definition of "terms contract," because there would be a part deposit followed by another instalment, which would also really be a part deposit. Although that is really a cash deal and might take effect in a short time—say, 28 days—nevertheless it would come within the definition of "terms contract" which, I feel, is not intended. For that reason I suggest that although slight difficulties might be involved, the Law Reform Committee might be good enough to look at this and indicate whether or not it would agree to an enlargement of the definition.

The proposal in the first portion of the amendment is to ensure that the deposit need not be paid immediately upon execution of the contract. If a deposit is paid partly on execution and partly later, it may still be treated as a deposit, provided the payments are specified as being the deposit and are paid within 28 days of
the execution of the contract. That is what it really boils down to. It allows a little leeway for the payment of the deposit. I therefore move an amendment—

Page 3, lines 6 and 7—Delete the words "paid on or in connection with the execution of the contract".

The Hon. A. F. GRIFFITH: The honourable member has a number of amendments on the notice paper and perhaps you will permit me, Sir, to say at this stage, when dealing with the first amendment, that I have had all of them referred to the Law Reform Committee which sees its way clear to find favour with them. I also contacted the Parliamentary Draftsman who examined the situation in order that I could be satisfied that the amendments would meet with the accord not only of the Law Reform Committee, but also of the draftsman himself.

I make these general comments now which might be in the interests of saving time. I will not find it necessary to make any further comment because I am satisfied with the amendments. One member of the Law Reform Committee, a Crown Law officer, is present this afternoon merely to give us any assistance we might require. However, I would suggest to Mr. Medcalf that he describe the reasons for each amendment as he goes along.

Amendment put and passed.

The Hon. I. G. MEDCALF: I move an amendment—

Page 3, line 13—Delete the word "land" and substitute the following passage:

land,
and for the purpose of this interpretation "deposit" includes any part of the purchase price which the contract specifies as being a deposit and provides is to be paid, whether by one or more payments, within twenty-eight days of the execution of the contract.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 6: Restriction on rescission—

The Hon. I. G. MEDCALF: I am sorry I have not had time to place this on the notice paper, but I move an amendment—

Page 3, line 30—Delete the words "twenty-eight" and substitute the word "fourteen".

It has been brought to my attention that the Law Society recently introduced a printed form for a contract of sale, and this is now available for general purchase. It has been approved by a committee of the Law Society and it is thought it will greatly facilitate the handling of sales without the use of a lot of other cumbersome and home-made forms which have been in use to date. It should also, it is hoped, reduce expense.

One of the clauses in the contract, dealing with one of the breaches of contract—that is, the failure to pay one of the installments—states that the period of notice should be 14 days. Previously, of course, in many contracts there was traditionally no time limit prescribed for this particular breach. It was because of this situation, I believe, that the Law Reform Committee decided a specific period of days should be inserted. It was felt that if a vendor gave a notice relating to the rescission of a contract, or gave any notice in connection with a breach consisting of the failure to pay an installment, it should be a notice for a reasonable period. The figure of 28 days has been inserted without, I believe, any specific love for that particular period, but merely in order to have a certain period included. I consider that 14 days would be quite adequate in this situation, and such a time would also correspond with the period included in the new form which has just been printed and issued by the Law Society.

This does not affect the breach of the other clauses of the contract which are dealt with by the rest of the subclause. In those cases a reasonable time from the date of service is permitted and that, of course, is flexible depending on the circumstances.

In connection with this amendment my attention has been drawn by the Real Estate Institute to the fact that if people habitually and continually neglect to make payments, a period of 28 days each occasion would mean a rather excessive burden on the vendors and an excessive burden with regard to clerical work. It is therefore considered that 14 days would be quite adequate in the average case.

The Hon. W. F. WILLESEE: I am a little concerned from the point of view of the purchaser because 14 days is not very long for a purchaser who has entered into a contract of progressive payments. If a purchaser is suffering a lack of immediate finance, this period of time is not very long to enable him to honour his contract. Therefore, 28 days would be far better. I am concerned with that aspect of the situation.

Mr. Medcalf has more or less lined up the situation as it is applicable to what we might call the movement of the trade; it is customary to do this because it is within the law; it is something that has developed. However, 28 days is not a long time to allow a person who possibly has signed himself up for the biggest contract of his life. This is borne out by the title of the legislation: namely, the Sale of Land Bill. The purchaser will have contracted to buy land on which he ultimately wants to put a home. If anything, I think we should consider extenuating circumstances and allow a person time to honour a contract.
The Hon. I. G. MEDCALF: I admit it is a matter of opinion whether the period is 28 days, 14 days, 56 days or some other number of days. It is a matter of opinion and a matter of judgment. Like all matters of opinion it depends upon the point of view; namely, whether we look at it from the point of view of the purchaser or from the point of view of the vendor. Clearly a period of 28 days is more favourable to a purchaser than a period of 14 days. There is no doubt about that, because a period of 28 days simply gives him more time in which to find the instalment.

One might say that we are going from nothing to a period of 28 days. That is really what is happening, because at the moment there is no requirement in the law to give any period of notice at all. It is true that in some contracts a time is prescribed but this occurs only in a minority of contracts. Most contracts do not allow for any time when it is a case of failure to pay part of the money.

I believe we should try to look at this fairly from the point of view of both parties—namely, the purchaser and the vendor—and not only from the point of view of the purchaser. For this reason, 14 days would be an equitable compromise. A fortnight would enable a person who was really what is happening, because at the number of days. It is a matter of opinion whether the period was. I consider that 14 days should be sufficient time for an average purchaser to find the money. After all, it is not only 14 days after the amount becomes due, but 14 days after notice has been given. In the first place there is a date for payment of the instalment, then a notice, and then a period of 14 days, or 28 days as has been suggested. If the notice were not sent for a week or two that would represent additional time.

The Hon. A. F. GRIFFITH: The notice could be sent the next day.

The Hon. W. F. Willesee: He may not receive it.

The Hon. I. G. MEDCALF: No, he may not receive it. However, there is a provision for receipt of notices in that the average contract usually provides that a person will be deemed to receive a notice in the ordinary course of post. I believe there is something in the Property Law Act on this subject but it escapes me at the moment. I think Parliament amended that legislation with regard to notices. Certainly there is now a method of sending notices.

If we look at it from that point of view, it would not mean that the end would come exactly 14 days later, but it would mean that payment would be required 14 days from the date of the receipt of the notice.

The Hon. A. F. GRIFFITH: As Mr. Medcalf says, I think we have to look at this from both points of view because a contract is made between a vendor and a purchaser and both have their rights. At the moment a vendor has more rights than a purchaser in respect of the cancellation of a contract for non-payment. However, the original purpose of the Bill was to give some protection to the purchaser which has not existed up to now.

I am inclined to the view that whether the period is 14 days, 21 days, or 29 days it will not alter the fact that a purchaser is a person who has a continuing prior knowledge of his obligation. He knows he is making a purchase and he knows what his commitment is. It is conceivable that he could be meeting a fortnightly commitment, although there are not many contracts of this type because the majority would probably be on a monthly basis.

The Hon. W. F. Willesee: In which case 28 days would have some determining effect.

The Hon. A. F. GRIFFITH: In which case 14 days would have the same effect. After all, if a purchaser has entered into a contract to pay a certain amount per month on the 1st of each calendar month, it could be a big purchase for him and something constantly in his mind. He would know that on the 1st of each month he had to make a payment. He would not suddenly become aware on, say, the 29th or the 30th of one month that he had to make a payment on the 1st of the next month. He would know that he had entered into a contract and had an obligation to pay.

If he does not pay, under this legislation he is to receive a notice. I think that 14 days is not an unreasonable period bearing in mind that no notice at all is given at the moment. I emphasise that the purchaser will know his responsibility. This is not intended in any way to relieve him of his obligation to pay, but it is intended to give some breathing space in certain circumstances. He would be aware of those circumstances and of his inability to make the payment on time long before the 1st of the month, particularly if he has a recurring obligation. For this reason I am inclined to the view that 14 days is not an unreasonable period.

The Hon. W. F. WILLESEE: I am disappointed with the Minister's reply, particularly in view of the fact that he sponsored the introduction of the Bill and must have had some belief in the 28-day period.

The Hon. A. F. GRIFFITH: Cut it out.

The Hon. W. F. WILLESEE: What did I say that was wrong?

The Hon. A. F. GRIFFITH: I didn't say that you said anything wrong.

The Hon. W. F. WILLESEE: Why did the Minister tell me to cut it out?
The Hon. A. F. Griffith: I said, "Cut it out."

The Hon. W. F. Willesee: I repeat that the Minister introduced the Bill on a 28-day basis. I thought he was right in doing that.

The Hon. A. F. Griffith: It is a Law Reform Committee proposal which is subject to alteration in a number of respects.

The Hon. W. F. Willesee: Let us get back to the right of the vendor versus the right of the purchaser. Under these circumstances, the vendor cannot lose and he can take advantage of a defalcation of payment. Most people who purchase land today are on a very narrow existence margin. I wholeheartedly agree with the Minister that they would know that on the 1st of each month they had to find a certain amount of money to pay for a house or a block. However, one untoward occurrence—sickness or an accident at work, for example—can upset the whole of the budget overnight.

The Hon. A. F. Griffith: What is the position now?

The Hon. W. F. Willesee: The position now is bad enough, but the Minister has introduced a measure which possibly could help overcome the situation. The moment relatives make money available, depending on their goodwill. Normally if a son, a daughter, or an in-law cannot pay, dad pays. That is the position at the moment and it happens every month; in fact, every day. I see no reason whatsoever for a period of 14 days. Why not leave it at 28 days?

Let us consider, too, the time a person has available in a 14-day period, when he is working five days a week, to attend a bank or a lending institution. Would 28 days be such a long time to ask the vendor to wait when a purchaser may be desperate to obtain money to honour an instalment which he may not be able to pay? We should remember that in almost every case a purchaser would want to pay with all the fervour in his heart because he would want to own the land. Do not try to mislead me into the belief that a vendor should be pitied against the issue of the rights of a purchaser in those circumstances.

The Hon. I. G. Medcalf: I concede that Mr. Willesee's point is perfectly valid. There are situations of the type he mentioned where somebody might be unable to meet his instalments for some reason or other—he may not be able to get to the bank, the building society, or some other lending institution. However, I do not believe that in the average case, or in the majority of cases, purchasers are in a position that they have to go to a bank or a lending institution every time they want to pay an instalment.

The Hon. W. F. Willesee: How many purchasers would know of that situation?

The Hon. I. G. Medcalf: They can stipulate that if they want to do so.

The Hon. N. E. Baxter: Is it not a breach of contract if there is a non-payment of an instalment?

The Hon. I. G. Medcalf: That is what we are talking about. Anyone who does not pay his instalments on a due date is, after a particular period, liable for a breach of contract. That is the whole object of the clause; it requires the vendor to give...
a notice. At the present time he does not have to give any notice at all, and that has been the position for some considerable time.

I believe the provision in the clause is a good one. I believe it is fair and proper for such notice to be given, and I have advocated that for many years. I realise that the length of the notice is a matter of opinion, but it is a question of deciding what is fair and reasonable, in the average case, so far as the vendor and purchaser are concerned. If many instalments have to be paid, and 28 days’ notice has to be given, frequently it will create a problem for the vendor or the vendor’s agent. Even with my proposal, 14 days’ notice will have to be given every time.

The Hon. W. F. Willesee: Don’t you believe that the probability is that the person will be using the form twice as often?

The Hon. I. G. MEDCALF: I do not know about that. I think it is a matter of judgment. In my view it is being fair to both parties to make the period of time 14 days. If we find that this period does not work out fairly so far as both parties are concerned it can be extended. However, in my view, 14 days’ notice is adequate. I am fortified in that view by the fact that the Law Society, which has always taken a keen interest in this question, has inserted 14 days in its standard notice. That is the committee which prepared this legislation and after a great deal of experience it is of the opinion that 14 days is adequate and fair to both parties in the average case.

The Hon. W. F. Willesee: How long after a sale of a property would a person have right of possession? Would it be 28 days?

The Hon. I. G. MEDCALF: To enter into possession?

The Hon. W. F. Willesee: How long after a person paid the deposit would it be before he could take possession?

The Hon. I. G. MEDCALF: If it was a long-term contract the key would normally be given upon payment of the deposit.

The Hon. W. F. Willesee: A period of 28 days is the usual time that they work on.

The Hon. I. G. MEDCALF: I am not sure that I can follow the honourable member’s question. If it is a cash sale—

The Hon. A. F. Griffith: Mr. Willesee is trying to find out the time that expires between the date of signing the contract and the date of possession.

The Hon. W. F. Willesee: A cash sale is a different story.

The Hon. I. G. MEDCALF: The position would vary. It depends on the arrangements made between the vendor and the purchaser.

The Hon. W. F. Willesee: Usually it is 28 days.

The Hon. I. G. MEDCALF: It is up to the vendor and the purchaser. As a general rule, the purchaser will not sign the contract unless he gets possession when he wants it. A number of factors enter into the matter, including the size of the deposit and so on. I believe, in these circumstances, my proposal is a reasonable one and it is a sufficient step to take at this time.

The Hon. N. E. BAXTER: I believe Mr. Medcalf has made out a fairly solid case as to why the period of 28 days should remain. He referred to the majority, or the average case, but I believe the clause in the Bill is designed to assist those people who come up against difficulties when their payments are due. In other words, they find it difficult to meet their payments. A period of 28 days gives them a fairly reasonable time to get over their difficulties and raise the money necessary to meet their payments. In my view 14 days is a little on the short side. I believe this clause is designed for the exceptional case and not the average case. Therefore I agree with Mr. Willesee that 28 days, as originally proposed, and as already stated in the Bill, is the right period.

The Hon. A. F. GRIFFITH: The only reason I indulged in a little slang when I used the expression “cut it out” was because Mr. Medcalf seemed to suggest that because I introduced the Bill on the basis of 28 days I should stick to it.

The Hon. W. F. Willesee: He did not say that.

The Hon. A. F. GRIFFITH: Mr. Willesee made that suggestion. I used that expression because if the honourable member wants me to stick to the wording that is in every Bill I introduce in the future he will be disappointed.

The Hon. W. F. Willesee: You ought to thank God from where all blessings flow.

The Hon. A. F. GRIFFITH: I always do. There are several other amendments to this Bill to which I intend to agree, as I have already indicated. I just wanted the honourable member to know my position.

The Hon. CLIVE GRIFFITHS: I, too, am not convinced that we should agree to only 14 days’ notice being given by the vendor. It will be recalled that I read out the terms of a contract during the second reading debate on this Bill. In that contract it was indicated quite clearly that at present a purchaser has no rights whatever. At long last I think this Bill will provide him with some rights. During the second reading debate I spoke in the terms of suggesting that this is a measure which certainly is providing a much-needed requirement so far as the purchaser of land is concerned.

If a purchaser is faced with a problem of being unable to meet a commitment then, speaking according to Mr. Medcalf's
terms, on the average, 14 days' notice is not sufficient, and I support the clause, as printed.

The Hon. I. G. MEDCALF: I think I have said sufficient to explain my point of view. I would like to point out, however, that a vendor himself has commitments and frequently might be relying on the payments that are due to him. Also, we have to bear in mind that we should try to be fair to both parties. We should not be carried away by considering only the hardship on the purchaser. A vendor could be subject to hardship, too; in fact I have seen this occur many times. Vendors and purchasers are the same in different situations, just as a car driver and a pedestrian are the same in different situations. There could come a time when the purchaser of a property may become the vendor.

Ever since the law began there has never been any period fixed, so we are making a considerable departure from previous practice by inserting a provision that notice has to be given. If we look at the position from the point of view of the average citizen, we should try to be fair to all parties and, at this stage, I think 14 days is sufficient notice.

The Hon. W. F. WILLESSEE: I am sorry Mr. Medcalf keeps using the word "fair." I think we are debating this issue on the basis of justice. There is no intention to take away any right from anybody. The intention is to grant a privilege to a person who is in an unfortunate situation. If we extend his own argument that two people are the same in different situations, I think the person who has the greatest need to be given satisfaction is the purchaser.

A vendor has a better chance of seeking an intermediary through banking institutions than has a purchaser, especially if the purchaser is a young man starting off to work his way through life. So I cannot understand why the honourable member has sustained his argument for so long; that is, his argument of 14 days as against 28 days. The Bill, as printed, contains a provision for 28 days' notice, and most of us agree with it. The honourable member has other amendments on the notice paper and we will deal with those in turn, but now he is arguing that notice of 14 days should be agreed to on the basis of fairness.

There is no question of fairness if we look at the amendment. In my opinion, the so-called benefit of granting 14 days' notice to the purchaser is actually a restriction. Notice of 28 days is little enough for a genuine purchaser. We must also bear in mind that no contract is signed by a vendor unless he is satisfied with the person to whom he is selling the property; because he expects to receive all his money. In most instances a vendor would be given an extension of time to make his payments if he bound himself under another contract; that is, having sold his property, if he wished to enter into another contract he would have a better chance of raising finance within a period of 28 days.

The Hon. A. F. Griffith: Quite apart from the period of time in which the vendor expects to receive his money?

The Hon. V. J. FERRY: Having had practical experience with contracts over some time, I am inclined to agree to a provision that will grant 14 days' notice.

The Hon. W. F. Willesee: If you were my banker you would have just lost a client.

The Hon. V. J. FERRY: If I were the honourable member's banker perhaps I would not accept his business.

The Hon. A. F. Griffith: The Leader of the Opposition asked for that.

The Hon. V. J. FERRY: I am thinking particularly of contracts where the vendor is dependent upon receiving his payments, because, for various reasons, he has probably financed himself into the purchase of other property, such as a house or a business. I believe the vendor is entitled to expect payment upon the due date.

Many contracts of sale contain a provision that payment must be made on a monthly basis. This is common practice today, particularly, I believe, in respect of buying land on which one wishes to build a house, or even to purchase a house already built, where the purchaser pays a deposit and then pays so much every month. In such circumstances if a purchaser was repeatedly tardy in making his payments, we would have the somewhat ludicrous situation of 28 days' notice being given to him every month.

The Hon. R. Thompson: If you were a banker and I was having a hard time, would you lend me money to tide me over?

The Hon. V. J. FERRY: I would have to consider the honourable member's case in the same way as I would consider every other case. I cannot see the need for allowing 28 days' notice to be given when at present no notice is given. I believe 14 days' notice is quite reasonable.

The Hon. R. F. CLAUGHTON: I cannot follow Mr. Medcalf's argument in relation to the ordinary person who is, perhaps, selling a home and buying a new one. This seems to be the case that has been cited. Suppose I wished to sell my home. I would go to a land agent who, in time, would obtain a purchaser. Once the contract of sale was completed, I, as the vendor in this case, would receive a lump-sum settlement. The person who bought my home would obtain finance through some lending institution and his monthly payments would be made to that financial institution and not to the original owner of the home. This would be the position is regard to most of these transactions.
It would be the exception for the owner of a property and another person to come to an agreement for the sale of the property without an intermediary.

The Hon. A. F. Griffith: Your knowledge of business is not very wide, if that is what you think.

The Hon. R. F. Claughton: The majority of such transactions are conducted through lending institutions. That is where most of the financing is done. If a purchaser is late in the payment of an instalment, the lending institution is able to stand the delay, until 28 days have elapsed. I think that in these circumstances a period of 28 days is reasonable.

The Hon. I. G. Medcalf: Mr. Claughton did not consider the particular case we were discussing. The case he mentions is where a purchaser is buying land and borrows the money from a bank or lending institution. This would not be a sale under a terms contract, because the person would have a transfer of the land into his name and would give a mortgage to the bank or the lending institution.

We are talking of cases where a person buys a property under a contract, on terms usually over a fairly long period. When one buys a property on a contract of sale on terms one invariably estimates one's financial position. I suggest nobody goes into an arrangement for the purchase of a property on the blind; invariably he makes an assessment of his financial position and is satisfied that over the period he will have the means to meet the instalments. This is something which most people go into very carefully.

It is not proper for us to look at this matter solely from the point of view of hardship to the purchaser, because hardship can also fall on the vendor who is not paid. Mr. Claughton indicated that he was a possible vendor. I suppose he is the average citizen and I suggest that the average citizen is also likely to be the average vendor.

The Hon. W. F. Willesee: Under this you get paid after 28 days.

The Hon. I. G. Medcalf: Not on a contract of sale on terms. The period might be for any length of time.

Amendment put and negatived. Clause put and passed. Clauses 7 to 9 put and passed. Clause 10: Remedy of purchaser on contravention by vendor—

The Hon. I. G. Medcalf: I move an amendment—

Page 4, lines 33 and 34—Delete the words "by notice in writing served on the vendor".

Members will recall that in the second reading debate I referred to the situation that might arise whereby a purchaser, who was buying on very long terms—and I in- stanced 15 years—could take advantage of this provision, due to some extremely technical breach on the part of the vendor. Although the purchaser could have been in possession for many years he could give notice and rescind the contract, and thus claim his money back. This could be just as inequitable to a vendor as it is to a purchaser in allowing the contract of sale to remain.

What clause 10 provides is that if a vendor has a charge, an encumbrance, or some sort of warrant over his land at the beginning of the contract and he does not notify the purchaser of it, then at any time before the final transfer of the property the purchaser can rescind the contract and recover all moneys paid by him to the vendor. If this provision is left as it is it seems to be quite inequitable.

I agree there are circumstances when it is fair and proper to allow the purchaser to rescind a contract. For example, the vendor might have a mortgage over the land, which does not tell the purchaser anything about it. That would place the purchaser in a very difficult situation. I therefore believe that the purchaser should have the right to obtain relief in such circumstances.

The amendments to this clause standing in my name are designed to ensure that the purchaser will still have this relief where, within one year of becoming aware of a breach or a default by the vendor, he takes action to have the contract rescinded. The effect of the first amendment is that instead of giving a notice to rescind—which then terminates the entire relationship between the purchaser and the vendor—he simply rescinds the contract. That is the end of the exercise; the contract is at an end; and the money has to be paid back.

The purpose of the next amendment in my name is that instead of giving notice to rescind the contract the purchaser has to take action within one year of becoming aware of the breach to notify the vendor; and then it is left to the court to decide whether the purchaser has the right to rescind the contract, and to make an equitable adjustment between the two parties. This means the purchaser will not lose anything. He will still have the right to rescind the contract, but he has to do so on just terms before a court.

So many different situations can arise in relation to the purchaser and the vendor that it is impossible to lay them all down. If we laid down one situation which was fair in a particular case, we might find it unfair in another case. The object of the amendment is to allow the courts to decide what is fair, and also to retain one fundamental right which the Bill gives: that is, the purchaser shall be entitled to rescind the contract on the ground of fraudulent misrepresentation.
There is a technicality in the law, because the law says one can only rescind a contract if there is fraudulent misrepresentation. This amendment provides that the circumstances I have outlined shall be deemed to be fraudulent misrepresentation. In this case the purchaser could serve notice to rescind the contract, and the court could allow him to do so, but the court is required to make an equitable adjustment between the vendor and the purchaser in the type of cases I have mentioned.

The Hon. R. THOMPSON: I have listened carefully to Mr. Medcalf, and I think he used the words “legal technicality” when referring to something fraudulent about the contract. That would have to be proved. However, I think Mr. Medcalf must go back to clause 7, which reads as follows:

7. (1) Where it is proposed to sell land under a terms contract, the proposed vendor of the land shall, before the proposed purchaser of the land executes the contract, give notice in writing to him of any mortgage, encumbrance, lien, or charge on the land... and so it goes on. At that stage the vendor has defaulted if he has not complied with the provisions of clause 7. I do not see why we should give the vendor a let-out under clause 10, if he has broken the law under the provisions of clause 7.

The Hon. I. G. MEDCALF: We are not giving him a let-out at all. We are, in effect, saying that if he breaks the law under the provisions of clause 7 it will be fraudulent misrepresentation. The effect of the proposed amendment is simply to say that instead of the purchaser having the right to give notice of rescission, so that he can get all his money back if there is a breach of clause 7 before the contract is signed, he will have the right for the breach to be treated by the court as fraudulent misrepresentation, which will entitle him to a rescission of the contract.

I will relate clause 7 to an absurd case. Say a vendor had a charge against the land in respect of an annuity payable to his grandmother, who is 100 years of age, and he forgets to mention this fact to the purchaser. The vendor knows that at the end of the contract—say, 15 years—his grandmother is not likely to be alive, and in any case the charge is small and he could handle it himself. This situation is quite possible. The grandmother could die a year later and that would be an end to the charge, but because the vendor did not mention the charge to the purchaser, the purchaser could allow the contract to continue until the last year and then have it rescinded under the provisions of clause 10.

That situation would be unfair and inequitable. I am sure the honourable member will agree with me that the object of the amendment is a good one; that is, to provide that the purchaser must take action within one year of becoming aware of the breach.

The Hon. A. F. Griffith: Would the honourable member tell the Committee of the circumstances in which the purchaser might become aware, and how it could be determined that he was aware of those circumstances. He could have the knowledge and withhold it for many years.

The Hon. I. G. MEDCALF: He could become aware of such circumstances after a search of the title because all encumbrances are registered against the title. If the purchaser makes a search at the commencement of the contract this situation would not arise. If a purchaser signs a contract and he knows there is a charge against it he can take action to rescind the contract within one year.

The Hon. A. F. Griffith: How would one establish the time that the purchaser became aware of the circumstances?

The Hon. I. G. MEDCALF: If the vendor had forgotten to advise the purchaser, at the time of signing the contract, he should write a letter giving the information. The purchaser would then have a year in which to take proceedings. He could then ask the court to give back to him such part of the purchase price to which the court believed he was entitled.

The Hon. R. THOMPSON: When Mr. Medcalf was speaking to the second reading, he used the words “unscrupulous purchaser”—an unscrupulous purchaser could sit on the land for 15 years and then get his money back because he became aware of a charge against the contract. I do not think there are many unscrupulous purchasers, and I do not think there are many unscrupulous vendors.

The Hon. I. G. Medcalf: I agree with that.

The Hon. R. THOMPSON: However, I still cannot get past clause 7. The marginal note to that clause is “notification of condition of title.” To comply with the conditions of clause 7 the vendor of land would have to notify the condition of the title at the date of the sale. For that reason I cannot see any need for clause 10 other than as a safeguard if the vendor does not advise the purchaser of charges against the title. If he does not divulge the condition of the title at the time of the sale the vendor is subject to a fine of $750.

The triviality of a small annuity against the land does not come into the argument at all, because in all probability that would not be registered on the title. Even if it is registered on the title it is the responsibility of the vendor, on the date of the sale, to acquaint the purchaser of that situation.
The Hon. A. F. GRIFFITH: I do not think Mr. Ron Thompson appreciates the position. If there is a charge on the land, the vendor has an obligation to notify the purchaser, under the provisions of clause 7.

The Hon. R. Thompson: That is right.

The Hon. A. F. GRIFFITH: If the vendor does not notify then he is in breach of the contract and liable to the penalty provided. The argument put forward by Mr. Medcalf has been examined by the Law Reform Committee and that committee considers it to be sustainable. That argument is that the purchaser might come into possession of certain knowledge upon which the contract could be terminated. Instead of terminating the contract the purchaser keeps that information to himself for 19 years of a 20-year contract. Having enjoyed the possession of the property for 19 years, he then terminates the contract.

The Hon. R. Thompson: I am not opposing the clause; I am trying to get clarification.

The Hon. A. F. GRIFFITH: I thought the honourable member was opposing the clause. I think it is reasonable that a purchaser should not be able to have that advantage. There should be a limitation on the time during which he can take action.

The Hon. R. Thompson: I consider that clause 7 covers the situation completely.

The Hon. A. F. GRIFFITH: I do not think it does; clause 7, in itself, provides for a certain situation, but clause 10 provides for a different situation. If clause 10 is not amended the purchaser would be able to withhold information for 49 years of a 50-year contract. The contract could then be cancelled even though the purchaser was aware of the situation for all that time.

The Hon. R. Thompson: No-one has told us what the knowledge of the purchaser could be.

The Hon. I. G. MEDCALF: The basic point that has to be appreciated here is that the provisions in clause 7 are part of the law already, and it is a penal clause. Clause 10 repeats what is already in the Sale of Land Act, 1940. If one is a vendor when signing a contract one has to tell the purchaser if there is any charge or mortgage on the land. It is the vendor's obligation to tell the purchaser, and if he does not give the purchaser a letter or a notice telling him about it, he puts in the contract a clause stating, "Take notice that there is a mortgage on this land." The purchaser then knows that what he is buying is not what he thought it was, and that there is an encumbrance on it. Clause 7 says that the seller of land must notify the purchaser of any encumbrance, either by formal notice, by letter, or by settling it out in the contract. If he does not do so, he is liable to a penalty of $750. In other words, it is a kind of criminal prosecution.

The Hon. A. F. Griffith: He is liable on conviction.

The Hon. I. G. MEDCALF: Perhaps I should have explained it better. That is the real point. I am not opposed to this principle at all—I am in favour of it—but I am trying to clarify the matter and cater for the situation where somebody could take an unfair advantage in the type of circumstance that was mentioned, when there was some technical situation that had evaporated long ago, and the purchaser could sit on the land and say, "I am not going on with it; I want to cancel the deal and get my money back." I am suggesting that we should let the court decide what is fair between the two parties, and how much should be contributed by each.

Amendment put and passed.

The clause was further amended, on motions by The Hon. I. G. Medcalf, as follows:

Page 5, line 1—Insert after the word "purchaser" the words "but within one year of the purchaser becoming aware of the contravention".

Page 5, lines 1 to 4—Delete the passage beginning with the word "rescind", in line one, and ending with the word "contract", being the last word in the clause, and substitute the passage "commence an action in the Court for the rescission of the contract, and the Court having regard to the equities of the case may exercise such discretion and make any such order as it could have exercised or made had it been alleged and established that the contract had been induced by fraudulent misrepresentation".

Clause, as amended, put and passed.

Clauses 11 and 12 put and passed.

Sitting suspended from 3.45 to 4.03 p.m.
Clause 13: Restriction on sale of subdivisonal land—

The Hon. I. G. MEDCALF: Members will recall that during the second reading debate I referred to the case of a vendor who was selling land but who did not have his name actually on the title and yet, nevertheless, was entitled to sell the land by reason of the fact that he had a contract which gave him the right to call for the title. This clause provides, generally, that a person virtually cannot sell land unless he is registered on the title as the proprietor of it; that is, unless his name is on the title. The title must actually be in his name before he can advertise the sale of the land or take any steps to sell it if it is a sale of subdivisonal land on terms.

The idea behind my proposed amendment is that there are cases where a person does not have his name on the title but, nevertheless, is entitled under a contract to get his name on the title. He could have a contract which states that after he has paid a certain amount of the price he is entitled to a transfer of a certain amount of the land but, for some reason, he has not in fact got the transfer. In these cases it seems to be fair and proper that we should allow those people, although they do not have their names on the title, to sell the land if they are, in fact, capable of getting their names on the title.

The amendments on the notice paper do not go as far as I originally suggested, but I put them up in this form because I wish to avoid the situation to which the Minister referred as the Greenwood Forest case. I would not want any suggestion that that situation could arise. Therefore, the amendments deal with the rather restricted category in which one can call for a transfer.

The amendments will provide that although a person is not the registered proprietor he can, nevertheless, sell the land if he has lodged the documents of transfer in the Titles Office. If that is done, and they are proper, registrable documents of transfer, he will get a registered title, even though his name may not be on the title, and he will be entitled to sell the land. This could not possibly result in another Greenwood Forest situation because in that case the people were not in a position to get their names on the title. The situation I have endeavoured to cover is where a person has actually lodged proper, registrable instruments of transfer with the Titles Office.

Sometimes delays occur through no fault of the vendor—they could happen in the normal Titles Office processing—and provided the documents are proper, registrable instruments of transfer or applications which will give the legal title to the vendor and make him the registered proprietor, I believe it is only proper we should allow the vendor to sell. I believe the amendments provide a watertight provision and there will be no possibility of another Greenwood Forest case. Therefore, I move an amendment—

Page 6, line 1—Insert after the clause number "13." the subclause designation "(1)".

The Hon. W. F. WILLESSEE: We could have several people with a right to a title not actually transferring a title. Where there is a succession of this sort of thing, when are the transfer fees paid to the Treasury?

The Hon. I. G. MEDCALF: The fees are paid immediately the documents are lodged with the Titles Office. They must be paid upon lodgement even though the name of the vendor may not actually be put on the title.

The Hon. W. F. Willessee: That is for one title. What happens if we have seven different titles?

The Hon. I. G. MEDCALF: If there were seven different titles the fees would all have to be paid immediately. There is no chance of anyone not paying.

The Hon. A. F. GRIFFITH: I merely want to say that I am prepared to accept the amendments.

Amendment put and passed.

The clause was further amended, on motions by The Hon. I. G. Medcalf, as follows:

Page 6, line 9—Delete the word "or". Page 6, line 12—Insert after the figures "1893" a passage as follows:— ; or (e) he is presently entitled to become the proprietor of the lot.

Page 6—Insert at the end of clause 13 new subclauses as follow:—

(2) A person shall be deemed not to be presently entitled to become the proprietor of a lot unless he is, at the date he sells the lot, entitled to be registered as proprietor of it under one or more registrable Instruments or under one or more applications made under the Transfer of Land Act, 1893 which have been lodged in the Office of Titles.

(3) For the purpose of this section an instrument or an application which was at the relevant time lodged at the Office of Titles shall be deemed to be and to always have been registrable notwithstanding any defect in the instrument or application—

(a) if the instrument has subsequently been registered or the application granted.
without having been returned by the Registrar of Titles or withdrawn from the Office of Titles; or

(b) if the Registrar of Titles certifies in writing that he is satisfied that the defect was not of a substantial nature and that it has been remedied.

Clause, as amended, put and passed.

Clause 14: Restriction on sale of mortgaged subdivisional land—

The Hon. I. G. MEDCALF: I move an amendment—

Page 6, line 14—Delete the words “Where a person is the proprietor of” and substitute the words “A person who has the right to sell”.

This is purely a matter of substituting the correct words. This amendment is consequential upon the previous amendments and has no really substantive effect upon the intention of the Bill. If the clause was left as it is it would mean that only a person who is the proprietor of the land shall be penalised; whereas, of course, the object of the Bill is to penalise a person who has the right to sell; because he might not be the proprietor.

Therefore, the amendment broadens the clause and really expresses the intention of the Bill. The object is to ensure that everybody is included under this provision—not only the person who happens to be the proprietor, but any person who has the right to sell the land. In other words, it provides a penalty for people mortgaging subdivisional land where they have the right to sell it—not only those who are the registered proprietors of it, but also people who are entitled to sell it under a contract.

The Hon. W. F. WILLESEE: The previous amendments must have been fairly important if this one is consequential. I am worried about the words, “A person who has the right to sell.” Where is that right established? This seems to be a difficulty that we get into in regard to many of our bulk sales of land which is subdivided into smaller areas. Who eventually has the right to sell? What documents provide the basis of a right to sell?

The intermediate buyer is the one who is generally left in the air, because he purchases from someone who has not the complete right to give him a title. This is due to the circumstances that surround the society in which we live—and I refer to the right of local government to consider subdivisions, matters of town planning, and so on. A person may have a moral right to sell land to an individual or a series of individuals, but this right may not bear investigation.

The Hon. I. G. MEDCALF: That is an interesting question. It really boils down to a person having the right to sell if he has the right at law to sell. A person has the right to sell if he is the legal or equitable owner of land—that is, if he has the right under a contract—even though he may not be the registered proprietor. Only the man with his name on the title is the legal owner or proprietor; but both he and the man to whom he has sold the land have the right to sell as equitable and legal owners. Once the legal owner has agreed to sell the land to somebody else he no longer has the right to sell; that right passes to the person who has agreed to buy the land even though his name is not on the title and he is not the registered proprietor.

As it is, this provision covers only the person who has his name on the title. I am trying to bring in everybody; all those who have rights under contracts in such land. They would all be bound not to mortgage the land except under the terms set out.

The Hon. A. F. Griffith: But not to go so far as to create a set of circumstances that previously existed in relation to a certain area of land, of which we are all aware.

The Hon. I. G. MEDCALF: This is a restrictive clause as the marginal note indicates, and we are restricting the right of people to mortgage land, except on certain terms. Previously the provision referred only to the registered proprietors—people whose names were on the title. The fact that we are extending the scope should make Mr. Willesee happy.

The Hon. R. THOMPSON: I regret I was called away to the telephone and was not here during the discussion on this clause. I gave an example the other night of a person who took out three contracts of sale on three areas of adjacent land, and, having done so, he proceeded to sell them. Will this provision restrict that type of transaction? If it does not we will not be achieving very much.

The Hon. I. G. MEDCALF: I am not sure whether this is relevant to the clause we are discussing. We must look at the words contained in clause 14, which provide restrictions on the mortgage of subdivisional land and say that where a person is the registered proprietor of five or more lots he shall not sell any of such lots which are the subject of a mortgage unless the mortgage relates only to that particular lot and he sells the lot under a contract which provides that the consideration for the sale of the lot should be satisfied, to the extent of any money owing under the mortgage at the date upon which the purchaser is entitled to possession or receipt of the rent and profits of the lots sold, by the purchase assuming on and from that date the obligations of the mortgagor under the mortgage.
In other words, where a person is selling any lot which is the subject of a mortgage, the mortgage must relate to the particular lot and not to other lots, otherwise it would complicate things so far as the purchaser is concerned. We must make further provision that the vendor has to pay off the mortgage out of the purchase price. This is a desirable clause which is normally included in contracts of sale. It protects the purchaser and ensures that the vendor does not mortgage his land and sell it while it carries a mortgage the amount of which might be greater than the balance of the purchase price. The amendment provides that the purchaser can pay off the mortgage out of the balance of the purchase price instead of paying it to the vendor. I am trying to extend the effect of this to prevent such a situation. I do not want a situation similar to that which we experienced previously. I do not know whether any such situations exist now, but we are trying to avoid these in the interests of the purchaser.

The Hon. A. F. Griffith: The original conception of this legislation was to prevent a situation where, for example A might own land in broad acres which he sells to B. The land is bought by B under contract of sale from A; after which B subdivides the land and sells it to a number of purchasers. It might go from A to B, from B to C, and from C to D. It is possible that B might fall down on his contract to A, and C on his contract to B, which would leave all the little Ds lamenting. The original concept of the legislation was to prevent such a situation. We do not want a situation similar to that which we experienced previously. I do not know whether any such situations exist now, but we are trying to avoid these in the interests of the purchaser.

The Hon. R. Thompson: I gave an illustration the other night.

The Hon. A. F. Griffith: Yes, but it did not go as far in the ownership of land as the example I have given.

The Hon. R. Thompson: Not nearly as far.

Amendment put and passed.

The clause was further amended, on motions by The Hon. I. G. Medcalf, as follows:

Page 6, line 16—Delete the word "he".

Page 6, lines 28 and 29—Delete the words "where a proprietor of a lot in a subdivision or proposed subdivision" and substitute the words "to a person who".

Clause, as amended, put and passed.

Clauses 15 to 23 put and passed.

Schedule put and passed.

Title put and passed.

Report

Bill reported, with amendments, and the report adopted.

BILLS (?) RECEIPT AND FIRST READING

1. Nickel Refinery (Western Mining Corporation Limited) Agreement Act Amendment Bill. Bill received from the Assembly; and, on motion by The Hon. A. F. Griffith (Minister for Mines), read a first time.

2. Judges' Salaries and Pensions Act Amendment Bill.

3. District Court of Western Australia Act Amendment Bill (No. 2). Bills received from the Assembly; and, on motions by The Hon. A. F. Griffith (Minister for Justice), read a first time.

4. Chiropactors Act Amendment Bill.

Bill received from the Assembly; and, on motion by The Hon. R. F. Claughton, read a first time.

5. Vermin Act Amendment Bill.


7. Agriculture Protection Board Act Amendment Bill.

Bills received from the Assembly; and, on motions by The Hon. L. A. Logan (Minister for Local Government), read a first time.

LIQUOR ACT AMENDMENT BILL

Second Reading

Debate resumed from the 11th November.

THE HON W. F. WILLESEE (North-East Metropolitan—Leader of the Opposition) [4.35 p.m.]: I intend to be quite brief in my remarks on this Bill and will submit the points I have at issue directly to the Minister. In general terms the series of amendments deal with specific sections; I will be dealing with very few of them and as far as the remainder are concerned silence means acclamation.

Clause 5, which amends section 35 of the Act, deals with honorary members of clubs; and a point has been raised as to whether or not honorary members would have the right to take guests to the club with them. Apparently some clubs have a little doubt concerning this matter. For instance, if I were an honorary member would I be able to take my wife or a friend with me?

The Hon. A. F. Griffith: Surely those people could be made honorary members also.

The Hon. W. F. WILLESEE: If that be the answer, so be it.

The Hon. A. F. Griffith: That is the way I think about it.

The Hon. W. F. WILLESEE: I raised the matter only as it had been put to me. There is some doubt and possibly some people require an answer.
It seems to me that there is a conflict between section 35 (3) appearing on page 33 of the Act and section 69 (4) (d) appearing on page 65 of the Act.

The Hon. A. F. Griffith: Could I interrupt you for a moment? Without intending to be in any way offensive, could I suggest that we deal with these various items in Committee? I have a suggested amendment to this clause.

The Hon. W. F. WILLESEE: Well, I suppose as long as we get there it does not matter which way we climb. My only purpose was to give the Minister prior notice of what I had in mind.

The Hon. A. F. Griffith: Mr. Ron Thompson spoke on this matter last night when he referred to indoor and outdoor sport.

The Hon. W. F. WILLESEE: I am referring to a different aspect. I am trying to point out a conflict in the Act as it stands.

The Hon. A. F. Griffith: All right. Let us go ahead.

The Hon. W. F. WILLESEE: Let us make this a very brief second reading speech and hope that I will be successful later on.

The PRESIDENT: Order! The honourable member will address the Chair.

The Hon. W. F. WILLESEE: I always try to do so, Sir. As a matter of fact, I have quite a kink in my neck as a result of looking at you so much!

The Hon. A. F. Griffith: I am sorry.

The Hon. W. F. WILLESEE: To begin at the beginning, section 35 (3) on page 33 of the Act reads—

(3) Except in the case of a club that has as its object, or one of its principal objects, the conduct of competitive, outdoor sport a person is deemed not to be the guest of a member of a club, unless his name and the date of his attendance has been entered in a guest book, kept by the licensee, and the entry has been subscribed by the member.

As I understand this provision, it means a club at a gala function, at which several hundred are present, does not have to adopt the tedious procedure of listing all the names in the visitors' book.

The Hon. L. A. Logan: That is right.

The Hon. W. F. WILLESEE: Section 69 (4) (d) on page 65 of the Act—and we are amending section 69 under this Bill—reads—

(d) an up to date register of members, each in his class, be continually available for inspection and a guest book be continually available for the entry of the names of guests, on the licensed premises; and

I think there is a conflict here. The intention of each provision is different, but my understanding is that the provision in section 35 will override the provision in section 35; and I draw the Minister's attention to this.

There is only one other point I wish to raise and that concerns clause 9. In lines 34 and 35 on page 4 reference is made to a period of eight hours during which time an honorary member is permitted to be on the premises. I believe that the words, "during such visit," which could be for six hours, 24 hours, or nine hours, would be more applicable.

The Hon. A. F. Griffith: If you do that it could be all night.

The Hon. W. F. WILLESEE: So what? A jolly good time would be had by all; and that first thing happens—for most of the night anyway! I think the inclusion of eight hours is a little too restrictive. The Minister drew a fairly long bow when he said that it could be all night. However, the time involved could be more than eight hours.

The Hon. A. F. Griffith: In the Licensing Act it was six hours. In the Liquor Act there is at present no time mentioned, and I was merely inserting eight hours.

The Hon. W. F. WILLESEE: I thought the words, "during such visit," would cover the situation. After all, the visit might be for only two hours.

The Hon. A. F. Griffith: It refers to eight hours from the time it is posted.

The Hon. F. J. S. Wise: Make it 10.

The Hon. W. F. WILLESEE: That concludes what I have to say on this Bill which I support.

THE HON. J. HEITMAN (Upper West) [4.42 p.m.]: I am quite happy with most of the amendments in this Bill as they relate to country clubs. The hours of Sunday trading for a club—that is, from 4.30 to 6.30 p.m.—are not in the best interests of the club or the sport. I think the drinking time should fit in with the sport and not the sport fit in with the drinking time, and I am pleased the Minister is making this amendment so that the drinking hours fit in with the sport, whether this involves golf, or whatever it might be.

The new provision for club members concerning the use of the clubhouse as a lounge once the shutters are up on the bar is quite a good one as I think this is the purpose of the erection of a club, which purpose should be fulfilled. Consequently, I am pleased this amendment also is being made.

Previous speakers have referred to the eight-hour honorary membership of a club, and this provision also hurts me a little because a carnival will often commence at 10 a.m. and not conclude until 10 p.m.
The Hon. L. A. Logan: The one at Morawa started at 9 a.m. and did not finish until after 9 p.m.

The Hon. J. HEITMAN: I believe the Act should be left as it is with no specific hours included because, after all, a club closes at 11 p.m. If a person wants to play bowls until 10 p.m. he can then still enjoy a drink before he goes home. If this amendment concerning the eight hours was not included, and the Act remains as it is, again the license would fit the sport and not the sport fit the license. This is a matter which should be re-examined.

Clause 7 refers to a canteen at a livestock saleyard. As far as I am aware only one livestock saleyard has a canteen and that is the one at Midland.

The Hon. A. F. Griffith: That is right.

The Hon. J. HEITMAN: Is it thought that other saleyards will apply for a canteen license? If not, should we just not refer to the Midland saleyard and leave it at that? Most saleyards do not require a canteen license except, perhaps, Midland where work starts very early in the morning and does not finish until fairly late in the evening.

I consider a canteen is a necessity at the Midland saleyards, but I do not think that other abattoirs or saleyards really need a canteen license. For this reason I thought it might be as well to specify the Midland saleyards.

Clause 8 states that it will not be possible to drink within 20 chains of a hall while a dance or other entertainment is being conducted in the hall. This does mean that people will not be able to drink on their own premises if they had a house next door to a hall? Perhaps we should include the words "in a public place" before the words "within 20 chains of a hall," and the position could be made a little plainer in this way in case the provision will stop people from drinking on their own private premises.

Clause 10 will allow a license to be held in conjunction with a restaurant license. This could permit winehouses and saloons to sell beer and all other spirits, including wines and brandy, after 10 p.m. I understood that it was thought winehouses and saloons should not sell anything else but wine.

Clause 11 could affect the working of hotels which have to close certain sections, such as botele departments and cocktail lounges, while serving liquor on Sundays. Perhaps we could make this a little clearer so that everyone would know exactly what is meant.

Clause 14 will give the police much more authority. They will be able to enter even private functions, such as birthday parties, weddings, or anything of that nature, if they think it is necessary to police the Liquor Act.


The Hon. J. HEITMAN: On the whole I think the amendments are good. I have simply mentioned a few matters and perhaps the Minister might have a look at them.

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Justice) [4.48 p.m.]: At this stage I do not propose to do anything more than acknowledge the remarks made by members who have spoken to the Bill, because it is essentially a Committee measure.

I suggest that we now go into Committee and attend to the clauses one by one. We could pass simple clauses to which members have no objection. If we find that a clause is likely to cause lengthy debate, or that we are uncertain on some aspect, we could postpone consideration of it until I make further inquiries. We could, perhaps, make progress along those lines.

What I have said so many times obviously will be true again; namely, every time I introduce amendments to licensing legislation all members usually have a fair deal to say. I repeat what I said when moving the second reading: I did not really want to amend the legislation at all. I would have been quite satisfied to let it go along. However, it was felt that we ought to try to tidy up a few matters.

I think there may be one or two misconceptions about what the amendments mean. I refer particularly to one or two of the points made by Mr. Heitman, but I shall elucidate them in the Committee stage. I will attempt to be as helpful as I can and if I do not know an answer perhaps we could postpone consideration of the clause until I have obtained the information.

Question put and passed. Bill read a second time.

In Committee

The Deputy Chairman of Committees (The Hon. F. D. Willmott) in the Chair; The Hon. A. F. Griffith (Minister for Justice) in charge of the Bill.

Clauses 1 to 4 put and passed.

Clause 5: Section 35 amended—

The Hon. R. THOMPSON: When I spoke last evening I said that I could not understand where proposed new subsection (1a) fitted into section 24. Possibly the Minister can advise me on this point. According to the Minister's notes this is the provision which will extend the hours of clubs. Either his notes are incorrect or I am misreading the amendment into the legislation.

The Hon. A. F. GRIFFITH: Paragraph (a) of section 24 (2) permits hotels in prescribed areas—that is, in goldfields
areas—to sell liquor on Sundays in sealed containers of up to one-third of a gallon for consumption off the premises.

So far as clause 5 (b) is concerned, by inserting proposed subsection (1a) into section 35, which deals with club licenses, it will permit clubs in prescribed areas to sell in accordance with the provisions of section 24 (2) (a) with such adaptations as may be necessary within that period of time.

Paragraph (b) of section 24 (2) permits the court to set two specified periods for hotel trading for consumption on the premises only in other parts of the State; that is, in parts other than prescribed areas.

By inserting proposed subsection (1b)—which is mentioned in clause 5 (b) of the Bill—into section 35 it will permit the court to set two specified periods for clubs to trade on Sundays for consumption on the premises only in other parts of the State; that is, in the metropolitan area or in country areas other than prescribed areas. I think it is perfectly all right and the intention is clear enough.

The Hon. W. F. WILLESEE: There is no purpose in repeating what I said at the second reading stage. I ask the Minister to have a look at possible conflict between the section which is being amended, section 35, and section 69. I will await his reply with interest.

The Hon. A. F. GRIFFITH: Could I suggest that we proceed with the Bill? After all, it has to go to another place. I will have a look at it and if there is anything requiring attention I could ask the Minister representing me in another place to attend to the matter. I do not normally do this because I like to deal with our legislation in this Chamber. Alternatively, something may eventuate during the course of the Bill to cause it to be reprinted. I will stop it at that point if that is the case and I will look at the question in the meantime.

If there is anything wrong I am quite anxious to tidy it up. To be perfectly frank I was not sufficiently quick of wit when listening to Mr. Willesee to follow the points he raised. I will have to sit down and contemplate them with the Act.

Clause put and passed.

Clause 6 put and passed.

Clause 7: Section 43 amended—

The Hon. J. HEITMAN: I mentioned at the second reading stage that clause 7 is really designed to cover the position of the canteen license at the Midland saleyards. I wonder whether the Minister thinks it would be appropriate to specify Midland so that the provision could be plainer. This could save argument at a later stage if other saleyards applied for canteen licenses. As far as I can see Midland is the only one that is ever likely to need it.

The Hon. A. F. GRIFFITH: It would be quite competent to take out the relevant words and to insert the word "Midland" in lieu. This would simply restrict the provision to Midland and to nowhere else.

The Hon. W. F. Willesee: We would possibly have to amend the Act again at a later stage.

The Hon. A. F. GRIFFITH: If it did happen that somebody else wanted to apply to the court for a canteen license, the granting of that license would be outside the jurisdiction of the court and legislation would have to come to Parliament again. I think it is unlikely that this would be the position although I cannot say for certain. What is certain is that the licensee who is conducting the business at Midland finds himself in the position I mentioned when I introduced the Bill. He made representation to the Minister for Agriculture who, in turn, brought it to my notice. This is the reason for the amendment. I am easy, but I do not think it really matters.

Clause put and passed.

Clause 8: Section 46 amended—

The Hon. J. HEITMAN: I also mentioned this clause during the second reading debate. The wording is, "or within 20 chains of a hall, while a dance or other entertainment is being conducted in the hall."

I think this could be rather dangerous unless we state, "in a public place within 20 chains of a hall." Otherwise, it could apply to people drinking in a house or some other privately owned place within a few chains of, or even next door to, the hall. I think it is possible people would not be allowed to drink even in a private place within 20 chains of a hall while a dance or other entertainment was being conducted.

The Hon. A. F. GRIFFITH: I should like to read the whole of section 46 (1) (a). With the inclusion of the proposed amendment, it will read—

(1) A person shall not consume liquor on any premises, including a park or reserve, without the consent of the occupier or of the person or authority having the control of the premises, and, in any event, shall not consume liquor—

(a) upon a road within the boundaries of a town or townsite or within 20 chains of a hall, while a dance or other entertainment is being conducted in the hall.
It seems to me that if the consent of the person who owns the premises is obtained there is nothing to fear.

Clause put and passed.

Clause 9: Section 69 amended—

The Hon. A. F. GRIFFITH: This was the clause to which Mr. Ron Thompson addressed himself at some length last night. I can see the point he made in his reference to indoor sport as distinct from outdoor sport, bearing in mind that a sport could be played under cover, the same as it is outside. I have an amendment which I think will meet the situation. I move an amendment—

Page 4, lines 30 to 32—Delete all words from and including the word "competitive" down to and including the word "engages" and substitute the following passage:—

prescribed, competitive sport, a person who is visiting the club as a member of, or an official or a person assisting, a team that is to contest a pre-arranged event.

I have used the word "prescribed" because it will give the court discretion and enable it to come to a conclusion in regard to what it considers is a legitimate sport. In other words, I cannot concede that a club which has a dartboard on the wall is an organisation that has as part of its function the sport of playing darts.

The Hon. R. Thompson: There are dart clubs, and they are operating in a fairly big way.

The Hon. A. F. GRIFFITH: That is so; but they are in hotels and so on. If we stretch the bow too far we will open the door wider than it should be opened. I want to give the court an opportunity to determine the position. The position should not be too loose and I am quite satisfied to leave it to the court to decide.

The Hon. R. THOMPSON: I think the amendment will make the provision much better than it is at the moment. As regards the question of darts, in the Fremantle area dart playing is a popular sport and many clubs take part in an annual competition. As a matter of fact, the Fremantle Club won the premiership this year. We are inclined to forget how many people play darts as a sport. Only three weeks ago I attended a club dinner—this was in relation to only one dart club—and 350 people attended—it was a sit-down meal.

The Hon. A. F. Griffith: Was this held on licensed premises?

The Hon. R. THOMPSON: No, in a hall.

The Hon. A. F. Griffith: But was it on licensed premises?

The Hon. R. THOMPSON: No. I am merely illustrating how popular is the sport of darts.

The Hon. A. F. Griffith: I do not doubt that. You have already answered my question. It was not held on licensed premises.

The Hon. R. THOMPSON: I think the amendment covers the situation adequately. The police, particularly, would know the size of the dart playing movement, and the amendment also covers other minor sports that are played on a competitive basis.

During the second reading I referred to R.S.I. clubs. I know several of them have licensed premises and several others are working towards that end. Therefore, the amendment is quite timely.

There is another form of sport which is played quite extensively in clubs throughout Western Australia—I refer to what is known as one-ball billiards. This sport is played on a competitive basis among different clubs. The people who play it are experts in their particular field and that sport, too, could be included under the amendment. I said during the second reading that bowlers do not take along cheer squads, but with one-ball billiards it is nothing to see 200 people watching. In my view the amendment fits the bill completely.

The Hon. A. F. GRIFFITH: I do not want it to be thought that a licensed club can say, "We do not engage in any form of sport but we will get a ping-pong table and we can be included under this provision." I do not think that was ever intended.

The Hon. R. Thompson: No.

The Hon. A. F. GRIFFITH: The provision in the Bill and the amendment are intended to make the present situation clearer. I think the amendment covers the case to which Mr. Wise referred, too. It was because of the point he raised that I had included the words "or an official or a person assisting." Had those words not been included the manager and other officials would have been excluded.

The Hon. P. J. S. Wise: This proposal meets the point I raised.

The Hon. A. F. GRIFFITH: I hope people will not take undue advantage of this.

The Hon. R. Thompson: I think the genuine people will be able to substantiate their claims.

The Hon. A. F. GRIFFITH: In my view the court will be able to determine whether or not an application is legitimate.

The Hon. R. Thompson: Yes.

Amendment put and passed.

The Hon. C. R. ABBEY: There is another matter that needs attention. On page 4, lines 34 and 35, the words "for a period of eight hours" appear. In my view that period is an unreasonable one. Let us take the case of a bowling club which
is conducting a competition. The competition could start at 9 o'clock in the morning and not finish until 10 or 11 o'clock at night, during which period drinks could be served to members. However, a visitor who was put up as a member for the occasion could get a drink at 10 o'clock in the morning, but at 6 o'clock he ceases to be a member for the purposes of the Liquor Act. In many cases bowlers are competing until late in the evening; they have to wait for the presentation of trophies, and so on. I think the provision needs to be amended by deleting a reference to "eight hours" and inserting in lieu the words "during normal trading hours."

The Hon. A. F. GRIFFITH: I can see the point but I am not sure whether or not it is well taken. We can postpone further consideration of the clause and during the tea suspension I will have the matter examined.

The Hon. W. F. WILLESSEE: Before the Minister moves in that direction, I would like to refer to what Mr. Abbey has said. During the second reading I, too, discussed this matter, but I wanted to use the words "during such visit." Will the Minister give consideration to both suggestions?

The Hon. C. R. ABBEY: Mr. Willessee's suggestion could well be a suitable substitute, but there is the point that some country bowling clubs have competitions that extend over two or three days. They will be placed in the situation where they will have to put up the names of visiting members from another club as honorary members for that period.

The Hon. A. F. GRIFFITH: I think I understand the point made. Apparently the situation is that when people visit a club to attend a function which is likely to last for more than eight hours it is required that they be made honorary members of that club, but if a competition lasts for more than one day then the request is that they should be granted continuing honorary membership. I think that is going too far. At present the situation is that the name of the visiting member has to be put up as an honorary member each day.

If I had not sought to amend this clause, the existing provision would continue in that if a man visits a club for two days, each day his name has to be placed on the notice board as being an honorary member. I do not propose to widen the provision more than that. The point I am not sure about is that the amendment sought contains the expression "eight hours from the posting of the notice." I will check this, because if a person were to arrive at a club at 9 a.m. his eight-hour period would expire at 5 p.m., but if the notice was not posted until 10 a.m. it would not expire until 6 p.m. So everything depends on when the notice is posted. I want an opportunity to check this, but I do not want to go so far as to provide that a person will have an opportunity to become an honorary member for a week.

The Hon. W. F. WILLESSEE: The Minister has dealt with individuals, but I have in mind a team that is visiting another group of people, who may not be seen again for several years, to enter into a competition. I think the simple way to meet such a situation would be to say, "Several people comprising a team are visiting a club during the holding of a competition." The visit may last for seven days. If those players returned as individuals then each man could have his name posted as an honorary member every day. When a team is visiting another football team for the purpose of holding a competition, then I think it would be simple to provide that they would be honorary members during the period of that visit.

The Hon. C. R. ABBEY: This is an important point, because throughout the length and breadth of this State and in every State of the Commonwealth on every suitable occasion, at weekends or on public holidays, bowling clubs both in the metropolitan area and in the country hold competitions. The number of these competitions run into hundreds, and practically all of them last for more than one day. During this period the officials of the club are extremely busy and if we were to impose upon them the duty of posting the names of the members of the visiting club on the notice board as being honorary members for each day of the visit, I think this would be unreasonable, because the number of visiting players could be 150 or more.

Everyone who plays bowls knows that this is a common situation and it is not unreasonable to suggest, as in the case quoted by Mr. Willessee of a football team visiting a club, that for a club to be made honorary members during the period of their visit. Such visits are generally made during Saturday and Sunday. Surely if we are to provide this facility on Monday, it is most unreasonable to provide that it should not be available during the period of a visit.

The Hon. A. F. GRIFFITH: I hope we do not intrude into this field. The question of honorary membership of a club belongs to the individual and not to a group of people. Such a provision has never been in the licensing laws of this State. I could think of a situation where a club could say that it would make 150 people honorary members for four days. If there was any question of a person being unlawfully on the premises he could simply say, "I belong to that group," and this would not be a desirable state of affairs. An honorary member should, in some way, be accredited. The right should be gained by name and not by numbers, so I hope we will not interfere with that situation.
I will review the other question as to the number of days, but I am not particularly enamoured of the idea, because the existing situation has worked successfully for a long time.

The Hon. C. R. Abbey: It has been honoured in the breach.

The Hon. A. F. GRIFFITH: That means the law is being broken. In that case people cannot expect to have the benefit of the law being widened merely by saying, "We are breaking the law; widen it so we will not have to break it." I do not agree with that sort of thing.

The Hon. CLIVE GRIFFITHS: I agree with the Minister that honorary membership should be granted to individuals, but I cannot agree that an organised group of people, on every single day when a competition or a function is being held, should be obliged to have the name of each person posted on the notice board to indicate that they are honorary members.

I do not think it would be unreasonable to suggest that their names should be posted on the board as honorary members at the beginning of the competition. Such a situation could occur in many other places apart from bowling clubs. I have in mind the Australian football championships during which period numerous players and officials visit this State from other States of the Commonwealth and the poor old secretary or manager is running around like a scalded cat every day. To impose the extra duty on such officials of having to place on the notice board every day the names of all members of the team to indicate that they are honorary members would be unreasonable.

The Hon. J. HEITMAN: It seems rather silly that the Minister should take exception to a team visiting another club to play sport without their meeting the requirement of posting their names on the notice board as honorary members. In the country areas many members of one bowling club visit another bowling club to play pennants and according to this provision the names of the members of the visiting pennant team will have to be posted on the notice board every day.

The Hon. A. F. Griffith: And you have done that for 60 years.

The Hon. J. HEITMAN: The fact is that we have not done it for 60 years. We have members of one club visiting another club at present and they do not have their names posted on the board as honorary members. This practice has continued ever since I have been a member of a bowling club. If I visit Mingenew to play bowls I do not see the necessity for my name to be posted on the notice board as an honorary member. I want to see the position that has existed for the past decade continued in the future.

The Hon. A. F. GRIFFITH: I move—

That the clause be postponed.

Motion put and passed.

Clauses 10 to 16 put and passed.

Clause 17: Section 153 amended—

The Hon. A. F. GRIFFITH: Last night it was pointed out that the word "a" occurs twice in the one passage. Although I think it is perfectly clear that the words in the amendment would follow the word "a" where it first occurs, to make the position abundantly clear, I move an amendment—

Page 6, line 17—Insert after the passage "a" the words "where first occurring".

Amendment put and passed.

Clause, as amended, put and passed.

Progress

Progress reported and leave given to sit again at a later stage of the sitting, on motion by The Hon. A. F. Griffith (Minister for Justice).

TRAFFIC ACT AMENDMENT BILL

(No. 2)

Second Reading
Debate resumed from the 10th November.

THE HON. R. F. CLAUGHTON (North Metropolitan) (5.30 p.m.): The Bill seeks to amend the Act in several respects: firstly, to admit as evidence the blood alcohol levels relating to the offence of driving under the influence of liquor; secondly, to admit as evidence calculations of maximum and minimum percentages in breathalyser tests, where a single reading cannot be obtained; thirdly, the admission of documentary evidence of analysts; and, fourthly, to provide protection against liability to medical practitioners when they take blood samples at the request of traffic inspectors.

In the main, the amendments in the Bill are largely related to breathalyser tests for the calculation of the alcohol levels in the blood. The Bill also contains a number of amendments which are largely consequential on the four main ones.

I feel I should draw attention to a letter from the W.A. Temperance Alliance which bears on the subject. Whilst I am not attempting to effect amendments to the Act to the extent requested by the alliance, I think it is entitled to have its views expressed in Parliament. In this letter, dated the 23rd October, 1970, from the W.A. Temperance Alliance, the following appears:—

This Council consists of the Temperance Organisations from all Australian States and New Zealand.
It referred to a motion that had been carried by the Australian Temperance Council in September last. The motion is—

That we request all State Temperance bodies to promote legislation to reduce the maximum legal blood alcohol level for drivers to .05.

The letter also set out several resolutions that had been adopted by the Methodist Church, and they are as follows:

That on the spot breathalyser tests should be legalised for any licensed driver sitting in the driver's seat of a vehicle, whether or not the vehicle was moving.

To seek legislation preventing young people in school uniforms being served with liquor in hotels or other public places.

To urge the Government to strengthen the police force and provide better facilities for law enforcement.

To reduce the allowable blood-alcohol content for drivers from 0.08 per cent. to 0.05 per cent.

It also forwarded a pamphlet entitled "The Campaigner" which contains the reports of a Commonwealth Government joint committee. Its function was the examination and the possible implementation of breathalyser testing in the Australian Capital Territory. This pamphlet points out that with a blood alcohol level of 0.05 per cent. the incidence of accidents among drivers increased twofold, and with a level of 0.08 per cent. the incidence increased threefold.

Originally the Act of Western Australia stipulated 0.05 per cent., and that appeared in section 32C (4) which stated—

Where...the calculation...at a specified time,—

(a) was 0.05 per centum or less, the finding or calculation is prima facie evidence that the person was not, at that time, under the influence of alcohol;

(b) exceeded 0.05 per centum but was less than 0.15 per centum, the calculation or finding is evidence to be considered by the court, together with such other relevant and admissible evidence as may be given in that proceeding, but does not, of itself, give rise to any presumption as to whether the person was or was not, at that time, under the influence of alcohol;

That section of the Act was amended subsequently, and the reference to 0.05 per centum was deleted.

The suggestion of the W.A. Temperance Alliance is that driving with a blood alcohol content of between 0.05 and 0.08 per cent. should be an offence, but one which carries a smaller penalty than the offence of driving with an excess of 0.08 per cent. The intention of the resolutions of that alliance, indeed, of the Bill is to reduce the number of road accidents. I think it must be admitted that driving under the influence of alcohol is only one of the factors which cause accidents; and there are many other factors which deserve consideration.

I feel that the amendment in the Bill does not attempt to bring about an increase in the number of convictions, or the policing of the Act to any greater extent. It will simply enable more evidence to be placed before the court. The need for the amendment was brought about by a recent court decision.

I shall now refer to some statistics relating to the United Kingdom where it was found that accidents and injuries involving motor vehicles decreased by 9 to 10 per cent. in the period following the introduction of the breathalyser in October, 1967, until September, 1969. There is evidence to show that the use of the breathalyser has brought about a reduction in the number of accidents; but the evidence in Western Australia does not seem to be as clear. We might deduce from this that the policing of the traffic laws in Western Australia is not as stringent as it should be. It might be claimed that if the provisions in the Act were more closely policed it would have as great an effect in lowering the number of accidents as that achieved in the United Kingdom.

It would appear that the apprehending of drivers who are under the influence of alcohol is largely brought about by the behaviour of those people, rather than by the making of spot checks of motorists. When a driver shows erratic behaviour or some other outward sign that he is under the influence of liquor he draws attention to himself. The test is often made after an accident has taken place, and this is something like closing the stable door after the horse has bolted.

In my view motorists who are under the influence of alcohol while they are behind the wheel of a car are a significant cause of road accidents in this State. I feel that more effective policing of the Act, and a lowering of the alcohol blood level at which motorists are liable to be convicted—even though this be a lesser offence—will also achieve the result of reducing the number of accidents.

I refer to a publication entitled Australian Road Safety Report of March, 1970, which contains a report showing that a Japanese company has reduced accidents among its drivers by applying the "bio-rhythm" theory. This is a practice which
is adopted by the company to psychologically test people for what is called bio-rhythm. All people experience periods of high activity. This company put this theory into practice by prohibiting its drivers from driving in their periods of low activity. The result achieved was that the accident rate was reduced by one-third. This is only one of the areas in which it has been proved beyond doubt that a reduction in the number of accidents can be effected.

Whilst much attention has been directed to alcohol being associated with road accidents, I would point out that there is room for action to be taken in other areas from which worth-while results have been obtained.

To get back to the Bill, frequently I have experienced difficulty in fitting my understanding of a word to the legal definition. In this case the difficulty arises in relation to clause 2 which seeks to add words to section 32C.

The proposed amendment will insert into section 32C the words, "an offence against section thirty-two AA of this Act or for". Section 32C of the Traffic Act reads as follows:

Without affecting the admissibility of any other evidence that may then be given, in any proceeding for an offence against this or any other Act in which the question whether a person was or was not, or the extent to which he was, under the influence of alcohol at the time of the alleged offence is relevant . . .

Those words would appear to include all the provisions which are necessary. It took me some hours of study to verify that the proposed amendment will do what is desired. Section 32AA deals with the 0.08 offence and provides for a lesser penalty than that imposed under section 32C of the Act.

Section 32 of the Act deals with the offence of driving under the influence of alcohol, and section 32C deals with the procedure for taking a breath sample. The addition of the proposed words will provide for the admission as evidence of the samples which have been taken and the calculation will be made on the least and the greatest percentage of alcohol that could have been present.

Section 32C (c) of the Act reads as follows:

(c) the calculation, in accordance with the regulations, of the percentage of alcohol that was present in the blood of the person, at a time prior to the taking of a sample of his breath.

The proposed amendment refers to the calculation of the least and the greatest percentage of alcohol which would have been present. It is quite clear that there is a distinct difference in the meaning of those two provisions.

Paragraph (d) of clause 2 provides for the deletion of paragraph (g) of subsection (1), and the substitution of a reworded paragraph. This paragraph, again, allows for the admission of minimum and maximum findings as evidence.

Paragraph (e) of clause 2 refers to the equipment which is used for sampling. Paragraph (g) will delete existing paragraph (c) of subsection (2) of the Act, and replaces that paragraph with a provision including the minimum and maximum percentages of alcohol.

Paragraph (h) repeals and re-enacts subsection (4) of the Act and allows for the calculation of the maximum and minimum levels of alcohol that could have been present in a person's blood, which will indicate whether a person charged is under the influence of alcohol.

Clause 3 of the Bill will amend section 32D of the Act, and refers to blood sampling and breath testing. Section 32D provides for the making of regulations and may now include procedures for the admission of minimum and maximum assessments. A further amendment sets out the method of calculation.

The final amendment in the Bill provides that when a traffic inspector requests that a sample be taken of the blood of a person, no action shall lie against the medical practitioner.

The Bill does not contain anything with which I disagree, and I give it my support.

THE HON. L. A. LOGAN (Upper West—Minister for Local Government) [5.53 p.m.]: I do not think the honourable member raised any queries which required answering. I am sure all members received a letter from the Temperance Alliance and it is fair to say that if all the recommendations were put into effect they could have some influence on the accident rate. However, until such time as a complete inquiry is made into the accident pattern it would be wrong to blame any one particular aspect. I understand that an investigation is being carried out in most States—certainly in Western Australia.

I do not know how one would ever explain an accident involving two drivers, driving in opposite directions on an open road, who collide head-on, when liquor is not involved. Why does a driver go to sleep and run off the road when no liquor is involved? It seems to me that some roads and some areas are more hazardous than others. Perhaps, to a great extent, the cause of most accidents is purely lack of attention.

The Hon. F. J. S. Wise: Cigarettes could have something to do with the accidents.
The Hon. L. A. LOGAN: Yes, cigarettes could have some effect. Perhaps in the city some accidents could be blamed on those drivers who look at minis, but that reason could not be used on country roads. There are so many different reasons for accidents, and those reasons are hard to find.

I hope the committees which are investigating accidents will come up with something worth while. I thank Mr. Claughton for his acceptance of the measure and I commend the second reading.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

Third Reading

Bill read a third time, on motion by The Hon. L. A. Logan (Minister for Local Government), and passed.

BILLS (2): RECEIPT AND FIRST READING

1. Land Tax Assessment Act Amendment Bill.
2. Loan Bill.

Bills received from the Assembly; and, on motions by The Hon. G. C. MacKinnon (Minister for Health), read a first time.

Sitting suspended from 6.00 to 7.30 p.m.

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 6)

Second Reading

Debate resumed from the 10th November.

THE HON. W. F. WILLESSEE (North-East Metropolitan—Leader of the Opposition) [7.30 p.m.]: This Bill has four clauses, three of which are operative. I agree with each of those three clauses and, in particular, with clause 4 wherein the Minister proposes to assist the owners of residences whose property values have increased as a result of rezoning and as a result of revaluations carried out by the Taxation Department. It is now proposed to give relief to those people who are not essentially part and parcel of a rezoning scheme.

Recommendations in this regard have been made by local authorities, because they have been caught up, as it were, in this redevelopment situation. Without going into all the pros and cons of why these drastic determinations in valuations are made, the fact is that great hardship is imposed upon individuals and this Bill proposes to alleviate that situation.

To be quite specific, I have only one objection to the Bill. I am sorry the Minister built up such a good Bill with one hand and more or less knocked it down with the other. It is proposed that the provisions of clause 4 shall apply from the 30th June, 1972. I am sure the Minister would give great joy to many people if that date were altered to the 30th June, 1971. A simple amendment to the Bill would bring that about and would satisfy many people who have, within the last few months, been subjected to what might be termed savage increases in their rates and who are bewildered by the increase in their valuations.

Those people will obtain relief under this Bill. My plea is that it should not be left until 1972, but that the relief should be made effective as from the end of this current financial year. I cannot see why we should penalise for a further year those people who are affected when we intend, in principle, to give them amelioration in June, 1972. Those people now have increased valuations and pay increased rates. If we accept the principle of helping them in 1972, why not help them in 1971; at the end of this financial year? I cannot see that we would affect to any great degree the income of any local authority by so doing.

Individuals are concerned in this situation and in most cases the local authority rate is considerably increased and some people have had a rate imposed upon them which is much higher than the average rate of all the municipalities.

Therefore, if we are determined to adopt the principle of the Bill we will restore equity to those who have been prejudiced. The person who accepts a valuation for rezoning purposes and decides to sell his property under that valuation does quite well out of it; but the person who desires to live in his humble home for the rest of his life is entitled to take advantage of this legislation and have a notional value placed upon his land and property. As I said previously, I cannot understand why the Minister is leaving it one year too late. He could not be one year too soon; so I suggest that he compromise and amend the clause so that the relief will apply from the financial year ending the 30th June, 1971, rather than the year ending the 30th June, 1972.

THE HON. J. DOLAN (South-East Metropolitan) [7.38 p.m.]: I support the Bill, and I wish to address my remarks to clause 3. The Minister will recall that during the debate with similar legislation in October of last year I voiced a warning that something of this nature might possibly arise: that developers might hold onto their land—and there is no question of the size—by running some stock on it and pretending to receive an income. By so
doing they could claim their land is urban farm land. The Minister quoted an example of somebody doing just that and I think in the case he quoted the income was less than $200 for the year.

The Hon. L. A. Logan: It was $186 over three years.

The Hon. J. DOLAN: Was that the average over the three years?

The Hon. L. A. Logan: No, it was the total amount received over three years—the gross amount.

The Hon. J. DOLAN: Well, of course, anybody would know that property was not wholly or principally maintained for the carrying on of a business. The local authority did the right thing and rejected the claim that it be classified as urban farm land on the grounds that the person concerned was not wholly maintained by this industry. Of course, the first thing the ratepayer concerned did was to appeal and, to the consternation of the shire, the appeal was upheld. I find it hard to believe that could happen.

The legislation is now to be tightened up by adding after the word "kind." in section 531A, the words, "and from which businesses or industries the occupier derives the whole or a substantial part of his livelihood." I think if the onus to do that was placed upon the person quoted by the Minister, he would not be able to justify himself. I do not completely exempt the shire from blame. I think it adopted the attitude that it seems to me that some shires are adopting this attitude—that it would reject every application for urban farm land and then say, "You may appeal against this rejection." It looks as though this is a stock situation; the local authorities reject the applications and ask the persons concerned to appeal.

I would like to refer to the case of a particular nursery. Anyone could examine that property at any time and he would not find a single cent of land being used for the purpose of the nursery. The people concerned derive their entire incomes from the property in accordance with the intention of the Act and in accordance with the intention of Parliament when the matter was debated. Yet the shire has forced those people to appeal. They came to see me and I helped them prepare the appeal. I would most strongly support the appeal. I would think that if the case of the example quoted by the Minister was followed the result of the appeal would be a foregone conclusion.

I think the Minister is wise in tightening up the legislation and making sure that people do not take advantage of the concession. Many people engaged in primary industry have had their land zoned urban which has resulted in their paying terrific rates. I understand the rate for urban farm land is 50 per cent.

The Hon. L. A. Logan: It varies.

The Hon. J. DOLAN: Yes, I know, but it is approximately 50 per cent. If one had to pay $200 under the urban zoning, that amount would be reduced to approximately $100 if the land was accepted as urban farm land. I think that is quite fair and reasonable. Evidently, having been bitten, the local authorities intend to ensure that a type of dragnet clause is included rather than insist that every applicant for urban farm land must appeal. I support the Bill and I agree that the Minister is doing the right thing to stop people taking advantage of the legislation.

THE HON. CLIVE GRIFFITHS (South-East Metropolitan) [7.43 p.m.]: I wish to take one or two minutes to speak to clause 3 of the Bill. I am not as happy about it as Mr. Dolan is. As a matter of fact, I am not very happy about it at all because I believe that it goes from one extreme to the other. There have been many instances in the past, and there will continue to be in the future, of people legitimately using their land for farming purposes but the local authorities reject the applications and ask the land and, indeed, may not do so for several years to come.

The land might have been bought for the genuine purpose of being used as farm land. The people could be sinking money into it to develop it in order to produce something in the future; yet because they are not able to convince the local authority that they derived the whole or a substantial part of their livelihood from their land, it would appear that the local authority, if this Bill is passed, will be quite justified in saying that the people cannot claim exemption under this section of the Act.

People purchase land for the legitimate purpose of carrying on rural activities. Not all who purchase land are speculators who wish to hold on to it so that they will receive the benefits obtained by way of relaxation of the rates, with the intention of subdividing the land and selling it as urban land. On several occasions instances have been quoted to me of people who are using their land for farming purposes but they are not able to prove that doing so makes a substantial part of their livelihood is gained from the land. I think that is a fairly wide category. Who decides what is a substantial part of a person's livelihood? What constitutes a substantial part?

In such a case, is 10 per cent., 15 per cent., or 50 per cent. of his income a substantial part? Who makes the decision? Would this vary from local authority to local authority? Would it vary from council official to council official, or is some suggestion or regulation to be made that it is to be 10 per cent., 15 per cent., or 50 per cent. of his income which...
is to be considered a substantial part? One person could utilise 10 acres of land and derive from it an income of $500; while at the same time having a separate income of $10,000. Would the $500 be classed as a substantial part of his income?

On the other hand there could be another individual who similarly had 10 acres of land which were earning him $500 but whose alternative income was no more than $2,000. Here we would have two pieces of land which would be earning the same amount of money, but one of the owners would have a separate income of $10,000 while the other would have a separate income of $2,000. One of these owners would be able to say that the $500 was a substantial part of his income and he could, therefore, legitimately claim this as urban farm land.

But because the other person, even though he also owned 10 acres, was earning so much more money, he would not be able to claim this concession. The clause leaves a lot to be desired and I am not at all happy about it.

While I see the necessity to improve the present situation, I would like the Minister to come forward with something more equitable than the provision contained in this clause. I agree wholeheartedly with the remainder of the Bill, because it provides concessions which are worthy of the support of members of this House.

The Minister would have to be a lot more convincing when he closes the debate than he was when he introduced the Bill if he is to convince me that I should support clause 3.

THE HON. F. R. WHITE (West) [7.48 p.m.]: Like Mr. Clive Griffiths I, too, disagree with some of the comments and expressions made by Mr. Dolan, and I also am concerned about clause 3.

When the Minister introduced the Bill he said the legislation introduced last year in connection with urban farm land was brought down to grant relief to owners of land which was genuinely held for the purpose of farming. People could be genuinely farming land within the metropolitan region but if this amendment were agreed to they would not be able to benefit from any of the concessions the local authority might be prepared to give.

The important aspect here is the purpose for which the land is used. If it is genuinely used for farming, or for primary production, the concession should be allowed. This provision can apply not only to urban land but also to rural zoned land. In reality it would constitute a means test on the owner of the land.

The main problem which arose last year with one local authority in the metropolitan region was that the applications in connection with the urban farm rate were not made before the 30th June, 1970. Had the applications been made before that date they could have been considered by the local authority concerned before it struck its budget. On striking its budget it would have known what concessions had to be made and it could have allowed for them accordingly.

In the case of the particular local authority to which I refer, instead of it striking a 50 per cent. reduction in rates it may possibly have been able to strike a 10 or a 20 per cent. reduction. This is a most important factor, and one which should be considered when the Local Government Act is being amended to overcome difficulties being experienced by local authorities in connection with the adoption of urban farm land rating.

This should be overcome by legislation demanding that owners who want their land declared as urban farm land should make their applications before the 30th June so that the local authority will be able to organise its budget to cope with the matter.

If the amendment contained in the Bill goes through in its present form it will create a great many anomalies, such as those mentioned by Mr. Clive Griffiths, where there could be parcels of land side by side which are used for exactly the same purpose, each of which is bringing in, let us say, $1,000 gross income per annum. But because the owner of one property is earning, let us say, $2,000 a year he would be eligible for the concession, whereas his neighbour who is earning, say, $10,000 a year, would not be so eligible. This would constitute a tremendous anomaly and would be applying a means test on the owners of land.

I request that the Minister seriously consider this particular amendment with a view to bringing in a further amendment, not to section 531A, but to section 533A along the lines I have suggested.

In general I support the Bill, but I hesitate to support clause 3.

THE HON. L. A. LOGAN (Upper West—Minister for Local Government) [7.53 p.m.]: I can appreciate the point raised by Mr. Willesee in connection with the date aspect. Having been a town clerk himself, I feel sure he appreciates that every local governing body has worked out its budget for this financial year. These bodies have sent out their rate notices and a good proportion of the rates will have been paid. Any attempt to get these areas revalued, and the money re-funded, with a consequent throwing out of plumb of their budgets would constitute far too great an administrative problem for the local authorities are concerned.

That is why we decided on the year ending 1972, or the beginning of 1973. The authorities concerned would run into innumerable difficulties if they tried to work
out averages and values, or attempted to have repaid moneys that had already been paid. Quite apart from this, their budgets would be thrown out of plumb.

The Hon. W. F. Willesee: Do you know how much money would be involved?

The Hon. L. A. LOGAN: No.

The Hon. W. F. Willesee: I am sure it would only be peanuts.

The Hon. L. A. LOGAN: I am sure that the local authorities concerned would buck if we thrust this onus on them. Mention has been made of clause 3. It has been found very difficult to draft this clause to cover all the circumstances raised by Mr. White and Mr. Clive Griffiths. A great deal of thought has been given to the wording of this amendment in an endeavour to see how the matter could be worked out, perhaps on a percentage basis. We found, however, that that too would cause us considerable trouble.

We found ourselves in the situation where a council might want to declare an urban farm land rate but would not be prepared to do so in the following year if we did not amend this section of the Act. This would mean that nobody would derive any benefit from the legislation.

The Hon. R. Thompson: I know some councils that expressed that intention.

The Hon. L. A. LOGAN: They would be too silly if they did not. In an endeavour to give relief to those we believed were genuine cases we looked around for some way to tighten up the position.

The provision contained in clause 3 has been taken from the South Australian Act with the exception that we have deleted the reference to two acres. I think there was a reference to two acres in our Act last year. Our wording is exactly the same as that contained in the South Australian Act except for this reference to two acres.

No problems have been experienced in Victoria to my knowledge, nor have there been any problems in South Australia. There are, of course, likely to be people who will be caught up in this situation, but I do not see how we can legislate to cover all the problems that have been mentioned.

We can, however, be fortified in the thought that there will always be another session of Parliament. If we did what was suggested by Mr. White we would certainly not overcome the problem. The situation would not be helped by making people apply before the 30th June, because this would not remove the difficulty connected with the definition of urban farm land, which we are trying to correct. If this is not corrected, nobody will derive any advantage. If we are to overcome the problem it will be necessary for us to alter the definition.

I hope members will support this clause so that we might at least make some provision for those who are genuine. I cannot follow the point raised by Mr. Dolan, because when the decision was made on the particular appeal the council included, to my certain knowledge, another 34 applications in the urban farm land rate.

The Hon. J. Dolan: It was done, because I handled the appeal.

The Hon. L. A. LOGAN: I cannot understand why; because, as I have said, to my knowledge the council included another 34 applications without appeal. I cannot understand why it was not done in the case to which Mr. Dolan referred.

I hope members will accept the measure as it is, because this will give us time to look around and see how we can overcome any anomalies that might exist.

The Hon. W. F. Willesee: I will support you on this if you support me on my suggestion.

The Hon. L. A. LOGAN: I think Mr. Willesee appreciates the problem. Had the Bill been introduced in June or July, or before the assessments were issued, it would have been a different matter. I am sure members will appreciate the situation and I hope they will support the Bill.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (The Hon. F. D. Willmott) in the Chair; The Hon. L. A. Logan (Minister for Local Government) in charge of the Bill.

Clauses 1 and 2 put and passed.

The Hon. CLIVE GRIFFITHS: I appreciate what the Minister suggested because I realise that unless something is done we could be in the position where no local authority will strike the farm land rate. However, I do not like the term "genuine cases" he keeps using. The implication is that anyone who does not derive a substantial proportion of his income from urban farm land is not genuine; and I could not go along with that. I believe that to say that a person must derive the whole or a substantial part of his livelihood from the land is far too wide a definition.

The Hon. R. Thompson: What do you consider would be a substantial part?

The Hon. CLIVE GRIFFITHS: I would suggest 75 per cent of his living.

The Hon. R. Thompson: The Minister might be able to tell us.

The Hon. CLIVE GRIFFITHS: I asked the Minister earlier. I am certainly not going to vote against the clause because there would be no point in it, but I want to voice my dislike of the definition.
The Hon. R. F. Hutchison: There might be a number of others who would vote with you. Why don’t you be brave?

The Hon. F. R. WHITE: I wish to reiterate that the purpose of introducing legislation to deal with urban farm land was to allow concessions to the owners of land genuinely held for farming purposes. People who have a block of land, say, a hectare and a half, held land for that purpose, but they could be making no income whatever from it. For many years they must sink their money into the land without any hope of a return, and if we stipulate that such people must obtain a substantial return from that land, then we are debarring all the genuine people from being given a concession.

In the Forrestfield area as late as 1964 an Italian family approached the local authority with regard to some rural land in order to ascertain whether there was any possibility of its being rezoned urban. The local authority said, "Have no fear. It is very unlikely rezoning will occur. Go ahead and develop the land."

The same family went to the Town Planning Department and received an identical answer to the same question, so that year the family purchased the land and commenced planting fruit trees, which they continued to do until 1967. This year the family is starting to obtain its first crop—not its first financial return, but its first crop. However, the expenditure is still greater than the family's income despite the fact that this man is a genuine orchardist. If this amendment is passed he will not be able to take advantage of any concession because he will not be offered one.

I sincerely request the Minister to have a closer look at this case because this provision will bar not the odd few who will be at an unfair advantage, but many people who should be entitled to a concession.

The Hon. R. THOMPSON: I did not take the opportunity to speak during the second reading debate, but I would like to refer to a matter which has arisen perhaps for the first time in the Cockburn area where a town planning scheme has been adopted by the shire. As members are aware, under such a scheme a portion of a person's property, or cash in lieu, is taken in order to establish a fund so that suitable recreation areas can be made available.

One person whose land is reserved for recreation is, unfortunately, an aged pensioner. His neighbour was able to sell out for something like $11,000 to $13,000 an acre, but this pensioner could not sell his land because he could not get a buyer as a result of the reservation on the land. He has just received a rate notice for $198 for the current financial year, but he cannot afford to pay it. He cannot sell the land although it is useless to him.
I am not in a position to indicate what a substantial percentage of a person's income would involve. As I said earlier, we try to work on a percentage basis, but anomalies do arise. Therefore, the best thing to do is to leave this matter to the courts, if there is an appeal, to decide what is a substantial part of a person's livelihood.

I am not too sure that the shire would not classify the land to which Mr. White referred as urban farm land for the purpose of this rate. I think it could quite easily do so because practically the whole of the area concerned is under orchard and the man is using the whole of the area for the purpose for which he purchased it. Consequently I can see no reason why the council should not consider the position and to budget in the following financial year.

The H'on. L. A. LOGAN: No.

The Hon. F. R. WHITE: The Minister can correct me if I am wrong, but my understanding is that under this amendment the local authority will be limited with regard to whom it will be able to apply this rate. If a person cannot satisfy the provision in this clause he will not be considered for the concession.

The Minister stated that in this particular instance he felt the local authority would possibly consider granting a concession. I believe the local authority would, too, if it had the authority to do so; but under this provision that authority is taken away from the shire. There is no flexibility whatever in this amendment.

I would like to deal with one local authority in the metropolitan region which has adopted a special urban farm land rate; that is, the Shire of Gosnells. It has had difficulties in the current financial year as the result of applications regarding urban farm land—and those applications are still coming in. Nothing in this legislation will help overcome the difficulties that shire is facing this year because the legislation is not retrospective. I am quite sure that at the end of this financial year the Gosnells Shire Council will be very hesitant about declaring new urban farm lands.

The suggestion of the shire clerk of that local authority was not to include a limitation regarding the income of the owner of urban farm land, but to make an amendment either to section 533A or section 548, provided that anyone wishing to have his land declared urban farm land made an application before the 30th June. In this way the council would have the opportunity to consider the position and to budget accordingly in the following financial year.

The H'on. J. DOLAN: I am in full sympathy with the remarks made by Mr. Clive Griffiths and Mr. White but, like the Minister, I consider this is a difficult question. I would have liked Mr. White to say that people have been granted consideration so far.

The H'on. F. R. WHITE: No.

The H'on. J. DOLAN: Not yet, apparently. I am inclined to say that the decision as to what constitutes a substantial part rests with the shire. If the shire is sympathetic it could declare any percentage a substantial one.

I have the utmost sympathy for the case Mr. White mentioned and I think those people are entitled to consideration. I also think it would be given because it would be a poor shire that would not extend consideration to people in these circumstances. They are good citizens who work hard. It is not a question of money or of making a fortune. It is a question of whether there will be any recognition of the fact that they have been penalised because the land has been declared urban. I do not think that was the intention at all.

The Minister quoted a case where, in three years, a total income of $186 was involved and there is no question that the person concerned was taking advantage of the position in the Act. This is what has to be avoided.

The H'on. A. F. Griffith: Do you think that the word "substantial" could mean less than 50 per cent? 

The H'on. J. DOLAN: I understand that in many cases the Taxation Department—and we all know how hard that department is—works on a percentage which is less than 50 per cent. I understand that if a person is making money from a hobby the rate is 40 per cent.

The H'on. F. J. S. Wise: It is 35 per cent. in some cases.

The H'on. A. F. Griffith: I bet that if I put up the argument that 50 per cent. was a substantial part it would be difficult to convince you.

The H'on. J. DOLAN: The Minister would have to disclose all the circumstances in the same way as they are disclosed to the Taxation Department. If I were the man in the shire who was responsible for making a decision I would be most sympathetic to the type of people mentioned by Mr. White and Mr. Clive Griffiths in view of all the circumstances. However, I issued a note 12 months ago that there would be people who would try to take advantage of the provision. They had land which they were holding for future subdivision. In the meantime they ran cattle and then made an application for it to be considered as urban farm land.

The H'on. W. F. Willessee: What about the person who tries to develop, puts in a great deal of money, but shows no profit?

The H'on. J. DOLAN: He would be receiving the equivalent of the rate reduction through the income tax reduction. It
would balance out. If a man spent a couple of thousand dollars in developing a property in the hope of receiving future returns, this expenditure would be a legitimate taxation reduction in the interim period. He would be saving more than under the urban farm rate scheme.

As I say, I am most sympathetic but I feel that if this clause is not accepted we will have more difficulties the other way and people who legitimately would deserve some sort of consideration will not receive it. For this reason I will support the clause.

The Hon. N. McNeill: I rise only to pose a question. Most of the discussion on clause 3 to which the words, "and from which businesses or industries the occupier derives the whole or a substantial part of his livelihood" are to be added has been centred around income whereas, in actual fact, the Bill says livelihood. I think this could put a completely different complexion on the net result if a local authority is called upon to make an interpretation. In other words, I think livelihood can be taken as being something quite different from income.

My purpose in rising is to ask the Minister whether he has any comment as to the meaning of livelihood and whether it was construed as being representative of income, gross or net, of a property. I think the two are quite different.

The Hon. L. A. Logan: That is why we have not included the word "income."

The Hon. R. Thompson: My comments are still centred on the word "substantial." The Minister said that percentages were considered and I would like to know the shortcomings of including percentages in the measure.

The Hon. L. A. Logan: The shortcomings were that people could be in different types of businesses. Mr. Dolan mentioned several of the shortcomings, in fact. They were concerned with money and all kinds of things.

The Hon. R. Thompson: I can see that a difficulty could arise with part-time market gardeners. I am not happy about the word "substantial" but I think that, for a start, something should be written in. After all, the legislation will not be operative until next June. We have until then to see what the reactions of local authorities will be. I would like the Minister to suggest that a percentage be included instead of the words "substantial part" because this would give a shire some guidelines on which to work. Otherwise every shire affected under this legislation could be striking different percentages. There could be half a dozen percentages independently struck by various shires close to the metropolitan area. I hope the Minister will suggest that we try a percentage to get the reaction from local authorities.

The Hon. F. R. White: There has been a great deal of play on the term "substantial part" and on its meaning. However, the amendment states, "the whole or a substantial part." The inclusion of the word "whole" would indicate that a substantial part will be greater than half; otherwise, why include the word "whole?" Why should not the amendment read, "the occupier derives a substantial part of his livelihood"? The inclusion of the word "whole" must be for the purpose of ensuring that "substantial part" means a very substantial proportion.

If I am incorrect I should like the Minister to advise me and I should particularly like him to advise me why the word "whole" has been included.

The Hon. L. A. Logan: If Mr. White reads the Land Tax Assessment Act he will find the word "whole" is included. It is used in almost every other Act, too, which deals with this kind of thing. Consequently, from the point of view of the draftsman there is a reason.

The Hon. J. Dolan: You could exclude a large number of people immediately with the inclusion of the whole of the income. It would be necessary only to worry about the doubtful ones.

The Hon. L. A. Logan: I think the point raised by Mr. McNeill is a valid one. Both Mr. Dolan and Mr. Wise have said that, so far as the Taxation Department is concerned, the word "substantial" means less than 50 per cent. in some cases. If we started to include percentages, as Mr. Thompson has requested, the case mentioned by Mr. White would not have any chance whatsoever.

We should bear in mind that a person will not be rated until the next financial year. If his orchard is bearing now he will be receiving a fair income from it next year. I think he would be covered.

The Hon. N. McNeill: Irrespective of income, it would still be "livelihood."

The Hon. L. A. Logan: I am sure members would find that this is why the word "income" was not included. We ran into problems in trying to lay down percentages.

The Hon. R. Thompson: What sort of problems, will the shires run into?

The Hon. L. A. Logan: They will run into plenty and we want to get them out of problems. I suggest we leave the wording as it is for the time being.

Clause put and passed.

Clause 4: Section 533 amended—

The Hon. W. F. Willesee: I hope to delete the word "seventy-two" in line 24 on page 2 of the Bill and to substitute the word "seventy-one." My purpose in doing this is to pursue a thought I had when speaking to the second reading; namely,
the legislation will be much more effective and will give greater benefit if it is effective in the current financial year.

In reply, the Minister said that local authorities concerned would have already budgeted for a year ahead; that they would have prescribed income; and that they would offset it by anticipated expenditure. However, in the case of every local authority there has been a right of appeal when an adjustment of rates has been made in the current year. The right of appeal goes beyond the local authority concerned, because a tribunal hears appeals. If an appeal is upheld the local authority concerned loses certain revenue that it had anticipated, and simply has to do without it. It has to adjust its budget accordingly.

Therefore, I do not regard that issue as being very great, nor do I regard the amount of money involved with the individuals concerned as being very great in the overall income of a shire. This applies particularly when we think of bigger shires, but let us deal with the metropolitan area in toto.

There could not be a substantial amount of money involved to a shire but there is a substantial amount of money involved to a person on a set income. For example, a person on superannuation is in a most invidious situation and would greatly appreciate the opportunity to pay a notional rate, which I believe, will be fixed within the vicinity of the rate paid over previous years.

When we look at particular shires and consider their rate increases, they are something in the order of 8 per cent., 10 per cent., or 11 per cent. However, the individuals whom the Minister is endeavouring to help by this legislation have faced increases in rates of up to 250 per cent., not 10 per cent. or whatever figure the shire itself projected. What he is trying to do.

It is idle to suggest that if a notional nominal figure, similar to that paid in the past, applies to these people it will affect the finances of the rest of the shire, whatever shire it may be. I have some regard for the lack of funds which certain shires experience and, personally, I was a bad budgeteer as I could never balance.

In this case a principle is involved. When I have been able, I have advised people concerned to take action within the law and that action has been by way of appeal. I am confident that those appeals will be upheld, having regard to the overall increase of the shires' projected rate and also to the unprecedented figures these people have been forced to pay because of valuations which have become astronomical compared with what was paid in the previous year.

There must be a right of appeal on the basis used for the valuation, and there must also be a right written into this legislation. We cannot put a blanket over a whole area and say, "All that land is for flat development"; because blocks differ. Some of them would never be suitable for flat development projects. Some of them will be, and others are. The owners of these blocks are not complaining about the situation. However, there are other people —including some working in this building—who do not want to leave their houses. They want to live in them until the day they die, but they do not want to pay the exorbitant rates that are imposed on their properties.

The principle of the Bill is good, but I submit the timing for the introduction of this proposal is bad. There is no great justification for saying that this clause cannot be altered in the way I suggest. If the amendment were agreed to it would not impair the administration of any local authority in the metropolitan area. However, it would give great relief to the individuals concerned, particularly those on fixed incomes. I move an amendment—

Page 2, line 24—Delete the word "seventy-two" and substitute the word "seventy-one".

The Hon. L. A. LOGAN: As I said earlier, I sympathise with Mr. Willesee in what he is trying to do.

The Hon. W. F. Willesee: I don't want your sympathy; I want your help.

The Hon. L. A. LOGAN: However, I would not be prepared to accept the amendment without some investigation of what the situation is likely to be. We have to bear in mind, of course, that in the majority of cases the people concerned will have appealed against their valuations, and nothing can be done until such time as the appeals are heard. The local authorities will have to adjust their books in accordance with the decisions of the valuation appeal court. Then the people concerned will have to reapply to use this provision in the legislation. So in all there will be three bites of the cherry and by that time it will be almost the end of next year.

I think this amendment will be placing too much of a burden upon the local authorities. However, it is up to the Committee. If the amendment is not agreed to I will endeavour, before next Tuesday, to get some advice on what the position is likely to be.

The Hon. W. F. Willesee: Would you like to defer the question?

The Hon. L. A. LOGAN: This Bill has to be sent to the Legislative Assembly. The honourable member can appreciate my position. Without knowing all the circumstances I, as the Minister in charge of the Bill, and Minister for Local Government, would not like to accept the amendment at this stage.

The Hon. W. F. WILLESEE: This is my final word because I do not want to hold the issue up. Unfortunately I will have to
divide the Committee in view of the fact that the Bill has to go to another place. I could not quite follow the Minister when he talked about there being three bites of the cherry. If, in fact, appeals are heard, the position will be no different from what it would be if we dealt with the issue now. If the amendment is agreed to the appeals will not be necessary.

The Hon. L. A. Logan: There will be a lower value.

The Hon. W. F. WILLESEE: The value will not go any lower than the previous value.

The Hon. L. A. Logan: It could be lower than last year.

The Hon. W. F. WILLESEE: That is encouraging, but I very much doubt it in view of the fact that current valuations are five years behind. I think the amendment if agreed to would simplify the whole situation.

The Hon. CLIVE GRIFFITHS: I am in favour of the argument put forward by Mr. Willesee. I thought he submitted a good case for amending the clause in the way he has suggested. The Minister said that by agreeing to it we will be placing a huge burden on the local authorities. However, in some parts of my province the burdens that have been placed on some of my constituents have been enormous, and to them that is a point worth considering.

I have already mentioned to the Minister the case of an individual whose rates were increased from $700 to $2,500. That person thinks that it is a fairly substantial burden and, unfortunately, this clause will not help him. Certainly any burden that the local authorities might have to carry by having to readjust their rates, or readjust their budgets or works programmes, is not to be compared with the burden some people have to carry at the moment. Therefore I hope the Minister will go deeper into this proposition before he rejects it.

Amendment put and a division taken with the following result:

**Ayes—10**
- Hon. R. F. Caughton
- Hon. J. Dolan
- Hon. V. J. Perry
- Hon. Clive Griffiths
- Hon. R. F. Hutchison (Teller)

**Noes—12**
- Hon. C. R. Abbey
- Hon. G. W. Berry
- Hon. G. E. D. Brand
- Hon. A. F. Griffith
- Hon. J. G. Hislop
- Hon. L. A. Logan (Teller)

**Pairs**
- Hon. H. C. Strickland
- Hon. J. J. Garrigan

Amendment thus negatived.

Clause put and passed.

Title put and passed.
Commonwealth assistance on this occasion represented 47 per cent. of the total works and housing programme, which is the highest contribution since 1956-57.

The borrowing programme for the current year was determined at a meeting of the Loan Council in June last. The governmental programme for works and housing was fixed at $623,000,000. In addition, the Commonwealth Government agreed to provide the States with interest-free capital of $200,000,000, making the borrowing programme $823,000,000. Western Australia's share of the borrowing programme is $60,000,000, and we will receive an amount of $18,680,000 as an interest-free capital grant.

The grant is designed to help finance capital works from which debt charges are not normally recovered, such as schools, police buildings, and the like. Details of the allocation of this grant to specific works are shown incidentally on Pages 13 and 15 of the Loan Estimates which are available in the House.

The borrowing programme for semi-governmental and local authorities raising amounts in excess of $300,000 was fixed at $400,000,000, of which Western Australia was allocated $17,790,000.

Under this Bill, authority is sought to raise loans amounting to $56,200,000 for the purposes listed in the first schedule.

The new authority provided for each item does not necessarily coincide with the estimated expenditure for that particular item during the current year. Unused balances of previous authorisations have been taken into account and in the case of works of a continuing nature, sufficient new borrowing authority has been provided to permit these works to be carried on for a period of approximately six months after the close of the financial year. This is the usual practice and it ensures that there is continuity in the progress of works, pending the passing of next year's Loan Bill.

Full details of the condition of various loan authorities are set out in pages 12 to 15 of the Loan Estimates. These pages also detail the appropriation of loan repayments received in 1969-70.

Provision for the payment of interest and sinking fund is another important authorisation in this Bill. It charges these payments to the Consolidated Revenue Fund and no further appropriation is required from Parliament.

Authority is also sought in this Bill to reappropriate certain authorisations which are no longer required. The second schedule sets out the amounts to be re-appropriated and the third schedule lists the items to which they are to be applied.

Debate adjourned, on motion by The Hon. F. J. S. Wise.
the provisions and therefore I do not propose to go into a great deal of detail in this speech as I believe the notes will prove to be self-explanatory.

For some years there has been a shortage of valuers and, for this reason, it has not been possible to provide revaluations at regular short intervals. As a result, following revaluations in recent years, there have been substantial increases in the land taxes and rates levied. These increases are most severe on land of between four to 10 acres classified rural while it is in close proximity to land zoned for urban use and the value of which is affected by the value of the urban land.

Since taking over the valuations work, efforts have been made to overcome the shortage of personnel, but unfortunately, there are few qualified men available. I understand the shortage is Australia-wide. The Government, therefore, has instituted a training scheme and currently has 21 trainees several years to gain qualifications and experience, it will be some time before the benefits of this scheme are available.

An improved valuation cycle coupled with more stable land prices will, no doubt, overcome the problem in future but, in the meantime, some relief from sudden increases in values and high values assessed on rural land is necessary. The Bill provides for this in three ways—

Firstly, by increasing the present exemption of $6,000 to $10,000 for improved properties and extending the existing tapered concession from $18,000 to $50,000.

Secondly, by empowering the commissioner, with the approval of the Treasurer, to determine a ceiling value per acre to be applied to rural land.

Thirdly, by deeming unimproved rural land to be improved land for purposes of the Act and so qualify it for assessment at the lower improved scale. This is because unlike land zoned for other uses and purposes, rural land cannot be subdivided for residential purposes and can be developed only for very limited uses.

It is proposed that the extension of concessions for improved land apply for the current and future years of assessment.

Provision is made for the ceiling value which is to be determined at $1,500 per acre to be applied for 1969-70 as well as the current year of assessment. This figure will be reviewed for future years. Where the application of the ceiling value reduces paid assessments, refunds will be made and in cases where assessments have issued but not paid, a reassessment will be processed and sent to the taxpayer concerned. The concession of deeming unimproved rural land to be improved land is to be applied to the current and future years of assessment. In order to apply the proposed concessions to rural land a definition of this type of land needs to be inserted in the Land Tax Assessment Act. There are provisions in the Bill for this purpose.

For the metropolitan region, classification of land as rural under the Metropolitan Region Scheme is used unless that land—

Has been classified or rezoned by a town planning or local authority for some other use or purpose;

Or is approved for subdivision into lots of one acre or less;

Or is approved under the provisions of the region scheme for development for some other use;

Or is being used for some other purpose except for the owner’s place of residence.

For the remainder of the State, all land is to be defined as rural, unless that land has its use changed in a similar way to that which I have described for land in the metropolitan region.

The other land uses, which exclude land from the definition of rural land for the purposes of the Land Tax Assessment Act, are residences, flats, trade, businesses, industry, and commerce. Full details of these provisions and their effect are given in the notes accompanying the Bill.

Another situation which often results in heavy tax assessments is the rezoning of rural land for urban or other purposes. Under the arrangements so far described, while land remains in the rural classification the assessments will be held at a reasonable level. However, on rezoning, unless action is taken, it will be assessed at full valuation at the relatively high unimproved rate of land tax. Therefore, provision is made in this Bill that when in future land is rezoned from its rural category, the ceiling value will cease to operate but the lower improved land tax rate may still be applied.

Subject to application by the owner, assessments at this lower rate of tax will continue to issue until approval is obtained to subdivide or develop the land or the land is used for some other purpose than its previous rural character allowed. If this does not occur within three years, then at the expiration of that period, the concession will cease to apply. This will give owners a reasonable period in which to take action to use the land in accordance with its zoning before the higher tax rate is levied. Taken together and coupled with the removal of rating for vermin and noxious weeds, the concessions which I have briefly described will meet the problems of small rural landholders facing
increasingly heavy land taxes and rate assessments. They will also give further relief to owners of improved properties.

Under the existing law, if land is used for primary production as defined in the Act, it is granted exemption from land taxes. However, if the land used in this way is within the boundaries of towns and cities as defined in the Local Government Act, then it is not eligible for this exemption.

Under these provisions, when areas become towns or cities and land within the area is being used and continues to be used for, say, market gardening, the exemption from land tax that owners of land enjoy would be removed. This is not desirable and local authorities have made representations to have the restriction removed. The Bill contains a provision for this purpose. However, in order to ensure that the exemption cannot be used as a means of tax avoidance and is restricted to land properly used for primary production, it is proposed that in the metropolitan region, the exemption apply only to defined rural land or land which is otherwise classified where the users gain a substantial part of their income from the use of that land for primary production.

In the past few years many persons have acquired properties known as home units instead of acquiring conventional houses. These units are located in buildings ranging from duplex houses to multi-storied constructions, as is well known. They have one thing in common in that they are erected on one piece of land. The title to this land is generally held in one of three ways. These are—

Under strata title arrangements. By tenants in common. By a limited company as the single owner.

Owners of land under the strata title system receive separate assessments for land taxes where applicable based on the value of the respective shares in the land. This is possible because they hold separate registered titles and they therefore can be treated on the same basis for land tax purposes as the owners of land on which ordinary dwelling houses are erected. However, the owners of home units held under the other types of title receive one assessment based on the whole of the value of the land on which the units are erected. The amount of tax so assessed must then be paid by them on an agreed shared basis.

The introduction of a tapered exemption from land taxes for improved properties has highlighted this situation. Under the existing land tax legislation those who own units under strata titles enjoy the concessions, but those who own units held under the other types of title generally do not. This is because the value of the land in most cases is beyond the limits of the concession. In some cases, they cannot convert to strata titles without considerable expenditure, and in other cases the owners may not wish to do so.

Representations have already been received to allow these home unit owners to participate in the concessions currently available under the provisions of the Land Tax Assessment Act, and I have no doubt that, with the extension of these concessions, many more will become concerned.

The provisions in the Bill now before the House are designed to place all home unit owners in the same position as owners of conventional dwelling houses. Because of the nature of the land holding, a portion of the land value has been assigned to each owner.

Home units also have to be clearly defined to ensure the concession is not applied to buildings erected as business propositions, such as offices or flats. It is also necessary that each group of owners who directly or indirectly own the land on which the units are erected apply for the concession. This is necessary because it cannot be applied to only part of the land in the one title. Full details of the requirements and their operation are set out in the notes on the Bill, which have been circulated.

In amendments to the principal Act in recent years increased land tax has been levied on unimproved land. One of the types of land included in this category is freehold land held by owners for forestry purposes in that it is used to supply natural timber for milling. In view of the desirability of encouraging the use of this land for forestry and at the same time, ensuring a reasonable contribution to revenue, provision is made in the Bill to provide a 50 per cent. rebate of the tax levied under the higher unimproved scale.

Owners of forestry land will need to apply for this concession so that the land can be identified. They will also need to obtain a certificate from the Conservator of Forests, which ensures the concession is only given to owners of land used for bona fide forestry purposes. The concession is to apply from the 1970-71 assessment year.

There is one other provision made in this Bill. This is to meet cases of financial difficulty being encountered by some taxpayers, whose land value has been substantially increased but who are unable, through no fault of their own, to proceed with subdivision or development of the land.

Currently, the Act provides power to defer taxes but this is only used for short periods or arranging payment by instalments. It is proposed to extend this section to allow the commissioner, in appropriate cases, to provide extended periods of deferment and where necessary, to adjust
This will be about one of the shortest speeches in moving the introduction of the second reading of a Bill. This measure abolishes the noxious weed rate for 1970-71 and onwards and the comment made in respect of the current amendment to the Vermin Act applies in this case also, with the main amendment in this Bill being to section 48A of the principal Act.

Debate adjourned, on motion by The Hon. J. Dolan.

AGRICULTURE PROTECTION BOARD ACT AMENDMENT BILL
Second Reading

THE HON. L. A. LOGAN (Upper West—Minister for Local Government) [9.10 p.m.]: I move—

That the Bill be now read a second time.

This Bill is one of the group of three amending Bills to give effect to the abolition of the vermin and noxious weeds rates, and the operation of the Agriculture Protection Board being financed from Consolidated Revenue as a result.

On the passing of this legislation the funds then to be made available to the Agriculture Protection Board will be paid into the board's trust fund for distribution to respective vermin and noxious weed funds in accordance with its budget. This will allow the board some flexibility in being able to direct available funds to meet changing or emergency situations.

The board has in the past prepared an annual budget and on this has based the amount of vermin and noxious weed rates. In future, this budget will be presented in the form of the normal Government Estimates procedure for parliamentary approval.

Subsection (1) (b) of section 9 of the principal Act already provides for payments to the protection fund from Consolidated Revenue.

Section 11 of the principal Act contains the original provisions for providing funds to the Agriculture Protection Board from the Western Australian Government Railways Commission, in lieu of rates, and from Consolidated Revenue. The amendment now proposed will allow a change to the normal estimate procedure while retaining the contribution from the commission. An amendment to section 8 of the principal Act is designed to enable the board to distribute funds received from Consolidated Revenue for expenditure, as I mentioned earlier, on vermin and noxious weed control as required.

Debate adjourned, on motion by The Hon. J. Dolan.
PHYSICAL ENVIRONMENT PROTECTION BILL
Second Reading

Debate resumed from the 10th November.

THE HON. R. H. C. STUBBS (South-East) [9.12 p.m.]: I support the Bill before the House. It is entitled—

An Act to make provision for the establishment of a Department of Environmental Protection and a Physical Environment Council for the prevention and reduction of environmental pollution and the protection of the physical environment, and for incidental and other purposes.

The Hon. F. J. S. Wise: Do you like the title?

The Hon. R. H. C. STUBBS: I sincerely hope that the Bill will prevent and reduce pollution, and will afford protection to the environment. I would like to congratulate the Minister who is to administer the new portfolio on his appointment, but I should really commiserate with him in having to administer such a difficult office. He will certainly have the job in front of him, and he will certainly have many problems.

This legislation is like any new-born child, which is helpless and without teeth. I hope that it is nurtured carefully and is supplied with all the nourishment and vitamins that are required, so that it will grow into something strong and vigorous. I also hope that it is supplied with its full share of fluoride so that it will grow strong teeth with which it will be able to bite!

I support the Bill, and intend to vote for it. When it reaches the Statute book it could be amended from time to time in the light of future events. For many years few people were aware of the effects of pollution. There are many forms of pollution—to the air, to water, and to soil—but only in latter years have people become aware of it. So, today we have anti-pollutionists, anti-litter people, conservationists, and preservationists. To a certain degree I support them, because I believe prevention is better than cure.

The pollution problems which have arisen in overseas countries are terrific. Before the people actually become aware of the effects of pollution a great deal of damage is done, and it generally costs millions of dollars and takes many years to arrest the effects of pollution. When one travels to countries overseas one can see in some of them the scars from the effects of pollution.

I was fortunate enough to be selected to make an overseas tour, and I did make a report on pollution. I will condense my remarks on this report as much as possible, but nevertheless there is plenty that can be written about this subject. In my report I said—

There is great concern and awareness in many parts of the world today on pollution in all its forms and its adverse effect.

The growing populations of towns and cities where there is industry and heavy motor vehicle traffic are some of the causes.

Chimneys in industry were great polluters until standards of sulphur dioxide were invoked, and measures were taken to keep the allowable limit within bounds.

The motor vehicle emits carbon monoxide fumes with the lead compounds associated with motor fuel. Research has shown that where traffic policemen are continually exposed to vehicle fumes there is a high rate of illness, with cancer following.

I noticed whilst in New York that, on certain days, it was not possible to see the tops of the tall buildings—there was the odour of exhaust fumes and an irritation in the nasal passages, together with a burning of the eyes.

Air pollution has been described as one of the worst environmental evils to which people can be exposed.

A firm of Consulting Engineers in Vancouver found that, in North Vancouver, 64 per cent. of all air pollution given off in the city was from motor vehicles and the biggest pollutant was carbon monoxide, which accounted for 42 per cent.

Research in many countries is being undertaken by research teams from Universities to study air pollution and disease. These studies are in relation to the concentration of sulphur dioxide and suspended matter, and morbidity and mortality. It has been shown that bronchitis has a great upsurge in relation to sulphur dioxide.

There have been three disasters in the world due to smog causing polluted air. December, 1952 is a recent date when 4,000 people over and above the average death rate for London died due to the effects of smog. It is thought that a reading of 0.5 parts per million of sulphur dioxide causes chest ailments.

Research is being conducted in America and Europe on children, to gauge the effects of pollution and sickness. It was considered that children would be the best subjects for research because most are comparatively healthy and they have useful exercise in playing games. They do not use tobacco or alcohol and, not being workers, are not subject to occupational hazards.
In Germany it was found children from industrial areas of air pollution showed signs of rickets. In America, it was found that children in industrial air polluted areas have a high incidence of asthma—50.4 cases hospitalised for every 100,000 of population. It was also disclosed that the two extremes of social status—the "haves" and the "have-nots"—produced an equal reaction to the effects of industrial air pollution—the incidence of asthma, bronchitis and other ailments, were the same in each class.

Great studies are being made at Sudbury in Canada to offset the effects upon the environment of smoke emission from smoke stacks. Three smoke stacks will be phased out when a new smoke stack is completed this year. It will be as high as the Empire State Building in New York. This new smoke stack of 1,250 feet, (the tallest in the world) and of a very large internal diameter will channel the smoke high into the atmosphere.

The Hon. G. C. MacKinnon: What was the estimate of the cost of that chimney?

The Hon. R. H. C. STUBBS: I think it was $1,350,000, although I cannot be sure of that figure.

The Hon. G. C. MacKinnon: It would cost about that, I guess.

The Hon. R. H. C. STUBBS: Yes. To continue—

In addition, electrostatic precipitators with a great capacity for dust control will be able to deal with all the fumes.

It is evident there has been pollution because of the scars which we see on the countryside. In recent years we have been made more aware of pollution by the Press, radio, and television. The problem has been highlighted and people are becoming concerned about it. Parents are wondering about the future of their children in polluted areas. While we do not have pollution to a great extent in Western Australia I think we can learn from the experience of other countries. One of our problems was highlighted recently and I read where bottles accounted for 5.9 per cent, and cans accounted for 16.3 per cent, of the roadside litter. Of course, included in roadside litter are plastic cups, cartons, boxes, paper, wrappers and refuse. I would wager that the percentage of bottles and cans in my area would account for 50 per cent. of the litter. When one is driving along country roads one sees motorists throwing litter from their cars. Western Australians are not the only ones to be blamed because Eastern States people do travel through my area.

The Hon. G. C. MacKinnon: It is a pretty thirsty area, is it not?

The Hon. R. H. C. STUBBS: Yes, we do get rather thirsty. Perhaps to cut down on the litter the answer might be to make a refund on bottles and cans. I think a refund would have more influence because the children would be able to gather the bottles and cans. We can also train our families not to be litterbugs.

Detergents are a great pollutant. I had something to say about detergents in my report, and I will quote as follows:

Detergent manufacturers in North America have been notified to considerably reduce the phosphate level of their products and so minimise the effects of the detergents in lakes and rivers, the result being that some detergents are now phosphate free.

We have been using soap for 2,000 years and I have not heard of anybody suffering any dire effects.

The Hon. J. Dolan: It would depend on whether or not they used Palmolive.

The Hon. R. H. C. STUBBS: Not on your "Lifebuoy"!

The State Electricity Commission, the P.M.G. Department, and the water supply department all cut great swathes through the countryside in the course of their work. I know that trees have to be cleared so that they will not fall across power lines. But I am wondering, whether too much of the flora is destroyed.

I am all for the preservation of wildlife, wildflowers, and sacred places. However, we have to look at this matter objectively. When speaking, the Minister mentioned President Nixon and perhaps I will be permitted to quote briefly from an article I read in Occupational Hazards, dated April, 1970. Under the heading of "Total Environment: The Presidential Commitment" the following appeared:—

"... In the next 10 years we shall increase our wealth by 50 per cent. The profound question is: Does this mean we will be 50 per cent. richer in a real sense, 50 per cent. better off, 50 per cent. happier or does it mean in the year 1980 the President standing in this place will look back on a decade in which 70 per cent. of our people lived in metropolitan areas choked by traffic, suffocated by smog, poisoned by water, deafened by noise and terrorized by crime? ..."

The article continues—

He described the automobile as "our worst polluter of the air" and called for further advances in engine design and fuel composition. . . .

We can no longer afford to consider air and water common property, free to be abused by anyone without regard to the consequences.
"Instead we should begin now to treat them as scarce resources, which we are no more free to contaminate than we are free to throw garbage in our neighbour's yard...

President Nixon took issue with those who maintain that a polluted environment is the inevitable by-product of our affluent society.

Dealing with air pollution, the article continued—

Turning to air pollution, President Nixon proposed national air quality standards and emission standards for hazardous substances issuing from plants, incinerators, and other stationary sources. Here also, he seeks to extend Federal jurisdiction over intra-State violators, with violators subject to fines of up to $10,000 a day.

I think industry can be happily married to environmental control. We need both; we need State development and we need decentralisation. Only a few years ago the word on everyone's lips was "decentralisation." Today, the word is "conservation."

While I support conservation I am also in favour of industry because I know what industry means to inland towns, and I know what it does for decentralisation. Industry brings with it towns, and the towns bring roads, railways, communications, and other services.

We only have to go back a few years to the time when the towns which were farthest from Perth were Northam, York and Toodyay. When gold was discovered tracks were formed, then railways were constructed, water supplies were put in, and prosperous towns developed, with decentralisation as we know it today.

If our natural resources are exploited the ground should be restored to its former state, and, perhaps, improved on. The materials which come from the ground are non-replaceable, but forests and agriculture, generally, are replaceable.

Conservation is even more important to the mineral industry than any other natural resource industry. Poor conservation may ruin a forest for a generation, but the trees will grow again for our grandchildren. Whether we like it or not, we are very much dependent on minerals, more so than we realise.

I wonder just how many of us realise how dependent we are on minerals. The farming industry depends on minerals from which to produce plant, machinery, and other equipment. Housewives depend on minerals for the production of stainless steel sinks, knives, forks, spoons, and all those things which make life in the kitchen easier. The mineral for the production of all those articles comes out of the ground by way of mining. It is therefore important that we have mining. I know a number of people claim that mining scars our countryside. Granted, it does, but the countryside can be restored to its former state.

The man of the house usually has a car in which he travels to work, and when he staggers home tired at night he usually opens a can of beer. The material for his motor car and for his can of beer comes out of the ground.

I will now return to the Bill before us, which I suppose you, Mr. President, have been waiting for me to do. I would like the Minister, when he replies to the debate, to enlarge on the definition of "pollutant." The definition contained in the Bill is as follows:—

"pollutant" means solids, liquids or gases which, if discharged into the air or waters or on to land, will result in injury to human, animal, or plant life or to property or which unreasonably interferes with the enjoyment of life and property;

Some industries emit a terrible odour and I ask: could it be claimed that such an odour would interfere with public health?

The Hon. G. C. MacKinnon: That would be covered under the Health Act, and would come under the classification of noxious trades.

The Hon. R. H. C. STUBBS: I have not heard of a noxious odour killing or injuring anybody.

The Hon. G. C. MacKinnon: It is taken account of under the Health Act, and would be treated as a noxious trade.

The Hon. R. H. C. STUBBS: I do not think so. If it is objectionable in other ways, yes; but if it is just a smell I doubt that we could take exception to it.

There is another point: I see that the Minister's heart is becoming softer. I suppose constant dripping has worn away his heart of stone.

The Hon. G. C. MacKinnon: I thought I was regarded as the softest man in the business.

The Hon. R. H. C. STUBBS: Noise is mentioned in paragraphs (c) and (d) of subclause (1) of clause 21, which deals with the functions of the council. The word "noise" is simply mentioned, and that is as far as it goes. As the Minister knows, I have mentioned the word "noise" in this House a few times. At one stage I think someone told me I was making a lot of noise about noise. I have also asked when a noise abatement Bill will be introduced. However, I am glad to see that noise is mentioned in some Statute. It is a humble beginning, but perhaps next year we shall be able to do more about it ourselves.
I have here a report entitled, "Noise," which was produced by a committee which investigated the problem of noise in England. Some very able men were on this committee and they made a very extensive report. I would like to read one or two extracts from the report. Under the heading "Effects on Health," the report quotes the definition of health that is used by the World Health Organisation, which is as follows:

Health is a state of complete physical, mental, and social well-being, and not merely an absence of disease and infirmity.

The report then continues—

For the most part, people's well-being is diminished by noise, so in this sense of the term there is no doubt that noise affects health.

In a chapter entitled, "The Law Relating to Noise," paragraph 60 says—

Noise can be the subject of a civil action for nuisance at Common Law. Nuisance has been defined as the wrong done to a man by unlawfully disturbing him in the enjoyment of his property.

In Western Australia we have to go to law and get an injunction to stop noise. I remember that earlier this year a company had an injunction taken out against it, and the ruling was that it was only allowed to operate during certain hours of the day.

Aircraft noise has been a very live subject in certain parts of the metropolitan area recently. On this subject the report has this to say in paragraph 650 and following paragraphs—

We feel that the improvement of the insulation of houses, or portions of houses, is the only practicable means of ameliorating the lot of those who are subjected to excessive noise. A technical solution to the problem is available, but we feel that it is most unlikely that it will be adopted unless exceptional measures are taken.

The total cost per room is likely to be greater than the average householder could easily bear. We recommend that grants on a varying scale should be paid towards the cost of improving the sound insulation of existing dwellings in areas near Heathrow Airport where aircraft noise is unreasonably high.

I think we will have that problem very soon. In a section dealing with noise from construction and demolition sites, the report says—

Noise from construction and demolition work is a serious cause of disturbance and annoyance to people nearby.

The report then deals quite extensively with noise control and so on. Another section deals with entertainment and the upsetting of neighbours by noise. The report also deals with noise in the country. This paragraph is interesting: It states—

We hope that in such places as National Parks and National Trust properties endeavours will be made to preserve, or create, havens of quiet where those who wish to can escape from noise for a time.

The report then deals with mineral workings, agricultural machinery, garden and horticultural equipment, and so on. It is a very extensive report and I do not intend to read it all.

That is all I have to say about this Bill but I hope it is a success. I hope something can be done to give it more teeth. I think we will find that necessary when we are dealing with people. Not everyone will be happy with this Bill: Even the good Lord could not please everyone; so who are we to say we can?

Debate adjourned, on motion by The Hon. J. Dolan.

JUDGES' SALARIES AND PENSIONS ACT AMENDMENT BILL

Second Reading

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Justice) [9.35 p.m.]: I move—

That the Bill be now read a second time.

This Bill is introduced to permit an increase in the salaries of judges of the Supreme Court and to amend the conditions under which they are entitled to receive pensions. A complementary Bill deals with judges of the District Court.

The previous adjustment of judicial salaries was effective from the 1st January, 1969. It has been the custom to review judicial salaries about every two years. In view of changes which have taken place recently in South Australia, however, the time seems appropriate for some adjustment to judicial salaries payable in this State. For some years past, the decisions of the Queensland and the South Australian Governments have been taken into account when the judicial salaries are being determined in this State, and the proposed salaries are related to South Australia.

The salaries paid to judges of the superior courts are the only ones which remain to be fixed under Act of Parliament. However, it has long been considered—and there is no apparent reason for changing the practice—that Parliament should be the authority in this matter.

The Chief Justice of this State currently receives a salary of $18,000 per annum, with the Senior Puisne Judge receiving $16,500, and puisne judges $16,000. The
rates now proposed are $21,600 for the Chief Justice, $19,800 for the Senior Puisne Judge, and $19,200 per annum for puisne judges.

The arrangement under which the Senior Puisne Judge receives a higher rate than puisne judges has been in operation since 1955 and no change in this arrangement is proposed.

By way of comparison, the Chief Justice of South Australia now receives a salary of $23,000 per annum, and puisne judges $21,000. However, the judges in South Australia are required to contribute to their pensions at rates of from 5 per cent. to 8.3 per cent. of salary. Those in Western Australia do not make any contribution and, as the net rates payable in South Australia are, therefore, Chief Justice from $21,091 to $21,850, puisne judges from $19,257 to $19,950, the proposed rates in Western Australia can be considered as comparable.

Incidentally, present salaries payable in Queensland are Chief Justice $19,500, plus an allowance of $1,000, and puisne judges $17,700. These rates are much higher than those at present existing in Western Australia.

Also, provision is made for an amendment to the rate of pension payable in the case of invalidity or widow's pension in cases where a judge has served for less than 10 years.

The present scale provides that where a judge retires by reason of invalidity, the pension payable is equal to 14 per cent. of his salary if his period of service is less than two years. Where the period of service exceeds two years, the pension entitlement is 14 per cent. of his salary plus 4 per cent. for each completed year of service other than the first year, but so that the pension does not exceed 50 per cent. of his salary at time of retirement.

Concern has been expressed with the benefits available in the early years of service. Therefore it is proposed that if retirement occurs before completion of six years' service, a pension at a rate equal to 30 per cent. of salary will be payable, and in any other case 30 per cent. of salary plus 4 per cent. for each completed year in excess of five years but not to exceed 50 per cent. in all.

A widow of a deceased judge is entitled to receive 50 per cent. of the amount of the pension to which such judge would otherwise have been entitled.

An amendment is proposed to provide that where any retired judge is entitled to a pension under any other State scheme, the pension payable by reason of service as a judge will be reduced by the amount of the State's share of the amount of such other pension. Provision is being made to reduce the widow's pension.

It is considered essential that the salaries and benefits be maintained at a level where the right people will be prepared to accept appointment to this important position in the judiciary, and for this reason I commend the Bill to the House.

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

DISTRICT COURT OF WESTERN AUSTRALIA ACT AMENDMENT BILL
(No. 2.)

Second Reading

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Justice) [9.41 p.m.]: I move—

That the Bill be now read a second time.

The provisions in this Bill are complementary to those contained in the Bill to increase the salaries and benefits payable to Supreme Court judges.

It is the practice in other States for salaries of District Court judges to be reviewed at the same time as those of Supreme Court judges and it is considered there is no good reason why this system should not apply in Western Australia, even though appointments to the offices of District Court judges were made only in March last, though in fact the salaries were fixed when the Act was passed in 1969.

The same rate of increase as proposed for Supreme Court judges is suggested for District Court judges. These rates entitle the Chairman of Judges to a salary of $17,400 instead of $14,500 now currently payable; the salary of the District Court judges to be increased from $13,500 per annum to $16,200 per annum. The new rates are considered in the light of attracting persons required for the office.

An amendment similar to that in the Judges' Salaries and Pensions Act Amendment Bill has been included to provide that a judge entitled to a pension under the Superannuation and Family Benefits Act will not receive the State's share of that pension. It would be undesirable to require the State to meet not only the State's contribution of pension under the Superannuation and Family Benefits Act but also the pension wholly provided by the State under the Judges' Salaries and Pensions Act.

As the new court has been in operation for seven months, it would be appropriate to inform the House that the results to date are very satisfactory. Since the court commenced, 500 matters have been received and 56 transferred from the Supreme Court. Of these, 194 have been disposed of by the court.

District Court judges have been engaged also in criminal, family, and matters before the Third Party Claims Tribunal. The establishment of the new court has enabled
the Supreme Court to cope with increased work in other fields and obviates the need for the appointment of a commissioner whilst a judge is absent on long service leave. Their appointment enabling them to act as Chairman of the Third Party Claims Tribunal has reduced any delays which would be occasioned by the need for the previous chairman to carry out the other functions under the Motor Vehicle (Third Party Insurance) Act, which do not require the services of the lay members of the tribunal. I commend the Bill to members.

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

NICKEL REFINERY (WESTERN MINING CORPORATION LIMITED) AGREEMENT ACT AMENDMENT BILL

Second Reading

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Mines) [9.45 p.m.]: I move—

That the Bill be now read a second time.

At the outset I would like to apologise for the very lengthy explanation which is contained in the introduction of this Bill which deals with a most important agreement.

The purpose of the Bill is to ratify an agreement between the State and Western Mining Corporation, the object of which is to facilitate expansion of the level of nickel mining and processing by the corporation. It amends, and is also supplemental to, the 1968 agreement Act, which led to the establishment of the Kwinana refinery which, of course, will continue to operate to capacity and to export.

The Bill contains a number of important provisions. However, the most important is that the corporation will establish a nickel smelter at a site approximately 9½ miles south of the Kalgoorlie Post Office; the smelter is estimated to cost $30,000,000 and to have a capacity of approximately 20,000 tons of nickel matte per year. While the cost of the smelter will approximate that figure, there will be other capital costs as I shall explain as I proceed.

For the information of those members who are not conversant with the terms, the concentrate is the first product produced. The concentrate could contain from 6 per cent. to 15 per cent. nickel according to the process used. Nickel matte contains approximately 70 per cent. nickel metal.

The smelter will also have the advantage that a number of other metals can be obtained at the same time as part of the smelter process.

I think there is no doubt at all that this agreement for the establishment of the nickel smelter at Kalgoorlie is one of the most important agreements we have introduced to the State Parliament for ratification and it proved one of the most difficult to negotiate.

Western Mining Corporation enjoys a unique position within the State's mining history. It is a great exploration company, which has very loyally stood by the gold-mining industry. It has to its credit many important innovations as well as a great deal of courageous exploration and mining experimentation. It is also significant that it is an Australian company. It was therefore fitting that this corporation should be rewarded in the establishment now of Australia's first commercial nickel project.

The refinery at Kwinana established under the 1968 ratifying Act is based on the Sherritt Gordon process which produces high grade nickel metal direct from concentrates from Kambalda. This was the process selected by the corporation. The refinery is now operating at its designed capacity of 15,000 tons per annum. But it is only when we have the complete cycle of operations—mining, concentrating, smelting and refining—that an other metals such as cobalt, copper, precious metals such as platinum, and possibly a number of other things, can be economically won. The corporation intends to do just that.

A feature of a smelter in Kalgoorlie is the importance of having an on-the-spot smelter to the School of Mines. This is of great practical value. It will provide a training inducement and aid, which is vital if the State is to develop increasing diversification of metal and metallising activities.

As far as the Ora Banda laterites are concerned, for instance, we hope to retrieve the sulphur economically. On the other hand, the can virtually eliminate the SO₂ pollution problem, as well as giving us an indigenous source of sulphur. As to whether we will finally produce sulphuric acid or elemental sulphur—or both—is something that will only be determined after the present studies are completed and a decision finally made about the viability of the Ora Banda laterite ores, which ores, incidentally, will cost on their own about $70,000,000 to develop if the current proving work demonstrates that the deposits are a viable proposition.

At this point, it is appropriate that I should explain why there appeared to be some hesitation in reaching finality in our negotiations in respect of the Kalgoorlie location, which was only third in priority on strictly economic grounds. The first priority for the establishment of a smelter would have been Port Pirie as the railway system from Kalgoorlie to Port Pirie has considerable backloading capacity, which the Commonwealth Railways would be anxious to use.
The establishment of the smelter at Port Pirie would have meant that the corporation would not have had to make any contribution by way of capital towards railway construction. When considering the freight rate which the Government has negotiated, it is fair to say that even with the concession written into the agreement, the corporation could still take its product to Port Pirie at a cheaper cost per ton than that involved in transporting the product from Kalgoorlie to Perth. This would be possible because the line from West to East is substantially idle when compared with traffic from East to West.

The second priority would have been Kwinana, and the third priority, as I mentioned, was Kalgoorlie. The Government was anxious to have the smelter at Kalgoorlie, because of our overall regional development concept for the State and the importance of having key projects within each of the national geographic regional areas. It is to the corporation's credit that it was also anxious for a number of reasons, including its traditional attachment to the eastern goldfields, to find a way of establishing at Kalgoorlie.

It was in this atmosphere that the negotiations were conducted with both Government and corporation having the same objectives and, therefore, seeking to find ways and means of successfully basing the smelter at Kalgoorlie. So when considering this agreement, I would like members to appreciate my problems in the face of much uninformed and often unfair criticism surrounding the mining industry and its administration. I had to make the difficult decision on the types of tenure which are incorporated in the agreement. The Government has endorsed wholeheartedly the agreement and the decision.

This may not necessarily be accepted as a precedent for future cases as each will be judged on its merits. But, as I proceed to explain so that members may become aware of the complexities and economics of the industry, you will understand, Mr. President, the merit of the various conditions written into the agreement.

There was one dominating thought in the mind of the Government and the corporation, which was the desirability of establishing a long-term industry that would serve Kalgoorlie long after all of us have passed on; an industry capable of expansion so as to forestall the effects of further decline in the goldmining industry and, we hope, provide for the eastern goldfields something even more important than the golden era, which has, over recent decades, lost much of its lustre.

The corporation is ready to get on with the job. It has been progressing on the engineering side in anticipation of the Government, and if given industrial peace, the smelter should be in operation within two years. It is planned to commence construction very soon and it is necessary to get various engineering studies translated into contracts. When the first stage is completed, the plant will provide direct employment for an operating staff of at least 250.

An area of 2,835 acres has been set aside. The corporation will have immediate access to 1,500 acres. It is an Industry which requires a great deal of land, so we have allowed plenty of perimeter within which the corporation can locate and operate its project. As members will see in clause 5 of the agreement, which has the marginal note "Smelter Site," the corporation can request additional land within the allocated area of 2,835 acres.

We were not prepared to allocate immediately freehold of 2,835 acres to the corporation, because we wanted to be certain it needed that much space. To ensure there was no restriction on the expansion into ancillary activities which could be of value to the district and increase the economics of the plant, we reserved this area in case the corporation may make a request at some future time. If it does, it will have to demonstrate that it has a reasonable need for the extra land.

There is also provision during the currency of the agreement to enable the Government to procure some of this land for another purpose if the Government considers that the corporation has adequate land otherwise for its needs.

Under clause 5 (3), the corporation will be at liberty from time to time, if and when it demonstrates to the State that it has a reasonable need for extra land, either for the purpose of the smelter and/or that of any ancillary or associated operation, to purchase from the State an estate in fee simple.

A further provision is that if and when the State gives the corporation notice of its intent to sell any part of the smelter site which is mentioned in subclause (1) of clause 5, then if the corporation within 14 days after the giving of the notice, satisfies the State that it has an immediate need for the whole or any part of the land, the corporation will purchase from the State an estate in fee simple. So the corporation is protected because we cannot sell the land without giving the corporation the chance to demonstrate that it has a reasonable need for it.

Should the corporation within 14 days of receiving the notice satisfy the State that it is reasonably likely that the corporation will have a need for the whole or any part of the land mentioned in the notice, within a period of seven years, the land will be set aside for the corporation.
Thus, we will avoid anything which might inhibit the growth of the industry. However, we feel that 1,500 acres should be the limit, because as the production of concentrates increased, ancillary activities, including power stations and the like. But the flexibility has been introduced to cater for the possible need, for instance, of establishing a similar type of industry in that location.

As can be seen from the plan which I will table, the proposed railway line to be constructed from Kambalda to Kalgoorlie will pass through the site. There are obvious reasons for this. Members will see in the agreement that the right of the State to acquire part of the smelter site for the railway has been retained. This right also extends to future roads and requirements for any other public purpose.

We are not too sure at this point what public services will have to be installed in this area, but, consequently, we have retained the right to acquire. In each case, the State will accept the responsibility for the services related to the piece of land acquired. It would be unfair to the corporation, which will have to pay for all the services, to develop the area if we were to resume without taking over the responsibility for the appropriate part of the services.

The agreement obliges the corporation to commence construction of the smelter by the 30th June, 1971, and have it operational by the 31st December, 1973. On present indications, the corporation will be about a year ahead of those dates. The initial capacity will be 125,000 tons of nickel ore or nickel concentrates per annum. From this tonnage, it is expected that the corporation will produce 20,000 tons of matte containing up to 70 per cent. of nickel metal.

I would now like to refer to clause 6. In addition to treating ore mined within its own leases, the corporation has been granted the right to buy and treat ore or mineral concentrates produced by other mining companies. There are some safeguards for the corporation to enable it to ensure that ore from other producers can be rejected should it contain contaminating material which could affect adversely the operations of the smelter.

There is no obligation on other producers to put their material through the corporation, but the corporation will, we hope, from time to time have surplus capacity which could be of value to others who cannot afford to install their own smelter but who want to toll their ore through an established smelter. The corporation will accept this ore, provided it has the right to reject any ore which contains a contaminant which is incompatible with the type of process or plant.

In addition to the smelter site, the agreement also grants to the corporation the right to obtain a tailings lease of an area up to 300 acres. This area will be used for the disposal of slag and other waste residues. It could be within or without the 2,835 acres. That will be a matter for negotiation at the time. The corporation must ensure in the disposal of the residues and waste materials that they do not cause annoyance or inconvenience to third parties and that the aspects of air and underground water pollution are safeguarded. There is also an obligation on the corporation to cover the waste with soil if so required.

Incidentally, the corporation has accepted a commitment to make it possible to obtain enough water to operate up to its present planned and expanded basis. The chairman of the corporation has already announced that the corporation is planning to go up to 40,000 tons; that is, double the capacity that is being installed immediately.

The clause in the agreement, which was probably the most difficult to negotiate, was that dealing with the area to be granted to the corporation in the Ora Banda laterite nickel area. The clause granted to the corporation rights of occupancy over an area totalling 246 square miles until the 30th June, 1978, on condition that on the 30th June, 1975, and thereafter in the third party in each succeeding year, the corporation will surrender to the State one quarter of the original area.

Up to the 30th June, 1975, the rental shall be $8 per square mile per annum for such rental as is applicable to temporary reserves from time to time under the Mining Act. At that stage the area is being rented as a temporary reserve. After the 30th June, 1975, and for the balance of the period to the 30th June, 1978, the rental shall be in accordance with that applicable to leases under the Mining Act from time to time.

This is a much higher figure, but it was felt to be fair to give the corporation five years to endeavour to carry out a very detailed exploration programme in the Ora Banda area in order to prove a large enough volume of laterites to justify rail and other connections to the Kalgoorlie smelter, thereby expanding very considerably and for as far ahead as one can see, the reserves and the activities of the smelter. It is felt that after the 30th June, 1975, the full mining lease rates of rental, as applicable from time to time, should be paid for any areas that had not been converted into mineral leases in the meantime.

The operation is in two phases. The first phase of five years is on the basis of temporary reserve rental as varied from time to time, and the second phase of three years is on the basis of full lease rental, which will also add an inducement to encourage the corporation to convert
quickly the areas to mineral leases, because when they become mineral leases they become part of the agreement operation.

At any time during the right of occupancy period, the corporation will have the right to apply for and be granted mineral leases within the Ora Bands area as set out in one of the schedules attached to the agreement. The mineral leases will be for a period of 21 years with right of renewal for a further period of 21 years. Provision is made for a further renewal at the discretion of the Minister for Mines.

Clause 10 refers to the right of the corporation to obtain under certain conditions mineral leases in other areas. It is left to the discretion of the Minister for Mines of the day to grant additional leases under the conditions of this agreement, where it is satisfied that it is economical and otherwise desirable and logical for those areas to be processed through the smelter.

This is to ensure, as far as is possible at this particular time, the long life of this smelter on an expanding basis. It is an unusual clause, but I trust members will realise that the provisions in it are so tight and so much in the hands of the Government, as distinct from the corporation, that it is a desirable clause to have to enable additional life to be linked into this particular smelter.

Having made some reference to the disposal of slag and other waste residues, I come now to the question of possible air pollution from the smelter and this was a matter of particular concern during the negotiations of the agreement. Those members who know Kalgoorlie-Boulder well, will know that a lot of SO\textsubscript{2} has been poured over that area for a long time. In fact, some of the readings show that if the scientific calculations are correct there should be no grass or trees left in Kalgoorlie. However, other factors must be involved because they seem to have survived and to have become quite healthy in the process.

This does not mean to say that we could superimpose on the area another industry which would have an SO\textsubscript{2} problem and ignore its impact on the community. There is, however, a compensating factor in that, as some of the established gold-mines go out of production, the burden of SO\textsubscript{2} on the Kalgoorlie-Boulder area will lessen as new producers come in. However, we had some special studies made by the clean air people because the corporation comes under the Clean Air Act. As members will see, this is specifically mentioned. Although the situation is catered for by law, it was felt it should be specifically mentioned in this case.

The clean air people, in consultation with the corporation, arrived at a level of operation whereby if a chimney stack of not less than 500 feet was constructed, the burden of SO\textsubscript{2} would be at an acceptable level.

The smelter will be 9½ miles out of town, which gives the corporation an advantage. Of course, the higher the stack, the bigger the area— theoretically speaking—of drift and the less contamination and concentration.

The agreement is in rather legalistic language, but, in this case, the import is that if the measurements of SO\textsubscript{2} that are taken in Kalgoorlie-Boulder show that the level of SO\textsubscript{2} fallout is beyond the permitted limits, the corporation must cut back its production to comply with the declared maximum emission at this time of negotiations. For example, if the corporation is emitting SO\textsubscript{2} at a greater concentration and volume than it has declared at the present time—for instance, through a change in processing which is less efficient and emits more SO\textsubscript{2}—then it must cut back its production accordingly.

However, if somebody else is allowed to go into the area and is producing SO\textsubscript{2} and emitting it into the atmosphere and, as a result, lifts the reading over Kalgoorlie-Boulder to an unacceptable level, then, of course, checks would have to be made to see where the SO\textsubscript{2} came from. If this particular Western Mining Corporation smelter is operating within the declared limits approved by the clean air people, it would be quite unfair to make it cut back its production. Whoever is the culprit will have to cut back.

There is a scientific timetable of tests and the corporation and the Government will make parallel tests, one as a check against the other, in case one fails. The corporation has been given a rate of emission to which it has agreed. The permitted rate is 20 parts per 100,000,000.

It is considered to be a fact that people who live in such areas develop an immunity or an indifference to the SO\textsubscript{2}. It is strange that towns which are traditionally engaged in a particular industry do not seem to be as sensitive to this sort of thing as other towns. For instance, Kalgoorlie is not as sensitive to SO\textsubscript{2} as Kwinana. Kwinana is just becoming accustomed to the power station and other industries which emit SO\textsubscript{2}, whilst people in Kalgoorlie have lived for many years in an atmosphere of a fairly substantial SO\textsubscript{2} emission.

However, that has not prevented us from going into the matter very thoroughly because we hope this will not be the only smelter to be established near Kalgoorlie. Therefore it is a good time to think about the problem because if we succeed with this project, obviously the next one will conform.
The agreement provides that the corporation will establish within five years a plant to extract the SO₂ and produce sulphuric acid or elemental sulphur, or use the sulphur for metallurgical processes—or some of each. The agreement contains a rather unusual clause which provides that the corporation must do that as a positive commitment, unless it can demonstrate to the satisfaction of the Government that it is economically or technically impracticable.

The corporation wants to get into the sulphuric acid business because, I understand, the process which is planned is the most likely one with which to make use of sulphur in its own metallurgical process.

The agreement also grants the corporation the right to generate its own requirement of electric power. Any surplus power may be sold to customers approved by the State provided they are engaged in mining in the vicinity of the smelter site. The corporation has to obtain the normal license from the S.E.C. It is not considered that this will present any difficulty if there is a surplus capacity and the supply of power to people engaged in mining in the vicinity of the smelter is approved by the S.E.C. A situation could arise whereby somebody could obtain cheap power because the smelter is in existence and can sell surplus power. However, the supply of such power is subject to the corporation's obtaining the necessary license to sell, as I have explained.

It is doubtful whether the corporation would be competing with the Kalgoorlie power station in this direction, but if it does compete with it, it will be because the S.E.C.—the governing authority—has decided it is desirable that it should. I understand the conditions under which the commission issues permits for power to be sold are fairly stiff and I feel we can leave the matter in its hands.

The agreement contains a clause whereby the State will use its best endeavours to make available land for housing purposes. There is no obligation on the State to construct houses. This obligation could not be accepted. The Government will assist the corporation in its negotiations for housing finance but it is not obliged to find the money.

The clauses from 16 onwards in the agreement represent a difficult part on which to arrive at a mutually satisfactory arrangement, due to the fact that the State Government has not the capital with which to provide locomotives, rolling stock, permanent way, and ancillary equipment.

The agreement provides that the State will obtain the authority of Parliament to reconstruct to a standard gauge railway line between Kalgoorlie and Lake Lefroy, two spur lines—one to the smelter and another to the mill area at the Kambalda mine—and to reconstruct to a standard gauge railway, the existing line between Lake Lefroy and Esperance. Provided the necessary financial assistance can be obtained from the Commonwealth Government, or funds become available from another source, the work will be carried out.

We still have this last link in the chain to complete and my colleague, the Minister for Railways and Minister for Transport, is engaged actively on this but with the money obtained from the Western Mining Corporation and from the Lake Lefroy salt project, the gap should be a comparatively small one.

The corporation's contribution to the work will be $9,000,000. In return for its contribution, the corporation has been granted a special freight rate of 1.8c per ton mile, which is conditional upon the corporation providing its own rolling stock to the Railways Department specifications and meeting many other requirements of the Railways Department in respect of minimum payloads, etc. This freight rate is rather unusual. It is a flat rate of 1.8c per ton mile while normally the rate charged varies according to the distance. But this rate applies also to all the ore, concentrates, etc. that are carried between Kambalda and Kalgoorlie, between Kambalda and Esperance, and between Kambalda and Kwinana—in fact, between any of those points.

The agreement provides for a minimum payload of 1,500 tons per train. There is also a provision that each of the wagons shall carry its proper payload otherwise the whole railway proposition could become uneconomical.

We could in this respect conjecture that if anyone else comes along with a proposition for a similar concession and is prepared to put up the capital to provide locomotives, rolling stock, and ancillary equipment, and guarantee the carriage of tonnages that will be guaranteed by this corporation, I would think such person would not have much trouble in convincing the Railways Department to enter into a similar agreement.

However, getting back to this agreement, if we look at the rate of 1.8c per ton mile, it is not much lower than or even as low on a per ton basis as the rate per ton if the corporation did not put up any capital and sent the concentrates across to Port Pirie on a backloading basis.

It is very important that members understand these provisions because we do not want an misunderstanding about this, in having the first of the smelters established on the goldfields.

This freight rate applies in respect of all ore and concentrates going to the smelter, whether it be the corporation's own ore or ore it has purchased from other mines,
or ore that has to be tolled, but there is one distinction in respect of the product that comes out— that is, the nickel matte, when it comes out of the smelter and goes for the freight rate down to the refinery, or for export, as the case may be, but to Kwinana in each case.

If the nickel matte is the product of tolled ore, then it will bear the normal rate to the coast whether it goes to Esperance or elsewhere. I think that is fair because it is in a different category from company mined or bought ore.

There is provision in the agreement which states that the freight rate will escalate in accordance with the freight rate set out in the agreement and at the end of 15 years' operation, the freight rate structure has to be reviewed within the guidelines set down in the agreement.

The idea of this is to avoid the situation where with the escalation clause working, the practical cost structure is likely to get ahead of the increases in freight rates and therefore instead of the railways continuing to make a profit they could fall behind. We do not think this will be the case but we have to provide for a complete review within the agreement's guidelines. The compensating provision is that there shall be profitable operation of the railways and if after 15 years the escalation clause is not satisfactory, there would have to be a renegotiated freight rate which would ensure a continuing profitable operation for the railways. Royalties at the end of 10 years are undoubtedly in the hands of the Government of the day. If we want the smelter against the adverse economics of the Kalgoorlie location, I do not believe the agreement could have been negotiated on a different basis from this. The corporation has not been given all it wanted but it has been given as much as we are prepared to give.

There has been tremendous pressure on the present Minister for Railways for a special freight rate for fuel oil for power generation on the goldfields. This has never been conceded because it would have created a precedent. In this case, we have refused the special freight rate for fuel oil to be used for power generation on the goldfields. This has never been conceded because it would have created a precedent. In this case, we have refused the special freight rate for fuel oil where it comes out of the smelter, qualifies for the lower rate to the coast, and operates the system. That would include the provision of locomotives, rolling stock, and so on.

If during the time the Government decides it will install a system of its own, then the corporation's rights to put forward a proposition are automatically cancelled.

The last clause of the agreement sets out that if the corporation puts forward a proposition that is acceptable to the Government and the corporation builds and operates the line—the Government has the last say in respect of the standard gauge railway running north from Kalgoorlie—then the Government can acquire this line in accordance with the guidelines set out in the agreement if it desires, and in such circumstances it will ensure a freight service to the corporation at the cost it is incurring in operating the service itself, plus a reasonable margin of profit and with provision for the escalation of cost.

I think this is a reasonable approach, and one which it is wise to accept because the approval of any proposition that is put forward within five years is entirely in the hands of the Government, and in this instance provision is not to be made. If the Government decides to build a railway system north of Kalgoorlie it automatically cancels the corporation's right to put forward a proposition.

I have covered the main points in some detail because this is the first smelter in the area. I would like to table a plan which shows the location of the smelter site, and commend the Bill to members. Also of interest are a plan of the temporary reserve area and a small bottle of granulated nickel matte.
I am sorry this explanation has taken so long. I am grateful for the hearing members have given me.

The plans and sample of nickel matte were tabled.

Debate adjourned, on motion by The Hon. R. H. C. Stubbs.

POISONS ACT AMENDMENT BILL

Returned

Bill returned from the Assembly without amendment.

ADJOURNMENT OF THE HOUSE:

SPECIAL

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Mines) [10.22 p.m.]: I move—

That the House at its rising adjourn until 2.30 p.m. on Tuesday, the 17th November.

Question put and passed.

House adjourned at 10.23 p.m.

Legislative Assembly

Thursday, the 12th November, 1970

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

QUESTIONS (23): ON NOTICE

1. This question was postponed.

2. TRAFFIC

School Crosswalks

Mr. CASH, to the Minister for Traffic:

(1) How many school crosswalks have been approved during 1970?

(2) How many requests have been rejected?

(3) What criteria are used by the schools crossing review committee when assessing crosswalk needs in school areas?

Mr. BOVELL (for Mr. Craig) replied:

(1) 21.

(2) 20.

(3) (a) Ages of children concerned—whether attending infants, primary or high school.

(b) Width of road to be crossed, type of surface.

(c) Maximum speed limit of vehicles permitted.

(d) Type of vehicles using the roads in that area.

(e) Warning signs already in area, restrictions of visibility for the child, the driver, or both, caused by a bend, dip, a hill in the road and parked vehicles in the area.

(f) Restriction of visibility to both drivers and child caused by rising or setting sun.

(g) Number of motor vehicles passing.

(h) Configuration of roads in vicinity.

(i) Noise of any industry or other activity in the area which would distract the child or smother the sound of approaching vehicles.

(j) Other hazards such as lack of footpaths, kerbing, etc.

3. This question was postponed.

4. CONSUMER PROTECTION COUNCIL

Establishment

Mr. CASH, to the Premier:

In regard to consumer protection, when can a statement be expected of the Government's intentions relating to the establishment of a consumer protection council or for the appointment of a commissioner for consumer affairs?

Sir DAVID BRAND replied:

The matter of consumer protection has been under consideration by the Standing Committee of Attorneys General. Professor Rogerson and his colleagues at the Adelaide University prepared a report which is now being examined by Crown legal officers in Victoria who will submit a paper for consideration of the Standing Committee.

Additionally, the State Department of Labour has been requested to examine existing and proposed legislation of other States with a view to advising the Government as to what action should be taken.

TOWN PLANNING

Land: Area Zoned Rural

Mr. DUNN, to the Minister representing the Minister for Town Planning: What area of land is zoned rural under the metropolitan region scheme as at today's date?

Mr. LEWIS replied:

650,754 acres.

6 to 10. These questions were postponed.