

# Legislative Council

Wednesday, 15 August 1984

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

## "HANSARD": WEEKLY COPIES

*Statement by President*

**THE PRESIDENT** (Hon. Clive Griffiths): Several members have spoken to me about the position in regard to the weekly *Hansard*. I have a memorandum from the Chief Hansard Reporter which reads as follows—

Re: Weekly Hansard

In future, the weekly *Hansards* will contain proceedings as follows—

No. 2 will contain Thursday, 26 July; Tuesday, 31 July; and Wednesday, 1 August.

No. 3 will contain Thursday, 2 August; Tuesday, 7 August; and Wednesday, 8 August; and so on.

To help Members in their preparation of speeches, an uncorrected copy of Thursday's *Hansard* will be available by the following Tuesday, when the weekly number is available. Of course, this uncorrected information must not be quoted.

This procedure has been found necessary as a result of the increased volume of work handled by both the Government Printing Office and *Hansard*.

J. I. Bussola

Chief Hansard Reporter.

In a nutshell, that means that in future the weekly *Hansard* will be published on Tuesdays, and instead of containing the proceedings of Tuesday, Wednesday, and Thursday as it used to, it will contain the proceedings of Thursday, Tuesday, and Wednesday. A copy of the letter is available to members.

## HEALTH: DENTAL

*Technicians: Petition*

On motions by Hon. Tom Knight, the following petition bearing the signatures of 102 persons was received, read, and ordered to lie upon the Table of the House—

To the Honourable the Speaker and Members of the Legislative Assembly in parliament assembled. We the undersigned resi-

dents in the State of Western Australia do herewith pray that the Parliament of Western Australia will support.

(i) The amendment of the Dentist's Act, 1939-1972 to include provision for Dental Technicians who qualify through Legislation to treat members of the public direct in the fitting, manufacture and repair of removable dental prosthesis (dentures), thereby providing members of the public with a free choice of consultation in the matter of fitting, manufacture and repair of removable dental prosthesis; and

(ii) The establishment of a recognised course of clinical training to be undertaken in addition to the existing Dental Technician's apprenticeship to enable existing and future Dental Technicians to qualify under the term of paragraph (i) above. And your petitioners, as in duty bound, will ever pray.

(See paper No. 95.)

## PAWNBROKERS AMENDMENT BILL

*Introduction and First Reading*

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

*Second Reading*

**HON. PETER DOWDING** (North—Minister for Consumer Affairs) [2.38 p.m.]: I move—

That the Bill be now read a second time.

This is a short Bill which is designed to overcome a particularly unsavoury practice which has been adopted by one pawnbroker operating in Perth.

The problem which this Bill seeks to remedy was brought to my attention earlier this year following an unsuccessful prosecution instituted by the police under the Pawnbrokers Act against City Loan Office.

These proceedings indicated that City Loan Office was avoiding the operation of the Pawnbrokers Act by purchasing goods which consumers had intended to pledge or pawn and then granting to them an option to repurchase those goods at a later time and at a far greater price than the price at which City Loan Office had purchased them.

The court held that this was not a pawnbroking transaction, that the obligations, little as they are under the Pawnbrokers Act, did not apply, and that the pawnbroker could dispose of the goods before the statutory limit of three months.

Consumers often did not know the nature or effect of the documentation they were signing, and most did not realise that what was happening was in fact a sale of goods. Certainly they did not intend to sell goods to the pawnbroker.

As well, this practice effectively disguised the rate of interest that was payable by the consumer in the event he repurchased the goods.

Inquiries have indicated that on a number of documents sighted by police officers at the premises of City Loan Office, the principal of the firm has noted an effective rate of interest on the option to repurchase transactions. These rates are not disclosed on the consumer's copy of the agreement, but recorded effective rates were up to 240 per cent per annum.

Hon. Tom Knight: Good business!

Hon. PETER DOWDING: Common rates noted by police officers were 80 per cent, 66.6 per cent, 100 per cent, and 56 per cent. It is little wonder this business sought to hide its rates of interest in the manner I have described.

I sought to discourage this practice within the pawnbroking industry, writing to all pawnbrokers seeking that they desist from it. To my knowledge only City Loan Office continues in this vein.

I am reassured by other pawnbrokers who do not act in this fashion and who disapprove of the practice as a means of avoiding the operations of the Pawnbrokers Act.

This amendment to prohibit the practice is designed to ensure that a licensed pawnbroker reverts to the normal arrangement of taking a pledge over goods. It does this by prohibiting a licensed pawnbroker from purchasing goods from another person and, having so bought, granting to the seller an option to repurchase within a particular period for a higher price than the price at which he purchased the goods in the first instance. It will mean he cannot effectively charge interest if he wishes to engage in the practice as he would be obliged to sell at the same purchase price. It seems unlikely that the pawnbroker would do this if he wished to remain in business.

I believe that this amendment, with significant monetary and punitive sanctions, will effectively discourage the practice of City Loan Office and cause it to revert to a normal pawnbroking transaction. This Bill is an interim measure and is a prelude to a thorough review of this legislation, a review which the Government intends to carry out.

I commend this Bill to the House.

Debate adjourned, on motion by Hon. G. E. Masters (Leader of the Opposition).

## BAIL AMENDMENT BILL

### *Second Reading*

Debate resumed from 2 August.

HON. G. E. MASTERS (West—Leader of the Opposition) [2.42 p.m.]: The Opposition has a number of queries about this Bill. I do not qualify myself as a legal expert, but I have looked at the Bill as someone who has a general interest in its provisions.

It is interesting to note that the parent legislation is being amended before it has been proclaimed. In other words, the regulations were drawn up and some problems arose with the provisions of the Act, so the legislation was referred to the Parliament to put changes into effect and make the Act operable. I have no strong objection to that method, because the original Bill was drafted during our time in Government.

However, some of the remarks in the Minister's second reading speech perturb me, and of particular concern is a comment in his first paragraph. The Minister said that one of the reasons for introducing this Bill was that attention had been drawn to serious administrative difficulties which would result from the proclamation of the Act in its present form. Anyone who has been a Minister—I have, and Hon. Joe Berinson has on a previous occasion—knows that when departments come back and say that the legislation or the regulations will cause administrative difficulties, the proposed amendments tend to suit the department rather than the public. I am not suggesting that that is necessarily the case here, but it seems to me there is cause for concern when someone says to the Minister, "Look, we've got to change this. There are some administrative problems". On my reading of the Minister's second reading speech, it seems there could be a disadvantage to the people seeking bail.

The Minister can probably advise me that that is not the case; but in relieving an administrative burden, there is always the risk that people's rights could be threatened. I ask the Minister to reflect on some of the comments I will make. In our endeavour to make things easier for the administration and perhaps to save costs, we must always be careful that we do not prejudice the rights of people and cause difficulties to the public. We must accept that in many cases administrative difficulties will arise, and we must say, "That is just too bad. Because of the public interest, this is how it has to be".

In the second paragraph of the Minister's second reading speech, he said—

... the Act requires the provision of more information to and by defendants and

sureties. This is to ensure that they are aware of their respective rights and obligations. The emphasis on the provision of adequate information places a day-to-day burden on the officers who administer the bail system.

It may be the case that there is a day-to-day burden, but does that necessarily mean that the Act should be changed the way the Minister is suggesting? As we go through the second reading speech—

Hon. J. M. Berinson: Before you go to the next page, would you just refer to the sentence immediately following? You will notice it is being done without detracting from the Act's aims.

Hon. G. E. MASTERS: That is right. It says, "detracting from the Act's philosophy".

Hon. J. M. Berinson: "Without detracting".

Hon. G. E. MASTERS: Without some sort of comment from the Attorney General, I do not necessarily accept that that is the end result, based on what appears in the second reading speech and in the Bill. I will refer to the provisions of the Bill as we go through the Committee stage.

Further in the second reading speech the following appears—

Section 8 obliges an officer to provide the defendant with information as to his bail rights on every occasion . . .

That is the existing provision. It requires that the defendant's position in respect of bail be considered. It is proposed that this requirement should apply to the first occasion only. Some people who are charged with an offence and who seek bail undergo a great deal of stress. They are concerned and worried. On any occasion or on every occasion they may not listen carefully to the explanations put to them.

Luckily enough, I have not been in the position of requiring bail, nor have I deserved to be in that position.

Hon. Kay Hallahan: Not yet.

Hon. G. E. MASTERS: Even Hon. Kay Hallahan would not expect me to have been in that position; but I accept that people in that position would experience stress and strain when they have been charged with an offence.

Even when bail rights are explained on every occasion, there is a fair risk that someone may not understand fully what was explained on the first, second, or third occasion. That person may have missed the point of the first explanation or may not have fully understood it. Certainly many disadvantaged people would need careful explanations on every occasion.

The following also appears in the second reading speech—

Section 8 also requires the disclosure of all relevant information by the defendant to the officer authorised to grant bail. It is proposed that a judicial officer may dispense with this requirement where bail is likely to be granted and the information in the possession of the officer is sufficient for his consideration of the case.

When dealing with information that has been passed on, I wonder whether that is a good idea. Perhaps the information may be in the possession of the officer, but is it sufficient for him to make a judgment on it? Should he seek more information? Is the Government saying that it is his judgment, and that if he does not have sufficient information, he can ask for further information? What is the reason for this provision?

In the Minister's second reading speech, the following also appears—

Section 7(3) of the Act provides that where bail has been refused by a Supreme Court judge the defendant on each subsequent appearance before the court may request to again go before the Supreme Court.

The matter of concern to me is contained in the following—

In view of the backlog of cases before the Supreme Court, and the lack of necessity for this unlimited right . . .

So we go on. The comment relating to the backlog of cases before the Supreme Court means that a decision must be secondary to the rights of people. That sort of statement worries me. A backlog of cases in the Supreme Court should not matter if the rights of people are threatened in any shape or form.

Reference has been made to administrative problems, a backlog of work, and cutting corners.

I quote from the Minister's second reading speech as follows—

Section 14 provides a right of appeal to a judge of the Supreme Court when bail has been refused by a judicial officer at a lower level. It is proposed to amend section 14 to restrict this ability to one application unless circumstances similar to those proposed in respect of section 7 justify a further application.

Who will decide whether the circumstances have changed.

I think the whole tone of this Bill appears to indicate a desire to save administrative costs and relates to cutting corners for administrative pur-

poses. At the same time it is threatening the rights of people who may be in difficult circumstances.

I have further queries which I will raise during the Committee stage.

I note that section 18 of the existing Act contains the following provision—

—an authorized police officer may, in accordance with this section, dispense with the requirement for bail for an appearance in court by a defendant for a simple offence for which he is liable to punishment by a fine of not more than \$100 (excluding any daily penalty), or imprisonment for not more than one month, or both such punishments.

Section 19 of the existing Act provides for the deposit to be refunded if the defendant appears and for the deposit to be applied to any fine. It is proposed that the amount be trebled to \$300. If a person deposits \$300 and the fine is \$150, does that person simply get the change from his \$300?

Hon. J. M. Berinson: If he does not appear.

Hon. G. E. MASTERS: Does he lose the lot even if the fine is less than \$300?

Hon. J. M. Berinson: I do not think that is directly the point being made in this section.

Hon. G. E. MASTERS: The Opposition generally supports the Bill but I do not like to hear that its intention is to save administrative costs and pressures at the expense of the public. I would like the Minister's assurance that this will not be the case.

**HON. D. J. WORDSWORTH** (South) [2.52 p.m.]: I rise with some apprehension to speak on this Bill. It is a complicated measure because of its legal implications. It deals with a field of which most members of Parliament have no experience. Like the Leader of the Opposition I have read the Minister's second reading speech and endeavoured to research the subject. As has been pointed out, the Bail Bill was enacted at the end of 1982, but it was never proclaimed. We have before us changes to that Act which we are told are required from an administrative point of view. However, as the provisions of the Act have not been applied, how can it be known what effect they will have in practice?

The Minister has said that the Bill will reduce the administrative burden as far as possible without detracting from the Act's philosophy. I tried to look at the Act's philosophy and to do that it was necessary to return to the working paper, "Review of Bail Procedures" issued by the Law Reform Commission in 1977. It was a very lengthy document which was distributed to many groups such as the Aboriginal Legal Service of Western

Australia, the Alcohol and Drug Authority, Associated Banks in Western Australia, and something like 25 other groups. Very few groups contributed to the working paper when asked to do so. In fact, the Aboriginal Legal Service, the Associated Banks, the Department for Community Welfare, and a few individuals were the only contributors. However, when the "Report on Bail" was finally delivered, the response from people such as the Chief Justice and others was much greater.

When looking for the philosophy behind the Bill, one refers to the recommendations made in the report and I quote from page eight, section 7, as follows—

7. In the Working Paper, the Commission dealt separately with a number of special groups in the community which tend to encounter particular problems in relation to bail. For example, some children and Aboriginal defendants have difficulty meeting conditions requiring financial security and sureties. Defendants who have only recently arrived, or who are not resident in Western Australia, may have difficulty finding a surety. Some Aboriginal and migrant defendants have difficulty understanding their bail obligations.

I now quote from page 19, chapter three, paragraph (b)—

(b) in cases where the legislation provides that bail may be granted, there could be a tendency for some bail-decision-makers to regard bail as a privilege for which a defendant must apply and, despite existing practice,<sup>5</sup> a defendant could be remanded in custody simply because the question of bail is never raised;

I think that from those two quotes one can begin to understand a little of the philosophy of the Bill. I now quote from another section of chapter three as follows—

3.5 There is an argument that such a qualified right to bail should not apply to overnight bail at the lock-up or bail during trial. In respect of overnight bail at the lock-up, the Victorian Act and the Queensland Proposals do not recognize a defendant's right to bail where he is in police custody but can be brought before a justice within 24 hours. Thus, in a typical overnight bail situation, a defendant is merely entitled to be considered for bail, he has no right to it. In the Commission's view, there is no reason either in principle or in practice why a defendant who can be brought before a justice

within twenty-four hours of his arrest should not have a qualified right to bail during any delay. Although short in duration, overnight custody can be a traumatic experience and a qualified right to bail in these circumstances should be recognised.

The Commission therefore recommends that once the police have completed the charging procedure, their duty should first be to release the defendant on bail, unless there are grounds for refusal, and secondly, if the defendant is not released on bail, bring him before a justice as soon as practicable.

I emphasise that it is a traumatic experience to be charged with an offence and the first duty should be to release the defendant. I wonder how many people find themselves in the position of needing bail. I guess that very few members of Parliament have ever been arrested. I know of two who were recently arrested and I think it was a traumatic experience for them; their belts were taken from them and their possessions taken from their pockets. They obviously had not expected that this sort of thing would happen. If I suddenly found myself in the position of needing someone to give me surety, I wonder whom I would call or whether I could find the required amount of money to get myself released.

I did refer to another document called "Bail Issues and Prospects" which included a proposed guideline by W. Clifford, who is the Director of the Australian Institute of Criminology, and L. T. Wilkins, who is a visiting expert from the State University of New York. I quote from page 3 of that document as follows—

Attorney-General, Robert F. Kennedy, at a conference in 1964 on the subject of bail said that there was a special responsibility to pay attention to the poor i.e., the 1,500,000 persons in the U.S. accused of crime, not yet found guilty but unable to obtain bail and forced therefore to serve a term of imprisonment prior to their guilt being established.

A million and a half people! To continue—

A seminar held in Sydney in 1969 elicited bail statistics in a paper by P. G. Ward showing that 2/3 of the persons then held in the Metropolitan Remand Centre in Sydney had no obvious history of previous convictions and about a half of those accused, i.e., 2,000 in 1968 had spent on the average five to six weeks in custody before going to courts.

A Committee of the Victorian Bail Council, studying 213 persons held in Victorian prisons on the night of the 17th and 18th October 1970, discovered that about 60% of

the persons held in custody had no prior prison record and that a proportion (thought to be the majority) had been held in custody because they were unable to obtain sureties for bail. Needless to say this implied *inter alia* the difference in the social status of those who could obtain sureties and those who could not.

That highlights the problem of finding someone to be a surety or of finding the required amount to bail oneself out.

The Minister's second reading speech also indicated that it was proposed to extend the useful provision of the Act in respect of simple offences. The Minister said—

Section 18 provides that a deposit of up to \$100 will produce a right to be at liberty without formal requirements of bail with respect to offences punishable by a fine of not more than \$100 or imprisonment for one month or both.

As has been pointed out, the penalty rises in proportion to the crime, but the minimum amount is \$100. These days, with the use of plastic cards, how many people have \$100 in their pockets at any given time? I presume from this that the Attorney General has to produce—

Hon. J. M. Berinson: That is a maximum I think. Can you refer me to the section?

Hon. D. J. WORDSWORTH: I was reading from the Attorney General's speech. The figure has been increased to \$100. As I was saying, we are using cash less and less frequently. I often find myself with less than \$100 in my pocket because these days one seems to use cheques and plastic cards. The Government is old-fashioned; it likes hard cash. Under the provision of this legislation, one cannot use those other sorts of credit.

The other matter which the report raised was that of drug trafficking and the fact that, at times, a surety could be put up. Because usually the people accused of this offence are in the business, they are able to find the money or arrange to have the money. These people can get bail fairly quickly and abscond and not report back.

I quote from page 10 of that report as follows—

Chapter 1—Bail to be Considered for All Offences

1.2 One commentator on the Working Paper suggested that defendants accused of drug trafficking should not be released on bail. Another commentator suggested that bail should be refused where a defendant is caught in the act of committing certain offences, and that the exclusion of bail for cer-

tain offences could serve as a deterrent to crime.

That refers to drug trafficking. I am not quite sure from the Minister's second reading speech whether the Bill relaxes the granting of bail to drug traffickers, because in the second reading speech is the following—

Section 15 provides the Supreme Court with an exclusive jurisdiction to grant bail where the offence for which the defendant is in custody is punishable by death or imprisonment for life. The major relevant offences are wilful murder, murder, rape and armed robbery.

I wonder whether drug trafficking should not be included in that list which requires a higher body to authorise bail.

Hon. J. M. Berinson: You do understand the drug offences are not included in the present Act?

Hon. D. J. WORDSWORTH: No, I was not aware that drug trafficking was not included.

Hon. J. M. Berinson: What I am trying to say is that drug offences do not come within section 15 of the present Act, so it is not a question of the current Bill reducing any provision relating to drug offences. It is neutral in respect of drug offences.

Hon. D. J. WORDSWORTH: Perhaps the Attorney General could explain from what level the person accused of drug trafficking can get bail.

Those are the only matters I wish to raise. I do find it a difficult subject on which to speak. I think it is a pity that this House does not meet more often as a Select Committee to look into these Bills as was proposed by one of our members recently. As members we are so often protected from the problems which arrested people are subjected to and the difficulties which they experience in a lockup.

I remember once going with the late Colin Campbell, Director of Prisons, to a Jaycees meeting at Pardelup Prison at Mt. Barker. He asked me whether I had ever been to a prison and I said that I had not; it was the first time. He said that I would find the people in the prison not much different from me. The difference is that—

Hon. J. M. Berinson: They have been caught!

Hon. D. J. WORDSWORTH: One can be driving home at night with a couple of drinks under one's belt and someone walks out from the side of the footpath and bang, one finds oneself in prison with the other people. I have not had very much experience in this field, but I think we must look more closely at our system of arrest and bail.

**HON. JOHN WILLIAMS** (Metropolitan) [3.09 p.m.]: I do not share my colleague's apprehension about talking to the Bail Amendment Bill because it is something about which I have been concerned for a number of years. I wish to support him most strongly in the fact that it is particularly traumatic when what we call an ordinary citizen becomes tomorrow's criminal. An arrest takes place and the draconian methods laid down by our laws are then practised at the police station. One cannot blame the police; the laws are telling them what they have to do are laid down. They remove the accused's belt and shoelaces in case they try to hang themselves. There is nothing to reduce their humiliation when their photographs and fingerprints are taken; they are strip searched, and they are put into a not very pleasant place of confinement.

That is not the fault of the police; that is the fault of the legislators, we who make the law. If we want to correct that, it is up to us to do so here; it is up to us to tell the police a different story.

There are one or two frightening aspects of bail, and I shall ask the Attorney General about some of them and whether—although not perhaps in the context of this Bill—the recommendations of the Law Reform Commission or whatever have overlooked a whole umbrella of aspects affecting the granting of bail.

Until some time ago, a person in Queensland arrested for drunk and disorderly conduct would be taken to the watch-house and immediately granted bail of 10c. The problem was that if the person arrested was a vagrant, he would not have that 10c. The officer in charge of the watch-house would have a box full of 10c pieces on the shelf and he would say, "Here you are; you are now on 10c bail". The officer would put down the 10c, then pick it up and return it to the shelf. That is what we might call bending the law.

Some offences attract a particularly high rate of bail, and this is one of the frightening aspects to which I have referred. Let me present members with a scenario involving an example of one of our colleagues here being arrested and asked whether he could raise bail. The shock of being arrested and having to go down to the lockup could be enough to unhinge him to the point of contacting you, Mr Deputy President (Hon. Robert Hetherington), me, or some other member, rather than contacting a member of his own family. Remember, he is allowed just one telephone call. The arrested member might ask if we would be prepared to go down to bail him out.

In my time I have bailed out several people. It is a simple procedure and all we need do is just sign

our life away and hope that the person will attend court the next day. My point is this: I know what I am signing for. Generally speaking, people seeking bail have been arrested for trivial offences, perhaps for driving under the influence. Quite often I get called on to bail out people who have been arrested for this offence.

However, let us consider the problems faced by a person not fully versed in the English language, a person who belongs to a particularly tight-knit family. When a member of such a family is in trouble, his family want him out of that "prison" immediately. At the police station, family members are asked what property they own and would they care to sign for bail. It could be that bail has been set at quite a fantastic figure, perhaps \$5 000 or \$6 000. I hasten to add that this would not be for a drink-driving offence! As I say, ethnic groups tend to help their families.

Of late I have heard of two or three instances where a father has pressured a son to help another son who is in trouble. In these families the son is not prepared to say, "Look, my brother is a bad egg and I won't help him because I cannot trust him". The father will say, "You have the money so you put it up. I will see that he appears in court". That is the end of it until such time as the person who signed for the bail amount comes to each and every one of us saying, "Can you appeal to the Attorney General, because bail has been estreated? I didn't want to put up the bail, but I was 'forced' to do so by my family, who put me under pressure". I sympathise with the Attorney because he knows that almost weekly someone will appeal to him to save someone whose bail has been estreated.

My appeal to the Attorney is this: Bail conditions are not spelt out to ethnic groups in our community in such a way that the people fully understand their obligations. This is not the fault of the Attorney, nor of previous Attorneys. Generally speaking it is a problem of "ethnicity". We do not take into consideration that we are not dealing with people who have come from the United Kingdom, upon whose laws a great deal of ours are based.

Not enough care is taken to explain a person's responsibilities in accepting to go bail when a magistrate or judge decides that bail should be granted. There is a great deal of difference between what happens in the lower courts and what happens in the Supreme Court or the District Court. In the higher courts I have found judges to be most meticulous in explaining in detail the conditions to be met by a person providing bail. So my plea is this: Is there some way the Attorney can institute a system, even if it is after a court case,

whereby these people are taken away to a room so that an officer can explain to them in detail what the situation is? He could explain to such a person that if his brother or sister does not appear in court on 3 March at 10.00 a.m., that person will have to find the amount of money equivalent to the amount at which bail has been set. He could ask whether that is fully understood. If the person replies, "Non capisce", the officer could call for an interpreter who could then explain what was involved in a language the person could understand.

I am not being silly in making this suggestion; rather I am being realistic, because too often constituents of mine have found themselves in bother because they have not understood. I think the Attorney knows what I mean, so I will not elaborate further.

I support what Hon. David Wordsworth said about the setting of bail for drug offences. One or two magistrates in Perth have no scales on their eyes whatsoever; they are fully aware of what happens to the people in front of them. Then we have those magistrates who are very kind and want to do the best possible for the accused. It must be remembered that at this stage the people are only accused: they are not guilty people. This is where the difficulty might arise.

Depending on the section of the Criminal Code under which the people are charged, particularly people involved in drug trafficking, I believe there should be no hesitation in saying that bail should not be allowed. We are fooling ourselves if we think that by setting bail of \$500 000 a person charged with a drug offence will not abscond. An amount of \$500 000 is petty cash to drug traffickers, particularly those in the top bracket.

As inhumane as it sounds, if drug traffickers are charged under that section of the Criminal Code relating to trafficking, there should be no question of bail, because they will certainly abscond. We can take away their passports and have them report to the police three times a day, but still the network will get them out. We are dealing with a big current social problem.

I comment now on a scheme which was instituted by the previous Government and which was prosecuted and brought to fruition by the present Government, and I refer to the use of bail hostels. It was a forward thinking move to have them introduced, and because this Act had not been proclaimed, for a long time some difficulty was involved. The Attorney General can vouch for the fact that the bail hostels have started to work and work properly, and that will take off some of

the pressure which has seen criticism of the granting of bail.

With those few queries, I indicate my support of the Bill.

**HON. P. H. WELLS** (North Metropolitan) [3.20 p.m.]: I support this Bill, but I have a few queries to raise and remarks to make. I would also like to remind the Attorney General of his words in 1982 when the Liberal Party introduced the Bail Bill. The Attorney General, then in Opposition, said the Bill had taken three years to come to the Parliament in such a form. The Bill followed carefully the Law Reform Commission report of that time. He said those words in August 1982, and now in August 1984 that same man is introducing into Parliament the same amendment he proposed in 1982, because he was upset that it was not accepted by the Government of the day.

I notice that the Attorney General has had his way in the proposed amendment to section 18. The prescribed penalty was \$100. That figure was increased to \$250, but he has now decided on \$300. Mr Wordsworth pointed out that fact. It was suggested to me that the Attorney General might deserve the name "the Bankcard Attorney", because a person will need to have a good Bankcard limit to be able to pay \$300!

**Hon. J. M. Berinson**: You have taken enough interest in this Bill to know that the increase from \$100 to \$300 had nothing to do with funds, revenue, or anything else; it is expanding the opportunities of people to get bail readily.

**Hon. P. H. WELLS**: If I remember correctly, in 1982 the Attorney referred to people being charged for traffic and gambling offences. I am certain Mr Pendal, Mr Moore, and Mr Lockyer will be interested in this point, because it could apply to people in their electorates who play two-up.

When Mr Berinson spoke in 1982 he referred to the Law Reform Commission report and suggested that the figure should be \$250. I have limited knowledge of this matter. As I have said before, this establishment does not provide members of Parliament with access to officers involved in these particular areas. I am suggesting that some of these details have to be considered and information made available so that we may ask questions about certain matters.

The illustration Mr Berinson gave in 1982 was from the Law Reform Commission report. That report referred to small offences for which the likely penalty was \$20. However, it is proposed, in 1984, that the figure be increased to \$300; although in 1982 Mr Berinson suggested \$50.

**Hon. D. J. Wordsworth**: That \$50 is inflation in the Labor period!

**Hon. P. H. WELLS**: The Attorney General is just like the member he sits next to in this House. When that member was on the Opposition side of the House he used to attack us, but when interviewed later by a reporter he said, "Now I am in Government it is a different matter. I realise the situation". I gather the Attorney General now realises the problems in putting together legislation. He took 18 months to get down to the fine tuning of legislation which was introduced in Parliament in 1982.

I would like some assistance in regard to the amendments to section 8 which relates to details of bail. It concerns me that we might become lax and not look after the interests of someone who may not be aware of his rights. For example at 2.00 a.m. on a Sunday morning a person may be charged with being disorderly. At that time he may be told of his rights, but eight hours later he may not remember anything he was told. He may have been drunk at the time, in shock, or fearful. I believe a period of eight days is allowed after the charge. It does not seem to me to be a great problem to go through that process of again acquainting a person of his rights to ensure that he understands them.

More than 50 per cent of families in this State have a member who was born outside Australia. Of course, some such people may find it difficult to understand what is being asked of them. A person may state that he understands his rights, when in fact he does not.

We have a responsibility to ensure that an innocent person is protected. We have a responsibility to ensure that everyone is aware of his rights, and understands those rights. I ask the Attorney General to look at the situation. A person may be in a state of shock at finding himself up before a sergeant of police and may not be able to understand his rights. He may be drunk, or even frightened. We do not know the level of comprehension of such a person, so as legislators we have that great responsibility to ensure that the person who is innocent, until proved guilty, receives adequate protection from the law. Section 8 of the Act was meant to ensure that on every occasion a person could be granted bail and be given adequate opportunity to obtain it. I am concerned that the changes proposed by this Government may be contrary to the interests of an innocent party. I urge the Government to consider whether that amendment is really necessary.

All that does is to stop a person with some administrative responsibilities doing extra paper

work. The reality is that, without removing the opportunity, we may not provide rights to an innocent person and that innocent person may spend another eight days in prison. He may remain locked away because he was not given the opportunity of being provided with information which was intended under the original Act.

I understand that the present Government, in opposition, recognised that the putting together of the bail legislation into a single Act was a great move forward. That procedure was given great consideration by the Law Reform Commission, which, in fact, proposed it. I do not believe we should change now without giving this matter more consideration.

**HON. J. M. BERINSON** (North Central Metropolitan—Attorney General) [3.31 p.m.]: I thank the members who have contributed to this debate. This is a serious matter, and it is important that we apply ourselves properly to the principles involved in this Bill. I remind the House that when the Bail Act was introduced by the previous Government, it had the support of the then Opposition. I think it is true to say, going on what has been said so far, that, on that general basis, that Act codifying, as it does, the bail provisions across the board, still has the support of all members.

What we come down to now is a question of detail. In some respects that requires us to consider again the views which the Government put when it was in Opposition. In other respects, and in the major respects covered by this Bill, it requires us to look at the question of administrative difficulties which have emerged since the original Act was passed.

I assure the House, in response to some of the comments made by Hon. Gordon Masters and Hon. D. J. Wordsworth, that there is no question in this Bill of our accommodating administrative requirements by the sacrifice of important rights attaching to charged persons. That is not the aim of the Bill, nor is that its effect.

In my second reading speech, I tried to stress that what we were looking for on these administrative questions was the possibility of our improving the administration, but without our sacrificing the principles.

Hon. D. J. Wordsworth referred to his view of the principles involved. I have no quarrel with them. As a practical measure, the Act introduced some important principles in the way in which it emphasises, among other things, the need for there to be a consideration of bail taken at every stage, whether applied for or not.

It is also important, in a practical sense, to consider the emphasis which is put on the need for an understanding of the parties concerned. That aspect was raised by Hon. John Williams, and I will refer to it in a moment.

At the end of the day, it is important for us to have a system which works. Hon. D. J. Wordsworth asked how I knew that it would not work as it has not been tried yet. The answer to that is that it has not been tried formally. However, we have had something in the nature of a dry run. When the regulations and all forms were first prepared for the implementation of the original Act, the opportunity was taken, at a meeting of the clerks of the court, to go through the procedures that would be required.

One of the worrying features of that dry run was that the paper work for quite simple applications where bail would almost certainly be granted, let alone on anything of any greater difficulty, was taking up to 20 minutes to be processed. If such a position is allowed, it is not just a question of problems being created only for the administration, but also for the people waiting to get out on bail.

There really is a limit to the extent to which manpower can be poured into a court to process large numbers of applications. The end result would be long unnecessary queues. Here I am speaking from the customers' point of view, so to speak.

I stress to the House that it is not just a matter of administrative requirements and let the rest look after itself. There is an element here of there being an advantage to all parties in making sure that the system works properly.

It is true that, in the course of coming to this point, we have reduced some of the procedures that were in the first Act. Perhaps I can start first with Hon. Peter Wells' concern about the fact that we are suggesting that it should not be necessary, at every stage, for every part of the procedure to be followed.

The honourable member referred to section 8 of the Act which deals with the first occasion when a charged person turns up. It requires that care should be taken to ensure that the defendant is, or has been, given (a) such information in writing as to the effect of the Act as is prescribed, and (b) a prescribed form for completion, designed to disclose to the judicial officers, or authorised officers, all information relevant to the decision. Those are the first two requirements. We are saying that, in both of those respects, once is enough unless there is something else to suggest that a person may need to do it more often.

The purpose of section 8(1)(b) is to give some indication of the background of the charged person, his capacity to take bail, and his suitability for bail. This Bill provides that the judicial officer does not need to be told that every eight days unless something substantial has changed in the meantime.

The effect of the Bill in that respect simply allows the record to speak for itself unless something different has emerged.

Some stress has been put on the fact that charged persons should be made aware of the provisions applying to bail. It has been said that, on the first occasion, it might be late at night or that the person may not be in a condition to fully understand or might be affected by the stress of the situation and simply might not absorb or remember the conditions applicable to bail.

Hon. P. H. Wells: That happens in this place all the time.

Hon. J. M. BERINSON: Yes, that is a common complaint. The purpose of section 8(1)(c) which is not disturbed at all, is to provide the charged person with something in writing that he is expected, of course, to absorb at the time. If he cannot understand it, he should be given assistance to understand it. He may not understand it because of language difficulties or for some other reason. Under section 8(1)(c) heavy stress is placed on making sure that he understands. He also has the detail in writing.

Hon. D. J. Wordsworth: But, for the following eight days, he is waiting for his chance to come up again.

Hon. J. M. BERINSON: Yes, or for whatever period is applicable; the common remand period is eight days. He has that guarantee. The rules have not changed in the meantime.

Throughout there is an emphasis on ensuring that he does know, and if there is any doubt about it the situation should be catered for. There should not be just an automatic repetition of these proceedings, in full, at every stage of the process. That is the extent to which previous provisions are cut back.

Hon. P. H. Wells: He will still have 20 minutes on the first occasion.

Hon. J. M. BERINSON: No, he will not because since that time the forms have been simplified and again, without reducing advice to him, considerable work has gone into the process of ensuring that this can be done more readily.

Hon. P. H. Wells: How long does it take now?

Hon. J. M. BERINSON: Less. I am sorry I do not have the exact time.

Hon. P. H. Wells: If it takes less time, what is the problem now?

Hon. J. M. BERINSON: The problem is that there is simply no point to repeating a procedure if it is not required and if it does not serve a purpose. When it does serve a purpose attention will be given to it again. However, because it only takes 10 minutes rather than 20 minutes—I am using this as an example—that is not an argument to say that it should be repeated as many as 10 or 12 times, or more often, if the person is held on remand for lengthy periods.

Hon. P. H. Wells: Why should not the accused be asked if he understood what he was told on the first occasion and if he wants it repeated, have it repeated?

Hon. J. M. BERINSON: I will suggest that many of these questions, particularly those asked by Hon. Gordon Masters, should be dealt with at the appropriate clauses during the Committee stage. I will deal with the questions at that point. It would be better to do that rather than replying to them generally.

We were also urged to be careful that we should not allow the question of costs or economy to cut across people's rights and, of course, that is fair enough. That comment was made in relation to the proposal contained in this Bill that there should be some limit on the occasions on which a person should be entitled to go before a Judge of the Supreme Court.

I refer members to section 14 of the Act which reads as follows—

14. (1) A Judge of the Supreme Court may, in accordance with this Act—

- (a) exercise a power to grant bail which is conferred upon any other judicial officer or any authorized officer by this Act; and
- (b) revoke or vary any bail previously granted by any other such officer.

Hon. P. H. Wells: Is that in the Bill or the Act?

Hon. J. M. BERINSON: I am referring to the Act. It continues—

(2) The jurisdiction of a Judge of the Supreme Court under subsection (1) in respect of an appearance by a defendant may be invoked by application made by either the prosecutor or the defendant, and whether or not any other judicial officer has—

- (a) previously granted or refused bail; in respect of that appearance.

The effect of this provision is that a person, as of right simply on his application, may require the

attention of a Judge of the Supreme Court on every occasion that he can apply for bail. Other parts of the Act make it clear that a person can apply for bail every time he appears on remand, and that could be every eight days. A person may be on remand, not for a capital offence—the granting of bail for such an offence is reserved to Supreme Court Judges—but for a lesser offence. He may be held in the Wyndham, Albany, or Great Eastern Goldfields prison awaiting the process of trial, and he is brought up on remand every eight days. Under its present terms section 14 would give him the right either to be brought to Perth to appear before a judge every eight days, or require a judge to visit where he is being held to hear his application every eight days.

One does not need great experience in the prison system to know that, once permitted, that is a right that would be allowed to lie idle. It is not a question of excessive concern for the backlog of cases in the Supreme Court or for the pressures on Supreme Court Judges. It is a concern that the Supreme Court, in the very short term, could find itself with no time to do anything else but to hear repetitious requests for bail. That is the practical reality. There is no great principle involved in this.

The system has proceeded for many years without any suggestion that the principles that apply are unfair or detrimental to prisoners, and nor would this provision be.

*Sitting suspended from 3.46 to 4.00 p.m.*

Hon. J. M. BERINSON: I propose to deal with only two other aspects of the Bill at this stage. The first relates to clause 10 which refers to section 18. The Bill seeks to treble to \$300 the amount of \$100, which is the deposit which will produce the right for a person to be at large.

With due respect, there appears to have been some misunderstanding of the effect of this proposed amendment. It does not mean that persons who wish to take advantage of it will have to find \$300; just as the Act, in its present form, does not mean a person will have to find \$100. That is the maximum amount that might be looked for; but the significance of the change from \$100 to \$300 is not so much in the amount of deposit that might be required, but in defining the range of offences for which this free and easy system, so to speak, will be available.

I thank Hon. Peter Wells for reminding me that I commented on this when the Act was first discussed in this House. He fortifies me in the view that I am being consistent. I am sure that what I said then would have been that limiting relevant offences to those which carry a maximum penalty of \$100 really comes down to a very small number

of offences indeed, and there are offences which we would not really regard as having an order of seriousness which would require bail which would be accommodated at the higher figure. That is the purpose of this trebling and not, as one member was unkind enough to suggest, to lessen my burden as Minister for Budget Management by producing greater revenue.

The last matter on which I will comment was raised by Hon. John Williams, who stressed very correctly the need for people to understand the nature and obligations which the bail and surety system involves.

No-one would disagree with the stress that he put on that aspect of the problem. Certainly as the person who has to consider repeated requests for relief from forfeiture of sureties, I would be the last person to question the importance of this. I simply stress to the House at this stage that section 8 in respect of bail, and section 37 in respect of sureties, already put heavy stress on the need to make sure that the persons caught up in this system fully understand its nature and the obligations they are undertaking. There is nothing in the Bill which would reduce those efforts to clarify such matters.

For the rest, I believe that to the extent that I have not in this reply covered all the questions raised by the various speakers in debate, that could better be left to the Committee stage when it would be appropriate to go into any further detail that is required. For the moment, I urge the House to support the second reading.

**Question put and passed.**

**Bill read a second time.**

## **RURAL HOUSING (ASSISTANCE) AMENDMENT BILL**

### *Receipt and First Reading*

Bill received from the Assembly; and, on motion by Hon. Peter Dowding (Minister for Planning), read a first time.

### *Second Reading*

**HON. PETER DOWDING** (North—Minister for Planning) [4.08 p.m.]: I move—

That the Bill be now read a second time.

When the Rural Housing (Assistance) Act was originally before this House in 1976, it was considered that it would have sufficient scope to handle most situations of farmers and pastoralists to enable them to obtain financial assistance for housing on their properties.

However, from time to time amendments have been necessary to meet the varying needs of applications to the authority. Firstly, leaseholders of

perpetual lease farmers—the old war service farmers—were not eligible and this was changed by the appropriate amendment in 1978 so that they could at least meet the eligibility criteria and either build new homes or add to the existing homes on their farming properties.

During the 1980 spring session of the Parliament, the Rural Housing (Assistance) Act was amended and the powers of the authority were widened whereby assistance could be given to a full-time farmer to build a house on his property for an employee who assisted him with his farming operations. So far, six farmers have availed themselves of this facility. However, it is expected that once the past seasons' economic downturn is overcome, more farmers will apply to the authority.

At the same time as this amendment was passed, the Minister for Housing was also given delegated authority to sign, on behalf of the Treasurer of Western Australia, the indemnity document indemnifying lenders. This has streamlined the issue of indemnities and reduced delays in commencement of buildings.

The authority has had applications from time to time from a farmer who wishes to shift a house from one part of his property, or from a small property, to another he owns so as it can be used by him and his family to better advantage. To date, the authority has had to decline any consideration for assistance as these applicants do not meet the eligibility criteria. With the proposed amendments, these applicants can at least be considered by the authority for financial assistance. It will enable the farmer to use established resources to better advantage.

Since the inception of the Rural Housing Authority in accordance with the Rural Housing (Assistance) Act, 354 farmers or pastoralists have received assistance to build homes, purchase homes in the case of transportable homes, or add to or modernise their existing homes on their properties.

The authority has the power either to borrow funds from the home purchase assistance account or from the central borrowings authority and on-lends these funds to farmers and pastoralists. To the end of the last financial year, 233 applicants received a total of \$6 791 600 in loan funds. Another 121 farmers were assisted with \$4 315 925 from building societies or the Rural and Industries Bank under the scheme of indemnification or insured by mortgage insurers. The services of the authority have enabled another 92 farmers to obtain finance from their normal farm financing institutions after approaching the authority for guidance. Following inspection and re-

port on the property by the authority, they were successful in obtaining finance for their new home on the property.

During the latter part of last year, the Minister for Housing was able to see first-hand some of the farm houses in the Esperance area which were built with the assistance of the Rural Housing Authority. It was good to see the change for the better in the homes that had been built and enjoy the hospitality of the assisted farmers. The Minister for Housing was able to see some of the substandard accommodation such as sheds and humpies which were without conveniences now accepted by society, and which the farmer and his family have had to live in whilst farming the property and in some cases, developing a farm out of virgin bushland. It was noticeable that other farmers had built homes from their own resources to house themselves in once neighbours had built a home with assistance from the Rural Housing Authority. This has helped the builders to remain in their industry and to be around for better times such as the industry is having now.

The authority is very sensitive to the seasonal problems and market fluctuations of the farmers' produce and has taken positive action in some cases in regard to the farmers' ability to repay their housing loans in an effort to bring a "social" contentment to the farmers' families. The authority meets regularly on a monthly basis and receives applications from all over the State, from Kununurra to Augusta, and east to Esperance.

This small amendment to the Rural Housing (Assistance) Act will enable the authority to assist more farmers and pastoralists to obtain finance for better houses for themselves and their families.

I commend the Bill to the House.

Debate adjourned, on motion by Hon. G. E. Masters (Leader of the Opposition).

## **ABORIGINAL AFFAIRS PLANNING AUTHORITY AMENDMENT BILL**

### *Receipt and First Reading*

Bill received from the Assembly; and, on motion by Hon. Peter Dowding (Minister for Planning), read a first time.

### *Second Reading*

**HON. PETER DOWDING** (North—Minister for Planning) [4.13 p.m.]: I move—

That the Bill be now read a second time.

The Bill before the House seeks to amend the Aboriginal Affairs Planning Authority Act 1972-1982.

The aim of the amendments is to repeal the agreement with the Commonwealth Government, an agreement which was reached in 1974 and which is contained in the Aboriginal Affairs Planning Authority Amendment Act—No. 100 of 1973—together with complementary Federal legislation. It provided for—

The Australian Government to establish a State office of aboriginal affairs (Department of Aboriginal Affairs) and to include in its function the administration of the AAPA Act, including the maintenance of the effective operation of—

- (i) the Aboriginal Advisory Council established under section 18;
- (ii) the Aboriginal Affairs Co-ordinating Committee established under section 19;
- (iii) the Aboriginal Lands Trust established by section 20;

the Director of the Department of Aboriginal Affairs to be a Commonwealth public servant but also to have a State appointment of Commissioner of the Aboriginal Affairs Planning Authority; and

Administrative staff and financial arrangements.

Although this arrangement worked reasonably well for some years, more recently a number of situations have occurred which demonstrated to this Government that there is a need for the State Government to have an independent administration in aboriginal affairs. I understand that when it was in Government, the present Opposition had reached a similar conclusion and that negotiations with the Commonwealth Government about the termination of the agreement had reached an advanced stage before this Government took office. The Commonwealth Government had indicated its strong wish to terminate the agreement so that the Department of Aboriginal Affairs in Western Australia would be clearly identified as the agency responsible for the implementation of Commonwealth Government policy in Aboriginal affairs.

Negotiations continued after the change of Government and agreement was reached for the State Aboriginal Affairs Planning Authority to accept increased administrative responsibility for the application of the Aboriginal Affairs Planning Authority Act with effect from 20 October 1983.

A position of Deputy Commissioner and Permanent Head of the Aboriginal Affairs Planning Authority for Aboriginal Planning was created

from that date and the occupant of the position was delegated to carry out those functions on behalf of the State Government, functions which had previously been conducted by the Director of the Department of Aboriginal Affairs.

Agreement was also reached that the remaining functions of the Aboriginal Affairs Planning Authority Act, including the formal process of consultation on State matters with Aboriginal people, would be taken over by the Aboriginal Affairs Planning Authority with effect from 1 July 1984. It is intended that the authority will remain a fairly small agency involved with policy development and carrying out the statutory requirements of the AAPA Act.

Although it has become necessary to terminate the legislative arrangement between the State and Commonwealth Governments for the administration of Aboriginal affairs, it is necessary to make it clear that there is no proposal that the present high level of co-operation and mutual assistance that exists between the Department of Aboriginal Affairs and the Aboriginal Affairs Planning Authority will be diminished.

I commend the Bill to the House.

Debate adjourned, on motion by Hon. N. F. Moore.

## STAMP AMENDMENT BILL

### *Second Reading*

Debate resumed from 2 August.

**HON. G. E. MASTERS** (West—Leader of the Opposition) [4.17 p.m.]: This is a very complicated Bill, as members can see from the size of the file I have in front of me. The information I have goes into considerable detail about the effects of the Bill on the community and on the business sector.

At this time I thank Hon. Joe Berinson for maintaining the tradition of making available briefings and committee notes on Bills of this kind; certainly such information is necessary when amendments deal with the Stamp Act. I think, this tradition was commenced by Sir Charles Court. I commend the Minister, and thank him for these notes which were certainly of great value in the research that the Opposition carried out in an endeavour to ensure that we fully understood the implications of the Bill.

The Bill is based largely on the report of the committee appointed to review the Stamp Act Amendment Act 1979 and the Stamp Amendment Act 1980. Certainly the committee met on a number of occasions in 1981 and 1982; it was a committee set up by the previous Government. I think

it is important that we note the membership of that committee.

The Attorney General appointed the committee to review the amendment to the Stamp Act and it comprised Mr D. Brown, Assistant Crown Solicitor, Crown Law Department; Mr M. A. Lewi, solicitor, Jackson McDonald & Co.; Mr W. J. Lightbody, Assistant Commissioner (Stamp Duties), State Taxation Department—convenor; and Mr D. R. Williams, barrister.

The report goes into great detail itemising the recommendations and giving reasons for them. In most cases the Government has accepted those recommendations. If we look at the notes supplied by Hon. Joe Berinson, it is obvious that most of the content of the Bill resulted from that report.

The Opposition has checked with those people in the community who deal with stamp duty in business transactions and the like, and from the information we have been given, after their perusal of the legislation, they have no real complaints about the provisions of the Bill although I understand that some members in this House have reservations about it.

The Bill sets out to make it easier for the Taxation Department to make the tax fairer, and easier for the taxpayer to seek a remedy for dismissal if the tax imposed is very unjust. I suppose this can occur when stamp duties are levied against us in transactions. Mr President, I am sure that you have suffered the consequences of the imposition of stamp duty on transactions which you have undertaken. It is a fair slug.

People feel the imposition of stamp duty very strongly. It is a fact of life, and it will be with us for ever and a day. It has always been, and is always likely to be in the future. It is a source of considerable revenue for the Government, so there is no way that we will have anything but stamp duty for a long time to come. The level of stamp duty can be changed from time to time, of course, although it is rare that stamp duty is reduced substantially.

The imposition of stamp duty on house transactions causes concern. It makes people jump a little when they receive a bill. It is interesting that the Government has seen fit to increase the fines substantially. We have seen a great increase in fines for the late payment of payroll tax, and now the Government is using the mailed fist approach and is lifting the fines imposed under this legislation by up to 100 per cent. In other words, if a duty is liable and a fine is imposed, as I understand it, the fine is equal to the duty that should have been paid. That has increased greatly from the earlier fine level of 10 per cent or 20 per cent. I

would like the Minister to comment about that matter. If he would like to do so when he replies to the second reading debate, he could do so; otherwise I will raise it during the Committee stage.

In the Minister's second reading speech, he pointed out that a number of measures were designed as anti duty avoidance measures. He went on to say that the Bill was designed to catch up with the people who avoid stamp duty. Then he went on to say, "The amendments now proposed will have little or no effect on the revenue". That is a strange sort of statement, if in fact the Government will catch a few avoiders of the duty. That must represent a fair increase in revenue, I would have thought, otherwise, there would have been no point in bringing forward this provision. It seems there was a contradiction in what the Minister said.

Generally speaking, the amendments are in accord with the recommendations of the review committee, of which I spoke earlier, so the Opposition has few reservations.

I draw to the attention of the Minister a matter directed to me quite recently, dealing with the transfer of units in unit trusts. I refer to section 73(d) of the Stamp Act. I have been told—and the figures given to me indicate that it is so—that the stamp duty levied on the transfer of units in unit trusts creates great problems. The stamp duty is calculated on the gross value of the assets of the trust, without having regard for the liabilities.

As a demonstration of the unfairness of this, I give the example of what would happen with the transfer of company shares compared to the transfer of units in a unit trust. If the company and the unit trust both had assets of \$1 million and liabilities of \$900 000, the net assets are \$100 000 each. If we assume the transfer of 50 per cent of the shares in the company and the units in the unit trust, we find the net value of the shares is \$50 000. If we take account of the liabilities in the unit trust, obviously the assets are \$50 000. The stamp duty on the transfer of the company shares is assessed on the net value of \$50 000 and amounts to \$300, whereas on the unit trust units, the stamp duty is assessed on the gross value of \$500 000 and amounts to \$16 775. In other words, there is a gross disparity between the stamp duty paid on the two transfers. I cannot understand why that should be.

I do not know whether the Minister has followed my comments, but I could give him the figures which I have available.

Hon. J. M. Berinson: I followed them only too well.

**Hon. G. E. MASTERS:** Perhaps the Minister will say he will take action in that regard. By the smile on his face, I assume that while he is in charge of the State Treasury, he will take these matters into consideration.

I will give another example of the difficulties encountered by some people. Let us consider the example of a general manager of a successful Perth trading concern who purchased 10 per cent of the units in a unit trust for \$35 000. My understanding is that the stamp duty he will be expected to pay will be in the vicinity of \$15 000.

I know that originally the legislation was brought forward to combat stamp duty avoidance; and it was introduced with good intentions. However, when the figures I have given are considered, we find it is an overkill situation. I can see no reason to continue with that level of stamp duty when commonsense suggests that the overkill calls for a reconsideration of the excessive rate. When one considers the stamp duty payable on a company transfer and a unit trust transfer, one wonders where we are going and what we are trying to do.

I accept that we were responsible for the overkill when we were in Government, but that does not mean that we cannot look at the situation and say that it was an overkill. The Treasurer could demonstrate that this motive is one of goodwill and make a big name for himself in this matter.

I have gone through the Bill and the speech notes in some detail. Certainly I will not go through a Committee debate now. Quite clearly the Opposition accepts the recommendations of the committee about which I spoke; and we are aware of the provisions which were not recommended by the committee, but which have been incorporated by the Government. I will refer to one or two of those aspects later. We have seen from the legislation that the Government is keen to impose fines in some situations, when it is not very keen to do so in the industrial area.

The Opposition supports the Bill.

**HON. NEIL OLIVER (West)** [4.28 p.m.]: I support the Bill.

It is almost five years to the day since the major amendment to the Stamp Act 1921 came before the House. On that occasion, I spoke of my concern about the powers of the Commissioner of Stamp Duties. As I will explain to members, my reason for that concern had occurred upon the introduction of the legislation. It is interesting that on that occasion I spoke about most of the amendments that were referred to the committee. I also

used the phrase, "using a sledge hammer to crack a walnut".

The Act created the new position of Commissioner of Stamp Duties. I cannot remember the title of the position before that time. It eludes me. That position came into effect when the legislation was passed in 1979. On that legislation I spoke in the second reading debate on all the matters which are now before the House by way of amendments to the Act. The amendments almost follow the line of what I suggested last night. It is unfortunate that the Parliament should abrogate its responsibilities and give them to some committee. Members are prepared to stand and speak on these matters and I am pleased to support the legislation.

I want to give members an idea of how the original legislation was handled at that time. The Stamp Act was introduced into the Legislative Assembly on 7 August 1979. Ultimately, the Bill was read a second time.

I should say at this time that the legislation—which contained 120 clauses—was a major review of a past Statute which had not been reviewed for many years.

The Leader of the Opposition at that time got to his feet and thanked the then Premier for providing him with the explanatory notes. He said that he did not know very much about stamp duty and that he would take the Premier at his word. He said that he was quite pleased that the imposts would increase the amount of revenue by only \$200 000 and then sat down. I think he spoke for approximately 10 or 12 minutes.

**Hon. D. J. Wordsworth:** Who was that?

**Hon. NEIL OLIVER:** It was the Leader of the Opposition at that time, Hon. Ron Davies. The Premier then rose and thanked the Leader of the Opposition for his remarks and closed the debate. The legislation then went into the Committee stage.

The question was put whether the Committee should consider the Bill as a whole or whether it should consider it clause by clause. It was decided to take the Bill as a whole, and the legislation went through from the closing of the debate by the Premier to the third reading, in the record time of 10 minutes.

Ultimately the legislation came to this House, and I had the opportunity to peruse the Bill in a lot more detail.

**Hon. D. K. Dans:** I was listening in the Legislative Assembly at that time. Legislation was put through that House very quickly.

Hon. NEIL OLIVER: I do not need interjections from Hon. D. K. Dans this afternoon. I support the legislation, and I thank the Government for bringing it forward.

After that swift passage through the Legislative Assembly, the legislation came to this House. We have been told that this House is not a House of Review. However, members commenced to examine the legislation, and I found some very major anomalies in it. One major anomalous clause which is amended by this legislation was clause 67.

For the benefit of the Opposition, I would like to explain what happens when the Liberal-Country Party is in Government and the present Government is in Opposition. We are not obliged to follow what is decided in our party room. There were some major debates on this matter. It took almost three weeks for the Crown Law Department to do a series of redraftings to clause 67. Clause 67 was an horrendous clause and was impossible to implement. The Attorney General at that time requested the Crown Law Department to speak with me in order to have the clause redrafted.

After the Crown Law Department redrafted the clause, it became a most interesting clause because it could not be applied to anybody. There were no such people who would be involved in land transactions in the manner in which the Crown Law Department envisaged. It seemed that the Crown Law Department, in the way it had redrafted the clause, expected someone to be wandering around Perth carrying something like \$10 000 in his back pocket. If that person saw a block of land that he or she liked, under the clause, the real estate agent could then present an unencumbered title to him or her immediately, either on the block or in his office and the transaction would conclude even without a stamped transfer. That was how the Crown Law Department and the Commissioner for Stamps worded the section.

After five redraftings of that clause, I eventually decided to draft it myself. I have now noticed that there are some amendments to the section in this Bill. I apologise for that. The Attorney General was not in this House at that time. Had he been, he would have been extremely concerned with the way the Crown Law Department drafted that clause.

Members of the Australian Labor Party are not used to moving amendments in this House because amendments are decided in Cabinet. It is up to members of the Labor Party to go along with those amendments, whether they agree or not.

Hon. Garry Kelly: That is your opinion. That is what you say.

Hon. NEIL OLIVER: Has the member made any amendments or placed any amendments on the Notice Paper? The member of the thick left has probably not read the Bill and so does not understand what I am talking about.

The point is that, in this instance, and because I had only been a member for two years, I felt that the Leader of the House would move the amendments at that time. The Leader of the House placed the amendments on the Notice Paper. The Government, at that time, was apprehensive about what I would do because it thought that I might move the amendments. However, there was no point in my moving the amendments because the Opposition, at that time, would not have supported them as the amendments would not have been understood by the Opposition just as Hon. Garry Kelly does not understand them now.

It was pointless my moving the amendments; and so, at that time, they were moved by the Leader of the Government. From that point on, whenever I have had a disagreement with the Government, as I had with Mrs Craig in relation to the Local Government Act, I have said that amendments are not acceptable and I have said that in the party room. On that occasion, I could not get the numbers to support me. So I placed the amendments on the Notice Paper.

Ultimately, a majority of members—I do not know whether the Labor Party saw the errors of its ways—supported me.

I have placed many items on the Notice Paper with which my colleagues, at times, have not agreed and which have not been passed or approved of in the party room but ultimately have been passed in the Parliament. I know that the Government does not comprehend what goes on in our party room and does not understand how our party works.

It was interesting to note that following its passage through the other place, 10 major amendments were recommended in the Legislative Council. Because a Bill to amend the Stamp Act is a money Bill, the amendments were then referred to the Assembly and eventually brought back to the Council for its concurrence.

I am pleased to see the amendments. I am disappointed that members have had to wait until 1984, having already reviewed the legislation and determined what was required. In saying that, I am not being disrespectful to the members of this committee since the matter was referred by the previous Government. Members have a contribution to make, but the Government does not

always take their comments on board. Instead it refers items to a committee which can then find in favour of the members of this House, of whatever political persuasion.

Finally, I refer to the comments of the Leader of the Opposition regarding stamping and the penalty for late stamping. The legislation provides for an exorbitant charge which far exceeds that imposed in other States in the Commonwealth. I understand that it is more than 50 per cent higher, although I have not checked the accuracy of that figure. The present Government has the policy of determining a figure and then doubling it to allow for inflation. I have seen that policy demonstrated in other legislation. I appreciate that the Government has a Budget to balance. I know the Attorney General is a legal practitioner and, therefore, he will understand the requirements for stamping of documents. He will understand that on occasions signatures to documents are required from people who are not in this State. Documents may require to be sent overseas if the signatories have not given power of attorney to someone in Western Australia.

It is an unreasonable penalty. I am sure that the Attorney General would have found the impost of 10 per cent of the duty as a penalty for late stamping totally unreasonable had he been in this Parliament in 1979 instead of practising as a legal practitioner.

Taking all factors into account—that is, additional charges, inflation, etc.—I ask the Attorney General to review that figure. He deals with budgetary management and has mentioned that a large increase in revenue from stamp duty is not expected through this legislation. In any event few people stamp their documents late. The period allowed should be reviewed—from memory I believe it is 30 days—and 45 days would be more reasonable.

I have much pleasure in supporting the amendments and thank the Government for bringing them forward.

**HON. D. J. WORDSWORTH** (South) [4.44 p.m.]: I draw the Attorney General's attention to a pre-Budget submission from the Pastoralists and Graziers Association of WA (Inc) on this topic. In that submission he will find that the association is pointing out the high impost that stamp duty has on the transfer of farming properties, particularly in a father to son transfer. Farming properties nowadays—and I am not talking about a very extensive property, but probably a wheat farm of one or two man units—are worth approximately \$800 000. The transfer fee in that case is \$30 000.

The cost of stamp duty has grown out of all proportion. It is now almost an estate duty, capital gains tax, or whatever other name one cares to give it. It is quite ludicrous that it should cost \$30 000 to transfer a property from father to son. Enlarging on Mr Oliver's point, if the documents involved in that transfer are not stamped on time a further penalty of \$6 000 is imposed. I believe the Government should examine this very closely and I hope the submission from the Pastoralists and Graziers Association will receive the attention it deserves.

The association also raises the question of costs involved in the purchase of farm vehicles. I refer to tractors and the like, but particularly to the trucks used for carting grain, and the large rigs involved. Farmers are buying second-hand plant which would have originally cost over \$100 000 for \$70 000-odd. The tax on that sum is just under \$2 000 and that relates to the purchase of a second-hand truck for a farm.

One can appreciate how high the tax has become if one looks at the original Act. I hold in my hand a copy of this Bill and query how members are expected to research such Bills when in order to do so it is necessary to go through the 1980 amendment Acts, No. 2 of 1983, No. 14 of 1983, No. 15 of 1982, No. 1 of 1982, No. 106 of 1981, No. 99 of 1982, No. 112 of 1982, No. 81 of 1981, No. 63 of 1980, No. 93 of 1982, and others. It is ludicrous that members should be expected to fight a paper war such as this when researching Bills introduced.

I refer to amendment Act No. 93 of 1982 which provides for a three per cent tax on vehicles. Referring to the original Act—that is, only two years earlier—the tax on motor vehicle licences was 0.75 of one per cent.

At that time the maximum duty was \$150. That was in 1980, which is four years ago. The amendment passed since increased the maximum to \$600 and now that maximum has been removed completely; we have gone from a maximum of \$150 in 1980 to the figures I have just given as examples—several thousands of dollars. This is no longer a stamp duty. It is worse than a capital gains tax.

**HON. J. M. BERINSON** (North Central Metropolitan—Attorney General) [4.51 p.m.]: I thank the Opposition for its support of this Bill notwithstanding the fact that its members had some critical comments to make. As I understand it, that criticism is directed in the main, at matters related to stamp duty which do not come within the scope of the present Bill. Nonetheless, the questions have been raised, and I will try to address them.

Could I start by endorsing the comments of Hon. Gordon Masters in respect of the work done by members of the committee which was given the responsibility of considering the last major amendment to the Act and to recommend further amendment. Mr Douglas Brown from the Crown Law Department and Mr Lightbody from the State Taxation Department were on this committee. In addition, there were two members from the private profession, Mr Lewi and Mr Williams QC. That committee met on no fewer than 20 occasions. The need for that number of meetings by a group of men as well-qualified as these, is at least, part of the answer to Mr Oliver's view that more attention should be paid to what is said by members of Parliament.

I do not decry in any way the general proposition that the views which members are able to bring to debates of all kinds, including those on highly technical matters, need to be properly considered. However, with due respect to the capacities which any of us have when one gets into an area of taxation, and especially an area so compounded with difficulty as is the Stamp Act, it is really getting beyond the capacity of members to define in detail precisely what ought to appear in legislation. In any event, I endorse the comments made in appreciation of the efforts of the members of that committee; they have done important and difficult work very well.

As I indicated earlier, I think that there is nothing in the Bill itself which I have been called on to defend. On the other hand, I have been called on to defend a number of matters associated with stamp duty which are not in the Bill. The first of these related to the taxation of unit trusts. Again, I do not disagree with Hon. Gordon Masters when he says that the application of stamp duty to unit trusts presents, on the face of it, some considerable difficulty. He offers the analogy of the system of applying duty to shares in companies and certainly a comparison of that kind does seem to suggest a particular detriment on unit trust transactions.

I think in earlier debates I may have relied on my experience as a philosophy 10 student! I only remember two things from that year. One which is entirely irrelevant to the present debate is that Wittgenstein once said that the meaning of a word is its use in the language. I am now not entirely sure what that means, but I remember being impressed at the time.

The second thing which I was taught that year was that one should always be cautious with analogies. I think that is true of the analogy of the treatment of unit trust transactions and the treatment of company transactions, as attractive as

that may appear. There is an alternative analogy which can be put, and that relates to the transfer of any property which has some duty applicable to the transaction. For example, with the transfer of a mortgaged piece of real estate where both the land and the obligations of the debt are transferred, it is on the full value of the land that the conveyance duty is imposed. I do not want for a moment to get into an argument as to the relative virtues of the company versus mortgaged land comparisons.

What I will restrict myself to suggesting at the moment is that on the face of it, the unit trust transfer does seem to indicate a problem area. Mr Masters was quite right in suggesting that I have arranged for some particular attention to be given to it.

Unfortunately, he went further than I can go in suggesting that a solution by way of relief is at hand. I certainly cannot suggest that. The area is one of great technical complexity and I will have to look to further advice before I could regard myself as in a position to make a recommendation, if at all, for further action in this respect. I do, however, advise the member that the difficulty is one that I recognise very well, and one to which attention is now being given.

Mr Wordsworth raised a second issue irrelevant to this Bill when he complained about the high rates of duty. All duties are too high. Payroll tax is too high, FID is too high, income tax is too high, and sales tax is too high. Excise duty is absolutely exorbitant.

Hon. D. J. Wordsworth: This has gone up four times in four years.

Hon. J. M. BERINSON: This does not really solve any of our problems. Stamp duty, like payroll tax, for example, is one of a very limited number of revenue avenues which is constitutionally available to the State and we have been forced by budgetary circumstances to look to a higher rate of duty than we would have normally.

Nonetheless, those moves have been unavoidable. Not only that, but far from being extraordinary on a comparative basis, members will be interested to know that they have really done no more, on the whole, than bring us up to the all-States average. I do not have the relevant papers with me, and I stand to be corrected on detail, but I refer to the example which Hon. David Wordsworth gave in respect of duty on heavy vehicles. Certainly, at three per cent, it is very much higher than it was when the figure was 0.75 per cent. However, if my memory serves me correctly, three per cent is the rate which applies in two other States, and 2.5 per cent is the rate which

applies in another two of the States. On the whole, looking at stamp duty across the board, we are at the all-States average.

Two things should be understood about that: In the first place, that sort of standard is required for basic revenue purposes. Secondly, that general conformity with the all-States average is needed if we are not to suffer further detriment when we go to the Grants Commission. As members will know, it is one of the considerations of the Grants Commission that each State is roughly equalling the revenue-raising efforts of all other States. If we do not, we get docked for it. Nonetheless, I will again join with the honourable member in saying that there is no pleasure in seeing duties at these levels.

In keeping with the general approach to all taxes and charges which the Government has shown itself committed to this year, we will be looking to absolutely minimise in all areas any further increases in taxes and charges. To the extent that real anomalies can be pointed out to us, we are reviewing the position to see whether something might be done by way of relief. That is the best that can be done in the practical financial considerations in which this State finds itself, as indeed all States do.

I do have to correct my earlier suggestion that no criticism has been levelled at the Bill itself, because I recall one aspect on which questions were raised, and this related to the increase in fines. In my second reading speech, this increase was described as an updating of the provisions, and indeed I think that is a reasonable way of approaching it.

In this context I am interested to note that in some comments on the Bill by the Taxation Institute of Australia—while it is true that the institute does have some comment to offer and even suggestions for further changes—there is no criticism of the move to a fine equal to the duty unpaid, and that is what is now proposed.

About that movement, a couple of things have to be said. The first is that the current provisions for non-payment or late payment are simply decades behind the needs of the time, irrespective of how recently those provisions have been enacted. I am not sure when these provisions of section 20 of the Act were enacted, but all they provide is that the late presentation of a document for stamping can incur a fine equal to 10 per cent of the duty or a fine of \$2, whichever is the greater amount. One need not be a genius to know that with current rates of interest it would almost pay a person to put the document in the bottom drawer for three years—if it is one, for example, that does not have

to go through the Titles Office—to be 20 per cent ahead.

There is more to it than revenue raising; there is the question of equity, and this is what I have tried to explain to people who have complained about the new payroll tax provisions. There is a question of equity as between people who meet their taxation liabilities in due time and those who do not. At the end of the day, if we are leaving it to the taxpayer's own choice, the great majority of people who, as a matter of course, comply with requirements, are in effect subsidising the others.

Let me add at once that where we talk about a fine equal to the duty, that is a maximum fine. I refer members to section 20(6) of the Act, which provides that the commissioner may remit wholly or in part any fine chargeable under this section. My experience has been in matters which have been drawn to my attention that the commissioner, whose discretion in these areas is independent of the Government and certainly independent of ministerial direction, applies that discretion reasonably, sensibly, and realistically. I have no doubt he will continue to do so.

I guess this is not an Act which will rate as one of the legislative landmarks of 1984. Nonetheless, it is necessary in the context of keeping our taxation laws in order, and ensuring they are readily understood and can be applied fairly. This is not the end of the line. It is the nature of taxation that we will have suggestions for further amendment and improvement being forwarded, and the Taxation Institute of Australia, to which I have referred, has already made some suggestions which I will ensure receive future consideration. I commend the Bill to the House.

**Question put and passed.**

**Bill read a second time.**

#### *In Committee*

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

#### **Clause 1: Short title and principal Act—**

Hon. P. H. WELLS: The Minister has mentioned advice he received from the Taxation Institute of Australia, but would he inform me whether groups such as the Australian Society of Accountants were provided with copies of the legislation and invited to make comment before the Bill was introduced?

Hon. J. M. BERINSON: What I say is subject to correction because I do not have my correspondence files with me, but from memory I can say that the Bill was sent for the advice of the Law

Society and the Australian Society of Accountants. I believe it was sent in confidence before being introduced into this Chamber, and this was done to allow more adequate time for consideration than would otherwise have been the case. I stress that I am speaking from memory, but that is my recollection. It is in accordance with the general approach I adopt on these matters.

Hon. P. H. WELLS: The reason I raised the question was that the society has not had time to answer the Government on this occasion. This is a problem which occurs when dealing with complex matters. It is not easy for members who do not have advice.

I suspect the Government has received no information from the accountants; there has been insufficient time to convey such information. I am simply pointing out the difficulty members have when the Government does not have a reply from what is a reasonable group.

**Clause put and passed.**

**Clauses 2 to 38 put and passed.**

**Title put and passed.**

#### *Report*

Bill reported, without amendment, and the report adopted.

#### *Third Reading*

Bill read a third time, on motion by Hon. J. M. Berinson (Attorney General), and transmitted to the Assembly.

### **QUESTIONS**

Questions were taken at this stage.

### **JURIES AMENDMENT BILL**

#### *Second Reading*

Debate resumed from 8 August.

HON. JOHN WILLIAMS (Metropolitan) [5.40 p.m.]: We are dealing with a matter of some moment. I am sure particularly the male population will congratulate the Attorney General wholeheartedly on his perspicuity in picking up the equal rights legislation on 1 August. Women will now be empanelled on juries.

Hon. P. H. Wells: It took him months to pick up the other one of mine.

Hon. JOHN WILLIAMS: He must have had this one pickled. It was ready. I am reminded of an unkind remark which was made by a judge in the sixteenth century, in view of what we think of our womenfolk today. He was asked whether women should be empanelled on juries. The old judge

replied, "Certainly not. If God had wanted women to think, he would have given them brains".

That just about illustrates the attitude held from the fifteenth the nineteenth centuries concerning womenfolk. They are now appreciated. I appreciate them a lot, I hasten to add, as perfectly competent to share the duties in regard to anything that happens in this society.

Hon. P. H. Wells: Where is the judge now?

Hon. JOHN WILLIAMS: As he lived in the sixteenth century, my guess is that he might be on some other planet, but I would not know.

For inequality, we can look at examples in this Chamber this afternoon. One is our own good, honest, hard-working Whip, Hon. Margaret McAleer, one of the first ladies ever to occupy that position. Another young lady, Mr President, sits above your head, so you are denied the pleasure of looking at her, and that is our lady policewoman this afternoon. They are both people doing a very competent job. I dispute what the judge said, even though many centuries have passed since he said it.

When we come to the jury system, we find it is, in point of fact, veiled in such antiquity that nobody really knows how it came about. It has just evolved, and it evolved after the fifteenth century had seen enough of trial by fire, by water, or by any other means which might achieve a result. If they dropped one in a pool of water and one did not drown in the first five minutes, one was presumed to be innocent. Later all sorts of other forms were used.

Hon. Robert Hetherington: One was concerning a witch. It had to be found out which was witch!

Hon. JOHN WILLIAMS: It was something peculiar. The system of the jury trial evolved and became a fundamental principle of criminal law and of common law in the United Kingdom. This system of trial by 12 good men and true—those were the words used—could, I suppose, be now amended to 12 good persons and true.

Hon. Garry Kelly: People.

Hon. JOHN WILLIAMS: Are we allowed to say that? I am not up with the latest.

Hon. P. H. Wells: Use the dictionary.

Hon. JOHN WILLIAMS: There is a project for Mr Wells, because he would be very thorough with it. This system of juries is one that has gone on and on, and it has served parts of the world very well.

It has been abused from time to time, and perhaps it is that abuse of the jury system on which a lot of our attention focuses today. If I can make

one quote on the basic characteristics of the jury system, it is this—

But its basic characteristics make it a remarkable political institution. It recruits laymen at random from the widest population for the trial of a particular case and allows them to deliberate in secrecy, to reach a decision by other than majority vote, and to make it public without giving reasons. Throughout its history it has been both overpraised as a charter of liberty and overcriticized as reliance on incompetent amateurs in the administration of justice.

The main thrust of the Bill which the Attorney General presents to us now, of course, is to remove certain barriers to people serving on juries. I share with the Attorney General, and with the previous Attorney General, concern about the tremendous difficulties they have had in the past in getting people to serve on juries. If one goes down to the central law court and looks at people called to be empanelled and then sees the number discharged because they do not measure up in some way or another, one realises that it is quite astonishing that a jury can be formed.

In a multicultural society, such as the one we have, even here in Perth, Western Australia, there are great difficulties in ensuring that members of the jury themselves know firstly what is going on and what is being said. It is an important aspect of any trial that the defendant shall have a fair representation of his case. I sometimes wonder whether the tests applied to those called for jury service are sufficiently stringent, particularly in regard to an understanding of the English language.

I was reminded of an officer who had had some experience in empanelling juries. He said that one of the greatest difficulties was when a person said, "Me no understand English". His next question was, "Do you hold a driving licence? Because if you do, we will have to confiscate it, because you do not understand English". Inevitably the person's English became very good. In seconds he understood it.

So the empanelling of juries is a very difficult business. Successive Attorneys General have had difficulty. Now we open up an entirely new set of circumstances and a new set of persons. It used to be sufficient for a female person to say, "I do not wish to serve on a jury" and that was the end of it. Such a person was automatically exempted. This amendment stops that and says, "All right, we will call you, but you must provide good reasons or cause why you should not be empanelled. It is not

sufficient to claim that because of your sex you should be exempted".

The previous Act was a repeal of the 1957 Act. At that time, the economic conditions within the country and our understanding of the opposite sex were such that they had very onerous duties to perform. A woman was a mother or a wife in a particular family background. Economic circumstances forced a lot of women into the workplace, and consequently certain values have changed, some of them for the better. Some, I will admit, have not been for the better, because the basis of our society is still the family unit, and I do not want to see anything put into legislation which will erode that.

I applaud the Attorney General for exempting women who have children under the age of 14 years to look after. As any family man in this House would know, it can be a very demanding task to be a wife and mother to three children under the age of six, perhaps, and then to be liable, as it were, for jury service. It would be quite impossible for that person to cope adequately.

It would not be impossible for a woman to get someone to take care of her children; that can be done easily. She could ring a baby-sitting service to arrange that. But the anxiety that the conscientious mother would have on leaving her children in the care of someone else would cause her to worry about her children and therefore cause her not to pay attention to the events of the trial.

I have not spoken with my colleagues about their views of this legislation, but I see no reason for us not to support it. It is a good Bill designed to meet a specific need. Nonetheless, one or two things about it worry me and I will explain those problems quickly to the Attorney, knowing that he will be able to give me some form of answer.

Section 5 (1) (b) of the Act excludes from jury service all those people who have been convicted of a crime or misdemeanour. Clause 6 of the Bill intends to repeal section 5 of the Act to include a provision excluding anyone sentenced to at least three years' imprisonment. So, anyone who has spent three or more years in gaol or who has been indicted for an offence such as murder will not be allowed to serve on a jury. I will point out what I consider to be a real danger with this provision.

A petty thief who may have served three or four terms of two years or less will not be disqualified from sitting on a jury. The time may be near when, as in other jurisdictions, a jury will be required to bring in a verdict that is unanimous, 10:2, or whatever is set. It is well-documented within the United Kingdom that juries have been infiltrated by people who have been offered re-

wards for returning a verdict which would clear the defendant. There is no secret about that. Although I was unable to find the reference to the particular case, I know that two or three years ago a very famous case was conducted at the Old Bailey, where a juror was tried for that very crime.

Criminals such as the Kray brothers—and thank God we do not have the equivalent here—have acknowledged the fact that on several occasions, even at that mother of courts, the Old Bailey, juries have been fixed by their solicitors in order to get them off.

I ask the Attorney: Should a person who has committed certain crimes be allowed on a jury? If he has committed a crime on two or three occasions, he should not be allowed to serve on a jury, in my opinion. I know it is difficult to fix a time, and no doubt the Attorney will tell us why he fixed a period of three years, but I would like to know what prompted his officers or him to choose that period. Petty criminals will sometimes stay as petty criminals and will allow themselves to be bought and to serve on a jury to fix a verdict. In this State, I might add that they run the risk of disqualification, but it is still only a question, is it not, when counsel sitting on an empanelling jury, *voir et dire* in the legal jargon, meaning “look and speak”. The counsel may not even like the cut of a person’s hair or the tattoos on his arms. For a thousand and one reasons he might say he did not like a particular person, so the intended juror is not empanelled.

The question I raise is: What precautions can be taken to preclude a person’s sitting on a jury when that person may have been influenced by media reports of the case coming to trial? In this age, the media provides a great deal of information in the coverage of events. Some people might consider a crime so abhorrent that they would do anything to get the perpetrator of the crime put away from society. The crime might be rape, which is one of the more serious crimes, if not the most. It can destroy women and it is as bad as drugs. Will it be mandatory in future to have a jury with equal numbers of men and of women? Is learned counsel to be able to say, “I do not want a jury full of women because they will be sympathetic to the prosecution and not the defence”?

I appreciate that these things cannot be written into legislation because we are dealing with emotions, but I ask the Attorney to reassure the House that these matters will be dealt with adequately by competent people when jury notices go out. It would be difficult, because everything is computerised. Each of us should be allowed to go to a central law court at some time to see a jury being empanelled and to see the difficulties that

the officers encounter. I have sometimes wondered whether a jury would be formed at all, because there have been objections to this and to that; however, they finally do arrive at a jury. Up until now, probably more by luck than good judgment, no-one has really been dealt with badly in the courts.

I have raised two queries, one dealing with people who have served sentences of less than two years being allowed on a jury, and another dealing with people who are influenced by media reports being allowed to serve.

With those few remarks, I support the Bill.

**HON. MARGARET McALEER** (Upper West) [5.59 p.m.]: It is regrettable that the quote by Hon. John Williams of the comments of the judge in the sixteenth century were not of an opinion confined to the sixteenth century. Unfortunately, one could believe it had been expressed in much more recent times. Perhaps more important were his remarks about the very protective attitude of men towards women. Hon. John Williams took a sensible approach to the matter when he viewed the difficulties which women in many family circumstances might have when required to serve on a jury. But the protective attitude of many men, although held with the very best intentions, is something that has played into the hands of women over all these years and has enabled women to make use of that special right granted to them to cancel their jury service.

It would be a pity to allow this Bill to pass without reference to the Bill introduced to the Parliament some years ago by the late Grace Vaughan, a Bill which sought in part to restrict or deny women special rights to cancel their eligibility for jury service.

*Sitting suspended from 6.00 to 7.30 p.m.*

**Hon. MARGARET McALEER**: Prior to the dinner suspension I was referring to the private member’s Bill introduced by Hon. Grace Vaughan; that is the Juries Act Amendment Bill. Although the second reading speech is printed in *Hansard*, it would be relevant and pertinent for me to read the objects and the reasons Grace Vaughan introduced the Bill. She said in her speech—

The purpose of the Bill is to achieve two objectives: One is generally to eliminate discrimination between sexes by giving equal responsibility to males and females in contributing to the system of justice in the society, and the other objective is specifically to avoid possible prejudice on juries by having only those women on the jurors’ books who elect

not to use their cancellation right under the Act.

The system of juries embodies the concept of trial by persons selected from the society in such a way that a group as representative as possible of that society sits in judgment on one or more of its members. This Bill aims to bring juries in this State closer to that ideal situation.

She went on to refer to a Select Committee of this House which sat the previous year and recommended that the objects of that Bill should be embodied in the parent Act, and that one should regard jurors as persons and not particularly as women, although women might in certain circumstances gain exclusion. I was naturally sympathetic to this particular Bill because I felt if one asserts and exercises a right, and perhaps exercises it without having to assert it, one must assume an equal obligation.

Hon. Robert Hetherington: Hear, hear!

Hon. MARGARET McALEER: I had a reservation that while it was all very well for people, say in my circumstances, to feel that obligation because I was exercising such a right, perhaps one was not justified in imposing an obligation on others who were not able to exercise the same right, no matter what one might assert. I had in mind the apocryphal story of the socialist speaker in Hyde Park who said, "When the days of freedom come, you will all have a farm". A voice piped up from the crowd and said, "I don't want a farm". The socialist speaker fixed him with his eye and said, "When the days of freedom come, you will have a farm".

As the Bill was lying on the Table of the House, I undertook a fairly extensive canvass of the women's organisations right across the spectrum, including those which were progressive and those which might be thought to be conservative, and I spoke to as many individual women as I could to ascertain whether they felt they should assume such an obligation. I am glad to say that almost without exception the reply was favourable.

In the event, the Bill was discharged, but not because the Government of the day or the Attorney General of the day (Hon. I. G. Medcalf) was unsympathetic to the Bill. It was rather that the report of the Law Reform Commission on juries was pending and that Hon. Ian Medcalf had in mind he would produce a more comprehensive Bill to deal with amendments to the Juries Act. He explained this to Hon. Grace Vaughan, and she accepted it on the understanding that in time he would bring down such a Bill as we have before

us now. Therefore, I have much pleasure in supporting the Bill.

HON. D. J. WORDSWORTH (South) [7.36 p.m.]: I wish to compliment the Attorney General and the Government for introducing this legislation. It follows of course from Law Reform Commission reports.

One matter that interests me has already been raised by Hon. John Williams and Hon. Margaret McAleer; that is, that the commission also recommended that the discriminatory right allowed to women, but not to men, to cancel liability for jury service be abolished. Hon. Margaret McAleer suggested that Grace Vaughan introduced such a concept in this House. While the Labor Party would perhaps like to say it implements every reform in this direction, I would draw the House's attention to the recommendation of a Select Committee of this House in 1956 that women should not automatically be excluded from jury service. At that time, the chairman was none other than your predecessor, Mr President, Sir Arthur Griffith, who had just been elected to the Council and who found himself Chairman of the Select Committee.

The committee's recommendation appears in its report of 6 November 1956 as follows—

With little exception the evidence heard by the committee gave strength to the opinion that whilst jury service was an obligation which all citizens should accept, the home and its responsibilities were an integral part of our way of life and that women of our State had a major responsibility in this regard.

Your committee recommends therefore that any amending legislation should provide that any woman should be excused from attendance upon being summoned as a juror if she has a child under the age of 14 years and desires to be excused for that reason or for any other valid reason whatsoever which she might advance to the summoning officer, the court or judge, such reason being in the opinion of the summoning officer, the court or judge, a reasonable one for applying for exclusion.

It shows that this Chamber is not as backward as one might think. That recommendation went to the Government of the day which did not accept it. That is rather interesting as I was not sure whether the Government of the day in 1957 was Liberal or Labor; I assumed it was a Liberal Government which did not accept this legislation but on reading *Hansard* I now find it was a Labor Government and the Premier, Treasurer, and

Minister for Child Welfare was none other than Hon. Albert George Hawke.

Hon. J. M. Brown: Albert Redvers George Hawke.

Hon. D. J. WORDSWORTH: Yes, Albert Redvers George Hawke. The Deputy Premier was Hon. John Trezise Tonkin. Herb Graham was there and so were others. It is interesting that a Labor Government decided at that stage that women would not serve on a jury in spite of the recommendation by a Liberal-dominated Select Committee of this House. It has taken from 1956 to make the change.

I notice in the report of the Law Reform Commission that it went into the matter of whether spouses of various people who were excluded from jury service should also be excluded. They were referring to the wives of judges, magistrates, judges' associates, ushers, legal practitioners, the Commissioner of Police, the Director of the Department of Corrections, and members of the Parole Board. The report put forward this opinion, and I notice that the Minister has not accepted it and that no spouses will be automatically excluded. Obviously, they can give reasons for their not wanting to be on a jury which would bring them under another provision anyway.

I support the Bill.

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [7.41 p.m.]: Once again, I am in the happy position of thanking members opposite for their general support of a Bill.

I was interested in the comments a few moments ago of Hon. D. J. Wordsworth who referred to some ancient history relating to this legislation. This is not the first occasion on which I have been reminded that a measure I have introduced, whether on the recommendation of the Law Reform Commission or otherwise, is not original.

My aim in these matters is not necessarily to be original, but to be right, and especially to produce a situation where something is actually done. So I have no problems in acknowledging the interest of members in years gone by, just as I have never had any difficulty or hesitation about acknowledging the fact that many of the Law Reform Commission reports we are in the process of implementing were actually referred to the commission in the first place by a previous Government and Attorney General. I am quite happy with that position, especially considering how long many of these recommendations have languished without action. I take my satisfaction from the fact that we are actually getting something done.

A couple of matters were raised by Hon. John Williams, and those matters I believe require some brief comment. The first relates to the potential influence of media reports on juries in particular cases. Mr Williams asked what assurances could be provided that persons selected on a jury would not have been influenced by earlier media reports. The honest answer to that is it is not possible to speak in terms of firm assurances or absolute confidence that that desirable state can be achieved. Certainly, it cannot be achieved now, and I doubt very much whether any legislative provision could wipe from people's minds the effect of media reports on particular situations.

There is, however, an opening in this Bill which has not been provided previously; it is to be found in clause 19 which seeks to implement a new section 32FA.

Clause 19 of the Bill reads as follows—

The principal Act is amended by inserting after section 32F the following section—

“ 32FA. (1) Immediately after calling the roll of persons summoned to form a jury pool the jury pool supervisor shall explain or cause to be explained to the persons who have appeared in answer to the summons their obligation to disclose to him or to the Court the existence of any of the factors referred to in the Fourth Schedule. ”.

In the fourth schedule of the Bill the factors referred to are listed, for example, incapacity, lack of understanding of the English language, and so on. The last reference is in the nature of a catch-all provision and that is—

Any other reason why there may be bias or likelihood of bias.

That sort of situation can readily be imagined to result from media treatment of events.

As I have said before, I do not see this provision as guaranteeing a solution, but it does at least ensure that something is said to potential jurors which might encourage them to turn their mind to the possibility that they have been biased in any way at all, including the possibility of bias as a result of media events. I think that is all that can be said on this point. It is a new provision, and it is attempting to meet the sort of situation to which Hon. John Williams refers. I do not think anyone can put it any higher than that.

Hon. John Williams also drew attention—I am glad he did—to the fact that there is to be a change to the provision in the existing Act which excludes from jury service persons convicted of crime or misdemeanours. The exclusion now will

apply to persons who have been imprisoned for three years. The member asked the question in two parts. Firstly, he asked why the Government has moved from this blanket ban on convicted persons to an exclusion relating to the period of a sentence. The second part of the question was: if the Government was going to pick a term, why did it pick three years?

The move away from a blanket ban on convicted persons follows the recommendation of the Law Reform Commission. Page 34, paragraph 3.59 reads as follows—

Under the present law, a person convicted of a crime or misdemeanour is disqualified for life from jury service, unless he or she has received a free pardon. The Commission is of the view that this provision is too narrow in one respect and too wide in another. It is too narrow in that it appears to apply only to those convicted in Western Australia, so that a person convicted of a serious offence in another jurisdiction would remain qualified. It is too wide in that regard is had only to the class of offence and not to the penalty imposed. Thus, a person convicted of a crime or misdemeanour is disqualified even though a non-custodial sentence (perhaps a small fine) was imposed, whereas a person convicted of a summary offence and sentenced to a substantial term of imprisonment is not.

The commission then goes on to refer to the consideration that was given to this very question by the Morris committee in England and points out that in England, Victoria, New South Wales, and the Northern Territory the specification of a term of imprisonment has been adopted as the basis of disqualification. It was because of the Government's acceptance of that recommendation that we are moving from the banning of all persons convicted of crimes or misdemeanours to persons who have been subject to a particular sentence.

Hon. John Williams asked, "Why is it to be a three year period? How do you arrive at that?" To come to the point and to be quite frank about it—I am taking the responsibility on my own shoulders—the Government arrived at that decision by a process of error. The background is as follows. Members will note from the Law Reform Commission report that the period of imprisonment recommended by the commission was actually two years.

In the course of preparing legislation a rather different pattern was considered, which brought other considerations into account. At the same point it was thought that the pattern would mesh

better with a three year period rather than a two year period. In the course of further consideration, the alternative pattern was discarded, but the need to then revert to a two year period was apparently overlooked.

This matter calls for an amendment, and I would ask the House to allow me overnight to prepare an amendment to present during the Committee stage. The amendment will meet the question raised by Mr Williams; I am sure it will be to his satisfaction and to the satisfaction of the House, but it should not prevent the House from now completing the second reading stage of the Bill.

With the understanding that I will be preparing an amendment to meet the situation of the period of conviction referred to in the Bill, I ask the House to agree to its second reading.

**Question put and passed.**

**Bill read a second time.**

## ADMINISTRATION AMENDMENT BILL

### *Second Reading*

Debate resumed from 2 August.

**HON. G. E. MASTERS** (West—Leader of the Opposition) [7.53 p.m.]: The Opposition supports the Bill. The Bill amends the Administration Act 1903 which deals with the law of inheritance and, in particular, with matters where a deceased person does not leave a legal will.

It has always mystified me as to how the responsible person goes about the allocation of an estate when a person dies and leaves no will.

The principles are clearly stated and set out in the Statute of Distributions as the Attorney General has indicated in his second reading speech. However, it has not been comprehensively stated in the Administration Act and that is the purpose of the legislation which is before the House.

From my understanding of the Bill, there must be a degree of flexibility in handling the affairs of a person who dies and leaves no will. I would like the Attorney General, who has a better understanding of this matter than I do, to explain to me and my colleagues whether there is a degree of flexibility in handling these matters.

I know that the Attorney General has been distracted because he has been talking to an Opposition member, but I will go back on the point I raised and my reference to the Attorney General's second reading speech.

I said that where a person dies and leaves no legal will, there is difficulty in the distribution of his estate, but there must be some flexibility in the way the estate is handled under such situations. I

do not know if the Attorney General will be able to assist me.

In his second reading speech the Attorney General made reference to two private trustee companies which approached the Attorney General in 1982—I guess it was Hon. I. G. Medcalf—to seek a better definition of the phrase “the next of kin”.

What concerns me is that the Minister made reference, in his second reading speech, to the general community benefit. He said—

If there are no kin, or the only kin are more remote than the children of deceased uncles and aunts, then under proposed item 11 of the table, the whole of the intestate property will pass to the Crown by way of escheat. At present, there is no escheat to the Crown so long as any kin remain, no matter how remote they may be.

I must say that if I were a great cousin of a multimillionaire from another part of Australia and I was the only kin who could be found, I would be most upset if the estate, to which I thought I had some claim, were to go to the State. I think there is some reason to suggest this would not be entirely fair.

I agree with that sort of thing in the case of remote kin who had lost contact with the deceased person. In such a case, there would be some reason to say that the next of kin would not be entitled to the estate. But to cut people off and say they have no claim at all, to draw the line somewhere—in this case at the children of the deceased uncles and aunts—I suggest is unfair. The recommendation put forward to the Minister and to the Government seems unfair and I wonder if this is the practice in other countries. If it is not the practice in other countries, what is the practice? Will people be disadvantaged by the provisions contained in this Bill? Is it a little tougher on the next of kin, even though they might live in remote countries like the United Kingdom or the United States?

I hope that the Minister can set my mind at rest on the point I have raised. If he is unable to do so, I will raise the matter again during the Committee stage because I have some strong reservations about it.

I support the Bill.

**HON. P. H. WELLS** (North Metropolitan) [8.00 p.m.]: People will become aware of this Bill. They should make certain they make a will. Since the Government will profit as a result of this Bill, it seems to me it should accept a commitment to bring about an awareness that in the event of a person's dying without a will, the Government will

take his money. That is what the Bill says. If one does not have a will, only in certain circumstances will that money go to one's next of kin. If one's wishes cannot be interpreted, the State will take that money.

I have been concerned with this particular matter for some time. In fact in my early years in Parliament, I wrote to the Legal Aid Commission, and drew this to its attention. It may have been because of that approach, or it may have been planning it already, but it put out certain pamphlets. I make sure those pamphlets are available outside my electoral office.

This is an area where we must educate the public. I realise the difficulty which the public have, and those people who are responsible for tidying up where the money actually goes. A much greater effort could be made so that people become aware of the situation and they can see the ease with which they can let others know what they want done with their affairs.

So often death is something we do not want to face up to. We tend to think we will be around for ever, but the reality is that we are all heading in that direction, and we all have a responsibility to make sure our affairs are in order.

Very early in my life, when I was newly married, I made certain there was a will to cover the eventuality of my death as far as any children in my family were concerned. In those days I did not know what I was leaving; I certainly did not have much. I do not know that I have much more now, but I was certain I was not having any Government taking anything I wanted to leave for my children.

My request to the Government in connection with Bills like this is that it take some steps to make the public aware of what the legislation means and to encourage them to make certain they make a will so that Bills like this do not have to be brought in to distribute funds in a way the people concerned may not have wished.

**HON. J. M. BERINSON** (North Central Metropolitan—Attorney General) [8.04 p.m.]: Hon. Peter Wells is quite right in emphasising the need to encourage people to write their own wills. There is no better solution to the problems which intestacy raises than not to allow it to arise. That can be done by the provision of a will. It is a simple enough process. Ample assistance is available, and to the extent that either as a Government or as individual members, we can encourage people to ensure that their affairs are put in order in respect of a will, we should certainly do that.

Hon. Peter Wells has already mentioned the initiative which the Legal Aid Commission has

taken at various times in that respect. We should also acknowledge the role of the Public Trustee, which makes it its business to provide a will-writing service at no charge to people who apply for that purpose, and which sends its officers in particular into those parts of the State which are less likely than others to be served by legal practitioners.

Hon. P. H. Wells interjected.

Hon. J. M. BERINSON: They would not be in a position to write wills, whereas the legal officers from the Public Trustee go into various areas which are not well serviced in this way.

Hon. P. H. Wells: The people in those areas have access.

Several members interjected.

Hon. J. M. BERINSON: There is a need to encourage people to put their affairs in order, and to do that by writing a will.

I have some problem in responding in a way which will satisfy Hon. Gordon Masters, because he is asking me, as I understand it, to provide some assurance that notwithstanding what this Bill provides, some flexibility should remain in respect of the distribution of intestate estates. I cannot accommodate the member there, because the real point of the Administration Act, and the real point of this Bill, is to clarify as far as possible just how the distribution should go when no will has been made. For that reason, the legislation, even now, goes into considerable detail to avoid what might be regarded as flexibility on the one hand, but on the other it is better described as uncertainty in the distribution of estates.

If one turns to section 14 of the Act which is proposed to be amended by clause 4 of the Bill, one finds an orderly set of possible circumstances being precisely defined with each set of circumstances having the distribution of an estate defined. One starts where the intestate dies leaving a husband or wife. From there one goes on to the second position where the intestate dies leaving a husband or wife and issue. From there we proceed to the situation where the intestate dies leaving a husband or wife and one or more of the following; namely, a parent, a brother or sister, or child of a brother or sister, but leaving no issue. So it goes on down the list.

In the Bill which is now before the House, we specify clearly for the first time the position of grandparents and also those of uncles and aunts and their issue. All of this is for the purposes of greater certainty and to remove the possibility of conflict and disputes among surviving members of the family, however close to or remote from the deceased person.

Hon. G. E. Masters: What you are saying is that there cannot be any flexibility, otherwise—

Hon. J. M. BERINSON: Otherwise there will be problems.

Hon. G. E. Masters: Yes.

Hon. J. M. BERINSON: Precisely.

The only other question is: Should there be a cut-off point? Some practical considerations are necessary here. Again, let me assure the House, as I did on a quite different Bill earlier this evening, this is not a revenue-raising measure; we are not looking for lots of estates to be forfeited to the Crown, and we would not expect that to arise to any markedly different degree under this legislation from existing legislation. After all, we are going a long way. It is not merely children, grandchildren, and so on; it is not only brothers and sisters, nephews and nieces, and their further issue. We are now going out to uncles and aunts and then cousins and through their issue to even more remote relatives. So we are really going a long way.

I know there are always exceptions to the rule, but I would expect there to be very few millionaires who die without leaving a will. Most of them have quite clearly in their minds where they want their assets to go. In fact, greater difficulty can arise in intestacy with small estates, where the search for relatives who are more and more remote from the person who has died in the end can consume so much in the hands of the trustees or solicitors handling the estate that by the time they are found there is nothing left to distribute; all one gets is a signature by way of clearance of the estate. That is likely to be a far more common situation.

As I tried to suggest in the second reading speech, one reaches the point at the end of the line where one is dealing with people who not only are extremely remote from the deceased person, but also who were not even in his mind to the extent that he was encouraged to write a will in their favour. Once one has reached that further extension, it is suggested it is not unreasonable to bring the matter to a head and just cut it off at that point. What is left of the estate goes to the Crown.

I am asked whether that is the position in other countries. It is, but I am sorry that, without longer notice, I am not able to provide details.

I think it is clear that this measure is not contentious and I commend it to the House.

**Question put and passed.**

**Bill read a second time.**

*In Committee, etc.*

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

*Third Reading*

Bill read a third time, on motion by Hon. J. M. Berinson (Attorney General), and transmitted to the Assembly.

**SUITORS' FUND AMENDMENT BILL***Second Reading*

Debate resumed from 2 August.

**HON. P. G. PENDAL** (South Central Metropolitan) [8.14 p.m.]: The Opposition supports this Bill, but I must say at the outset that it is not as a result of the normally persuasive arguments mounted by the Attorney General in his second reading speech that we give that support. Hon. J. Berinson is known normally as a very thorough individual. Indeed, on a number of occasions in this House, we have heard comments from him critical of any lack of detailed information explaining the nature of Bills.

Hon. J. M. Berinson: You are not now going to say "but", are you?

Hon. P. G. PENDAL: I have decided on this occasion that the paucity of explanatory material puts some onus on other members to provide it for him.

As I understand it, the Suitors' Fund Act with which we are dealing has been operating in Western Australia for around 20 years and is designed to be something like a form of insurance policy against which a litigant who is forced into extra legal processes through no fault of his own can make some claim.

It has been explained to me that one example might be where a magistrate makes a decision that is considered by one of the parties involved to be wrong at law. That person can exercise his right of appeal which, let us say, is then upheld by the superior court. Again, as I understand it, at that time the superior court can issue a certificate which the litigant then takes back to the suitors' fund board, and in turn the board has the power to cover that person's legal costs at the appeal stages.

I am told that another situation could involve a jury which has failed to reach a verdict, necessitating a retrial. In that case, the cost of the first trial may be met from that suitors' fund.

To this extent the analogy—and I noted the Attorney's earlier caution about placing too much reliance on analogies—I made about the fund be-

ing a form of legal insurance is certainly valid if members consider how the fund is financed.

The short answer to that is that it is funded by a very modest 20c levy on the costs of all writs issued out of the Supreme and District Courts and indeed inferior courts. In the context of this debate, the 20c really is a fairly paltry amount these days, particularly if we consider it alongside the cost of issuing that Supreme Court or District Court writ, an amount of \$40, as well as the 20c, making a total of \$40.20.

When we consider that the finances of the fund have been running down quite dramatically over the last few years, we must wonder why it is that no action has been taken to increase the levy. After all, if one believes in the principle of the user pays—and most political parties appear to subscribe to that nowadays—one could hardly argue against paying a higher levy for one's own personal protection before the courts.

I will refer now to some figures I had taken from the Auditor General's report, figures which I think underline the point I am trying to make. On 1 July 1980, there existed in the suitors' fund, which is administered by the Crown Law Department, a little over \$110 000. If one considers that it is a form of legal aid or legal insurance against matters having to be taken before a court—bearing in mind that we are now, through the Bill, adding a new dimension to its operations by the definition of the Small Claims Tribunal as a court—one might expect that the fund ought to be growing, and growing not at the taxpayers' expense—as I am sure Mr Berinson would agree—but at the expense of the people using the legal system at any one time. If we accept that under those circumstances the fund should be growing rather than shrinking, even on a simple basis of an indexed figure of 10 per cent since 1980 when the fund stood at \$110 000, we could expect that the fund this year would stand at something around \$150 000. Instead of that upward movement to around \$150 000, there has been a downward movement, and a very dramatic one at that, to the point now where the fund contains a little more than \$59 000, according to the Auditor General's report for 1983. Again, that suggests to me a dangerous state of affairs, because in each of the financial years from 1980—I have not had time to go back beyond that—the fund has been slowly but surely shrinking, indicating that this form of insurance is destined to dry up within a few years.

I appreciate that that matter is not one directly related to the amendment contained in this measure, although I believe the opportunity was there for the Government to make some comment

on it or to move in this direction since the Bill specifically seeks to extend the jurisdiction of the fund to cover the Small Claims Tribunal. In future, the tribunal will be defined as a court for the purposes of the suitors' fund.

As I understand it, under the current Act the Small Claims Tribunal is not regarded as a court. Indeed, long before the tribunal was ever thought of, the suitors' fund was in existence, thus the need for the Government to bring in this amending Bill.

I am assuming from all this that where presently a person takes an appeal to the Supreme Court on any matter that has originated in the Small Claims Tribunal, he has no redress for costs where it can be shown there has been a denial of natural justice. Therefore, this amendment makes a lot of sense, and I for one commend the Government for bringing it forward, because it is going to offer a facility to litigants before the Small Claims Tribunal that has existed as a facility to people in other courts in Western Australia for something like 20 years.

I take this opportunity to point out to the Attorney General what I consider to be the rather inadequate and meagre detail that is available about the fund, either to members of Parliament or for that matter to contributors to the fund. The only reference I was able to find in order to look at the level of accountability of the fund was a fairly brief reference in the Auditor General's report under the principal heading of "Crown Law Department". It is a very brief indication of the activities of the suitors' fund board. I ask the Attorney whether he would consider having a report of the board's activities in future included, if not in the Auditor General's report, perhaps in some form of tabled paper, and perhaps including a few case studies of the sort of work done by the suitors' fund board during the year so that people reading the report have a fair idea of the activities in which the board is engaged and how it applies its funds.

The final observation I want to make relates to the size of the levy, and I would be grateful if the Attorney could respond or at least have the matter examined. I have already said that it seems to me to indicate that the 20c is inadequate. Would it not be worthwhile to consider raising that levy, not only to reverse the downward trend to which I have already referred, but also to raise it to a more realistic level and so help to offset the spiralling cost of legal aid in Western Australia?

It may well be that this would then become a way of helping to finance the fairly heavy burden of legal aid without the money coming from Consolidated Revenue. Again, I trust it is under-

stood that it is not a question of the Opposition's or my suggesting that the Government raise its taxes, because we have been critical of that procedure. But this is not a tax; it is a levy on the user of a particular Government service, a levy which in today's dollar terms is really quite minuscule.

Those points aside, the Opposition certainly supports the central objective of the Bill, which is to allow litigants whose activities begin before the Small Claims Tribunal to have in future the same sort of facility that has been available to other litigants before other courts for over 20 years. We support the Bill.

**HON. J. M. BERINSON** (North Central Metropolitan—Attorney General) [8.27 p.m.]: I thank Hon. Phil Pental for his support of the Bill. I have noted his mild and kindly criticism about the lack of detail in my second reading speech. Perhaps I took too much for granted in thinking that everyone knew what the Suitors' Fund Act was about. Certainly if people were in any doubt about the functioning of that fund, they should have had their doubts put to rest by the honourable member himself. I have noted also the encouragement which the honourable member gave to an increase in the charges related to these court actions.

I would say two things about that: Firstly, the fund is under regular review and I would not regard its present level as dangerous in terms of the stability of the fund, even though with increasing costs and a stable fund one always has to be careful. Secondly, there is nothing to suggest in particular that the effect of this Bill in expanding the calls on the fund will lead to anything substantial in the amounts of money actually paid out. Appeals from the Small Claims Tribunal will still be by far the exception to the rule, mainly because of the limited grounds of appeal that exist from that tribunal. I would imagine that appeals will also be discouraged by the fact that, in any event, the amounts at stake are usually quite small in relation to the potential risks of litigation.

What we are looking to do in this Bill is to extend access to the suitors' fund as a matter of principle more than out of any concern that there is a large number of people who are being disadvantaged by this provision.

I take the honourable member's point about the lack of public report. Until he raised that point I was frankly under the impression that the board which administers the suitors' fund did provide an annual report. Perhaps that is not so.

Hon. P. G. Pental: I have been advised it is not.

Hon. J. M. BERINSON: I say quite frankly it is a matter to which I have not previously turned

my mind. I am quite happy to ensure that financial accounts of this fund are tabled. I will do that when the next report is brought to me. I do not think, on the other hand, that it will be a helpful exercise to look to the board to give case studies. There is nothing unusual in the course of its work. It is dealing with certificates provided by a court on the grounds that an appeal has succeeded on a question of law.

Hon. P. G. Pental: My only point there is that a current annual report really tells a lay person nothing about to what the funds are applied.

Hon. J. M. BERINSON: What the funds are applied to are the satisfaction of certificates provided by the courts.

Hon. P. G. Pental: You could say the same about the Consumer Affairs Bureau, but at least it gives a case study of what goes on during the year.

Hon. J. M. BERINSON: I can imagine certain information that could be of interest; for example, how many cases or how much by way of payment goes out of particular courts—something of that nature.

I would not know at the moment whether statistics are kept in a way that would provide that, but again I am quite happy, to the extent that they are readily available, to encourage their inclusion in the annual financial statement. I would have to caution against being too enthusiastic about the honourable member's suggestion that it might be an idea to increase the suitors' fund levy for the purpose of contributing to the Legal Aid Commission's funds.

We must recall that the Legal Aid Commission is acting for its clients and has to pay the levy itself. It would therefore follow under a system of that kind that the people who are assisted by legal aid would make no contribution and the people who are not assisted by legal aid would be paying for those who are assisted. I think that would be a rather unfortunate tipping of the balance, and I would not be inclined to pursue that proposal too far. I believe we have covered the points raised by the honourable member.

I look forward to the support of the House for this Bill.

**Question put and passed.**

**Bill read a second time.**

*In Committee, etc.*

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

### *Third Reading*

Bill read a third time, on motion by Hon. J. M. Berinson (Attorney General), and transmitted to the Assembly.

### **RESTRAINT OF DEBTORS BILL**

#### *Second Reading*

Debate resumed from 2 August.

**HON. G. E. MASTERS** (West—Leader of the Opposition) [8.36 p.m.]: Once again, the Attorney General is having an easy time. The Opposition does not oppose this Bill. Like a great number of legal Bills brought to the House recently, this Bill is one which the previous Attorney General (Mr Medcalf) instructed the Law Reform Commission to study, and on which it was to report. This was done in 1978, and the report was brought forward in 1981. So now in 1984 we are acting on that report.

I suppose that is how progress is made, but it seems a rather tortuous process. The Law Reform Commission named the project No. 73, and of course it has now discharged its obligation.

I was interested to hear the second reading speech of the Minister in charge of the Bill. He said in the first paragraph—

The present Absconding Debtors Act dates from 1877. It was principally designed to prevent assisted passage immigrants from leaving Western Australia without refunding passage money if they had not already discharged their undertaking to work in the colony.

I must say that when I arrived in Australia in 1962 with my two sons, I did not realise this Act still applied. I hope the Government of the day would believe I had fulfilled my obligations and that I have worked in the colony for sufficient time. I know Mr Stephens suggested that the sooner I went back to the UK the better, but I am sure that is only a reflection of his thoughts and not the thoughts of the other Government members.

It is refreshing to look at a Bill which is easy to read and to understand.

Hon. J. M. Berinson: It is like the Stamp Duty Act.

Hon. G. E. MASTERS: That was a little difficult. I would suggest the Attorney found that a little difficult as well, even with all his expertise. If we compare this Bill with the Absconding Debtors Act, we will realise that the Act is a difficult piece of legislation to read and understand. If anyone bothers to look at it, he will find that it has seven paragraphs which go on and on, without any full

stops. I think it would be a good idea for whoever drafted that type of Bill to obtain some advice from the person who drafted this Bill.

Hon. Peter Dowding: I think he would be a little old now.

Hon. G. E. MASTERS: I say to Mr Dowding that some of the legislation we have now, and possibly some which will be introduced, is almost as bad as that sort of legislation from the 1877s.

Hon. Robert Hetherington: Have to maintain the old traditions, you know.

Hon. G. E. MASTERS: In some cases, I agree. I am not arguing about that, but I would like to be able to read some of the legislation.

This Bill prevents debtors from leaving the State. That is contained in clause 5 of the Bill where it is set out quite clearly so that it is easy to understand. The legislation also prevents debtors from transferring assets and property or from removing it from Western Australia. I assume by the word "transferring", it means giving away to any person any such assets a debtor may have.

I suppose many of us have had some experience in this regard. I recall when I was in business and a fellow owed me a fair amount of money—at least it seemed a large amount in those days. I heard about his problems from a friend of mine who worked for him. He said this fellow was a good chap because he was giving his house and property to his son. That rang a bell with me, so I shot down to the office and got my money from him. Those who never heard of his kindness to his family never got their money.

Clause 17 of the Bill is clear and concise. Where a summons to appear in the court is sought, an application must satisfy the court that the debt exists and that the debtor is about to leave Western Australia. I am not sure how a person would find out that someone was about to leave Western Australia, but I am sure that there are ways and means.

If a debt is at least \$500 and an application has been made within a reasonable time—I suppose it means that the application is not made at the very last minute which could cause someone bother, or it may be a malicious move—

Hon. J. M. Berinson: That is really directed at preventing an application deliberately being made at the last minute.

Hon. G. E. MASTERS: I will make reference to that. What the Attorney is saying is that this clause prevents a capricious application for restraint. The Bill provides another civil remedy in clauses 26 and 27—again clearly and concisely.

My one criticism is of the minimum limit of \$500. If we remember that the Law Reform Commission was required to study and bring down a report on this matter in 1978, we will note that \$500 was worth a lot more then than it was in 1981, and is now. In that time, circumstances have changed, although a debt of \$500 is a fair sum of money. I guess one could prevent someone leaving the State if he had a debt of \$600, but it would cost more than \$600 to get to the Eastern States; in other words, a person would have to spend more than that to leave.

That figure is fairly low, and I wonder whether it would be a good idea to lift it from \$500 to at least \$1 000. I know we have to start somewhere, but this seems to be worth further thought.

Apart from that the Bill is good and sets out very clearly what needs to be done in relation to these problems. It is certainly a vast improvement on the 1877 Bill in the way it is written and constructed for the ease of people like myself to understand. I support the Bill.

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [8.46 p.m.]: I thank the Leader of the Opposition for his support of the Bill and his indication that it has the support of the Opposition generally.

The question of the appropriate amount of money is not easy to solve. There is always a dividing line, and perhaps \$500 should not be the end of the day as far as further consideration is concerned. The least that can be said is it is better than the present limit of \$40.

Hon. G. E. Masters: It can be changed by direction somewhere along the line. There is an ability to increase the figure.

Hon. J. M. BERINSON: Yes, it can be increased by regulation.

When one moves to a new Bill of this kind, whatever judgment one makes can be regarded as going too far in the interests of the creditor or perhaps too far in the interests of the debtor in letting him get away with too much. We have arrived at a figure of \$500 on the basis of recommendations to us. I think that is a reasonable starting point for this new Bill, on the understanding that the matter is open to regular review.

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

**LEGAL AID COMMISSION AMENDMENT  
BILL**

*Assembly's Amendment*

Amendment made by the Assembly now considered.

*In Committee*

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

The CHAIRMAN: The amendment made by the Assembly is as follows—

Clause 6, page 3, lines 8 and 9—Delete “regulation 156F(1) of”.

Hon. J. M. BERINSON: I move—

That the amendment made by the Assembly be agreed to.

Hon. G. E. MASTERS: The Opposition has no objection to this amendment. It is purely a technical change and we support it.

**Question put and passed; the Assembly's amendment agreed to.**

*Report*

Resolution reported, the report adopted, and a message accordingly returned to the Assembly.

**AUDIT AMENDMENT BILL**

*Second Reading*

Debate resumed from 14 August.

HON. G. E. MASTERS (West—Leader of the Opposition) [8.53 p.m.]: This legislation certainly presents no problem as far as the Opposition is concerned, and we support it in word and in detail.

**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 Hon. J. M. Berinson (Minister for Budget Management), and passed.

*House adjourned at 8.55 p.m.*

## QUESTIONS ON NOTICE

### INSURANCE: MVIT

#### *Amalgamation with SGIO*

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

- (1) Is the Government examining the feasibility of amalgamating the Motor Vehicle Insurance Trust and the State Government Insurance Office with a view to providing compulsory third party motor insurance?
- (2) Who is to carry out this investigation and will the Premier table a copy of the consultant's brief?
- (3) Has the Government abandoned its commitment given by the Premier to the Parliament in the Legislative Assembly on Tuesday, 20 September, when he said "... the SGIO should not have any advantages over private insurers by virtue of it being a Government organisation."?
- (4) In what way does the Government expect to bring about an amalgamation which administers MVIT's compulsory third party insurance monopoly without providing the SGIO with an advantage by virtue of its position as a Government organisation?

Hon. D. K. DANS replied:

- (1) to (4) The Government jointly commissioned Price Waterhouse Associates and the merchant bank, Rothwells Ltd., to investigate and recommend a corporate strategy and development plan for the State Government Insurance Office within the provisions of the State Government Insurance Office Act as amended.

Paragraph 5 of the terms of reference, a copy of which is provided, requires the consultants to report on, among other things, the feasibility of amalgamating the Motor Vehicle Insurance Trust and the State Government Insurance Office in the provision of third party motor vehicle insurance.

In appointing consultants, the Government was mindful that the State Government Insurance Office should have neither advantages nor commercial disadvantages over its private sector counterparts because of its being a semi-Government organisation.

### INSURANCE: MVIT

#### *Amalgamation with SGIO*

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

- (1) Would the amalgamation of the Motor Vehicle Insurance Trust and the State Government Insurance Office be able to comply with the solvency and minimum valuation requirement under the State Government Insurance Act 1983 in the event that the amalgamation provided for the SGIO to take over the MVIT's compulsory activities?
- (2) Is the Government considering amending the State Government Insurance Act?
- (3) If so, what areas are under consideration?
- (4) Are all the changes being considered in line with the Government's previous commitment that the SGIO would have no advantage over private insurers by virtue of its being a Government organisation?

Hon. D. K. DANS replied:

- (1) The Government has not received any proposals nor has a decision been made to amalgamate the State Government Insurance Office and Motor Vehicle Insurance Trust to provide third party motor vehicle insurance.
- (2) No.
- (3) and (4) Answered by (2).

### GAMBLING

#### *Soccer Pools*

72. Hon. G. E. MASTERS, to the Minister for Administrative Services:

- (1) How long have soccer pools been operating in Western Australia?
- (2) What has been the gross weekly revenue so far?
- (3) What has been the return to the Treasury?
- (4) Which company has been awarded the franchise in this State?
- (5) Does that company operate in Western Australia or has a local agent been appointed?
- (6) If so, under what trade name does the agent operate?

Hon. D. K. Dans replied:

- (1) Sales commenced on 23 July 1984, for the first competition date of 4 August 1984.
- (2) \$118 835.50.
- (3) \$38 621.54.
- (4) Australian Soccerpools Pty. Ltd.
- (5) Australian Soccerpools Pty. Ltd. has established an office in Western Australia.
- (6) Not applicable.

### GAMBLING: CASINO

#### *Burswood Island: Test Drills*

73. Hon. D. J. WORDSWORTH, to the Minister for Administrative Services:

- (1) On what date did the Government give instructions for test drilling on Burswood Island to determine the suitability for building foundations?
- (2) Was the whole of the Burswood Island area test drilled or only one or either of the proposed casino sites?
- (3) Was the information then passed on to one or more of those desiring to make application?
- (4) If so, to whom and on what dates?
- (5) In what form was the information given and did it give any recommendations as to the site's suitability for a casino?

Hon. D. K. DANS replied:

- (1) During April 1984.
- (2) Test drills were conducted on the whole of the area south of the proposed Burswood bridge.
- (3) No.
- (4) and (5) Not applicable.

I herewith table a copy of report No. WRB 88, May 1984, "Burswood Island-Victoria Park—Proposed Casino Site Soils Investigation".

*The report was tabled (see paper No. 96).*

### TRAFFIC: CROSSINGS

#### *Schools*

74. Hon. P. H. WELLS, to the Attorney General representing the Minister for Police and Emergency Services:

- (1) Which committee is carrying out the review of procedures for allocating guarded pedestrian crossings for children?

- (2) Who are the members of the committee?
- (3) What brief has the committee been given?
- (4) Will the committee examine and report on experiences overseas and interstate?
- (5) Can this committee recommend major changes as to the form guarded pedestrian crossings for children will take?

Hon. J. M. BERINSON replied:

- (1) School road safety advisory committee.
- (2) Representatives from—

Police Department—Chairman  
Main Roads Department  
Local Government  
Western Australian Council of State Schools Organisation  
Westrail  
Education Department  
Town Planning.

- (3) Reviewing the present criteria for establishing guard-controlled children's crossings and will look at the possibility of introducing other forms of controlled crossings where there is evidence that such crossings will improve the safety of children; and  
broadening the base of the present criteria for approving guarded-controlled crossings.
- (4) and (5) Yes.

### PASTORAL INDUSTRY: LEASE

#### *Mt. James*

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

Has the Government made a decision on the future of Mt. James Station?

Hon. D. K. DANS replied:

The reallocation of the former Mt. James Station is still under review.

### GAMBLING

#### *Lotteries Commission: Funds*

76. Hon. P. G. PENDAL, to the Minister for Administrative Services:

- (1) Does the Lotteries Commission provide funds for recurrent expenditure as distinct from capital grants?

(2) If not, have any exceptions ever been made?

(3) If so, to whom?

Hon. D. K. DANS replied:

(1) Yes.

(2) and (3) Not applicable.

## TOURISM

### *Caravan Parks: Natural*

77. Hon. D. J. WORDSWORTH, to the Leader of the House representing the Minister for Health:

(1) Does the Government intend to legislate or introduce regulations to enable "natural caravan parks" to be developed?

(2) If "Yes", when can it be expected that that will occur and what will be the general conditions?

(3) If not, what are the reasons for not providing for this form of accommodation to encourage tourism in the State?

Hon. D. K. DANS replied:

(1) The matter is under consideration.

(2) Discussion regarding the regulations is still proceeding and the date of gazettal is not known. The conditions will generally refer to the provision of potable water, toilets, solid and liquid waste disposal, sewage disposal, and required distance from nearest established caravan park.

(3) Not applicable.

## HEALTH: TOBACCO

### *Advertising: Coupons*

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

(1) How many coupons did the Government receive from advertisements used in its advertising campaign relating to the 1983 tobacco Bill?

(2) Did the Government write to people who had completed a coupon?

(3) How many letters were posted and under whose signature?

(4) Will the Government table a list of the names and addresses of those people who answered, by completing a coupon, its 1983 smoking advertisement?

(5) Will the Government table a copy of the letter sent to these people?

Hon. D. K. DANS replied:

(1) Approximately 3 000 coupons were received.

(2) Yes.

(3) Responses were sent under the Premier's signature to all those who included a legible address on the coupons.

(4) No. It is not appropriate to reveal the names and addresses of correspondents with the Government without the express permission of the correspondents. It is not intended to squander Government resources in obtaining permission from approximately 3 000 correspondents.

(5) A copy of the response and enclosure is tabled.

*The paper was tabled (see paper No. 97).*

## SPORT AND RECREATION

### *Football: Televising*

79. Hon. H. W. GAYFER, to the Minister for Planning representing the Minister for Sport and Recreation:

What reason is given by the WAFL for refusing to allow the GWN network the right to televise Victorian league football or any Victorian club football each Saturday?

Hon. PETER DOWDING replied:

Policies and agreements for the telecasting of football to the country are determined by the WAFL Board of Directors. The Government suggests that inquiries should be made of that body.

## PASTORAL INDUSTRY: LEASE

### *Mt. Anderson: Government Contribution*

80. Hon. N. F. MOORE, to the Minister for Planning representing the Minister with special responsibility for Aboriginal Affairs:

(1) Will the State Government be making a financial contribution to assist in the purchase of Mt. Anderson Station?

(2) If so, how much will be contributed?

Hon. PETER DOWDING replied:

(1) No.

(2) Not applicable.

### PORNOGRAPHY

#### *Censorship: Advisory Committee*

81. Hon. H. W. GAYFER, to the Minister for Administrative Services:

Further to my questions 1 of Tuesday, 31 July, and 55 of Thursday, 2 August 1984, with respect to the operations of the State advisory committee on publications—

- (1) How does the Government arrive at the final selection for two persons to fill the vacant positions on the committee?
- (2) If a list of names is presented to the Minister, from whom does such a list emanate?
- (3) Is it usual for the Minister or his advisers to seek suggested names for consideration as a committee member from appropriate bodies; that is, women's groups, churches, etc.?
- (4) If so, which bodies are consulted?

Hon. D. K. DANS replied:

- (1) Cabinet decision followed by Executive Council approval.
- (2) The Department of Administrative Services.
- (3) No.
- (4) Not applicable.

### HEALTH: HOSPITALS

#### *Osborne Park and Wanneroo*

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

For each quarter in the past 24 months what is the average bed occupancy rate at the—

- (a) Wanneroo Hospital; and
- (b) Osborne Park Hospital?

Hon. D. K. DANS replied:

- (a) and (b) The daily bed averages at Wanneroo and Osborne Park Hospitals for each quarter in the past 24 months are—

Quarters	Wanneroo	Osborne Park
September 1982	51.1	143.6
December	46.9	133.9
March 1983	49.2	139.2
June	45.1	136.8
September	48.5	138.9
December	42.5	124.9
March 1984	39.6	123.0
June 1984	34.1	105.8

### PASTORAL INDUSTRY: LEASES

#### *Elvire and Koongie Park*

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

- (1) Does the Minister have before him a request for the transfer of title to the Koongie Park and Elvire pastoral leases?
- (2) If so, when can a decision on these transfers be expected?

Hon. D. K. DANS replied:

- (1) The lessees of Koongie Park and Elvire Stations were granted approval in August 1983 to offer both properties for sale. To my knowledge, there has been no formal application to transfer the leases to another party.
- (2) Answered by (1).

84. *Postponed.*

### AUSTRALIAN BICENTENNIAL CELEBRATIONS

#### *Funding*

85. Hon. P. H. WELLS, to the Attorney General representing the Treasurer:

- (1) What funds does the Government plan to allocate towards the bicentennial planning and celebrations?
- (2) Has the Government made any commitment to allocate funds to any major bicentennial projects?
- (3) If so, which projects and how much?
- (4) What funds will be available to support local bicentennial committees?
- (5) When will additional details of funding for bicentennial projects be available?

Hon. J. M. BERINSON replied:

- (1) The Government is currently considering the nature and extent of its support for bicentennial planning and celebrations in Western Australia.

The broad scope of bicentennial planning dictates that the overall financial commitment by the State Government be thoroughly considered stage by stage and announcements made at the appropriate times.

(2) and (3) Refer to Legislative Council question on notice 58 of 7 August 1984.

(4) The Commonwealth has announced its intention to make some funds available for projects and events at the local level although the total amount and basis for distribution have not yet been announced. The State Government will announce details of any funding commitment to local bicentennial celebrations after further consultation with the WA Council of the Australian Bicentennial Authority.

(5) As soon as possible, subject to (1) above.

#### ABORIGINAL AFFAIRS: LAND RIGHTS

##### *Seaman Inquiry: Submissions*

86. Hon. N. F. MOORE, to the Minister for Planning representing the Minister with special responsibility for Aboriginal Affairs:

(1) Is the Minister yet in a position to provide itemised details of all grants made to assist in the preparation of submissions to the Seaman inquiry?

(2) If so, will he do so?

Hon. PETER DOWDING replied:

(1) No. The Aboriginal land inquiry has not yet completed its task.

(2) As above.

#### ABORIGINAL AFFAIRS: LAND RIGHTS

##### *Seaman Inquiry: Staff*

87. Hon. N. F. MOORE, to the Minister for Planning representing the Minister with special responsibility for Aboriginal Affairs:

(1) Have any of the staff appointed to the Seaman inquiry resigned or been dismissed since the inquiry commenced?

(2) If so, will the Minister provide details?

Hon. PETER DOWDING replied:

(1) and (2) Two clerical staff have left to take up employment outside the Public Service. Two anthropologists were transferred to be temporarily located at the Aboriginal Legal Service to assist Aboriginal groups with preparation and presentation of submissions to the inquiry.

#### POLICE: PROSTITUTION

##### *Toleration*

88. Hon. P. G. PENDAL, to the Attorney General representing the Minister for Police and Emergency Services:

(1) Has there been any change in the policy of—

(a) the Government; and

(b) the Police Department

in relation to the enforcement or toleration of brothels or prostitutes?

(2) If so, when was it made and what are the changes?

Hon. J. M. BERINSON replied:

(1) and (2) Enforcement of the law is a matter for the discretion of the Commissioner of Police, who must allocate and deploy his police resources in the way in which he considers to be most appropriate. I am informed by the Commissioner of Police that he has not changed his policy in respect of enforcing the law relating to unlawful conduct associated with prostitution.

So far as the content of the law is concerned, the Government is monitoring developments in other States with a view to assessing whether or not the law should be changed.

#### MOTOR VEHICLES

##### *Kimberley Land Council*

89. Hon. N. F. MOORE, to the Minister for Planning representing the Minister with special responsibility for Aboriginal Affairs:

In his answer to my question 930 of Wednesday, 11 April 1984, the Minister advised that the Kimberley Land Council purchased a vehicle for \$11 753.80 from funds provided to assist in the preparation of a submission to the Seaman inquiry.

Will the Minister advise—

(a) the make, model, and year of the vehicle;

(b) the present location of the vehicle;

(c) the name of the person or organisation under which the vehicle is registered; and

(d) the registration number of the vehicle?

Hon. PETER DOWDING replied:

- (a) to (d) It is not common practice to provide such detailed information when grants have been made to legally incorporated organisations. The member is already aware—see response to question 930—how the original grant was disbursed. Such further particular information as the member requests should now be sought from the particular organisation.

### HEALTH: HOSPITALS

#### *Osborne Park and Wanneroo*

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

For each quarter in the past 24 months, what number of surgical operations have been conducted at the—

- (a) Wanneroo Hospital; and  
(b) Osborne Park Hospital?

Hon. D. K. DANS replied:

- (a) and (b) The numbers of surgical operations for each quarter for past 24 months for the Wanneroo and Osborne Park Hospitals are—

Quarters	Wanneroo	Osborne Park
September 1982	661	1 423
December	559	1 381
March 1983	568	1 335
June	606	1 389
September	577	1 330
December	527	1 186
March 1984	557	1 193
June	435	895

### QUESTIONS WITHOUT NOTICE

#### LAND

##### *Broome*

8. Hon. N. F. MOORE, to the Minister for Planning:

I refer to his letter of 8 August to a Mr L. F. Bonser of Applecross relating to the proposed resort development in Broome, and ask—

- (1) Who decided that the land exchange Mr Bonser requested be rejected; that is, exchange from a freehold block at Kennedy Hill for a block adjacent to the golf course?  
(2) Why was the exchange rejected?

Hon. PETER DOWDING replied:

- (1) and (2) The member has not provided me with notice of the question and therefore I have not got the letter or the details with me. As I explained yesterday to the member and to you, Mr President, Mr Bonser had sought to be involved with a group called Wedge Industries which proposed a tourist development on land held by the Government and this very small parcel of land that Mr Bonser had acquired.

In subsequent correspondence, Mr Bonser raised a demand that the Government should exchange land elsewhere for another tourist resort for land held by him in Broome near Kennedy Hill. The Government simply saw no reason to acquire the land owned by Mr Bonser. To my knowledge, it was not land which the Government was interested in acquiring, and there was simply no reason it should end up as the proprietor of that block of land. Basically that is why no land exchange was appropriate in those circumstances.

#### LAND

##### *Broome*

9. Hon. N. F. MOORE, to the Minister for Planning:

By way of introductory remark, I remind the Minister he wrote to Mr Bonser as Minister for Planning.

The PRESIDENT: Order! I presume the honourable member is asking a question without notice of somebody.

Hon. N. F. MOORE: I ask it of the Minister for Planning. I remind him of the content of his letter to Mr Bonser in which he advised that the exchange of land was not approved by the Government, and ask: Why was the Minister involved in the decision to refuse the exchange of land when one would assume this was a matter for the Minister for Lands and Surveys?

Hon. PETER DOWDING replied:

It involved Mr Bonser's efforts to secure the tourist development for the company Wedge Industries. It had been directed to the Minister for Lands and Surveys who had a part to play, the Premier as

Minister for Tourism, and to me as Minister for Planning. When Mr Bonser returned to the fray for another round suggesting this land exchange, consultation took place between the Minister for Lands and Surveys, the Premier, and me.

Again, because it affected the three portfolios and because Mr Bonser had been contacted by all three Ministers the end result, a result which was arrived at after consultation between the three Ministers and the three departments, reflected the views of the Government. I was delegated to express the views of the Government to Mr Bonser.

#### LAND

##### *Broome*

10. Hon. N. F. MOORE, to the Minister for Planning:

I refer the Minister to Mr Bonser's request to purchase some reserve land adjacent to his freehold block at Kennedy Hill which is in Broome. Is the Minister prepared to provide, in writing, to the Shire of Broome and to Mr Bonser the reasons that the project was not given approval?

Hon. PETER DOWDING replied:

This matter has been canvassed with the Shire of Broome and as I have some regular contact with that shire, I am sure that if it has any further information to request, it will be brought to my attention.

The project was never Mr Bonser's project. He was an ancillary to it.

Hon. N. F. Moore: You must be careful about what you say here.

Hon. PETER DOWDING: Mr Bonser's representation was at all times on behalf of a company known as Wedge Industries.

Hon. N. F. Moore: You have it wrong.

Hon. PETER DOWDING: Wedge Industries was the company involved. A Mr Monk acted on behalf of Wedge Industries and I, in fact, corresponded with Wedge Industries on this matter.

#### LAND

##### *Broome*

11. Hon. N. F. MOORE, to the Minister for Planning:

Will the Minister provide, in writing, to the Broome Shire Council and to Mr Bonser the reasons that the project was denied?

Hon. PETER DOWDING replied:

I think I have answered the question. If Hon. Norman Moore is referring to the first project, Wedge Industries was involved. There has been correspondence and I do not believe that further correspondence is necessary. However, if any of the principals involved in the first project wish to have more information by way of correspondence, and it is subsequently requested, I will give consideration to that request.

If Hon. Norman Moore is referring to the second proposal, I advise that Mr Bonser wanted the Government not to acquire a block of land, but to simply fund him into some other commercial activity. I have already indicated to Mr Bonser, in writing, that that proposal is unacceptable.

#### LAND

##### *Broome*

12. Hon. N. F. MOORE, to the Minister for Planning:

I refer the Minister to his answer to my question without notice yesterday. He advised that Mr Bonser's proposal at Kennedy Hill was rejected for a variety of reasons. He stated that the environment was one of the reasons. Would the Minister advise what were the environmental reasons and which environmental authority provided those reasons?

Hon. PETER DOWDING replied:

Hon. Norman Moore may like to put the question on notice or he may like to take the question as being a question on which I will collect further information.

Hon. N. F. Moore: You told me yesterday that that was the reason.

Hon. PETER DOWDING: I said yesterday that there were environmental reasons. I do not recall the precise detail of those reasons, but if the member is seeking only the broad reasons, I indicate that

they have something to do with the protection of the foreshore area, in part. If the member wishes to receive more information, I will have it obtained, and supply it to him.

Hon. N. F. Moore: I do.

**LAND**  
*Broome*

13. Hon. N. F. MOORE, to the Minister for Planning:

I refer the Minister to his answer to my question without notice yesterday in which he advised that Gantheaume Point in Broome will be made the *creme de la creme* of resort developments. I ask—

- (1) What technical and environmental investigations have been carried out to assess the feasibility of the site for a resort development?
- (2) When will the site be made available for development?
- (3) How is it proposed that the land will be released?
- (4) Was the Shire of Broome consulted on the proposed use of the site before the Government's decision was announced?

Hon. PETER DOWDING replied:

- (1) A considerable amount of work was done at Government departmental level to identify this as a suitable site and it included reference to a number of Government departments and agencies.
- (2) The land is presently the subject of a lease which does not expire until 31 December this year. It will not be available for formal lease until after that date.
- (3) It is possible that the land could be released in a number of ways, but at this stage I understand that no final decision has been made. However, the question should more properly be directed to the Minister for Lands and Surveys.

Mr Moore: Is he going to get a guernsey at last? You have taken over his job on this matter.

Mr PETER DOWDING: The member is being a bit pathetic.

Several members interjected.

Mr PETER DOWDING: All these self-styled experts suddenly know all about it.

In answer to the question, this is an attempt by the Government to fast-track some development in this State—

Mr Moore: It has taken four years.

Mr PETER DOWDING: I know that pooh-poohing development proposals has now become the accepted norm for the Opposition.

The Gantheaume Point site in Broome has been fast-tracked and I hope it will continue to be fast-tracked and I make no apology for it. I have the greatest respect for, and a co-operative arrangement with, the Minister for Lands and Surveys, and I believe that the developers who are interested in this site are finding that the co-operation between Government Ministers in the Labor Party's Administration is unusual in the sense that it did not happen under the previous Administration.

They are finding it very useful in terms of dealing with the Government. They do not have to trip around from one door to the next to get a final answer.

- (4) I had discussions with the President of the Shire of Broome prior to the announcement being made and he welcomed the decision and indicated that he had faith in the project and that Broome would benefit very much from the project that the Government had put in train.

**LAND**  
*Broome*

14. Hon. N. F. MOORE, to the Minister for Planning:

Again I refer the Minister to his letter to Mr Bonser of 8 August in which Mr Bonser was advised of the rejection of his proposal to develop a resort hotel at Kennedy Hill, and I ask—

- (1) Is it the Government's intention to close down the Aboriginal reserve at Kennedy Hill?
- (2) Will the Government support Mr Bonser if he is forced to request police assistance to have Aborigines removed from his freehold block at Kennedy Hill?

Hon. PETER DOWDING replied:

(1) and (2) Hon. Norman Moore should know that question does not fall within my ministerial responsibilities.

I ask the honourable member that any further questions he wishes to ask about the Bonser matter be placed on notice.

Several members interjected.

Hon. N. F. Moore: I just ran out of questions, not because you asked me to.

Hon. PETER DOWDING: They were pretty boring.

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