Legislative Council

Wednesday, 4 April 1984

The PRESIDENT (Hon. Clive Griffiths) took the Chair at 2.15 p.m., and read prayers.

DEPUTY CHAIRMAN OF COMMITTEES

Appointment

On motion without notice by the Hon. D. K. Dans (Leader of the House), the Hon. P. H. Lockyer was appointed as a Deputy Chairman of Committees in place of the Hon. I. G. Pratt.

STANDING ORDERS COMMITTEE

Membership

On motion without notice by the Hon. D. K. Dans (Leader of the House), the Hon. P. H. Lockyer was appointed a member of the Standing Orders Committee in place of the Hon. I. G. Pratt.

ACTS AMENDMENT AND REPEAL (INDUSTRIAL RELATIONS) BILL 1984

Introduction and First Reading

Bill introduced, on motion by the Hon. D. K. Dans (Minister for Industrial Relations), and read a first time.

Second Reading

HON. D. K. DANS (South Metropolitan—Minister for Industrial Relations) [2.31 p.m.]: I move—

That the Bill be now read a second time.

On 10 November 1983, I introduced the Acts Amendment and Repeal (Industrial Relations) Bill 1983 into this House to amend the Industrial Arbitration Act. Due to delays which were imposed on the passage of the Government's legislative programme, consideration of the Bill was deferred until the autumn session of Parliament beginning on 22 March 1984.

In view of the delay, the Government, with the agreement of the Acting Leader of the Opposition in the Legislative Council, withdrew the Bill from the Legislative Council on 20 December 1983. In that the Government wished to continue consultation on the Bill with interested parties, withdrawing the Bill would allow for any changes to be incorporated in it. This would make the Bill easier to understand and debate when it was reintroduced.

Besides the Government taking the opportunity itself to review the provisions of the Bill, interested organisations and individuals also made submissions to the Government in respect of it. Arising from these submissions and discussions the Government has made some amendments to the withdrawn Acts Amendment and Repeal (Industrial Relations) Bill 1983.

The amendments are in the main of a simple drafting nature. The major policy amendments are as follows—

The definition of "employee" has been qualified to make clear that the intention is to bring within the jurisdiction of the Industrial Commission only those persons who perform work for labour only or substantially labour only;

academic salaried staff are to have access to the Industrial Commission generally, rather than through the Public Service arbitrator division;

the definition of "industrial matter" for Government officers and teachers is to be widened to provide these employees with access to the Industrial Commission similar to that which employees generally will have;

specific provision is to be made to allow for casual vacancies for union officers to be filled by the collegiate electoral system; this change will follow a 1983 amendment to the Commonwealth Conciliation and Arbitration Act to bring about uniformity;

section 66(2) of the Industrial Arbitration Act is amended to remove the possible liability of the Attorney General to meet the legal costs of parties associated with inquiries on alleged union election irregularities.

The Government is of the view that industrial law in this State does not provide an adequate framework for the prevention and resolution of industrial conflict. In fact it would be true to say the shortcomings in the present Industrial Arbitration Act are the cause of many industrial disputes rather than the means by which they are resolved.

The present industrial laws restrict the parties directly concerned—employers and unions—from reaching agreements based on their own deliberations. The removal of preference from the jurisdiction of the Industrial Commission and the related part VIA provisions, are such examples.

The Labor Party offered to the people of Western Australia a fresh new approach to the State's industrial laws. We do not believe that any series of amendments to the State's Industrial Arbitration Act can properly and responsibly be pres-

ented as the universal and instant panacea for the industrial relations problems confronting the State. It is possible, however, to achieve an environment in which the industrial relations participants are encouraged to resolve their differences in a manner which minimises disruption and inconvenience to the community at large. This Government sees its role in industrial relations as fostering the creation of that environment.

Hon. G. E. Masters: You have done well so far.

Hon. D. K. DANS: One practical way to achieve that end is to rewrite the Industrial Arbitration Act to accord with those views of unions and employers which are consistent with an orderly, rational, and fair industrial relations system, while at the same time ensuring that the broader interests of the community are safeguarded.

As soon as we became the Government, we set about establishing links with the employers, unions, and other bodies involved in industrial relations so that the necessary decisions could be preceded by consultation and based, as far as was possible, on consensus.

Prior to winning Government, we formulated a green paper on industrial relations and distributed this widely in the community. That green paper was discussed with employers and trade unions and received widespread community support. It contained a number of specific commitments to reform the industrial arbitration system. In addition, the Labor Party clearly enunciated its policies on the prevention and settlement of industrial disputes and industrial relations in general.

Consistent with and central to the thrust of Labor Party policy was the proposal to establish a permanent process of tripartite consultation on significant industrial relations matters. The policy provides that—

> Once in power, Labor will establish a permanent tripartite council which will consider and report to the Government and, if necessary, the Parliament, on legislative priorities, reforms and administrative steps necessary to improve industrial relations in Western Australia;
>
> while having its own views and electoral obligations, a Labor Government will, nonetheless, adhere to this consultative process and seek consensus;
>
> employers and unions will be expected to do the same;
>
> when an agreement is reached immediate steps will be taken to implement it; if, despite exhaustive effort, there is disagreement in whole or in part and resort to independent inquiry is not appropriate, a report of each organisation's position and views shall be made to Parliament;
>
> Labor does not in any way resile from its fundamental responsibility to the electorate; however, it recognises that business and unions are important elements in the social and industrial process; progress and stable government requires that they must be treated as such.

An interim tripartite committee was formed in April 1983 for the purpose of discussing the Industrial Arbitration Act and changes which were necessary. The tripartite committee met on seven occasions between 13 May and 8 July. The committee—

> Called for submissions from the public in open advertisement;
>
> wrote to interested organisations seeking general submissions;
>
> wrote to particular individuals and organisations seeking their response to a number of specific questions being considered by the committee; and
>
> gave detailed consideration to the submissions, replies and background papers presented to it.

In total, 114 submissions were received from members of the public and organisations. Agreement was reached on a large number of issues before the committee.

While the tripartite committee was considering the vital questions of who should have access to the Industrial Commission and what matters ought to be capable of arbitrated settlement, the High Court delivered its landmark decision in the social welfare union case. That decision reversed 60 years of restrictive High Court decision-making limiting the class of employee who had access to the Commonwealth commission.

The effect of the decision will be to give access to the Commonwealth commission to many employees currently excluded. It may also mean that the range of matters considered to be "industrial matters" may be expanded by that decision. The High Court stated—

> It is, we think, beyond question that the popular meaning of "industrial disputes" includes disputes between employees and employers about the terms of employment and the conditions of work.

We reject any notion that the adjective "industrial" imports some restriction which confines the constitutional conception of "industrial

disputes" to disputes in productive industry and organised business carried on for the purpose of making profits. The popular meaning of the expression no doubt extends more widely to embrace disputes between parties other than employer and employee, such as demarcation disputes, but just how widely it may extend is not a matter of present concern. This expanded Federal approach should be followed at a State level in order to ensure greater consistency between tribunals.

The ALP-ACTU prices and incomes accord, the economic summit communique, and the most recent national wage cases have all highlighted the importance and desirability of greater co-ordination and consistency between State and Commonwealth industrial relations systems.

In addition to the High Court decision in the social welfare union case and the growing need for Commonwealth-State co-operation in industrial relations, the Government and the tripartite committee used the 1978 report of the then Senior Industrial Commissioner, E. R. Kelly, as an important recent inquiry into the Industrial Arbitration Act. Many of the recommendations of Mr Kelly are incorporated in this Bill.

The tripartite committee was aware of the express policy commitments of the Government, for which I believe we have a mandate from the people of Western Australia. In relation to industrial arbitration that policy provides—

> Consistent with its objective, Labor will amend the Arbitration Act to promote consultation as the prime method of dispute settlement and wage and employment conditions determination. In doing so Labor recognises that the existence of an arbitration system is essential to good industrial relations as long as it reflects the principle of justice and equity and that one side, employer or union, is not weaker than the other.
>
> Specifically, Labor will—
>
> 1. Broaden the definition of "Industrial Matter" to give jurisdiction to the Arbitration Commission to deal with any matter which gives rise to industrial disputation;
> 2. Enhance the jurisdiction of the Arbitration Commission to enable it to deal with all who stand in an employee relationship with their employer. Without limiting the generality of that definition jurisdiction will be conferred on the commission to deal with agricultural, pastoral and domestic workers, sub-contractors, teachers and academics;
> 3. Require any party purporting to represent the public interest to first establish before the commission what that public interest is and whether on the basis of it, intervention should be granted;
> 4. Ensure that awards and/or agreements cannot be varied or interfered with other than by those party to them;
> 5. Require that unions are free to conduct their affairs as long as they conduct them democratically;
> 6. Guarantee to individuals who believe they are being adversely affected by union rules, the right to seek legal remedy;
> 7. Eliminate harsh and unworkable penalties;
> 8. Amend the Promotions Appeal Act to give Government employment promotional justice;
> 9. Enable unions who, within the terms of their constitution and rules, have decided to amalgamate, to do so by unifying their constitutions; always provided that any qualification or arrangements made between any of the amalgamating union and other unions will be *mutatis mutandis* maintained;
> 10. Confine industrial matters to industrial law and insulate the industrial field from the intrusion of other legislation which does not have industrial purposes, such as the Trade Practices Act and actions for tort;
> 11. Reintroduce the power of the Industrial Commission to grant the inclusion of "preference to union members" clauses in awards.

All of the policy aims except point 10 are reflected in the Bill.

The report of the tripartite committee was tabled for the information of members by me in this House on 10 November 1983. That report is comprehensive and sets out the detailed deliberations of the committee and contains the submissions received from the peak organisations involved in industrial relations in this State. The report also lists other persons who were approached to provide submissions and those who did.

I would like to record my sincere appreciation of the work done by the members of the tripartite committee. I express the hope that the legislation before the House, which represents the fruits of

their labour, adequately reflects the commitment, energy, and dedication with which they approached their task.

To assist members in reading the Bill I now table a detailed clause by clause explanatory memorandum.

The document was tabled (see paper No. 736).

Hon. D. K. DANS: I turn now to refer in more detail to the changes proposed.

Consistent with the preferred use of conciliation as a means of preventing and settling disputes between employers and employees, the title of the Act is to be changed to the Industrial Relations Act. The use of this title also reflects the wider range of employees who will have access to the commission. Teachers employed by the Minister for Education under the Education Act, Government officers, and railway officers will come within the commission's jurisdiction from now on. Similarly, the commission will be retitled the Western Australian industrial relations commission. The ACTU-ALP prices and incomes accord and what has flowed from it have emphasised the need for a greater co-ordination and the degree of co-operation between the Commonwealth and State industrial relations systems.

Section 6 of the Act is proposed to be amended to adopt as the objects of the Act, those objects which apply in the Commonwealth Act. Two significant additions to those Commonwealth objects are—

(i) Seeking to encourage communication, consultation and co-operation between Commonwealth and State industrial relations systems; and

(ii) A qualification to the object relating to encouraging union registration, which has the effect of avoiding overlapping union coverage of employees; it is hoped that this may assist in avoiding damaging inter-union demarcation disputes in the future.

The second significant addition to the Act relating to Commonwealth-State industrial relations systems is in part IIC—arrangements with other industrial authorities. This part enacts the provisions of the Commonwealth Complementary Industrial Relations Systems Bill, which was introduced into the Federal Parliament by the Fraser Government but not proceeded with before the 5 March Federal election.

This legislation was developed by the Commonwealth-State Departments of Labour advisory committee working party on complementary industrial relations systems established by the Ministers for Labour advisory committee. The Federal Labor Government has proceeded with that legislation. The States of Queensland and New South Wales have already passed amendments to their State Industrial Relations Acts along similar lines.

Those sections of part IIC which relate to conferences with other industrial authorities were included following a decision taken at a heads of industrial tribunals conference earlier this year. Each of these provisions will assist in obviating the significant disabilities imposed on industrial relations by the joint and overlapping operation of the State and Commonwealth systems.

The previous Government legislated to expand the definition of "employee" into the area of owner-drivers and subcontractors. This extended definition of "employee" had its origins in the report of Senior Industrial Commissioner Mr Eric Kelly, who said—

> Common law tests for determining whether a relationship is one of employer and employee or one of employer and independent contractor are often less than satisfactory in the modern industrial relations context and I am satisfied that a need exists for the commission to be able to declare certain contracts or pseudo-contracts to be contracts of employment for the purposes of the Act where it is apparent that they are harsh and unconscionable or designed to avoid the conditions of awards which would otherwise be applicable.
>
> Similar powers have existed in the industrial laws of Queensland and New South Wales for many years (see definition "employee" in section 5 of the Queensland Industrial Conciliation and Arbitration Act and sections 88C, 88E and 88F of the New South Wales Industrial Arbitration Act).

It is a matter of record that the commission and the Industrial Appeals Court found that the words used in the expanded definition of "employee" had a very limited application. I refer members to TWU v. Readymix 61 WAIG 1705.

This Bill seeks to extend the definition of "employee" in a meaningful way to include—

(i) Any person performing work under a contract for services for labour only or substantially for labour only;

(ii) any person who is—

(a) the lessee of tools of production, or

(b) the owner or lessee of a vehicle used in the performance of work; and

who performs work the characteristics of which are substantially the same as those applicable if he were an employee within the meaning of another part of the definition of "employee". This will tie the application of this provision back to persons who work for labour only or substantially labour only.

The Bill excludes certain corporate and employment arrangements from determination of the question of whether a particular person is an employee for the purposes of the Act.

To complement the expanded definition of "employee", new section 80ZF gives the commission power to declare void any contract whereby a person performs work if that contract is unfair, harsh, against the public interest or avoids award conditions. This provision is taken from section 88F of the New South Wales Industrial Arbitration Act. It will ensure that employment-related contracts which are inherently unfair can be corrected by an equity based tribunal. This provision has existed unchanged in New South Wales since 1959.

The definition of "employee" is to be extended to include the following classes of person currently excluded—

Academic staff of post-secondary education institutions;

some domestic employees;

employees of the Parliament and the Governor;

railway officers;

teaching staff of the Education Department; and

public servants.

The definition of "industrial matter", which is the basic source of the commission's power, is proposed to be extended by—

(i) Removing those unnecessary and disruptive exclusions which were inserted by the previous Government, including—

benefits for injured workers;
union membership;
housing rentals;
collection of union dues; and
matters of management prerogative;

(ii) specific legislative additions to the definition of "industrial matter" such as—

in relation to union subscriptions, the ratification of an agreement or restoration of a practice of deduction become industrial matters;.

membership or non-membership of an organisation becomes an industrial matter, but the commission is prevented from making any general order on the subject and all existing preference clauses are repealed from awards.

One of the consistent views presented by all parties to the tripartite committee was the need to distance the resolution of industrial conflict from legal form and technicalities. One change which reflects that position is the altered requirements for appointment to the position of president and the status and style which go with the position. By this Bill, future appointees to the office of president will be required to be legally qualified but the position will not attract judicial style and status.

The conditions for appointment of chief commissioner have been modified to delete the legal qualification requirement and place emphasis on experience at a high level in industrial relations. Elsewhere in the legislation this idea is further advanced.

The Bill has as its central theme the resolution of industrial conflict at its source by discussion, conciliation, and, if all else fails, arbitration. In new section 32 an obligation will be placed on the commission to attempt to resolve any conflict or disagreement by conciliation. In this respect, several amendments to this Act are modelled on provisions in the Commonwealth Act.

The commission will be empowered, in endeavouring to resolve a dispute by conciliation, to—

(a) Arrange conferences;

(b) give directions and make orders to prevent a deterioration of industrial relations and to enable conciliation or arbitration to resolve the matter;

(c) by order, encourage the parties to divulge attitudes or information which would assist in the resolution of the matter; and

(d) do all things right and proper to assist the parties to reach agreement for settlement of the matter.

A section 32 "conciliation order" will be designed to deal with the cause of conflict and disputation—not as does the current legislation, with its effect. By concentrating on the cause, disputes should be settled more speedily and permanently. Section 45 has become a discredited and inefficient provision in the Act and is accordingly to be repealed.

It is imperative that all parties abide by conciliation orders. Failure to accept the authority of the commission reduces the credibility of the system and creates community dissatisfaction with the system of conciliation and arbitration. The continued use of some form of enforcement of commission orders is therefore necessary in the continuation of an effective industrial system.

Accordingly, those parts of section 45 relating to orders and their enforcement which are compatible with the approach outlined are retained in new section 32 and are turned to the support of a conflict resolution system based on conciliation.

The Act is proposed to be amended to remove the current limitation on the commission's power to determine a fair date from which any decision it makes will apply, and to generally streamline the operation of the commission in its dispute-preventing and settling role.

A new section 51A relating to public sector discipline is to be inserted in the Act. This provision will enable the commission to make general orders covering employees of public authorities. The general order would be envisaged to cover matters relating to discipline, termination of employment, natural justice, and procedures to be followed. Any employee covered by disciplinary provisions in other Statutes will be excluded from such general orders.

The amendments proposed to the Act seek to simplify and streamline the procedures to be followed relating to union rules, registration, and control of unions by members. The amendments seek to avoid overlapping coverage by unions which has given rise to lengthy and expensive litigation and disputation.

The provisions relating to amalgamation have endeavoured to encourage unions to amalgamate subject to the wishes of their membership. Currently, 68 unions are registered under the State Act. Of these, 40 unions have less than 1 000 members and only five have more than 10 000 members.

It is important for the operation of the State's industrial relations system that both unions and employers have adequate resources and operate from a position of equality. The fragmentation of the union movement has mitigated against this development of a balance.

The reforms proposed will remove most impediments to amalgamation for those organisations desiring to amalgamate, and should result in a more effective union movement. These proposals had the full support of the interim industrial relations tripartite committee.

The Government School Teachers' Tribunal, Public Service Arbitrator, Railways Classification Board and Promotions Appeal Board have each been abolished and re-enacted as divisions of the commission.

In relation to teachers, the tribunal will cover all teaching staff employed by the Minister for Education. The constitution of the tribunal is not significantly changed. There has been an addition to its jurisdiction and decisions of the School Teachers' Tribunal may now be appealed to the Full Bench of the Industrial Commission. The chairman of the tribunal will be a commissioner appointed by the Chief Commissioner and the tribunal will generally follow the same procedures and exercise the same powers as the commission.

In relation to the Public Service Arbitrator, essentially the same format has been followed. In addition, those salaried employees of public authorities who for historical reasons have not been classified as Government officers, will in future be dealt with by the Public Service Arbitrator division of the commission. This will ensure greater uniformity of treatment for salaried employees of all public authorities.

The Public Service reclassification appeal system is to be replaced by a right to apply to the commission to review the salary and classification of any position within the principles of wage determination set by the commission. As a necessary consequence of having this division of the commission regulate all salaried employees of public authorities, access to this division of the commission will be open to organisations other than the Civil Service Association. For the purposes of medical practitioners in public hospitals only, the Australian Medical Association is given the same standing as any other organisation.

The Railways Classification Board is altered only to the extent that a commissioner will become a chairman rather than a magistrate, and appeal rights to the Full Bench are provided.

The abolition and re-enactment of the Promotions Appeal Board as a division of the commission will bring together promotions within the various public authorities from a currently fragmented system. One central promotions appeal system for all public authorities which cuts across barriers based on the class of worker involved is proposed.

Decisions of the commission constituted by the Promotions Appeal Board will not be appealable. The provisions contained in the Bill are generally a modification of the current Promotions Appeal Board legislation and the relevant provisions from the Public Service Act.

The commission will be empowered to inquire into any report to the Minister on any matter which may affect industrial relations which has been referred to it by the Minister. A similar power exists in the Queensland Conciliation and Arbitration Act and in the New South Wales Industrial Arbitration Act and was recently used to conduct an inquiry into and report on retail trading hours in New South Wales.

The industrial magistrate is to be confined to the enforcement of orders and awards which relate to a contract of employment. The enforcement of provisions of the Act and orders of the commission made in conciliation proceedings or union rule observance proceedings will be dealt with by the Full Bench of the Industrial Commission. The time within which proceedings before the magistrate, and the period in respect of which underpaid wages may be recovered will be aligned with the provisions of the Commonwealth Act.

The Local Court action for recovery of a debt, which is similar in substance to an action for breach of award, has the same time constraints as are now proposed for award breaches before the industrial magistrate.

In order to give effect to the requirements of the Act, a two tier enforcement structure has been proposed. New section 84A will enable any contravention or failure to comply with the Act, conciliation order, or order in relation to observance of union rules, to be dealt with by the Full Bench in what is primarily a conciliatory role. It is hoped that the need for penalty provisions will become unnecessary after conciliation proceedings before the Full Bench.

New section 84B allows for the deregistration of organisations where the Full Bench is satisfied that the objects of the Act would be better served by cancelling registration. This is a weapon of last resort which desirably will be used only when all other measures have failed.

New section 97 substantially accepts the recommendations of the Kelly report relating to exemption from union membership and merely requires the payment of the equivalent of union dues to Consolidated Revenue with no requirement to establish a "conscientious" objection to union membership. This provision is necessary as a result of the repeal of part VIA and the expansion of the definition of "industrial matter" to include matters related to union membership.

In summary, the amendments aim to—

(i) Bring greater uniformity between State and Commonwealth legislation;

(ii) place greater emphasis on conciliation and thereby put a greater onus on parties directly concerned to arrive at consensus;

(iii) bring existing industrial tribunals within the Industrial Commission to achieve uniformity and reap the benefits of such rationalisation;

(iv) provide the Industrial Commission with greater flexibility so that it can respond more quickly where necessary in the settlement of dispute process;

(v) provide greater support to the maintenance of industrial awards objectively and fairly determined by the Industrial Commission.

Generally, the provisions of this amending Bill seek to improve the efficient operation of the Act. Unworkable provisions have been removed and, where appropriate, replaced by arrangements which people involved in day-to-day industrial relations believe will work.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. G. E. Masters.

BUILDERS' REGISTRATION AMENDMENT BILL 1984

Introduction and First Reading

Bill introduced, on motion by the Hon. Peter Dowding (Minister for Consumer Affairs), and read a first time.

Second Reading

Leave granted to proceed forthwith to the second reading.

HON. PETER DOWDING (North—Minister for Consumer Affairs) [3.02 p.m.]: I move—

That the Bill be now read a second time.

The purpose of this Bill is twofold following amendments made to the Builders' Registration Act last year.

Firstly, this Bill will entitle the Builders' Registration Board to take into account at the time of application for registration and subsequently, in relation to the revocation of that registration, the material and financial resources available to a builder to meet his financial obligations as and when they become due. This proposal has the support of the Builders' Registration Board.

The board will be entitled at the time of an application to consider the financial resources of a builder, particularly in circumstances where a builder who has recently failed seeks to recom-

mence operations under a new corporate structure, such as a $2 company. The board has in the past experienced situations similar to this where the Act as presently drafted does not permit the board an opportunity of refusing registration. Such registrations can adversely affect the interests of consumers, and it is this situation which the amendment seeks to overcome.

While the Bill does not require in all instances the board to consider the financial circumstances of the builder, the provisions in the Bill would entitle it to do so in appropriate circumstances, particularly where there may be cause for concern as to the builder's viability. Conversely, the board will be entitled to cancel registration when it becomes apparent that a builder is insolvent and unable to meet his financial commitments.

The Bill also clarifies the position of appeals from decisions or orders of the board. the existing provisions relating to appeals from applications for or cancellation of registration or from orders made in relation to rectification or the payment of money are presently contained in two different sections with different appeal provisions.

New section 14 proposes that an appeal from a decision or order of the board be to the Local Court. Appeals are to be determined by way of rehearing. The new section replaces existing section 14, and section 12A subsections (2) and (3), and makes uniform the procedures, time limits, and powers of the Local Court in relation to appeals from decisions and orders of the board.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. I. G. Pratt.

WAR RELIEF FUNDS REPEAL BILL 1984

Third Reading

HON. D. K. DANS (South Metropolitan—Leader of the House) [3.05 p.m.]: I move—

That the Bill be now read a third time.

During yesterday's debate, Mr Masters asked me a valid question. I am advised that the Council of War Relief Funds decided that the funds remaining in the war relief funds account would be divided between the eligible recipients applying during 1984 for Christmas cheques. An amount of $2 520 was distributed between 14 recipients. The balance of the bank account as at 30 June 1983 was $242.91 after $2 626.71 was handed to the Air Force Association WA Division (Inc.) for the McIntosh Memorial Fund on 5 October 1983. I only found that out by checking with the Air Force Association.

Question put and passed.

Bill read a third time and transmitted to the Assembly.

FATAL ACCIDENTS AMENDMENT BILL 1984

In Committee

Resumed from 3 April. The Chairman of Committees (the Hon. D. J. Wordsworth) in the Chair; the Hon. J. M. Berinson (Attorney General) in charge of the Bill.

Clause 9: Schedule 2 added—

Progress was reported after the clause had been partly considered.

Hon. J. M. BERINSON: Yesterday, the Leader of the Opposition asked whether there was any significance in the omission of the words "as husband or wife" from paragraph (h) of schedule 2. I suggested then that I did not see any significance in that omission, and that this was supported by the fact that the preamble included the phrase "although not married". Taken together with the later reference to bona fide domestic relationships, that had the effect of limiting the provision to the traditional *de facto* relationship. However, I undertook to consider the matter further.

Further consideration confirms my first impression. Indeed, apart from looking to the traditional *de facto* spouse position, there would be no point to the words "although not married" in the preamble to paragraph (h). Without those words, it would be noted that we would have a provision that any person who lived with a deceased person on a permanent and bona fide domestic basis, etc., would be a relative for the purposes of the amended Act. The effect of including the words "although not married" can only be to draw attention to the intention to cover the traditional *de facto* relationship.

Another reason in support of the proposed terminology is that it follows what I would expect the Leader of the Opposition would accept as a most respectable set of precedents; namely, his own. I refer in this respect to the Housing Act of 1980, which was passed by the Parliament in the time that the Leader of the Opposition was Attorney General, and in which Act the word "spouse" is defined in the following way: Spouse in relation to a person includes a person living with the first mentioned person on a permanent and bona fide domestic basis. Very similar terminology also adopted in the period of the last Government appears in the Workers' Compensation and Assistance Act. Under the definition of "spouse" we find the words " . . . lives with the worker on a permanent or bona fide domestic

basis". So again this domestic basis founds the description of the relationship.

I should concede in advance of further discussion that in the case of the Workers' Compensation and Assistance Act there is a preamble which makes even clearer than does this Bill or the Housing Act that we are indeed looking at the traditional *de facto* relationship.

Against this background I put it to the Committee that we are presented with sensible precedents which have established a pattern of description which adequately covers the situation sought to be covered, and that it would be undesirable at this stage again to change tack, so to speak, and to find yet another way of describing the situation we want covered.

Against this background—that is, that the words do cover the situation sought to be covered and that they implement a pattern which has come to be generally adopted over the last few years—I suggest to the Committee that the provision as presently provided is adequate for our purposes and that there is no need to move further to the particular wording of the original Law Reform Commission report, which preceded all these developments by some years.

Hon. I. G. MEDCALF: I deny all responsibility for the Housing Act; likewise I deny all responsibility for the Workers' Compensation and Assistance Act. Neither of them came within my portfolio; nor was I consulted on the terms that may or may not have been used in those Statutes. However, even if the Parliament did pass those Acts—I freely admit it did—those Acts were not dealing with spouses as such and as so defined. We are not dealing with a spouse as so defined.

The Attorney General is endeavouring to import into these particular words the word "spouse", as indeed so am I. Our object is identical; that is, to restrict this claim to the wife or husband, the spouse, the *de facto* spouse in this case, the common law wife or husband unmarried in the strict sense of registration of marriage. But there is no reference here to "spouse", and that is really the burden of my complaint. I am merely saying, "Let's have a reference to spouse by saying a wife or husband". That is really all I have said.

My authority for this is none other than the Law Reform Commission, which made a recommendation to the same effect. I do not regard this as a matter of terribly great moment, although I would not like the Attorney General to rely upon the passage of some subsequent legislation, which I shall not name for fear of breaching Standing Orders, whereby the intention of Parliament is to be divined from what is said in *Hansard*, because if that were not passed the courts may not at some future date appreciate that we intended to include only the *de facto* spouse. As I said, it is not a matter of great moment to me personally, but I do believe it is desirable. Here the Attorney General would probably agree with me because he has already said in some of his second reading speeches that it is desirable to clarify the words of Acts of Parliament so that ordinary people understand them without any doubt.

I would have thought that the insertion of the words "as wife or husband" as recommended by the Law Reform Commission after the word "person" in subparagraph h(i) and (ii) would clarify this matter beyond any doubt whatever. As I mentioned yesterday, I do not doubt that the Parliamentary Counsel would stand up for the particular wording which he put forward and with which the Attorney General was probably satisfied.

I still believe that this leaves room for argument, and in thinking of the greater public who may be forced to read this legislation at some future time, I wonder why the Attorney General is so adamant in not inserting the words of clarification.

Hon. J. M. BERINSON: Mr Chairman, you would know I am not an adamant sort of person. The point is that, if we amend the Bill, there ought to be positive reasons for doing so. Contrary to the submission of the Leader of the Opposition, I suggest that even without the word "spouse" being specified, the notion of the spouse relationship is imported into the definition as it now appears by the very words "although not married". Those words can relate only to persons not married but capable of being married. This in turn raises the traditional notion of "spouse".

Let us be quite clear about the sort of problem that is being suggested as a possibility. In earlier debates the Leader of the Opposition provided only one possible example of confusion which might arise, and that was in relation to a housekeeper. He said that confusion might arise on the basis that a housekeeper might be said to be in domestic relationship with the person for whom the work was done. I frankly do not find that a persuasive example in that the nature of housekeeping work is such as to put people into an employer-employee relationship rather than into what is normally regarded as a domestic relationship.

I suppose some people might have in mind that the current discussion about homosexual relation-

ships might by some indirect means be brought into this Bill. If that is in anyone's mind, I do not believe that a change of that sort could be introduced by the terminology of the schedule. I am quite confident that no court, with or without reference to *Hansard* as provided by a Bill yet to be considered, would believe that a quantum leap of that nature could be introduced incidentaly by means of terminology of this type.

I am not being intransigent on the question, I am simply saying that the words as they stand clearly cover the situation which it is sought to have covered. That being so, there is really no positive reason for the Government to move an amendment.

Hon. I. G. MEDCALF: I will not press this point; I have made the point and believe it to be valid in that this will introduce some element of argument at some future date. I have made the point that it is desirable that legislation be transparently clear so that a layman can understand it. I repeat that the use of the words "as wife or husband" would put the matter beyond any possible doubt. Had I been preparing this legislation I would have insisted on the words the Law Reform Commission suggested. However, I am prepared to accept that the Attorney honestly believes what he is saying and that in fact he has no doubt whatever in relation to this matter, even though at some future date I believe some argument may arise. Having put the case, I will only say that I believe this matter may resurrect itself at some future date.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

PUBLIC TRUSTEE AMENDMENT BILL 1984

Second Reading

Debate resumed from 3 April.

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [3.24 p.m.]: I shall speak briefly on a number of matters which were raised by the Leader of the Opposition. The member placed differing weight on these matters and I will try to reflect that in the extent of my reply.

The first matter brought to attention was the difference in the extent of the increase provided by this Bill in relation to the value of property permitted to be sold by the Public Trustee as opposed to the increase applied to amounts which he is to be entitled to borrow. In respect of property sold there is an increase of 50 times, and in respect of the permitted amounts of borrowings the increase is 10 times. The differences, while largely going to meet the effects of inflation, are matched to the particular purposes to be served.

In respect of property which the Public Trustee looks to sell, I am advised that the most common form of property is residential housing and the experience in that area is such that the average price of a house is now at or around the $50 000 mark, making it desirable that special applications to the court should not be necessary on that account.

The purposes of borrowings are more limited. One example would be the need to raise funds on the security of an estate for carry-on finance for farming operations. That, however, would appear to be a fairly limited case and the more usual one, though again not common, is the requirement to raise funds for the purposes of maintaining trust estates; that is, to meet the costs of their repair.

In that respect the experience of the trustee is that $20 000 is adequate for the purpose. So, it follows there is no justification for taking that increase further.

The Leader of the Opposition raised also the possibility of some clash between the proposed amendment to section 38 and the amendment to section 40. Those amendments appear in clauses 7 and 8 of the Bill. I believe there is no real problem in this area. Under the latter section the Public Trustee is authorised to take a charge for the management of the common fund, and that charge is taken before income is distributed to individual trust estates.

Clause 7 has the effect that such distributions cannot be subject to a second charge on their receipt into the individual estate. The combined effect then is to prevent double dipping by the Public Trustee in this particular area, and that is indeed part of the intention.

The third question raised by the Leader of the Opposition was clearly the most important one; this goes to the proposal in clause 9 of the Bill to allow the Public Trustee an extended capacity to purchase land in fee simple.

I make the preliminary point that there is nothing in clause 9 which would authorise the investment of the Public Trustee's common fund moneys in fee simple land. It is proposed that the trustee should be able to make such investment only in the case of individual trusts or estates.

Those in turn are dealt with in two parts. The first relates to the care and management of the estate of an incapable or infirm person. The second part of the provision goes more generally to all

trusts or estates in the Public Trustee's care, except that in that case any investment in land would require the Minister's approval.

Dealing with the first aspect separately, I turn to the position of incapable or infirm persons. The most usual problem that we are looking at in terms of practical experience is the requirement to provide a residence either for the beneficiary of a trust or for his family. At the moment the only provision which permits the purchase of a dwelling house is to be found in section 17 of the Trustees Act. That provides that where a trustee is of the opinion that it is desirable to purchase a dwelling house for the use of any beneficiary under the trust, the trustee has the right to proceed to purchase. This is a very restricted provision and the difficulty has arisen in cases where the Public Trustee is managing the affairs of an incapable person and wishes to provide a dwelling house or a residence, not for that person who may by that time be in care in an institution, but for the care of that person's dependants or family.

Advice has been to the effect that the limitation of section 17 is to strictly preclude that sort of investment being made by the Public Trustee for the benefit of those other persons. This provision would give the Public Trustee greater flexibility and permit him to act in that respect. I should add that the Public Trustee would appear to be responsible for the great majority of estates of infirm and incapable persons.

It is not possible to get a precise measure of that, but a fairly clear indication of the extent of the Public Trustee's duties in this area is to be found in the number of applications to the Supreme Court for the management of such estates.

It would appear, looking back over a period of two or three years, that something like 90 per cent of such estates are in the hands of the Public Trustee, so it is a very important part of his duties and the problem of proper provision of accommodation for persons not covered by section 17 of the Trustees Act has been a matter of concern for some time. I again agree in advance that the provision for the purchase of land goes beyond dwelling houses alone. There are considerations here where dependants of the person and in some cases the beneficiaries themselves are anxious to have an investment in land as a reflection of their concern to maintain the value of the capital of the trust.

The second main aspect deals with the question of estates and trusts not involving incapable or infirm persons. It is quite correct, as has already been pointed out, that this would provide the Public Trustee with an investment power which other trustees do not have. As a matter of interest I refer members to the report of the Law Reform Commission on the investment powers of trustees, which was tabled earlier this afternoon. It will be noted there that one of the commission's reccommendations is for a very substantial extension of the powers of trustees on this very question—investment in land. It is much too early to anticipate what the Government will propose in that respect, especially as in the normal course of events we will look to considerable public discussion before we implement those recommendations.

Nonetheless, I think it is fair to say that in that recommendation is a recognition of the practical considerations which support an extension of trustees' power into this particular field of investment. Whether the Public Trustee's powers should be extended in advance of the private trustee companies' powers, or of private trustees generally, is a matter of judgment. I think it can safely be claimed that in dealing with the Public Trustee we are dealing with an organisation which, in terms of the proper caution which a trustee is called on to exercise, has an unblemished record and one on which we can safely rely. For greater caution the Bill provides that in cases other than those involving incapable and infirm persons, any investment in freehold land must have the agreement of the Minister as well. No doubt if we look to a wider provision based on the Law Reform Commission report that matter would be subject to further review.

I believe that those three matters cover the questions of importance which were raised in the course of debate. I appreciate the indication from the Opposition of its general support for this Bill with the major *caveat* of that land investment question. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (the Hon. Robert Hetherington) in the Chair; the Hon. J. M. Berinson (Attorney General) in charge of the Bill.

Clauses 1 to 8 put and passed.

Clause 9: Section 49 amended—

Hon. I. G. MEDCALF: I listened with considerable care to the comments of the Attorney General in his explanation of what was the most serious matter in this Bill; that is, the extension in very wide terms of a power to the Public Trustee to purchase, subject only to the safeguard that he must have the consent of the Minister. Being a

fan of a well-known television series, "Yes, Minister", I did not think that the sanction of the safeguard of a Minister would really add anything.

Hon. J. M. Berinson: I was relying on your record.

Hon. I. G. MEDCALF: They never asked me anything! I believe the record would be that the Public Trustee would effectively put a recommendation in such strong terms that the Minister would be constrained to agree, at any rate if he was any good.

I did not raise any suggestions that the common fund would be interested in the general purchase of land. Indeed this section does not permit it, and I did not raise that point. I merely raised the point that in the course of the administration of any trust for incapable and infirm persons' estates, the trustee would have the power to purchase land—real estate—in fee simple without restriction as to value, without any reference to valuation; without other safeguards which necessarily apply where an order of the court is obtained; or, for example, without the safeguard of section 17 of the Trustees Act which does have certain qualifications which must be observed.

The Minister has referred to section 17 of the Act. This contains a power—and it is frequently used—for the trustee, including the Public Trustee, to purchase a residence for the benefit of any of the beneficiaries of the trust to buy a house for one of the beneficiaries, a life tenant, or anyone who qualifies as a beneficiary under the trust.

That is a very good power. In addition there is a power under the Public Trustee Act to apply to the court in any particular case and to satisfy the court that it is necessary or desirable to purchase land. I have asked why the Public Trustee cannot rely on those powers, and the Attorney has said, as I understand it, but he may correct me, that the Public Trustee needs this power, not necessarily for the purpose of assisting an infirm or incapable person, but perhaps for the benefit of a wife or husband or other member of the family of the incapable or infirm person.

I am a little puzzled, because I would have thought he obtained that power under the first part of paragraph (ea)(i). I would have thought that because he is given the power to purchase land in fee simple for an incapable or infirm person, presumably he has the power to purchase land for the benefit of the infirm person.

Hon. J. M. Berinson: My comments in that respect related only to subparagraph (i).

Hon. I. G. MEDCALF: I was not sure whether the Attorney was referring to the second part. Those comments in regard to incapable or infirm people have no reference then to this argument at all. We are talking now about a power to be granted to the Public Trustee to purchase land under any circumstances in the course of the administration of an estate—any estate at all, or any trust—even though there is no power given by the will or the trust instrument; indeed it might have been specifically excluded. The Public Trustee will be able to do this now with the prior approval of the Minister if we pass this Bill. In other words, all he has to do is to get the Minister's consent on the file.

I believe that is much too wide. I have clearly not had the advantage of reading the Law Reform Commission's report which was tabled today. I do not know what it said, but I would be very surprised if it recommended a power of investment in the wide terms of this Bill.

Hon. J. M. Berinson: You may not be very surprised, but you will be fairly surprised.

Hon. I. G. MEDCALF: I am familiar with some of the earlier work being done in relation to investment in land. It was raised by some of the private trustee companies which desired this power. Indeed the matter has been progressing for a couple of years. It has been approached with very great caution by the authorities, naturally. I would be surprised if there were not to be an amendment to section 16, the investment section of the Trustees Act, which provides a number of safeguards in relation to investments.

I would also be surprised if there were no provision for some form of valuation of the land, and other safeguards of various kinds. It would surprise me if that were not the case.

However, that is mere speculation. If the Attorney is prepared to say that the words used here are similar to the recommendations of the Law Reform Commission in respect of investment in land, then I would go along with it, because there is something to be said for giving trustees generally a power to invest in land.

Sitting suspended from 3.47 to 4.01 p.m.

Hon. I. G. MEDCALF: We are not talking about the affairs of infirm or incapable persons. I have already indicated that we do not object to giving the Public Trustee the power to purchase land in the care and management of the estate of an incapable or infirm person. We do not object to that at all; we never have objected to it. Our only objection is the objection of principle, in that we are giving an extremely wide power to the Public Trustee which we have never been prepared to give to any other trustee, be that trustee privately appointed by a deceased person who had faith in a particular trustee or a trustee company.

I do not believe we should give him such a wide power. It is not a sensible thing to do, and I suggest that the Attorney have another look at this matter because it has been suggested to him that this power is necessary for some reason or other, whereas it is most unusual and unnecessary.

We will look after the infirm or incapable patients in the first part of the section. We do not object to that. That is out of the argument. We are now talking about giving the Public Trustee a wide power to purchase land without any sanctions whatsoever, without any requirement for a valuation or for some independent opinion. The Attorney is the only person who has any chance of preventing the purchase.

The Attorney General should not be put in the position of being a court. The court normally approves these matters. If, for example, the Attorney were to substitute "the court" for "the Minister", I would have no objection. It would then be remarkably similar to the power already in the Trustees Act, although the latter Act better expressed. I was a member of the committee which drew up the Trustees Act.

Hon. J. M. Berinson: But not the Housing Act!

Hon. I. G. MEDCALF: I thought I had better add that because no-one would know. It is a very wide power. I ask the Minister to have another look at this. If, as he says, it is desirable to give a power of investment in land generally to trustees, I would be prepared to go along with something along those lines. A lot can be said for that and I am sure that if the Law Reform Commission has recommended that there be some power along those lines, then subject to whatever safeguards Parliament believes should be inserted in it, and subject to the Law Reform Commission's report, the power should be added, I submit, either to section 16 or in a new section of the Trustees Act. It would then apply to all trustees, including the Public Trustee.

The Public Trustee is not in any different situation from a private trustee in relation to general trusts in the State. Some people will appoint the Public Trustee to handle their affairs. Other people may appoint a private trustee—one of their relatives, a trustee company or a trusted friend. If a person appoints a trusted friend as his trustee, should he not have the same power, if it is found to be necessary, as the Public Trustee? He has to properly administer the estate in accordance with the law. I have no quarrel with the Public Trustee although he, like other trustees, periodically makes the odd mistake. He has human failings, even though he is a corporate body.

Hon. J. M. Berinson: But the beneficiaries of matters in his care are less likely to suffer.

Hon. I. G. MEDCALF: I do not quite understand that.

Hon. J. M. Berinson: His office has a certain backing which other trustees do not have.

Hon. I. G. MEDCALF: Well, sometimes even he may complain about the actions of some of the officers who back him up. This happens in all organisations and I really do not think it is a good argument to say that the Public Trustee would not do anything wrong. I know he would not do anything wrong morally or deliberately. I am well aware of that. Nor would most other voluntarily appointed trustees. A certain amount of consideration has to be given to the wishes of a person who appoints a trustee and it is not necessary or desirable to get this power in an unrestricted form. As I have said, and with all due respect to the Minister for the time being, I do not believe that is a substitute for the court or a sufficient deterrent to the recommendation of the Public Trustee being put into effect. I do not doubt the Minister will occasionally say "No", but this is not an adequate sanction.

I therefore suggest to the Attorney General that it is desirable for him to have another look at this area so we can incorporate a safeguard into these arrangements. Perhaps we can agree to some form of compromise along these lines rather than take any other action.

Hon. J. M. BERINSON: Even though it will be obvious to some members, it is worth stressing that any discussion of these matters must proceed on the basis of the underlying duties of a trustee. He must, in all respects, act in the interests of the beneficiaries of the trust fairly, impartially, and honestly. That point is relevant to some points made by the Leader of the Opposition, for example, when he indicated that the proposed ability to purchase land is without the safeguards of the court and therefore, by implication, without safeguards at all. There are always safeguards and these are based on this duty of the trustee to act as a trustee. The additional safeguard is applied in the case of the Public Trustee, that the very nature of the office ensures that those duties are performed properly, and if they are not, anyone who suffers has full protection. That point should be made because it goes very far towards answering the reservations which have so far been expressed in this debate.

As to the relationship between this Bill and the recommendations of the Law Reform Com-

mission, I suggested, by way of interjection to the Leader of the Opposition, that if he thought he was not going to be very surprised, nonetheless, he would be reasonably surprised, and that will emerge from the terms of the report when members have the chance to consider them. I should indicate that I was not aware of the terms of the recommendations when the Bill was drafted; otherwise perhaps some modification could have been considered earlier. As it is relevant to the current debate I think I should draw the attention of the Chamber to the summary of recommendations of the commission in respect of the purchase of land. It is continued in chapter six and reads as follows—

The Commission recommends that—

(a) Trustees should be authorised to invest in land. (paragraphs 6.2 and 6.3)

(b) The power to invest in land should be confined to the purchase of a fee simple interest in land in Western Australia. (paragraphs 6.5 to 6.7 and 6.29 to 6.31)

(c) No statutory limitation should be imposed on the type of land which can be purchased and nor should the land be required to be income-producing. (paragraphs 6.8 to 6.13, footnote 2 to para 6.10)

(d) The legislation should provide that a trustee is not chargeable with breach of trust by reason only of the relation borne by the purchase price to the value of the land at the time of purchase if he obtains beforehand—

(i) a report by a licensed valuer who he believes on reasonable grounds is experienced in valuing the type of land concerned in the locality in which it is situated; and

(ii) the price the trustee pays for the land does not exceed by more than five percent the value of the land, as stated in the valuer's report. (paragraphs 6.14, 6.15 and 6.21 to 6.23)

I will leave out paragraph (e) which only lays down the requirements for these to be provided in writing. It continues—

(f) A trustee should also, as a precondition of purchasing land, obtain and consider proper advice as to whether the purchase is appropriate having regard to the need for diversification and the circumstances of the trust generally. (paragraph 6.20)

(g) No restriction should be imposed on the proportion of the trust estate which a trustee may invest in land. (paragraphs 6.24 to 6.27)

(h) The power to invest in land should be available to all trustees. (paragraph 6.28)

Reference is then made to the need to amend section 17 of the Trustees Act.

Considering those recommendations will make clear to the Committee that the only major respect in which the Bill differs from the recommendation is that it does not specify a requirement for prior professional valuation. On the other hand, the Bill does impose the additional requirement of approval by the Minister.

On the whole, and with due regard to the lessons to be learnt from the "Yes, Minister" programme, I think that is a fair enough swap because no matter how persuasive the recommendation of a department may be, I doubt very much whether any Minister, conscious of these overriding trustee duties, would give his approval without the very sort of prior valuation that the Law Reform Commission looks to.

Certainly, it would be an unwise Minister who did that, but more than that I believe that a Minister acting without that sort of advice would probably not be properly exercising his function.

If the Leader of the Opposition is saying that his objections would be met by a requirement for independent valuation, then I think I should indicate to him that that would appear to be a reasonable enough proposition and one which could be organised fairly readily.

Perhaps, having suggested that to the Leader of the Opposition, I should give him a chance to respond.

Hon. I. G. MEDCALF: While listening to the Attorney General the point that concerned me was whether the Minister would be under any liability upon giving approval, in view of the fact that we are dealing with trust property, and whether he would be implicated in some way as a result of the nature of the trust and the fact he has to approve the action of the Public Trustee.

I have not, in the very short time available since that fact crossed my mind, been able to resolve that point, but even if the Public Trustee has some indemnity under his Act, the Minister may have none.

Hon. J. M. Berinson: Which will make him all the more cautious.

Hon. I. G. MEDCALF: It occurs to me that the Minister might not be aware of this fact and I

believe it is an avenue that could also be examined.

We are dealing with a special kind of situation and I would not be taking the time of the Committee if I did not believe it was important to emphasise that we are dealing with other people's trust properties—we are not dealing with Government funds but with private citizens' property which has been acquired throughout their lifetime. After their deaths what happens to their property? This places a very high degree of responsibility not only on the trustees, but also on anyone dealing with the property, and frequently solicitors and agents become affected by the trust because they may be holding trust moneys or be required to give consent to some action. I wonder whether consideration has been given to where the Minister may stand in this area?

Generally speaking there is an exemption for judges when they make decisions. The court is normally above being proceeded against in this kind of situation, but I am not aware that the Minister has any indemnity without specific statutory authority.

I draw the Attorney's attention to that aspect and perhaps that is another reason it would not be a bad thing to look at the proposition he has made that there be an independent valuation which would clearly exonerate the Minister from making decisions or giving his approval if he were able to say the conditions of the Statutes had been fulfilled and were entirely in line with the proposals in the Trustees Act. I believe this is an important matter and I am grateful to the Attorney General for making that suggestion. It is a matter which should be considered further in the light of the Law Reform Commission's report.

I support the suggestion made by the Attorney.

Hon. G. C. MacKINNON: I have been loathe to cut across the debate between our learned and honourable colleagues, but I think the time is right for me to put a question to the Attorney General. It concerns the valuations, and the ability of the trustee. Recently two questions of this nature were brought to my attention. In each case the beneficiary was not really expecting any great benefits to flow and in each case the beneficiary was situated in another place, so it was difficult for the beneficiary to look at the matter. In each case the estate consisted of a property on which an old house was built which did not have a very prepossessing appearance.

The rumour in each case was that the properties had been sold at remarkably low prices to people who were purported to have been on a reasonably friendly basis with somebody involved with the sale. This was a serious accusation and one would need to be extremely careful before taking any action.

I listened to the Attorney General with some care and even asked for the amplifier to be turned up because the debate had become a quiet legal conversation between two eminent and learned gentlemen. I was having some difficulty hearing the debate, particularly when Mr Medcalf spoke. Mr Berinson noticed the difficulty I had. This question has to do with the need to check the valuation of properties both from the buying and selling points of view. The cases to which I referred were in seaside locations and both were outside my electorate, although one was in my electorate at one time. The local rumour was that the Public Trustee had sold the properties at remarkably low valuations and had not looked after the interests of the beneficiaries of the estate. This situation could occur under the most organised circumstances.

Can the Attorney General tell me what safeguards are contained in the Bill to prevent this sort of thing? Even if the rumours are just that, and are completely unfounded, it would not be impossible for it to happen. I gather from the criticisms being levelled and the suggestions put forward by Mr Medcalf that there might be some room for the matter to be tightened up a little.

This criticism has been brought to my attention on two occasions and I have been looking for an opportunity to raise it without making waves or accusations which are not supported by proof. I ask the Attorney General to take my comments on board in the spirit in which they are made; that is, in a constructive spirit and in the wish that the Act might be tightened up for the benefit of all. It should be borne in mind that the people involved with a trustee are not in a position to take any action by the time the trustee takes over! Under some circumstances even the beneficiaries are so far removed that they are not in a position to understand the situation or to do anything about it, even if they have a vague knowledge of it.

If I am on the wrong track and the Act contains plenty of protective devices, perhaps the Attorney General can tell me where to find them.

Hon. J. M. BERINSON: I regret very much that the honourable member has decided to raise this question in this way. I know that he has spoken moderately and in terms of wanting to be constructive. However, with due respect, to vent accusations of this kind, which are the most serious kind of accusations which could be levelled against a trustee, is not a constructive way

of proceeding. Neither is that helped by the early disclaimer to the effect the member is only passing on some rumours. The very fact that what has been conveyed here today is based on nothing better than rumour is the best reason for it not to have been raised in this forum at all. I say that seriously to the honourable member.

An accusation of this kind, no matter how vague, should be brought privately to the attention of the responsible authority. As it happens I am the Minister responsible for the Public Trustee. The honourable member can be assured that given the necessary detail of the property under discussion and the estate in which it is involved, the fullest investigation of those allegations would be made, whether based on rumour or not. That would be done in a way which did not reflect on the general propriety of the Public Trustee—an agency which it should be our duty to have held in the highest respect as, indeed, I believe it is.

Having said that, and having asked the honourable member to please proceed if he so wishes on that basis, I should add that so far as I am aware, we are not dealing with a piece of legislation which deals step by step with what the Public Trustee should do in the handling of an estate. What the Public Trustee is obliged to do is what all trustees are obliged to do; that is, act in accordance with the equitable doctrines and standards which are long-established and very well recognised and the breach of which is subject to the most severe penalties. Whether or not the penalty on the Public Trustee would be applied in the same way as it might be on a private trustee in breach of trust is a moot question.

The important point is that no beneficiary would suffer by any dereliction of duty by the Public Trustee, as unfortunately recent experience has indicated can occur with trustees who do not have the backing of the State. However, I do not want to go into that field. The main point is to stress that the whole management of trust estates must proceed at the highest standards and these are long-established and well recognised.

I conclude this part of my comments by again inviting the honourable member to forward the particular complaint that he has before him. He can be assured that it will be fully investigated and that a report will come back to him as soon as possible.

I revert now to the earlier comment by the Leader of the Opposition. I am less nervous about the responsibility that may evolve upon the Minister in this position. The prime responsibility will remain with the trustee and, to the extent that the Minister might possibly be involved in that responsibility, then that can only act to ensure that at the point of his consideration he acted on adequate advice. I would like to clarify a matter with the Leader of the Opposition. Do I understand now that with an amendment to subparagraph (ii) of proposed paragraph (ea) which would ensure that any purchase of land must be based on expert valuation, the Opposition would support the passage of the clause?

Hon. I. G. MEDCALF: I will answer by saying "Yes" or "No", but before I do I must state my qualifications. At the outset of this matter, I was unaware that the report of the Law Reform Commission would be tabled today. Had I been aware of that, most certainly I would have read it so I would be in a position to make a better comment on what ought to be the law in future in relation to public and private trustees.

I am somewhat taken by surprise because the Law Reform Commission has made this report, which I have not read. I envisaged some provision for valuation, but there may be one or two other qualifications.

While I would be disposed to agree with the proposition suggested by the Attorney General, it would be better to have the opportunity within the next day or so to examine the Law Reform Commission report with a view to ensuring that what is proposed fits in with the commission's proposition. It is clear to me that, sooner or later, the Parliament will be asked to legislate to extend the powers of all trustees in relation to investments, including those in land.

That being so, it would be illogical to stand by the attitude which I adopted at the beginning. That is by way of preamble. My answer is "Yes".

Hon. I. G. PRATT: I did not intend to speak on this Bill, but following the unreasonable verbal cuffing around the ears Mr MacKinnon received from the Attorney General, I am persuaded to relate an experience. The problem raised by Mr MacKinnon is a real one. A short time ago I was reading the "For Sale" notices in *The West Australian*. An advertisement which caught my eye was for an eight-year old brick and tile house on one acre of land close to the centre of Armadale for $40 000. I stopped and read it again. I thought, "Hello, there seems to be something missing". I went to work that morning, did a few jobs in my office, and rang the real estate agent. I said, "Was there a mistake in the ad?" The real estate agent said, "No. It went first thing this morning". It was the sort of house for which I had been looking, but I was too late.

Two days later, the children of the original owner of that house, the affairs of whom were being handled by the organisation we are now discussing, came to my office with the complaint that the sale had been discussed with them, and they had an understanding that it was to be auctioned. Knowing the current real estate situation, they agreed on a reserve price of $40 000 which, they thought, would be a fall-back position. They thought the price they received would be considerably higher than that. Actually, the property was given directly to a real estate agent to sell for $40 000.

I am happy that the Attorney says he will look into these cases personally, because I will ring his office tomorrow and seek an interview for these people.

Hon. J. M. Berinson: Just forward me the details.

Hon. I. G. PRATT: I followed the course I usually do, of suggesting to the people that they make their own attempt to solve the problem. My constituents use me if they are not able to do that. Those people agreed to that suggestion, and they are making their own attempt to solve the problem.

I shall contact those people and direct them to the attention of the Attorney General's office. I am sure the Attorney General will find the time to look into this matter personally.

Hon. G. C. MacKINNON: I am prepared to accept the admonition of the Attorney General because there is some justice in what he said. However, I point out that I had wanted to keep this matter quiet and have it handled without fuss and bother. If he had told me that no section of the Act covered the problem but that he would look into it, it would not have become a *cause celebre*, which it is well on its way to becoming. I assure the Attorney General that I have no intention of answering any queries from the Press or anyone else. I assure him that when he has been in politics a little longer, he may realise there are only certain ways in which a politician on the back bench of the Opposition can let people know that he has done anything about their problem.

The Attorney General is well aware that I have had enough experience to work quietly, if that does the job. He is also well aware that I am not in the practice of asking many questions in this Chamber for the sake of having my name in *Hansard*, or for any other reasons. However, I have an obligation to my constituents to let them know that I have raised the matter. I have an obligation to tell them that I am not covering up.

I tried to handle this matter as quietly and judiciously as it was possible to do. The Attorney General, from the elevated, glorified height of his position, saw fit to read me a lecture. All right, I have done the same sort of thing myself on many occasions, and frequently with far more bitterness and acerbity than the Attorney General displayed, but sometimes with less.

Nevertheless, I made an endeavour to handle the situation as quietly as possible. It is no good my saying to whoever raised the matter with me, "I have discussed the matter with a very honourable gentleman, the Hon. Joe Berinson, the Attorney General". He would say, "Oh, yeah, I believe that". However, now he knows I have discussed the matter with Mr Berinson because I can show him the quote and show where Mr Berinson ticked me off.

Hon. J. M. Berinson: I do not know what we have discussed. That is my problem.

Hon. G. C. MacKINNON: The Attorney General knows precisely what we have discussed. Mr Pratt listened, although he was not listening as intently as the Attorney General. He picked up exactly what I was talking about, and he gave another example of the same thing.

Hon. J. M. Berinson: I am dealing with it on the basis of what you said earlier. There was nothing I could make of that. I did not know what the property or the estate was.

Hon. G. C. MacKINNON: I did not want the Attorney General to know. It is too late. It is long gone, and too far away.

I am suggesting, following what Mr Medcalf said, that there may be some way in which the Act can be tightened up. I suggested that; I did not want the Attorney General to do anything. Had I wanted him to do anything about the matter, I would have informed him when it was brought to my attention. I said to the fellow who raised it, "What is the point in telling me about it, seeing that the old buildings are gone?" A new building is half constructed. I said, "How will you prove anything at this stage?" I told him it was too far over the hill, and I could have made a fuss for nothing. I did not take that step until I found that this was not the only case.

Within five minutes of my having made it clear, the Attorney had verification of it. I suggest that next time the Attorney feels the urge to pick up the cane to try to administer a little corporal punishment, he should think for a couple of seconds, because he is not the only person in this place capable of giving verbal lashings—not by a long way. All I asked was where was the safeguard in the Act? They could have been rumours

that I invented, but it happened that that was not the case. I do not want a schoolmarm's lecture. All I want to know is where is the safeguard in the Act? If a safeguard does not exist, am I on the right track and is it possible Mr Medcalf and I are talking about roughly the same thing? Would the Attorney give some consideration to my worry when he is thinking about Mr Medcalf's worry?

I did not want to go to this trouble, although people who are familiar with my usual methods of operation probably expected me to carry it a little further. I even hesitated while a couple of members spoke and I thought about the matter. However, I make it clear that I brought up the matter with the best of honourable intentions. I did not want a witch hunt, although I know how to start witch hunts. I just wanted quietly to check the position in the Act and I wondered whether the Attorney might consider it worthwhile to include the safeguard in the Act if it is not there already.

Hon. J. M. BERINSON: In this, as in so many other cases, it depends on one's point of view and it depends on the position from which one is looking as to how one sees the perspective. In my younger days, believe it or not, I was the goalie in a soccer team and every time a penalty was taken, I looked at the spot and thought to myself how absurdly close it was. I thought, "How can anybody miss?" However, after a couple of years as goalie, I went onto the field and occasionally, just at practice, because I was not good enough to do it in the real game, I was called on to take a penalty shot. Believe it or not, the distance from the spot to the goal seemed quite a way!

I suggest to the Hon. Graham MacKinnon that we have something similar to that position here. We need not engage in mutual lectures, but let us recognise what we are really talking about. The member says that all he was doing was raising a question as to the content of the Public Trustee Act. That is what he says. Unfortunately, in the course of expounding his question, he made two grave accusations of impropriety against the Public Trustee. There is no other way of understanding what he said except in terms of an accusation of impropriety.

Hon. A. A. Lewis: Are you sure you are right, because you made all sorts of accusations against me during the last session for which you never apologised, and you continue to do it?

Hon. J. M. BERINSON: All I am saying is that any suggestion that a trustee is selling trust property at less than its real value because of interests which do not go to the interests of beneficiaries, can only be understood as a charge of impropriety. I do not know how else it can be understood and precisely the same point was made by the Hon. Ian Pratt.

I will not take these matters further. I shall take the point of the Hon. Graham MacKinnon; that is not the main point of the current exercise and perhaps we should stick to that.

However, I take the opportunity, since Mr Pratt has raised a particular point, to suggest that he does not invite his constitutents to come and see me personally. That is not necessary and it is really not possible for a Minister to engage in personal interviews with everybody who has a problem related to his portfolio. In the normal course of events, the local member would look to interview his constituents and to provide the Minister with a summary of the problem. I assure the member that on the provision of that summary, either through him or from his constituents directly, I shall ensure that this matter is investigated as far as it reasonably can be.

I regret that we appear to have moved at least some way from the direct point of the clause. Nonetheless, the extended discussion appears to have been useful in indicating a point for sensible compromise. I take the point of the Leader of the Opposition that it would be reasonable in the current circumstances for members of the Opposition in particular to have the opportunity for a day or two to consider the recommendation of the Law Reform Commission as it relates to this Bill. On that basis, and with the further understanding that I will attempt, before the House meets next, to draft an amendment to the latter part of this clause so as to provide for independent valuation and the sorts of safeguards that are in the Law Reform Commission's report, it would be preferable to report progress now.

Progress

Progress reported and leave given to sit again, on motion by the Hon. J. M. Berinson (Attorney General).

SUPPLY BILL 1984

Receipt and First Reading

Bill received from the Assembly; and, on motion by the Hon. J. M. Berinson (Attorney General), read a first time.

Second Reading

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [4.48 p.m.]: I move—

That the Bill be now read a second time.

This measure seeks the grant of supply to Her Majesty of $1 550 million for the works and services of the year ending 30 June 1985 pending the passage of Appropriation Bills during the Budget session of the next financial year.

The Bill seeks an issue of $1 400 million from the Consolidated Revenue Fund and $85 million from moneys to the credit of the General Loan Fund. Provision is also made in the Bill for an issue of $65 million to enable the Treasurer to make such temporary advances as may be necessary.

The amounts sought are based on the estimated costs of maintaining the existing level of services and works and no provision has been made for any new initiatives, which must await the introduction of the Budget.

I would like to make a few brief comments on the budgetary position.

The 1983-84 Budget presented to Parliament on 13 October 1983 planned for a balanced Budget with revenue and expenditure estimated at $2 658 900 000.

A recent review of Consolidated Revenue Fund transactions to date indicates that, not unsurprisingly, there will be variations to these estimates of revenue and expenditure. However, honourable members would appreciate the uncertainty involved in forecasting the Budget outcome with over one-quarter of the financial year still remaining. Obviously many factors could yet arise during the remainder of the financial year which could have a significant impact on the result.

Notwithstanding those uncertainties, current trends suggest that slightly more buoyant revenue collections can be expected than was estimated when the Budget was framed. The improved general economic outlook and increased demand in overseas markets for minerals are the major reasons for this.

On the expenditure side every effort is being made to contain outlays to the amounts appropriated by Parliament. However, with the likelihood of significant unavoidable expenditure overruns on natural disaster payments associated with the drought relief in the eastern wheatbelt and Esperance regions, and more recently Cyclone "Chloe" and the flooding of the Fitzroy River, the final result in 1983-84 remains uncertain.

In addition, it is expected that the cost of award increases granted in 1983-84 will exceed the amount provided for this purpose in the Budget. Once again the total expenditure for 1983-84 in this area is dependent upon factors outside the Government's control. I refer of course to the outcome of national wage decisions and other claims within the guidelines of the prices and incomes accord.

Despite these unavoidable expenditure overruns, the Government is determined to contain State public sector spending and we are closely monitoring expenditure in an endeavour to balance the accounts in accordance with our Budget strategy. On this point it should be borne in mind that the out-turn for the last Budget introduced by the previous Administration was a deficit of $14.2 million. This led to a deficit on our books of $11.6 million being carried forward into 1983-84.

So far as 1984-85 is concerned, the financial outlook is significantly affected by three main factors—

The phasing in of Grants Commission's relativities;
the uncertainty in respect of special revenue assistance from the Commonwealth; last year we received $18.2 million; and
the full-year impact of award increases granted in 1983-84; this financial year the corresponding impact was cushioned to some extent by the wages pause.

Suffice to say that the Government faces no easy task in responsibly framing the 1984-85 Budget.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. I. G. Medcalf (Leader of the Opposition).

PAROLE ORDERS (TRANSFER) BILL 1984

Second Reading

Debate resumed from 22 March.

HON. I. G. MEDCALF (Metropolitan—Leader of the Opposition) [4.56 p.m.]: This Bill is a uniform legislative exercise which has been before the Standing Committee of Attorneys General for some time.

It provides for the transfer of parolees between the States and Territories on the basis that they would henceforth become the responsibility of the receiving State or Territory.

No transfer is to take place unless the Minister is of the opinion, after considering relevant information and documents, that the interests of the parolee will be best suited by the transfer. This applies whether or not a parolee is being transferred out of Western Australia to another State or Territory or into Western Australia from another State or Territory.

In these cases also the consent of the parolee must be given to the transfer unless he is a resi-

dent or believed to be a resident of the receiving State.

There are therefore safeguards in relation to the future of the parolees themselves and if it is in the interests of the parolees, then it is desirable, as part of their rehabilitation after conviction for an offence, that they be given every opportunity to re-establish themselves in their home State or Territory. In addition, of course, they will have the benefit or should have the benefit of the presence of relatives or friends, or familiar surroundings which may assist them in the course of their rehabilitation.

The Opposition supports the Bill.

One point which occurs to me is whether or not the Standing Committee of Attorneys General considered the question of who will pay the costs involved in transferring the parolees from one State to another, that is to say the transferring State or the receiving State.

I am sure that the Attorney General, in his capacity as Minister assisting the Treasurer, must be able to answer this off-the-cuff. No doubt a decision was made on this point but I could not find a reference to it in the Bill. The general experience of the criminal courts here has been that a far greater number of criminals in proportion come from other States and Territories than from this State.

In other words it seems likely that both in connection with the interstate transfer of prisoners—a Bill which we passed last year—and in connection with the interstate transfer of parolees, Western Australia may well find that it transfers out more prisoners and parolees than it transfers in.

Hon. J. M. Berinson: That is our profound hope.

Hon. I. G. MEDCALF: That no doubt pleases the Minister assisting the Treasurer. I doubt whether there are any specific statistics to back this up but this is certainly the impression which one gathers from time to time from persons familiar with the criminal law.

As I have indicated, the Opposition supports the measure.

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [4.58 p.m.]: I thank Opposition members for their indication of support. I think the matter of transport costs is not directly relevant to the Bill; it is relevant, of course, in relation to the Prisoners (Interstate Transfer) Bill.

Hon. I. G. Medcalf: Make them pay their own fare.

Hon. J. M. BERINSON: My memory of the arrangements for the transfer of prisoners is that the transferring or donor State will meet the cost.

Hon. I. G. Medcalf: It is certainly the recommendation I made.

Hon. J. M. BERINSON: The same question does not arise directly in this Bill. We are not here dealing with people in custody, we are dealing with people who are out in the community, either working, capable of working, or capable of attracting income support in one way or another. The initiatives in these cases would normally be left to the person seeking transfer of parole. Welfare questions may well arise which would need a call on one or another agency of the State to assist a parolee with his costs, but that is not contemplated as a general rule.

I think that is the only matter calling for comment. I again thank the Opposition for its support of this legislation.

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. J. M. Berinson (Attorney General), and transmitted to the Assembly.

QUESTIONS

Questions were taken at this stage.

ADJOURNMENT OF THE HOUSE: SPECIAL

HON. D. K. DANS (South Metropolitan—Leader of the House) [5.21 p.m.] I move—

> That the House at its rising adjourn until Tuesday, 10 April.

Question put and passed.

House adjourned at 5.22 p.m.

QUESTIONS ON NOTICE

GAMBLING

Casino: Burswood Island

816. Hon. P. G. PENDAL, to the Leader of the House representing the Premier:

Will the Premier give an unequivocal assurance that the Government is not considering allowing a casino to be built at Burswood Island in my province?

Hon. D. K. DANS replied:

The report of the Government casino advisory committee is with the Cabinet subcommittee. No decision has yet been made.

I have a rider to that. The committee met today and that decision has been made and announced to the Press.

819. *This question was postponed.*

INTERPRETATION BILL AND REPRINTS BILL

Explanation

843. Hon. I. G. MEDCALF, to the Attorney General:

With reference to the Interpretation Bill and Reprints Bill before the House and so that members may have a better understanding of and be better informed concerning these Bills, is the Attorney General prepared to make available to members a detailed explanation of the changes which the Bills seek to bring about?

Hon. J. M. BERINSON replied:

I have asked Parliamentary Counsel to prepare a statement indicating the more substantial changes proposed by these Bills. The statement will be made available early next week.

844. *This question was postponed.*

TOURISM

Bungle Bungle Tours

845. Hon. P. G. PENDAL, to the Leader of the House representing the Minister for Tourism:

(1) Will the Minister investigate complaints that tourists booked on the Airlines of WA Bungle Bungle tours are having to cancel their tours because the route crosses over Aboriginal land?

(2) If permission has been refused for such entry, by whom has it been refused?

(3) What is to be the fate of the Bungle Bungle tourist promotion?

Hon. D. K. DANS replied:

(1) Tourist promotion of Bungle Bungle will be delayed until a working party has completed a control and management plan for the area.

(2) Permission of entry to the area has not been refused. However, the Tourism Commission is not prepared to endorse tourist promotion of Bungle Bungle until the control and management plan for the area has been worked out.

(3) The working party's activities will cover the issues of the future promotion and management of Bungle Bungle as a tourist attraction.

RAILWAYS

Westrail: Debt

846. Hon. H. W. GAYFER, to the Attorney General representing the Treasurer:

In respect of Westrail—

(1) What is the State's total debt to the Commonwealth?

(2) How has this debt been constructed?

Hon. J. M. BERINSON replied:

(1) As at 30 June 1983—$223 668 000.

	$
(2) General Loan Fund	187 594 000
Rail Standardisation Agreement Act 1961	31 380 000
National Railways Network (Financial Assistance) Act 1979, Kwinana-Mundijong upgrading	4 694 000
	223 668 000

TOURISM

Bungle Bungle Tours

847. Hon. P. G. PENDAL, to the Minister for Planning representing the Minister with special responsibility for Aboriginal Affairs:

(1) Has the Aboriginal Lands Trust or any other Government agency refused Airlines of WA tourists booked on the Bungle Bungle tours, access across any lands in the Kimberley?

(2) If so, on what grounds have such refusals been made?

Hon. PETER DOWDING replied:

(1) and (2) No, there has been no refusal.

ROADS

Grants and Main Roads Department Expenditure

848. Hon. H. W. GAYFER, to the Minister for Planning representing the Minister for Transport:

In respect of the Main Roads Department and in each of the years 1978-79 to 1982-83 what—

(a) Commonwealth grants were made to the State;

(b) statutory grants were made to local authorities;

(c) State grants were made to local authorities; and

(d) was the total MRD expenditure?

Hon. PETER DOWDING replied:

		$
(a)	1978-79	65 295 605
	1979-80	71 034 603
	1980-81	78 729 290
	1981-82	85 425 486
	1982-83	102 279 540
(b)	1978-79	17 884 000
	1979-80	19 219 408
	1980-81	21 362 400
	1981-82	23 301 570
	1982-83	24 962 200
(c)	1978-79	8 330 050
	1979-80	8 767 900
	1980-81	10 174 550
	1981-82	11 922 750
	1982-83	13 534 020
(d)	1978-79	131 936 569
	1979-80	152 391 927
	1980-81	165 640 967
	1981-82	173 883 483
	1982-83	207 739 899

APPRENTICES

Government Departments and Instrumentalities

849. Hon. V. J. FERRY, to the Minister for Employment and Training:

(1) How many apprentices were employed by Government agencies in the south-west as at—

(a) 31 July 1983; and

(b) 31 March 1984?

(2) Which Government agencies employed apprentices as at 31 March 1984, and how many are employed with each agency?

Hon. PETER DOWDING replied:

(1) The Division of Industrial Training does not record statistics by regions other than for the Pilbara.

(2) It is assumed the member refers to Government agencies in the south-west, and if so, see answer to (1).

DAIRYING

Dairy Assistance Fund: Disbursements

850. Hon. C. J. BELL, to the Leader of the House representing the Minister for Agriculture:

(1) What is the current position of the dairy assistance fund?

(2) How is the money being disbursed at present?

(3) How will the fund be utilised after the changes in the dairy industry, arising from last year's amendments, are implemented?

(4) What effect will this have on farmer returns?

Hon. D. K. DANS replied:

I am advised by the Dairy Industry Authority as follows:

(1) The balance in the dairy assistance fund at 31 January 1984 was $3 271 597.

(2) The fund is being used for the following purposes at present—

	1982-83 $	7 months 1983-84 $
Market milk subsidy	53 327	7 919
Issue of new quotas	77 175	0
Manufacturing milk premium	860 692	707 235
Special milk products milk premium	213 402	0
Dairy products stabilisation	39 040	0
Department of Agriculture	332 152	186 859
Subsidy milk to Esperance	14 873	7 965
Promotion	100 000	0

(3) and (4) Unknown. The future use of the dairy assistance fund is being reviewed by the Dairy Industry Authority at present.

GOVERNMENT CHARGES

Increase: Labor Government

851. Hon. P. G. PENDAL, to the Attorney General representing the Treasurer:

(1) Is the Treasurer aware of the Institute of Public Affairs' survey which shows State taxation grew 7.9 per cent in the year of the O'Connor Liberal Government and 23.4 per cent in the first year of the Burke Government?

(2) Will he give my electors an assurance that this growth of 23.4 per cent in one year—the highest for any State in that year—will not be repeated?

Hon. J. M. BERINSON replied:

(1) and (2) No, I am not aware of the survey of the Institute of Public Affairs but I can assure the member that this Government will limit any increase in taxes and charges to the minimum consistent with responsible financial management.

FUEL AND ENERGY: ELECTRICITY

Power Station: Bunbury

852. Hon. V. J. FERRY, to the Minister for Planning representing the Minister for Minerals and Energy:

(1) In view of the Government's decision to establish a new SEC power station near Collie, will the Bunbury power station be phased out?

(2) If so, what is the expected time scale for its closing operations?

Hon. PETER DOWDING replied:

(1) and (2) With the commissioning of larger and more efficient generating plant at Muja power station, there will be a gradual scaling down of operation of the existing Bunbury power station. However, the State Energy Commission has no intention to phase out the power station completely before the early 1990s.

A copy of a letter the Minister for Minerals and Energy has recently written to the Editor, *South Western Times*, has been tabled.

RECREATION

Community Recreation Funds: Applications

853. Hon. MARGARET McALEER, to the Minister for Planning representing the Minister for Sport and Recreation:

(1) Could the Minister advise me when approval of applications for community recreation funds for capital works will be made?

(2) Is he aware that the long time-lapse between the closing date for applications and the announcement of approvals is jeopardising the cost estimates of the proposed buildings and may jeopardise the projects themselves?

Hon. PETER DOWDING replied:

(1) The recommendation will be put to Cabinet on Monday, 9 April 1984 and announcements will be made as soon as possible after that date.

(2) The time-lapse between the closing date for applications and the announcement of grants will be approximately the same as in previous years.

ENTERTAINMENT CENTRE

Ownership

854. Hon. V. J. FERRY, to the Attorney General representing the Treasurer:

(1) What is the nature of the ownership of the Perth Entertainment Centre?

(2) Is the property subject to leasing arrangements?

(3) If so—

(a) who are the present lessees;

(b) what are the terms and conditions of the present contractual arrangements; and

(c) are any contractual or leasing arrangements being re-negotiated?

(4) What involvement has Government had in the Perth Entertainment Centre for each financial year since its establishment, and what has been the cost of Government involvement for each year?

(5) What does the future hold for the viability of this centre?

Hon. J. M. BERINSON replied:

(1) The Government acquired the Perth Entertainment Centre on 30 June 1976 for a consideration of $7 442 500.

(2) Yes.

(3) (a) TVW Enterprises Limited;
(b) five-year term commencing 1 July 1981, but I would be reluctant to provide further details on the conditions of the lease as the company may not wish full details of the lease documents to be available to its competitors;
(c) yes, but see 3(b).

(4) The price for the centre was satisfied by the State's writing off a Government loan of $500 000 and assuming full responsibility for the company's loan commitments. In addition, as owner, the Government is required to meet the cost of maintenance on the centre. Government expenditure therefore has been as follows—

	Loan Commitments $	Maintenance $
1976-77	341 590	—
1977-78	489 287	—
1978-79	518 000	—
1979-80	560 532	517 030
1980-81	1 842 817	65 725
1981-82	871 507	88 832
1982-83	896 087	174 872
1983-84 Estimate	917 475	175 000

(5) This will largely depend on the viability of the entertainment industry.

CEMETERY

Karrakatta: Upgrading

855. Hon. P. G. PENDAL, to the Attorney General representing the Minister for Local Government:

On what basis and under what authority are headstones and other monumental works removed at Karrakatta Cemetery as part of the so-called up-grading programme?

Hon. J. M. BERINSON replied:

Legible and reasonably intact headstones are not being removed under beautification work being carried out by the Karrakatta Cemetery Board in conjunction with a community employment programme project. The board is removing other monumental work from old sections of the cemetery and progressively levelling, grassing, and landscaping those sections to up-grade appearance, reduce maintenance, and ultimately create a pioneer memorial park amenity. The monumental work being removed falls into two categories:

(1) Kerbing and grave covers in good or poor condition where the approval of the holder of the grant of right of burial or the next of kin has been obtained in writing.

(2) Kerbing and grave covers in poor, neglected, or dilapidated condition where the grant of right of burial has expired and the next of kin cannot be contacted. This work is authorised under sections 25 and 28 of the Cemeteries Act and the cemetery by-laws 63 to 65 inclusive. Photographic record is being kept by the board of all this category of monumental work.

In both categories all legible and intact headstones are being retained and in many cases the board is providing new foundations or renovating old foundations under those headstones.

COMMUNITY WELFARE

Women's Emergency Services Programme: Funding

856. Hon. TOM KNIGHT, to the Minister for Planning representing the Minister for Youth and Community Services:

(1) Is the Minister aware that in July last year, Senator Grimes stated that $4 million was to be immediately earmarked for the women's emergency services programme (WESP), and that Western Australia was to receive $340 000 over and above its normal finance?

(2) Was he also aware that in December 1983 the Western Australian women's emergency services programme group met with a group of women from Canberra to finalise the allocation and advise the Premier who would make the final decision?

(3) Could the Minister advise whether or not the Premier accepted the money?

(4) If "Yes", why has no allocation been made to the WA group?

(5) If "No" to (3), why not?

Hon. PETER DOWDING replied:

(1) to (5) This matter falls under the portfolio of the Minister for Health and the question should be directed to him.

857. *This question was postponed.*

COMMUNITY WELFARE

Department: Abortions

858. Hon. TOM KNIGHT, to the Minister for Planning representing the Minister for Youth and Community Services:

(1) Who within the Department for Community Welfare makes the decision to allow abortion of children in the department's care?

(2) Are the parents given the opportunity to agree to or oppose a proposed abortion?

(3) How many children in the department's care have been given abortions in each of the past three years?

(4) How many had parents' consent?

(5) How many on departmental decision?

(6) How many children in the department's care are on contraceptive pills—

(a) with parental consent;

(b) without parental consent?

(7) How many children in the department's care are known to be using other forms of contraceptives—

(a) with parental consent;

(b) without parental consent?

Hon. PETER DOWDING replied:

(1) The director, subject to medical advice.

(2) Yes.

(3) No collective records are maintained for the various types of operative procedures or anaesthesia for which consent is given by the director as guardian. A record of medical attention is recorded on individual personal files of wards.

(4) No figures are kept. Rarely if ever has a termination proceeded where the parents are consulted and do not consent. In some cases, however, the whereabouts of parents are unknown and they cannot be consulted.

(5) Answered under (4).

(6) and (7) As answered in (3).

STATE FINANCE

Financial Institutions Duty: Government Departments and Instrumentalities

859. Hon. P. G. PENDAL, to the Minister for Budget Management:

(1) Is it correct that FID tax is not payable by Government departments but is payable by Government agencies?

(2) If so, how much has the Tourism Commission paid in FID since 1 January 1984 which would not have been paid had the new commission remained a department?

Hon. J. M. BERINSON replied:

(1) The Financial Institutions Duty Act provides an automatic process for a Government department, with the word "department" in its name, to obtain exempt status accounts with certain financial institutions.

Other Government agencies and the like may apply to the Commissioner of State Taxation to be certified as a Government department.

(2) $2 511.77 to 31 March, 1984.

The status of the Tourism Commission for purposes of FID is currently being examined.

PORT

Bunbury: Facilities

860. Hon. V. J. FERRY, to the Minister for Planning representing the Minister for Transport:

(1) What capacity and facilities does the Bunbury inland harbour have for handling shipping servicing south-west industries and general trade?

(2) What additional facilities or extensions are programmed for the further development of this harbour?

(3) For what purposes will the new facilities be required?

Hon. PETER DOWDING replied:

(1) to (3) At the Minister's request the Bunbury Port Authority, in conjunction with the Co-ordinator General of Transport, is preparing a strategy document for the Bunbury port.

This document will deal with characteristics of the existing port, a review of

current port trade and deficiencies, and problems facing the port. It will also cover annual forecasts for existing and new trade up to the year 2000 and beyond. Implications of the trade forecasts on port needs and development in terms of additional berth requirements, port facilities, and port finances will be taken into account.

The questions asked by the member will be addressed in the document, which is expected to be available by mid 1984. The Minister will let the member have a copy as soon as it is available.

CULTURAL AFFAIRS

Libraries: Funding

861. Hon. P. G. PENDAL, to the Attorney General representing the Minister for the Arts:

Is it correct that, under the present Government, funding for the State's public libraries has deteriorated from the equivalent of 214 000 volumes in 1980 under the Court Government to 186 000 in 1983-84 under the Burke Government?

Hon. J. M. BERINSON replied:

It must be emphasised that the Library Board of Western Australia is a statutory authority responsible for setting its own priorities and making its own spending decisions within the limits of the funds made available by the Government.

In the first Budget brought down by this Government the Library Board received a 17 per cent increase in funds for acquisition of books over and above the last Budget of the Court-O'Connor Government.

I am informed that in the 1983-84 financial year the Library Board plans to buy 186 714 new volumes for circulation to public libraries. It will also acquire a considerable number of reference books for its own central library as well as tapes and other special materials.

Far from deteriorating, the funding made available by this Government to the Library Board for book acquisitions has reached a record figure of $3.416 million, the first time it has ever exceeded $3 million.

LAND: NATIONAL PARK

Shannon River: Declaration

862. Hon. A. A. LEWIS, to the Attorney General representing the Minister for the Environment:

(1) Has the Shannon Basin been declared a national park?

(2) If not, who authorised the sign on the Manjimup-Walpole Road announcing it as such?

Hon. J. M. BERINSON replied:

(1) No.

(2) I am advised that in fact the sign identifies the area as the "Shannon Forest" and is clearly associated with the Forests Department.

TRANSPORT: DANGEROUS GOODS

Regulations: Booklet

863. Hon. P. H. WELLS, to the Minister for Planning representing the Minister for Transport:

(1) What communication has been made with the general transport industry and truck drivers concerning the new regulations affecting dangerous goods?

(2) Will the Minister organise someone to to go through the Act and regulations, write a simple booklet explaining what is required from consignor, prime contractor, subcontractor and consignee, and distribute such booklet to the people affected?

Hon. PETER DOWDING replied:

(1) and (2) The administration of the dangerous goods (road transport) regulations falls within the portfolio of the Minister for Minerals and Energy, who will reply to the question in writing.

RECREATION

Walking Tracks: Shannon River Basin

864. Hon. A. A. LEWIS, to the Leader of the House representing the Minister for Forests:

(1) Have the walking tracks at Shannon townsite been completed?

(2) If so, what was the cost?

(3) What buildings have been erected, or are being erected, and at what cost or estimated cost?

(4) What is the estimated visitor usage of the facilities at Shannon?

Hon. D. K. DANS replied:

(1) No.

(2) Five kilometres of walk trails have been completed including 800 metres of trail with sealed surface for use by disabled people at a total cost, including bridges, boardwalks, and sealing of $23 524.

(3) Buildings completed—

	$
Barbecue shelter and surrounds costing	8 527
Quokka observation shelter and boardwalks	2 500

Buildings in progress—

Information shelter—estimated cost	13 000
Multi-use centre—estimated cost	40 000
Toilet block— estimated cost	10 000
Ablution block—estimated cost	20 000

(4) Specific information for the Shannon site is not available.

HOSPITALS: OSBORNE PARK AND WANNEROO

Medical Practitioners: Sessional

865. Hon. P. H. WELLS, to the Leader of the House representing the Minister for Health:

(1) Has there been a request for doctors using the Wanneroo and Obsorne Park Hospitals to apply to be registered for sessions?

(2) If "Yes", what were the positions for which the medical practitioners were requested to nominate?

(3) How many applications have been received for these positions?

(4) How many positions are available in each category at—

(a) Osborne Park Hospital;

(b) Wanneroo Hospital?

(5) How many doctors or medical practitioners have signed contracts relating to the sessional arrangements at—

(a) Osborne Park Hospital;

(b) Wanneroo Hospital?

(6) Will any doctor or medical person, who operated at these hospitals prior to the introduction of the sessional arrangements, now been denied sessions at—

(a) Osborne Park Hospital;

(b) Wanneroo Hospital?

Hon. D. K. DANS replied:

(1) Yes. Applications have been sought from medical practitioners to treat public patients for remuneration on a salaried or sessional basis at Osborne Park Hospital and Wanneroo Hospital.

(2) (a) Full-time appointments in anaesthetics, general surgery, and obstetrics and gynaecology;

(b) sessional specialists in anaesthetics, ENT surgery, general surgery, obstetrics and gynaecology, ophthalmology, orthopaedic surgery, paediatrics, and urology;

(c) general practitioners in family general medicine, which includes uncomplicated obstetrics.

(3) 177.

(4) (a) Osborne Park Hospital—

Specialist appointments—

Anaesthetics	13
General surgery	8
ENT	1
Ophthalomolgy	2
Orthopaedics	3
Plastic surgery	1
Urology	1
O & G	7
Paediatrics	4
General practitioners	70

(b) Wanneroo Hospital—

Specialist appointments—

General surgery	5
Anaesthetics	6
ENT	1
Orthopaedics	2
Urology	1
Paediatrics	2

Plastic surgery	1
O & G	3 or 4
General practitioners	9

(5) (a) and (b) 108 doctors have indicated definite acceptance of appointments pending determination by arbitration of outstanding matters of terms and conditions. Others who were offered appointments have indicated only provisional acceptance in writing and by telephone.

(6) (a) and (b) No, provided that those practitioners who have been offered a sessional appointment accepted those offers when the matters which await arbitral determination are known.

WATER RESOURCES: CATCHMENT AREAS

Clearing: Guidelines

866. Hon. A. A. LEWIS, to the Leader of the House representing the Minister for Water Resources:

Have there been any changes in the guidelines for clearing in the areas under restriction through the Country Areas Water Supply Act?

Hon. D. K. DANS replied:

Yes. The clearing guidelines were amended in December 1983 to permit the development of tree plantations in the restricted water catchment areas. The amended guidelines detail conditions under which licences will be issued for the clearing of indigenous vegetation for tree farming purposes.

EDUCATION

Copyright Act: Infringement

867. Hon. P. H. WELLS, to the Minister for Planning representing the Minister for Education:

(1) Has the Education Department recently advised schools that it is a breach of copyright to show videos which have been taped from TV programmes outside school hours?

(2) Were schools advised that they should clear any currently held tapes which may contain material infringing the Copyright Act?

(3) Will the Minister table a copy of the instruction and communication to schools relating to copyright requirements and the taping of programmes for use in schools?

Hon. PETER DOWDING replied:

(1) Yes.

(2) No formal notification to this effect has been given to schools.

(3) Yes.

TRANSPORT: BUSES

Shelter: Allanson

868. Hon. A. A. LEWIS, to the Minister for Planning representing the Minister for Transport:

(1) Has Westrail been approached to build a bus shelter at Allanson?

(2) If so, will it be built?

(3) If not, why not?

Hon. PETER DOWDING replied:

(1) Yes.

(2) Yes.

(3) Not applicable.

PUBLIC SERVICE

Board: Reclassifications

869. Hon. P. H. WELLS, to the Leader of the House representing the Premier:

(1) How many applications for job reclassification are awaiting approval from the Public Service Board?

(2) How many of these reclassifications have been awaiting approval from the Public Service Board for—

(a) three months;

(b) six months;

(c) nine months; and

(d) more than nine months?

(3) Has the Public Service Board been requested to delay reclassifications during the wages freeze or for any other period or reason?

(4) If so, what are the reasons, and for what period, are the reclassifications delayed?

Hon. D. K. DANS replied:

(1) 479.

(2) (a) 378;

(b) 52;

(c) 47;

(d) 2.

(3) No.

(4) Not applicable.

POLICE

Leonora

870. Hon. N. F. MOORE, to the Attorney General representing the Minister for Police and Emergency Services:

In view of the expansion of the population of Leonora, will the Minister give consideration to increasing the number of police officers stationed in the town?

Hon. J. M. BERINSON replied:

Resulting from a recent assessment of policing requirements at Leonora, the Commissioner of Police has approved an increase of one constable to the station strength.

The additional officer is expected to commence duty at Leonora within a few weeks.

LAND: NATIONAL PARKS

John Forrest and Yanchep: Expenditure and Visitors

871. Hon. A. A. LEWIS, to the Attorney General representing the Minister for the Environment:

(1) What has been the visitor usage in the last two financial years of—

(a) Yanchep National Park;

(b) John Forrest National Park?

(2) What has been the capital expenditure on these two parks in each of the financial years mentioned?

Hon. J. M. BERINSON replied:

(1) Number of visitors (estimated from ticket sales and honour box collections)—

	to June 1982	to June 1983
Yanchep National Park	230 000	206 980
John Forrest National Park	70 000	65 000

(2) Expenditure—

Yanchep National Park—		
wages	$279 416	$315 687
maintenance	$88 544	$97 619
John Forrest National Park—		
wages	$118 662	$144 917
maintenance	$31 811	$32 184

PASTORAL INDUSTRY

Leases: Carnegie

872. Hon. N. F. MOORE, to the Leader of the House representing the Minister for Lands and Surveys:

Has the Lands and Surveys Department been requested to approve the transfer of the Carnegie pastoral lease to the Aboriginal Development Commission or any other Aboriginal organisation?

Hon. D. K. DANS replied:

No. The Department of Lands and Surveys is not aware of any transfer proposal in relation to the Carnegie station pastoral lease.

EDUCATION: HIGH SCHOOL

Nannup District: Speech Therapist

873. Hon. A. A. LEWIS, to the Leader of the House representing the Minister for Health:

(1) Is Nannup District High School still to have the services of a speech therapist?

(2) Are the hours available to the school to remain the same?

Hon. D. K. DANS replied:

(1) and (2) This question should be referred to the Minister for Health.

EMPLOYMENT AND UNEMPLOYMENT

Community Employment Programme: Punmu Aboriginal Community Desert Regeneration Project

874. Hon. N. F. MOORE, to the Minister for Employment and Training:

In the schedule of projects under the community employment programme released on 24 February 1984, the item WCE 000184 Punmu Aboriginal community desert regeneration project valued at $631 379 appears. Will the Minister provide specific details of this project?

Hon. PETER DOWDING replied:

The project, sponsored by the Punmu Aboriginal Community, will provide employment over a period of 52 weeks to 22 persons including two drivers, two plant operators, eight labourers, eight nursery workers, one foreman, and one head foreman. Under the project, particular species of trees and shrubs which have been tested and are known to survive harsh conditions will be planted to

prevent further erosion of the area, to provide firewood which is scarce in this region, to provide shade and shelter which will allow vegetable growing under shade, and to provide a source of fresh food for stock. In the longer term, the project will provide research towards a basis for cash crops such as nuts (pistachio and cashew), dates, and light hardwood.

The project will be under the supervision of a person experienced with arid area horticulture, having worked with the CSIRO and in Israel.

STATE FORESTS: PINE

Crown Land: Agreement

875. Hon. A. A. LEWIS, to the Leader of the House representing the Minister for Forests:

Has an agreement been made between the State and Federal Governments not to plant pines on uncleared vacant Crown land?

Hon. D. K. DANS replied:

No.

ROAD

Laverton-Mt. Margaret

876. Hon. N. F. MOORE, to the Minister for Planning representing the Minister for Transport:

In view of the arrangement whereby students are bussed from the Mt. Margaret Mission to the Laverton District High School on a daily basis, will the Minister advise whether his Government proposes to upgrade the Mt. Margaret-Laverton Road?

Hon. PETER DOWDING replied:

This is a road under the control of the Laverton Shire Council. However, the 1983-84 Main Roads Department programme provided $10 000 to the shire for reconditioning of formation and gravelling a section of the road between Laverton and Mt. Margaret Mission.

In addition, a further $10 000 has been provided by way of a special grant to extend the work during this financial year.

Council has also applied a further $10 000 of its Australian bicentennial road development programme funds on this road.

Consideration will be given to further assistance on the 1984-85 programme should this be considered necessary.

COMMUNITY WELFARE

Department: Bus Charter

877. Hon. N. F. MOORE, to the Minister for Planning representing the Minister for Youth and Community Services:

(1) Did the Department for Community Welfare provide a bus for people from the Ingada Village in Carnarvon to travel to Geraldton recently?

(2) If so, what was the purpose of the trip and what was the cost of—

(a) the bus charter; and

(b) accommodation?

Hon. PETER DOWDING replied:

(1) Acting as agents for the Aboriginal land inquiry the Department for Community Welfare chartered a bus to transport members of Aboriginal organisations, including the Ingada Village, to Geraldton for a meeting with Aboriginal land inquiry personnel on 20 and 21 February 1984.

(2) (a) and (b) The people from Carnarvon met with other Aborigines from the Murchison area and officials of the Aboriginal land inquiry so that the discussion paper prepared by Mr Paul Seaman, QC, commissioner of the Aboriginal land inquiry, could be explained to them. A number of the people would have had difficulties with the discussion paper without this assistance. The cost of the bus charter was approximately $600, and accommodation for the Carnarvon people in Geraldton cost approximately $1 000.

EMPLOYMENT AND UNEMPLOYMENT

Murchison-Eyre Electorate

878. Hon. N. F. MOORE, to the Minister for Employment and Training:

(1) How many—

(a) Aboriginal; and

(b) non-Aboriginal;

persons in the State electorate of Murchison-Eyre are currently unemployed?

(2) How many jobs have been created under the community employment programme in the State electorate of Murchison-Eyre?

Hon. PETER DOWDING replied:

(1) (a) and (b) This information is not kept by the State. I would suggest that the member contact the Regional Director of the Department of Employment and Industrial Relations, who may be able to supply him with this information.

(2) 19.

COMMUNITY WELFARE

Department: Mt. Magnet

879. Hon. N. F. MOORE, to the Minister for Planning representing the Minister for Youth and Community Services:

(1) Does the Department for Community Welfare have any plans to station an officer at Mt. Magnet?

(2) If so, when will the officer take up his appointment?

(3) If not, why not?

Hon. PETER DOWDING replied:

(1) The department does not have any firm plans at this stage to station an officer in Mt. Magnet. However it is carefully monitoring demands for its service in that town; and if appropriate it will consider reorganising the staff resources of the Meekatharra office to provide a full-time service in Mt. Magnet.

(2) and (3) Not applicable.

MINING: ACT

Exemptions

880. Hon. N. F. MOORE, to the Minister for Planning representing the Minister for Minerals and Energy:

In the *Government Gazette* of 20 January 1984 (page 184) areas of land at Malcolm, east of Leonora, and at Butterfly Siding, south of Leonora, have been exempted from divisions I to 5 of part IV of the Mining Act 1978-1983.

What are the reasons for these areas being exempted?

Hon. PETER DOWDING replied:

The areas have been temporarily exempted pending various decisions that will need to be made affecting the Leonora area.

881. *This question was postponed.*