# Legislative Council

Tuesday, 1 May 1984

The PRESIDENT (Hon. Clive Griffiths) took the Chair at 4.30 p.m. and read prayers.

## MINISTERIAL STATEMENTS

*Guidelines: Statement by President*

**THE PRESIDENT** (Hon. Clive Griffiths): On Wednesday 18 April, I had occasion to give an opinion on part of the content of a ministerial statement. As it happened, the Minister concerned discontinued his remarks.

Before I proceed, I should make it very clear that the courtesy copies of that statement, distributed when the Minister started his statement, are not part of the record and, indeed, they must be returned if members have not done so already. The reason is quite clear: Advance copies of what may be proposed to be said in the House cannot be referred to or quoted from unless those words are delivered in fact; that is, until delivery they do not exist.

In light of recent events, I believe that I should take this opportunity to restate in precise terms what I said about ministerial statements.

As matters stand, there are no written rules governing the form and content of ministerial statements. A Minister wishing to make a statement must seek leave and I believe it is worth drawing members' attention to the fact that "leave" means "leave without dissent". Once leave is granted the content of the statement must comply with the general rules governing language that may be used in this House. That does not mean, necessarily, that the subject matter of a ministerial statement is not controversial or debatable. Such a statement may be used to publish the Government's policy or its attitude towards a particular subject or occurrence.

I do not think that the House could expect all ministerial statements to be non-political. On the other hand, regard must be had to the fact that the House, having given leave, is entitled to expect that the statement will not offend by containing offensive or unparliamentary expressions. I emphasise this point because the circumstances under which a ministerial statement is given prevent an immediate reply, there being no question before the House requiring resolution.

Pending consideration of this subject by the Standing Orders Committee, the following guidelines should be observed in relation to ministerial statements—

(a) At the time of seeking leave a Minister should give a clear indication of the subject matter;

(b) they are to relate to public affairs involving the responsibility of the Government or an individual Minister; and,

(c) they are to be concise and free from unparliamentary language or offensive expressions and comply in all respects with the relevant Standing Orders of the House.

## QUESTIONS

Questions were taken at this stage

## INTERPRETATION BILL 1984

*Second Reading*

Debate resumed from 22 March.

**HON. I. G. MEDCALF** (Metropolitan—Leader of the Opposition) [4.50 p.m.]: Before I begin my remarks I point out to the Leader of the House that I would appreciate it if he were to give me prior notice of his intention to change the order of the Notice Paper. This present change is not the first, and it is most inconvenient.

Hon. D. K. Dans: I regret that, but I was busy and I asked the Clerk to inform you.

Hon. I. G. MEDCALF: I received notice of what was going to happen, but that was an hour or two ago and Liberal Party members were in the course of a meeting. It was not possible for me to read the notice before I came into the House. This is not the first time that such a change has happened and I do sincerely hope that if the Leader of the House proposes to make any further changes or wishes to make a ministerial statement, he will give me some notification.

Hon. D. K. Dans: I think you realise that I nearly always do if I can.

Hon. I. G. MEDCALF: In general, the Opposition has no objection to the proposals in the Interpretation Bill. This Bill was initiated by me when I was Attorney General.

Hon. Peter Dowding: So it will be uncontroversial then.

Hon. I. G. MEDCALF: Indeed, it was in the middle of 1982 that a Cabinet minute was signed to the effect that this Bill should be prepared. It may well have been earlier, because I did receive a draft copy of the Bill when we were in Government and I have noticed, to some satisfaction, that the Bill before the House is very similar to that. Therefore, I am in a position to say that, generally speaking, we have no objection to the Bill. Indeed we applaud the work of the Chief Parliamentary

Counsel, Mr Garth Thornton, who was the originator of this Bill. He has done a great deal of work in other jurisdictions—Tanzania, Hong Kong and other places—before he came to this State. He is an expert in his work. The State was most fortunate in securing the services of Mr Thornton and he has set a very high standard for the other members of the Parliamentary Counsel's office, which has been reflected in their work.

We have no objection in principle to and indeed we support the new Interpretation Bill in modernising and simplifying the legislation. Having said that, I voice my objection to two clauses in the Bill. They are clauses 18 and 19 which are not the work, by and large, of the Chief Parliamentary Counsel, but substantially rather a copy of Federal legislation which is designed to get the courts to more specifically carry out the intentions of Parliament. Certainly that is the avowed object of these clauses. Whether it will have that effect is a matter of some speculation among the experts; indeed there are those who say that it will not make the slightest difference. I believe it will make a considerable difference to the way the judiciary goes about interpreting Acts of Parliament.

It would be wrong of me at the second reading stage to give all my reasons for objecting to clauses 18 and 19. The Attorney General will already be aware of what those reasons might be from comments that have been made in the Press and from correspondence from professional bodies and people generally. Nevertheless, while I do not propose to go into the details at this stage I do wish to say in general terms why I find clauses 18 and 19 rather disturbing.

The traditional view of statutory interpretation is that a court must, when interpreting a Statute, try to work out the intention of Parliament by examining the plain, ordinary, or literal meanings of the words used by Parliament. In other words, if the court has a Statute before it in respect of which some citizens are having an argument, the court has to look at the words used by Parliament and decide what is the plain, ordinary meaning of those words. What these clauses propose is that in the future the courts shall give effect to the purpose or object of Parliament. In order to do so the courts are to be given authority to examine extrinsic or external materials which are not contained in the Statute itself—in other words, words which Parliament has not necessarily used.

The kind of extrinsic materials which the courts are now to be allowed to examine include not only the proceedings of Parliament as contained in *Hansard*—the Minister's second reading speech and, presumably, although not specifically, speeches of other members of Parliament who may have moved amendments—but also Royal Commission reports, the reports of parliamentary committees, and other reports which may be relevant. This is a quite radical or revolutionary move in terms of court procedures and in terms of the substantive law, because it means that in the future if a court is called upon to decide what is the meaning of words used in the Statute of Parliament, it is to be entitled to look at whatever material might have been available to the Parliament—although not necessarily used—before the Statute was passed or before the amendment was passed.

There has been a very strong degree of condemnation of this process by many judges and lawyers and particularly by barristers in certain jurisdictions in Australia; and although there have been some very distinguished supporters of the general procedures, including some people for whom I am sure we all would have a great respect, nevertheless there is such a degree of concern in the legal profession that I believe Parliament ought to be alerted to what is proposed by the Bill.

Indeed, this matter has been a matter of very heated debate in the English speaking world. It has been rejected for the time being in the United Kingdom itself, but the Victorian and Federal Parliaments have decided to proceed with the same kind of amendments, although in Victoria there are some minor differences in terminology.

The reasons which have been given for changing the substantive law in this rather remarkable way have been that it will reduce costs and overcome sloppy drafting. In view of some of the Attorney's recent comments about the great improvement in drafting since the new Government assumed office, I would have thought he would not find it necessary to justify this amendment on the ground of sloppy drafting. Nevertheless, perhaps there was some sloppy drafting in the past which the Attorney wishes to ensure will be interpreted in accordance with the new Bill.

The reasons given, namely, advanced that there will be a reduction in costs and that it will overcome sloppy drafting, particularly in view of the fact that the Bill will apply to future laws only and not to the past, are most unconvincing. The costs involved in litigation over the interpretation of the written law, which includes regulations as well as Statutes, will increase substantially. It stands to reason that lawyers engaged in these cases will need to read the associated comments in *Hansard*, Law Reform Commission reports, and other relevant documents. They must do this before they can advise their clients. No-one need think their clients will not be charged for this service.

Likewise, the courts will have to read this material, which in most cases is not required to be read at present, and I do not believe this will result in a reduction of costs. I do not regard that as an important or practical reason for introducing this change.

I do agree that some ideas are difficult to express and words can bear different meanings in different contexts. I suppose the Attorney General may feel I am supplying him with an argument, but it is true that words have different meanings and an English word can have different meanings in different contexts.

We have left it to the judges to ascertain the ordinary meaning of a word and to put the appropriate meaning to it in its context. I do not believe it is necessary to go as far as suggested in relation to extrinsic materials. Even if one were disposed to accept clause 18 which provides for the object of Parliament to be of prime concern, clause 19 takes the matter into a new and unexplored area. The changes will involve certain important principles. Firstly, the law: I do not believe the law will become more certain as a result of these changes, if they are implemented. I believe the law will become more unpredictable than it is at present and citizens who want to interpret the Statutes will not be able to rely on what they have read in these Statutes. In any case, they will be obliged to read *Hansard* and Law Reform Commission reports and other documents. Also, what is the position in regard to amendments which are made over many years? Completely different intentions may be expressed by Parliament on the occasion of those various amendments, over a long time. It may be over three, five, six, 10 or 20 years.

How do we ascertain the purpose or object of Parliament in that case? Do we go back to the original Bill, to the introduction of the Bill by the Minister, and look at his second reading speech? When we find that the Opposition has moved an amendment a few years later and that there is a great amount of argument in Parliament, whose speeches does one read? Does one read them all? Judges will have to try to divine what Parliament intended. Is the intention of Parliament the view of the majority, or the view of the person who moved the amendment? I can predict all sorts of difficulties that will have to be faced by the judges who are forced to interpret the new proposals.

Then there is the question of the separation of powers between the Legislature and the judiciary. This separation is very strict and is one of the cardinal elements of the Westminster system of government. The judiciary may become politicised. It should make an independent decision on the words expressed by Parliament. If the judiciary is to be involved in the political statements put out by the Government or the Opposition, where does that end up?

Will not the judiciary eventually usurp Parliamentary powers? I know the Bill is said to be one way of making Parliament supreme. If we had a simple utopian arrangement whereby we could express a principle in such simple words and it worked, I would subscribe to it. I can well believe the opposite may occur and that the judiciary may take the view that the words used by Parliament are unreasonable.

Some judge may decide that the words used by Parliament are unreasonable and may put his own interpretation on the words and in effect we would then be allowing the judge to change the meaning of words used by Parliament, because he believed the words used by the Parliament to be unreasonable. That in itself is unreasonable.

In addition to those principles, which I believe are at stake, what about the conflicting statements in *Hansard*? Who on earth are the judges to take as being those expressing the will of Parliament? We are used to the arguments which occur in Parliament; it is a necessary procedure of the Parliament that we have a Government and Opposition with opposite views; that is the gravamen of Parliament. That is what it is all about; to put one point of view and another point of view while carrying out the function of Parliament.

The second reading speech of the Minister may be given prominence under clause 19; more prominence than any other speech. This may be taken as the intention of Parliament not merely the intention of the Minister. Is it really the intention of the Minister anyway or is it the intention of the particular public servant who wrote the Minister's speech? I know that some Ministers write their own speeches, but many Ministers have their speeches written for them.

I wonder whether these aspects have been examined sufficiently by the Government to ascertain just where this may lead them. I know that a precedent has been set with this clause and that similar clauses have been introduced in legislation in the Federal Parliament by Senator Evans.

I know the Government has great faith in Senator Evans, but I wonder whether this aspect should not be explored further before we take this great leap into the unknown. As I see it, it can almost be described as being premature, because so many doubts have been expressed. The law should be certain, not made more uncertain by changes of this nature.

I believe we should endeavour to add certainty to the law and not add more difficulties. Perhaps some people may be excused for having little faith

in believing that these changes will, in fact, bring about the state of affairs for which its sponsors hoped.

I am sorry I had to speak at such length in relation to these two clauses, but I felt it was necessary. I should emphasise there are real problems which concern the Opposition in relation to those two clauses and I believe this is a matter on which we should proceed most carefully. I would like to hear the Attorney's comments on this and on further matters which I will raise in the Committee stage.

**HON. A. A. LEWIS** (Lower Central) [5.11 p.m.]: I seldom enter into legal debates because I usually leave matters of that nature to my leader, to the Attorney, and to those people who are learned in the law. I wonder whether doing that has cost me and many other people in this place and outside it dearly because it seems that lawyers can twist and turn and put meanings into words which do not exist in the English language, and they can do that under an Interpretation Act.

I quote another member of the legal profession from an article which appeared in *The Australian* on 29 March as follows—

> One Melbourne QC said yesterday he had not come across one Victorian barrister who supported the Victorian legislation, which he said would add to, rather than solve, ambiguity and obscurity in the normal wording of Acts.
>
> "The thing is a disaster—I have never seen a piece of so-called law reform with the potential for creating so many problems," the QC said.
>
> "Many barristers are saying it will be no longer possible to rely on the plain and ordinary meanings of words used in legislation because those words alone will no longer express adequately the purpose of the legislation.
>
> "Barristers will be able to create ambiguity where none previously existed and this means lawyers will have to look at all relevent background material before advising clients on what legislation means."

Members in this Chamber would know what that means. The average bloke in the street will dig deeper into his pocket to pay more and more in costs for the most simple legal problems. Members hear the debates in this place—Lord help us—and we have enough trouble getting some of our legislation right; but to then have to read what was said in the place and understand what was in the Minister's mind when he introduced the legislation is beyond me. I refer members to the Minister's second reading speech. If a judge had to go back and find out what the Minister really meant, he would be utterly confused. He would have to read what the Federal Minister and the Victorian Minister said in respect of this legislation because the Attorney does not make what he is doing at all clear.

Members of the previous Government will know that I attacked the now Leader of the Opposition on a daily basis when company law was introduced because it incurred a huge cost to the community. I want to know why the Attorney feels that he has to muck around with this legislation. We have had no explanation for it. What do we do? There are so many laws. We have *Hansard*, the memoranda presented to Parliament, parliamentary committees, the Law Reform Commission, and boards of inquiry to consider, when we play around with this sort of thing.

How would a person involved in a national parks problem get any sense out of most of the Ministers we have had with responsibility for national parks?

Hon. G. C. MacKinnon: Get out of it!

Hon. A. A. LEWIS: Sorry! How does the Attorney intend this Bill to work? I ask him to explain it to me in simple layman's terms in order that judges will know what is meant by this legislation.

Hon. G. C. MacKinnon: We don't always understand the Ministers, do we?

Hon. A. A. LEWIS: Under this Bill judges would need to refer to *Hansard* to ascertain the objectives of the Bill.

Hon. G. C. MacKinnon: We cannot tell.

Hon. A. A. LEWIS: The Attorney has not told us. He has not even made an attempt or tried to explain it to us. He is riding roughshod over this Chamber.

The Victorians do not have all the say, because the same article to which I referred stated—

> A Sydney QC claimed yesterday the two bills . . .

He refers to the Victorian Government and Federal Government. It continues—

> . . . now being enacted would lead to the obstruction of civil liberties.

Of course, the Labor Party does not give a damn about civil liberties. It has shown time and time again that it wants to pressurise people in every area it can. It does not give two hoots about my liberties or the liberties of other members in this Chamber. The article continues—

"Ordinary citizens won't know where they are from now on," he said.

"Whereas at present if you want to know your rights you just look up the Act, the new legislation will mean in order to be sure of yourself you will have to look up all sorts of documents.

The Attorney's second reading speech does not tell us what is going on. What is the urgency about this legislation? Is it because other States have it? I do not believe that is the answer. I do not believe we have to follow the stupid things other States sometimes do. Let the Government stand out and look at how this Bill is operating in other States. Why do we have to automatically condemn the citizens of Western Australia to pay extra legal fees at the whim of the Attorney? That is all I conceive it to be. Perhaps the Attorney believes he is going along with his department or fellow Attorneys. If this Bill is to be passed it should be instructive and helpful in the carrying out of the law. If this is the case, the Attorney should explain what this Bill is about. He has a habit of making very short second reading speeches. I wonder why he does that?

Several members interjected.

Hon. Kay Hallahan: Quality, not quantity.

Hon. A. A. LEWIS: There is a lot of hot air around the Chamber and most of it comes from the Government front bench. It will be interesting to see if any of the Government members in this Chamber will jump to their feet during this second reading debate.

I guess not one of the members opposite has read the Bill. Can they explain it to me, to save their Attorney?

Hon. Kay Hallahan: There is no need to save the Attorney.

Hon. A. A. LEWIS: I have been told the Attorney does not have many words to say. Let us hear the Hon. Kay Hallahan's explanation of how she thinks those who vote for her will react as a result of the extra work which will be done in the courts. She could not give two hoots about the people she represents and the cost of their legal fees. That is typical of the socialists. They say, "We will give them legal aid and pick up the bills". The Hon. Kay Hallahan's electors are taxpayers; they have to pick up the bill for that. That is the style of this crazy socialist Government.

Hon. Garry Kelly: Tax dodgers.

Hon. A. A. LEWIS: Would the member like to talk about tax dodgers? I know the Deputy President (the Hon. John Williams) would not let me. How do those people who cut lawns and do odd jobs for cash get on? It would be right, Mr Deputy President, for you to rule me out of order if I enter into that sort of debate.

Hon. Garry Kelly: It is $6 million a year.

Hon. A. A. LEWIS: The Hon. Garry Kelly does not want to—

Hon. G. C. MacKinnon interjected.

The DEPUTY PRESIDENT (Hon. John Williams): The Hon. A. A. Lewis will direct his remarks to the Chair and not answer interjections.

Hon. A. A. LEWIS: I will address the Chair. I would like to know why, all of a sudden, we have to talk to this Interpretation Bill. I want to know whether sexist provisions will be introduced into the Interpretation Bill. The Attorney backs off a bit.

Hon. J. M. Berinson: You will be onto pornography in a minute.

Hon. A. A. LEWIS: I know the Attorney would be lost without *The Australian* on this subject, it is good reading. I want to know whether we will have a non-sexist rewrite of our Interpretation Bill. Will that be the next step? This is what is being done to the Interpretation Act in Victoria. Will we follow them down the slide?

Hon. J. M. Berinson: Clause 10 deals with that, but it deals with it in a very limited way, as you are aware.

Hon. A. A. LEWIS: I wonder whether the Government is going only a little way to see how far it can get? To see whether we will swallow it?

Hon. J. M. Berinson: All my cards are on the table, Mr Lewis, except for one, which will be—

Hon. A. A. LEWIS: If that is all the Attorney's cards, he had better withdraw the Bill now, because we know damn-all about it so far from what the Attorney has told us in the second reading speech or by interjection.

Hon. J. M. Berinson: It is in the Bill itself.

Hon. Mark Nevill: Have you read the Bill?

Hon. A. A. LEWIS: It is in the Bill itself? Are the judges and lawyers of the future not to have a look at what is said in *Hansard* about the objects of this Bill, why the Minister introduced it, and so on? Is that not what the Bill is about?

Hon. Mark Nevill: Come outside and I will read it to you.

Hon. A. A. LEWIS: Mark Nevill would not be able to do that because he cannot read. It is a chicken and egg situation. The Attorney tells me to read the Bill, it is in the Bill. It says that in future a judge or a lawyer has to take—

Hon. J. M. Berinson: No, it does not say that, it says he may.

Hon. A. A. LEWIS: But it will become common practice. As the Attorney knows, we may put "may" in there, but it will become common practice because it will become financially rewarding for the legal profession to make it a common practice. That is what worries me.

Hon. J. M. Berinson: May I suggest something to you? In the vast majority of cases there will be no need to take recourse to this.

The DEPUTY PRESIDENT (Hon. John Williams): The Attorney should know enough not to interject.

Hon. A. A. LEWIS: I have had assurances from this Government before and they have not stood up very well. How do I know that any assurance will stand up? It worries me that we have reached the situation where judges or lawyers have to refer to *Hansard*. They cannot read their Acts. Are our draftsmen so poor now that they cannot write an Act in clear English so that the legal profession can understand the clear meaning of the Act? Or are we going on with all this gobbledegook to make it easier for the legal profession to confound one another because we are taking everything that step further?

It is a worry because of the element of cost to the everyday person. The nonsense which goes on in some of our courts now—the Family Court for instance—and the lack of knowledge of some of the people who operate before the courts, is disturbing. They can still charge like wounded bulls. Some of the costs are horrific. I know of one case where a woman was virtually bled by a lawyer because he did not know his job. It is disgusting that we are trying to give the legal profession more and more "outs" instead of their reading the Act and going ahead.

I am glad the Attorney has given me an assurance about the non-sexist re-write, because I would be loath to read an article I have; it is quite amusing. I am sure the Hon. Lyla Elliott would be keen to hear that women are not persons within the meaning of the Act. I do not know how she would react to that because she has always taken genders fairly literally.

I have no more to say on the subject, except that I believe the Attorney is to give us a fuller explanation of where he and his department think they are going. What is the ultimate aim?

Where does the Attorney think a person who is not legally trained would fit in? Where does he think a cow-cocky, stock and station agent, life insurance agent, mining warden, or geologist—the average worker—would fit in? Has the Attorney or his department given any thought to the person in the street, and can he tell us why we need this amendment in respect of the majority of citizens of Western Australia?

**HON. G. C. MacKINNON** (South-West) [5.31 p.m.]: Would the Attorney be so kind as to elucidate an interjection he made? He pointed out to the Hon. Mr Lewis that a judge does not necessarily have to note the intent of legislation; that it is a matter of—

Hon. J. M. Berinson: I was referring to the use of extrinsic material. Mr Lewis was discussing clause 19.

Hon. G. C. MacKINNON: For example, let us say judge No. 1, hearing the case, elects not to take any notice of this provision and it goes to appeal. Judge No. 2 then elects to take notice of the intent. Would that provide a different basis? I take it it could give the second judge a different basis for his examination of the relevant evidence. Is that a possibility? I hope I have made myself clear. I do not have the training which makes one fully aware of the intricacies and legalities involved. Nevertheless, I have some experience which made me prick up my ears when the Minister indicated that the decision to use or not to use the material was as loose as that.

As were previous speakers, I am alarmed that, after many years of sticking to one kind of activity, it has been seen fit to change the pattern. When I first came into the Parliament the only member who was a solicitor was Eric Heenan and quite long discussions used to occur on the great need for clarity in the law, because the intent of the legislation was not considered by justices. Therefore, it was always necessary for the law to be stated clearly. We discussed that at great length and whenever we went to see the Crown counsel—it was before the appointment of Parliamentary Counsel—he elaborated on it, as did senior members.

One debate in this place took many hours. It related to where a comma should go. Because no justice looking at the law read the debates in Parliament—he had to read the Act and interpret it—it was pointed out that it was necessary for the law to be precise in every form.

As we all know, Acts are not always precise in every form, but it seems to me this opens the doorway for a certain amount of laxity. It could be said, "Well, it is in *Hansard*. We do not need to be all that careful".

Could the Attorney General tell me to what extent these problems have been examined; why those rules, if one likes, have been set aside; and why it has been decided to set them aside and embark on this different path? As I understand it, it is a different path from that taken in most parts

of the world where the system that we embrace is used.

Perhaps the Attorney General might disabuse me with regard to that statement also, but it has always been my understanding that this was a rather universal sort of rule where our methods are the norm.

I am alarmed at this proposed change. I do not really see that it serves any useful purpose. We have always had arguments from Crown Law to the effect that, "This law does not stand up and needs to be tightened", and that has been done. Occasionally a judgment has been given contrary to the intention of the Government and the Government has amended the law accordingly.

It seems to me the Attorney is seeking to make the rules of the game a bit like those which exist in respect of kids playing cowboys and indians. They have to have a meeting to discuss whether one is really dead! I always understood the law had to be precise; but, as a result of this Bill, it will be able to be influenced by interpretations of other relevant material. That strikes me as bringing the law of the land down to a situation a bit like a kids' game of cowboys and indians. Would the Attorney General be so kind as tell me why, after 29 years of listening to my betters when I first came into the House and following their precepts to the best of my ability, I should make such a distinct change.

**HON. P. H. WELLS** (North Metropolitan) [5.36 p.m.]: I find clause 20 very interesting. In the short period I have been in the Chamber, I have been pleased to ascertain from the Attorney's second reading speeches that he has regard for the intentions of Parliament and he seeks to ensure Bills passed in this place comply with those intentions. However, will this measure result in a great spate of challenges to previous interpretations of the law? If we intend to include debates recorded in *Hansard* in the interpretation of Acts, it may well have an effect on previous legislation and provide grounds for a number of challenges.

I remember one piece of legislation which was passed not long after I became a member of the place. It related to the real estate board. The Hon. Mr Brown would remember it also. As I understand it, at the time that the legislation was passed, it was the intention of Parliament to allow for a grandfather clause in respect of real estate management and applications for licences. However, the Act as written did not include that provision and, as a result, some years later it was amended.

If the debates recorded in *Hansard* had been included as the material used to interpret the Act and if, in the original debate which took place, the existence of a grandfather clause was acknowledged despite the fact that the Act was not written correctly, does this Bill mean that someone could challenge the position and it would not be necessary to amend the Act? It would be accepted that, because it was the intention of Parliament that that be the interpretation and the debate confirmed that, and the position was not rebutted in *Hansard*, the Act would not need to be amended.

Frequently in debates I and other members raise a number of interpretations of legislation and ask questions prefaced with the remarks; "This is the way I understand it," or "Perhaps the Minister might correct me if I am wrong during his reply to the second reading debate". However, such queries may not be answered during the debate.

Does the absence of the rebuttal of that type of interpretation in *Hansard* leave the way clear for the legislation to be challenged in the future? I am not very well versed as to how these challenges in the legal area occur, but I have been led to believe that the contents of the Act determines the law. When it was necessary to amend the Act in relation to real estate management, the *Hansard* record of the debate covered the situation. However, it was still necessary to amend the Act. Does the Bill mean that in future cases of this nature an amendment would not be required? We would have talked about it in this place, the alternative interpretations would have been rebutted, and gradually the legal profession would accept what occurred during debate.

Such a situation makes me shudder, because a fair number of interpretations are raised during debate and the Attorney may say, "So many queries have been raised, I will not answer them all now. Bring them up again in the Committee stage". We may not obtain answers during debate in Committee. If that occurs, as the Hon. Graham MacKinnon said, the position will be very lax. The results may be good or bad. We would not encounter the problem I have experienced in respect of a couple of Bills when I have endeavoured to ascertain the precise words which are appropriate, and a more general approach may be taken to an issue. However, I would have thought that would cause a number of problems in respect of interpretation.

This is an area I did not think we would ever get into in respect of legislation. I would be interested to learn how the matter has developed and whether it is working elsewhere. I assume this new, innovative approach has been tried elsewhere and perhaps the Attorney can tell me with what success, and the sorts of problems which have arisen in such cases.

**HON. D. J. WORDSWORTH** (South) [5.40 p.m.]: I find that the intentions of this Bill are really quite ridiculous if one considers the difficulties which could arise. Without doubt, there is very great need for us to use more simple English in some of our Bills and to try to simplify the terminology that is often used. But I do not believe that being able to refer to *Hansard* will make the situation easier for the general public or the judiciary. In no way can a Minister's second reading speech be taken as a simple explanation of the Bill. One could not read his speech and believe that the Bill contains nothing other than what he has stated because there are often quite a few minor points in the Bill which he does not discuss in detail in his speech.

This situation worries me a little; let us take a second reading speech, not a debate. If a Minister's second reading speech is to be used to interpret the intention of a Bill, where will the Parliament then correct the second reading speech? Perhaps we might feel a need for that. We go into the Committee stage and we check word by word the clauses of a Bill and we move that certain words be deleted and that certain words replace them. Traditionally the Bill has been the document that we end up with after deleting some clauses and inserting new ones, or just changing the English used. Will we now do this to a Minister's second reading speech and say that it does not reflect what the Parliament wishes to pass?

Of course one of the difficulties we have is that the Government does not necessarily control the House and therefore what the Minister says might not necessarily be the intention of the House, but the majority of the House might be quite happy with the actual printed words ultimately in the Bill.

Another problem that I see arising is: Which Minister's second reading speech do we take note of, because we have a two-House system? Which Minister can be quoted in the courts, because indeed a review by historians of the debates of the two houses might find that the second reading speeches contradict each other. Indeed it is very hard for a Minister in this Chamber handling someone else's legislation, particularly when he has to handle the legislation of some four or five other Ministers. One only has to look across the Chamber to see the pile of Bills that each Minister is handling. I am quite sure one could find that the explanations given by the Ministers in different Houses are quite contradictory.

Traditionally by our Standing Orders we are not allowed to quote what another Minister has said in another place, probably for good reason because once we start a debate on what another person meant in another Chamber we are in all the trouble in the world. Will we call that person before the Bar to explain what he meant in the other House, because indeed that would be interpreted by future judges as part of the Bill? I really become utterly confused when I start thinking of the problems that could arise from this clause.

I also want to point out the difficulties that the *Hansard* staff will have in the future. Currently the *Hansard* reports record what is said in the House. I do not think our speeches are ever designed to be read historically by the judiciary when trying to interpret a Bill. Indeed, some humorists will have great fun quoting debates and it will give them great opportunity to show their wit. What worries me about the written word as expressed in the Parliament becoming part of the interpretation of an Act is the weight that this will now throw on *Hansard* in recording truly the word for word speeches that are made in this House. I point out that we might not get our copy of *Hansard* for some time after a speech is made. Will we have a third reading speech without having read the corrected speeches in *Hansard*?

Will we wait to receive our copies of *Hansard* to make sure that speeches are fairly accurate before we pass a Bill? I wanted to give one of my constituents a copy of speeches made in another place concerning the registration of fire trailers. These speeches were made in November last year and were not cleared by *Hansard* until March this year, which was the actual time *Hansard* was printed for the last week of last year's sitting. Certainly to receive our copies of *Hansard* one week behind is quite common nowadays with the way in which the Government Printer is getting behind with his work. I find this whole matter quite ridiculous.

As I pointed out earlier, we go into Committee to interpret the words within each clause and, I repeat, do we then in the future go through a Minister's second reading speech sentence by sentence to decide whether it is a true interpretation of the Bill? When a Bill is reported to the President by the Chairman of Committees, it is the Bill "as printed" which is accepted and words used by the President referring to a "fair print" have always been used in the Parliaments in the past. It is the only way in which it can work successfully; so I have great difficulty in supporting this legislation.

**HON. J. M. BERINSON** (North Central Metropolitan—Attorney General) [5.49 p.m.]: I agree in a number of respects with the comments made by the Leader of the Opposition. I agree that the genesis of this Act was in the member's term as Attorney General. I have never been

reluctant to acknowledge the initiatives which he took at that time. I also agree with him that most of the contents of this Bill are desirable and uncontentious, and I suppose I am also forced to agree with him that clauses 19 and 20 do not fall within that general description.

I think it is fair to say that there are reasonable grounds for opposing views on those clauses, but if I may agree with the Leader of the Opposition once again, those grounds are best pursued at the Committee stage, when we will be looking in detail at both those clauses as well as others. I will therefore, restrict myself at this stage to simply trying to allay the more extreme fears that have been expressed.

It is important in a Bill of this sort, as in all our legislation, to keep our sense of perspective and not to look to the most extreme case as being the typical one. In relation to a comment by the Hon. Sandy Lewis I interjected to say that the occasions on which clause 19 would ever be brought into play would be the exception to the rule. I think I said that in the vast majority of cases neither clause 18 nor clause 19 would need to be taken into account by a court. That is precisely the position. Both these clauses look to the exceptional case where we have a position in which the clear words nonetheless lead to an ambiguous result, or to a case in which an ambiguous result needs some attention to the purposes of the Act in order to obtain a satisfactory determination by the court. That is all that will happen.

Hon. A. A. Lewis: Satisfactory in whose opinion? That is what worries me.

Hon. J. M. BERINSON: Satisfactory in the opinion of the court. Without going too far into the detail of the clauses, that is the reason that the ability of the court to have recourse to extrinsic material under clause 19 is significantly different from the interpretation the honourable member put on it to the effect that they would always have to have recourse to it and judges would have little time to do other than scan *Hansard* and Law Reform Commission reports. That will not happen. In clause 19 the use of such extrinsic material is qualified in all sorts of ways. Clause 19(1) requires in the first place that extrinsic material should be resorted to only where it is capable of assisting in the ascertainment of the meaning of the provision. If there is no doubt about the meaning of the provision clause 19(1) does not come into play at all. Even if it comes into play the discretion is then left to the court with the word "may" to decide whether extrinsic material will be resorted to.

In the Committee stage I will offer one or two quotes. Among them will be a reference to comments that there will be cases where, yes, the meaning will not be clear, and it is thought by the court that it should look to the extrinsic material, but the extrinsic material does not help. That might be because it is not directed to the point or because it is not clear, or because conflicting views are set up in the extrinsic material itself.

Hon. A. A. Lewis: It gets worse and worse.

Hon. J. M. BERINSON: In spite of the "shock, horror" reaction which the Hon. Sandy Lewis is performing for the benefit of the House, those views are offered by leading jurists. I assure Mr Lewis and the House this is not a socialist plot. I go further to assure him as he thought we are sneaking it in with indecent haste—that I do not put so much emphasis on the importance of clauses 18 and 19 that I would have made a Bill out of them if not for the fact that at present a complete rewrite of the Interpretation Act is available for the consideration of Parliament. As a result this becomes an appropriate time to consider the serious provisions contained in clauses 18 and 19.

I suggest also that there is a case for looking to uniformity in the combination of jurisdictions which we have in the Commonwealth. That applies not only to the substantive law but also to questions of common methods of interpretation. I will refer again later to the current position of the Commonwealth and Victoria in this respect, and my understanding is that South Australia is moving in the same direction. It would be very odd indeed to expect our judges, especially in the appeal courts, who on some occasions are told that they can look at the extrinsic evidence and on some other occasions are not told that, to only do it sometimes. Perhaps the most telling of the arguments in favour of explicitly stating the nature of the use of extrinsic evidence is that nobody believes it is not used now.

Again I will leave it to a later occasion to bring authority much more persuasive than my own to encourage the House to accept that, to a large extent, what is proposed in clauses 18 and 19, is really only to confirm existing practice and to make its exercise more definite.

I take the opportunity to draw to the House's attention a circulated amendment to clause 77. I will deal with this in the Committee stage, but to give some advance notice of the intention, I indicate that this is to preserve the current position of certain law enforcement officers which would have been disturbed had a provision of this kind not appeared in the proposed Act. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

*In Committee*

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

Clause 1: Short title—

*Progress*

Progress reported and leave given to sit again at a later stage of the sitting, on motion by the Hon. J. M. Berinson (Attorney General).

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

## WESTERN AUSTRALIAN COLLEGE OF ADVANCED EDUCATION BILL 1984

*Receipt and First Reading*

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

*Second Reading*

**HON. PETER DOWDING** (North—Minister for Planning) [7.32 p.m.]: I move—

That the Bill be now read a second time.

This Bill will provide a sound basis for the future development of the Western Australian College of Advanced Education under its own Act of incorporation. It will place the college on the same legislative footing as the Western Australian Institute of Technology, and to this end the legislation has been modelled on the Western Australian Institute of Technology Act.

Care has been taken to ensure a smooth transition and to protect the rights of students and staff. For example, the superannuation provisions of the Colleges Act have been incorporated into the Bill. Student and staff organisations are continued; and existing statutes; by-laws, and rules will continue to apply.

The structure of the college council will be changed and its membership increased to a maximum of 20 by the inclusion of a second student representative, a representative of the alumni, an additional person appointed by the Minister on the recommendation of the council, and the chairpersons of the boards of the Bunbury Institute of Advanced Education and the Western Australian Academy of Performing Arts respectively. The reconstituted council will closely approximate the WAIT council, which has a maximum of 19 members. The council membership will be reviewed and changes made, but it is intended that, until new elections are held, elected council members will remain in office to provide continuity.

A special feature of the Bill is the provision for the Bunbury Institute of Advanced Education, which is currently being established by the college. The legislation provides for the establishment of a board of management, with extensive community representation, together with elected student and staff members. Although it will not be possible to hold elections until the Bunbury institute commences operations, the appointed board members will be able to provide advice in the meantime, and this will ensure that local community input can be made during the planning stages.

The powers and duties of the institute board, which are set out in the Bill, were determined following consultation with the tertiary education advisory committee of the South West Development Authority.

The Western Australian Academy of Performing Arts is a well-established component of the college, and its position is formalised in the legislation. The control and management of the academy, and the constitution, powers, and duties of the board of management of the academy, are matters for the college council to determine by means of statutes. The present board of management will continue for the time being.

In recognition of the multi-campus nature of the college, with campuses at Churchlands, Claremont, Mt. Lawley, and Nedlands, provision is made for the establishment of campus committees to advise the college council. Each campus committee will be chaired by one of the Governor's appointees to the council, and its membership will largely comprise students and staff at the campus, with two community members. The campus committees will be instrumental in maintaining the distinctive ethos of each campus and will also advise the council on academic programmes and activities relating to the campus concerned. The establishment of campus committees is designed to overcome some of the problems which resulted from the unduly centralised structure which came about after the amalgamation of previously autonomous colleges forced on the State by the Fraser Government.

This Bill will provide a strong foundation for the college's future development within a framework which provides for substantial student and staff involvement in the decision-making process.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. G. C. MacKinnon.

## COUNTRY AREAS WATER SUPPLY AMENDMENT BILL 1984

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by the Hon. D. K. Dans (Leader of the House), read a first time.

*Second Reading*

**HON. D. K. DANS** (South Metropolitan—Leader of the House) [7.36 p.m.]: I move—

That the Bill be now read a second time.

This Bill seeks a number of significant changes to the Act. Amendments are proposed to sections of the Act dealing with the control of catchment areas, and another is proposed to the section of the Act dealing with the use of fire hydrants. An additional provision is proposed to enable by-laws to be made for prescribing certain fees. A new section is proposed to enable the issue of infringement notices for various offences under the Act, and amendments to various sections are proposed in order to increase a range of penalties imposed for offences under the Act. I will now deal with the amendments in the order in which they appear in the Bill.

Clause 4 relates to an amendment to the present definition of "holding". The amendment seeks to extend the definition by the inclusion of a perpetual lease granted under the War Service Land Settlement Scheme Act. This addition to the definition is considered to be necessary in order to clarify further those properties which may be subject to a claim for compensation under catchment clearing controls.

Clauses 5 to 12 relate to amendments to specific sections of the Act dealing with catchment clearing controls to promote earlier finalisation of compensation claims and to widen the avenues for the purchase of land to be used for exchange purposes. They also seek to provide several minor amendments required to update the Act and to clarify or modify sections according to the needs that have been determined in the course of clearing control operations.

Clause 10 proposes to amend section 12E of the principal Act in subsection (1) to clarify that "tree cover" includes the indigenous undergrowth and to provide uniformity with the description included in section 12C(3) of the principal Act.

The Bill proposes two new subsections. Subsection (7) is designed to allow the acquisition of land that is not the subject of a claim for compensation but may be used to satisfy a future or current claimant by the exchange of that land. This means that land which could be located either within or outside the gazetted catchment boundaries may be acquired and used for catchment control purposes. It is important to realise that only those cleared portions not subject to salinity encroachment would be the portions used for exchange purposes. The uncleared areas would be retained by the Government.

Subsection (8) specifically provides for an advance payment to be offered to a claimant and, failing acceptance by the claimant within 30 days, allows for the suspension of interest accrual on the amount so offered. It is considered this measure will advance the finalisation of claims.

Clause 11 seeks to amend section 12EB of the principal Act with consequential amendments to subsections (3) and (4) arising out of the amendments in clause 10, and also to clarify in subsection (4) that a transfer is intended rather than a disposal of land.

Clause 12 proposes to amend section 12EC of the principal Act to allow either party to determine a claim for compensation made as a result of the refusal of an application for a licence to clear land located within the gazetted catchment boundaries. Previously the view was held that the claimant alone had the right to determine a claim. New subsection (2) provides for each party to bear his own costs of representation other than for orders made by the court for fees payable to the court or a member thereof. This is consistent with the practice adopted in the administration of the Act.

Clause 13 seeks an amendment required to bring the provisions of the Act dealing with the use of water from fire hydrants by non-bona fide persons into line with those contained within the Metropolitan Water Authority Act. This will be achieved through the addition of four subsections to the existing provisions of section 37 of the Act. Existing section 37 provides for the installation, maintenance, and removal of hydrants as well as the responsibilities pertaining thereto both within and outside fire districts.

Proposed subsection (13) details persons able to use fire hydrants located outside a fire district. Use within a district is governed by section 61 of the Fire Brigades Act and is covered under subsection (14). Proposed subsection (15) enables the Minister to grant permission for other persons to use water from fire hydrants. Such use would be subject to the imposition of terms and conditions which the Minister sees fit. Proposed subsection (16) details the penalty for unauthorised use.

Clause 14 proposes to widen the range of by-laws which may be made under section 105, to enable fees to be prescribed for the issue, on request, of statements concerning rates and charges

due and amounts paid. This amendment will enable fees to be raised for services provided under the Country Areas Water Supply Act as are presently raised for identical services under the Metropolitan Water Authority Act.

Clauses 15 and 16 relate to a proposed new section in the Act to enable the issue of infringement notices for offences committed against the Act. At present, where an offence is committed against the Act, it is necessary to prosecute the alleged offender in a court of law. This is time consuming and costly for both the department and the defendant. The infringement notice powers will enable immediate fines to be applied in respect of offences which are not considered of sufficient importance to warrant prosecution through the courts. Such offences include water being used from a house connection contrary to a notice to do so, such as in an area subject to water restrictions; interference by use of a by-pass connection or reversing a meter so as to register backwards; or the illegal supply or taking of water to, or by, an adjoining property holder. The imposition of infringement notices will effectively mean that an offender electing to pay rather than allow a decision to be determined in court will receive a modified penalty in lieu of a more substantial fine should a guilty verdict be returned.

I will now deal with the various subsections in new section 117. Subsection (1) contains definitions in relation to the offence, the offender, who may issue infringement notices, who may collect payments, and who may withdraw such notices. A modified penalty is also defined and, in monetary terms, this is not expected to exceed $50 for an offence compared with a general maximum of $500 under other proposed amendments to update penalties. subsections (2), (3), (4), and (5) enable infringement notices to be issued, and explain the option available to the alleged offender. Subsections (6) and (7) grant the powers for notices issued to be withdrawn, including that to refund any modified penalties paid. Subsections (8) and (9) ensure that a person electing to pay a modified penalty or having a notice withdrawn is not subjected to further legal proceedings in respect of the alleged offence. Subsections (10) and (11) convey the necessary powers to the Minister in respect of the authorities required.

Clause 18 details the proposed increases in penalties under the Act. The level of penalties which may be imposed has essentially been carried over from the Goldfields Water Supply Act 1902. These levels were not reviewed when the Country Areas Water Supply Act was proclaimed in 1947. One penalty relating to section 12B(2), land clearing was adopted in 1976. The new penalties listed in column 3 have been adjusted in accordance with inflationary trends to bring them up to logical and realistic levels.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. W. N. Stretch.

## LOCAL GOVERNMENT AMENDMENT BILL (No. 2) 1984

*Receipt and First Reading*

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

*Second Reading*

**HON. PETER DOWDING** (North—Minister for Planning) [7.45 p.m.]: I move—

That the Bill be now read a second time.

The Local Government Act was reprinted recently for the first time since 1976, and that reprint contains all amendments to the end of 1982.

The Bill generally reflects changes sought by local government covering interim rating, loans to sporting and recreational organisations, the power to raise loans on behalf of statutory bodies and land transactions with those bodies, regulation of street trading, allowances to council members, compliance with a notice issued by a council in respect of a building, and prohibition on the use of licensed premises for the purposes of a polling booth.

For some time, local government has been seeking a power to interim rate when the valuation of land changes during a financial year. At present the Act precludes any alteration to the rates payable on such land, and rates are not assessed on the new valuation until the following 1 July.

Councils have submitted that this is an inequitable situation and the Bill provides for the *pro rata* adjustment of rates, irrespective of whether the valuation change is an increase or decrease.

The Act was amended in 1981 to authorise councils to financially assist sporting and recreational organisations. However, experience has shown that this legislation contains an anomaly. Although councils may make an outright grant to an organisation of this kind, they are not authorised to make a loan. This situation is clearly anomalous, and the Bill proposes that it be rectified. In 1982 the Act was amended to authorise councils to raise loans on behalf of State Government departments, instrumentalities, or agencies and also to sell or lease land to these bodies without obtaining the approval of the Governor.

Councils' borrowing powers are utilised extensively on behalf of the State Energy Commission and it was principally to cover those transactions that the loan raising provisions of the Act were amended. Legal opinion has since indicated that the commission is not strictly a State Government Department, instrumentality or agency.

A further amendment is proposed to extend those provisions which were amended last year to ensure that they include the commission.

The Bill includes provisions authorising councils to regulate street trading. These provisions will confer clear powers on councils to make by-laws to regulate the activities of persons who wish to display and sell goods in streets other than at a stall. The power to control stalls is already in the Act.

As stalls in streets can presently be controlled, it is appropriate that other forms of street trading should also be subject to similar controls. I think the community would generally support the principle that streets are provided for the prime purpose of allowing persons to move from place to place free from obstruction. It follows that there must be some limit on the extent to which people cause streets to set up their goods for sale.

Members will recall that a Bill which was before the House in 1982 proposed that power be given to councils to impound the goods of those persons who unlawfully engaged in street trading. In the event, that Bill did not pass into law. This Bill does not provide for the impounding of goods, but seeks to deter unlawful trading in streets by providing for significant penalties for those people who trade in a street without a licence. Whereas the Act presently limits the maximum penalty for a breach of a by-law to $500, it is proposed that the maximum penalty for this offence be $1 000 or six months' imprisonment.

The Act presently contains limited power for councils to recoup expenses incurred by members. Payments may, for instance, be made for expenses actually incurred by a member in carrying out duties which have been specifically authorised by council, and to cover loss of earnings and travelling costs in attending council meetings. A mayor or president may also be paid an entertainment allowance. However, a member of a council would obviously have to meet a whole host of incidental costs in carrying out his civic duties. Such things as telephone calls to constituents, and attendance at community functions come readily to mind.

I do not believe that a person who serves his community as a member of a council should have to bear a financial cost as a consequence. Accordingly, the Bill proposes that a council may pay an annual allowance to its members, subject to a limit which will be prescribed by regulation. A council will have complete discretion as to the amount of the allowance up to the prescribed limit, or indeed whether it will pay any amount at all.

Although the annual amounts proposed have yet to be settled, it is envisaged that they be in the order of $500 for a councillor, $3 000 for a deputy mayor or deputy president, and in the vicinity of $7 000 to $10 000 for a mayor or president. I wish to emphasise that we are not proposing a payment in the nature of a remuneration. All we seek to do is to provide councils with the opportunity to ensure that members do not have to subsidise their voluntary service.

The Bill provides that a member who is in receipt of payment of an annual allowance is not disqualified on the grounds that he is the holder of an office of profit of the municipality, and a member shall not be regarded as having a pecuniary interest in his election to the office of mayor, president, deputy mayor or deputy president, by reason only that the holder of such office is, or might in the future be, in receipt of an annual allowance.

The opportunity is also taken in the Bill to provide for the limits on certain other expenses, which are currently set at $20 under section 513 of the Act, to be prescribed by regulation. It is envisaged that this amount will be set at $40.

Under the present provisions of the Act, a council may give written notice to the builder or owner of a building which is unsafe, or unsatisfactory for other specified reasons, requiring him to pull down or alter the building. Subject to the appeal rights against the notice, the Act authorises the council to enter upon the land to give effect to the notice.

Representations from local government point out that no provision is made for the council to obtain a court order to require compliance with the notice, and without such an order the council could be liable for damage or trespass if it were ascertained that there was a defect in the notice. The Bill makes provision for the obtaining of a court order in such cases as is already contained in other sections of the Act relating to building matters.

It has come to the attention of the Minister for Local Government that a polling booth for a municipal election has previously been established on licensed premises, and the Bill seeks to prohibit this undesirable practice.

The remainder of the Bill proposes to correct various minor errors which came to light during the course of the preparation of the recent reprint of the Act.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. W. G. Atkinson.

## ACTS AMENDMENT (WESTERN AUSTRALIAN MEAT INDUSTRY AUTHORITY) BILL 1984

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by the Hon. D. K. Dans (Leader of the House), read a first time.

*Second Reading*

**HON. D. K. DANS** (South Metropolitan—Leader of the House) [7.52 p.m.]: I move—

That the Bill be now read a second time.

The Western Australian Meat Industry Authority Amendment Act 1982 was introduced to enable carcases of prescribed species to be branded in accordance with their end use suitability as determined by carcase characteristics and pre-slaughter and post-slaughter treatment.

Subsequently, a very successful campaign has been conducted promoting "Tender Gold" beef. As a result of that effort it has become apparent that amendments to the Act are required in the areas which I will detail as follows:

Expand the definition of "carcase" to include primal cuts: The current definition defines a carcase as "the whole, halved or quartered body of a slaughtered animal". Industry has indicated that in certain circumstances it may wish to apply a brand to individual primal cuts from carcases which are eligible to be branded.

Regulation of the sale of branded meat: Currently the Act regulates the branding of meat destined for the local market, but not the sale of branded meat. The situation could arise where retailers could advertise and sell non-branded meat as the branded product. The amendment provides powers for the control of the sale of branded meat similar to those which exist in the Marking of Lamb and Hogget Act.

Determination by the Minister: It was originally proposed that carcase branding be compulsory for all species. With the inclusion of tenderising treatment in the carcase description, emphasis has shifted so that beef branding is now seen as a marketing aid rather than a compulsory requirement. The amendment allows the Minister, after consultation with the Meat Industry Authority, to determine whether carcase branding is voluntary or compulsory for prescribed species or groups within prescribed species.

Branding of imported meat: To avoid any conflict with Commonwealth legislation, it is necessary that imported carcases are not discriminated against. At present the Act states that imported carcases shall be branded, whereas the previous amendment allows for voluntary branding of beef. This amendment provides for the branding of imported carcases to be handled in the same manner as the branding of locally produced carcases of the same species.

Further amendments of the Western Australian Meat Industry Authority Act are required in the following areas.

Provision of abattoir licences: There is currently provision for the authority to grant licences to abattoirs for a specific throughput. However, there is no provision to vary that throughput in line with current slaughter requirements. The amendment enables the authority to increase or decrease the approved throughput of an abattoir.

Standard carcase definitions and measurement procedures: Nationally, producers and processors have agreed to standard carcase definitions for beef and sheep and have requested that the definitions be formalised by legislation. In WA, agreement has been reached on a standard carcase definition for pigs. The use of a standard description based on standard measurement procedures simplifies carcase trading and analysis of market reports. The amendment provides for definitions of a standard carcase and standard measurement procedures, but will also allow for non-standard definitions where both seller and buyer agree. Industry members of the Western Australian Meat Industry Authority agree to these amendments.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. W. G. Atkinson.

## VETERINARY SURGEONS AMENDMENT BILL 1984

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by the Hon. D. K. Dans (Leader of the House), read a first time.

*Second Reading*

**HON. D. K. DANS** (South Metropolitan—Leader of the House) [7.56 p.m.]: I move—

That the Bill be now read a second time.

The Veterinary Surgeons Act regulates the practice of veterinary science in this State and also provides for the registration of veterinary nurses.

This Bill seeks to amend the Veterinary Surgeons Act in four ways—

To allow veterinary surgeons to incorporate veterinary practices;

to allow the Veterinary Surgeons Board to appoint inspectors and to carry out investigations to ensure compliance with the Act;

to require a list of registered veterinary surgeons to be prepared and published earlier each year than is the case at present; and

to allow veterinary nurses who may be refused registration the same rights of appeal as now apply to veterinary surgeons.

With regard to the incorporation of veterinary practices, the main section of the Act which requires amendment to permit incorporation is section 20. Traditionally, most veterinarians, as well as members of other professions, have followed their profession either as sole practitioners or as members of a partnership in group practice.

Nowadays a great number of small businesses have become incorporated and as such enjoy a number of advantages. However, these advantages are not available to veterinary surgeons because, under the present Act, a group of veterinary surgeons are not permitted to incorporate the practice as an incorporated body.

The right to incorporate has already been extended to veterinary surgeons in Queensland, and other States are believed to be considering similar legislation.

Incorporation of a practice results in veterinary surgeons becoming salaried employees of, and shareholders in, the practice, and they would thus be able to provide for their own superannuation and be able to obtain workers' compensation.

Additionally, incorporation has advantages in the transfer of a practice, on death or retirement, by the sale of shares and the general financial management of the practice. Veterinary surgeons would be liable for PAYE taxation.

Amendments to section 20 provide for incorporated veterinary practices to be composed entirely of registered veterinary surgeons. The only exception to this being in the case of a single veterinary surgeon wishing incorporation. In that particular case the incorporated body may comprise two members, only one of whom need be a veterinary surgeon. Under these circumstances the Veterinary Surgeons Board, in considering registration, must be satisfied that control of the practice remains with the veterinary surgeon.

The important question of liability is covered in amendments to section 20, which provides that full personal professional liability will still apply to each veterinary surgeon in an incorporated practice as it does at present.

I refer now to powers of investigation and appointment of inspectors. Subject to the Minister, the Veterinary Surgeons Act is administered by the Veterinary Surgeons Board.

To carry this out effectively, the board needs to undertake investigations into the activities of veterinary surgeons or of lay persons who may be considered to be undertaking acts of veterinary surgery and as such to be breaching the Act.

While the present Act provides powers for the board to conduct formal inquiries into the professional conduct of veterinary surgeons, it does not provide a satisfactory legal basis for the board to carry out investigations into breaches of the Act or require persons subject to the Act to provide information.

To be fully effective, the board needs power to enforce the requirements of the Act, and to do this it is necessary to appoint inspectors and for them to be able to gather relevant information. The Bill amends section 13 to permit inspectors to be appointed.

The Bill in a new part IIA—titled "Powers of Investigation"—sets out those purposes for which investigations may be made and requires persons subject to this proposed Act to provide relevant information.

These powers are substantially the same as those already incorporated in the Real Estate and Business Agents Act in regard to powers of investigation by that board appointed under that Act, except that in the present Bill no provision is made to involve police officers.

Section 16A of the Bill sets out those areas of inquiry in which the board might find it necessary or expedient to carry out investigations. These are—

(a) Determining any application or any other matter before the board;

(b) determining whether or not persons are acting in conformity with any conditions as to registration or restrictions in the practise of veterinary surgery proposed under the Act;

(c) determining whether or not registered veterinary surgeons, veterinary nurses, or other persons subject to the Act are complying with the requirements of the Act; and

(d) detecting offences against the Act.

Section 16B of the Bill sets out circumstances under which information may be required and be obtained, and also places certain restrictions on officers of the board, such as the right of entry and the need to notify persons of the obligations under the Act.

Publication of roll of registered veterinary surgeons: Under the provisions of section 17 of the

Act, a roll of registered veterinary surgeons is published in the *Government Gazette* about July each year. As there is a public demand for this roll much earlier in the year—following registration of new graduates each year—it is desirable to have the roll published much earlier in the year for the convenience of the public.

Therefore, provision is made in the Bill which will permit the publication of the roll in the *Gazette*, in April each year.

The present Act provides for the registration, by the Veterinary Surgeons Board, of veterinary nurses, who have completed an approved course of study and are of good fame and character. There is no right of appeal where the board refuses registration of a veterinary nurse. This is in contrast to veterinary surgeons who may appeal to the District Court against a refusal by the board to register a person.

It is considered that veterinary nurses should have rights of appeal similar to those of veterinary surgeons, and the amendment to section 26E of the principal Act provides for this.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. C. J. Bell.

## WESTERN AUSTRALIAN WATER RESOURCES COUNCIL AMENDMENT BILL 1984

*Third Reading*

Bill read a third time, on motion by the Hon. D. K. Dans (Leader of the House), and passed.

## RESERVES BILL AND RESERVES AMENDMENT BILL 1984

*Second Reading*

Debate resumed from 18 April.

**HON. V. J. FERRY** (South-West) [8.04 p.m.]: This Bill is a somewhat traditional Bill which reaches Parliament for very good reason; it provides an opportunity for all members to peruse the provisions dealing with reserves throughout Western Australia.

This year the Bill is a little larger than in previous years; it deals with quite a number of reserves and gives members an opportunity to check with local authorities the areas within their constituencies in order to satisfy themselves that Parliament should pass the Bill.

This is perhaps more a Committee Bill in that each clause can be debated as it relates to a particular parcel of land or reserve. Therefore, my comments in the second reading debate will be somewhat curtailed. However, there are one or two observations I wish to make at this stage.

I wish to refer to one reserve which this Bill proposes to pass to the superintendence of the Forests Department. It is rather incorrigible of the Government inasmuch as it has instituted a committee to come up with a review of land in Western Australia which has come up with a publication called "The Task Force On Land Reserve Management in Western Australia".

Hon. D. K. Dans: What particular reserve did you refer to?

Hon. V. J. FERRY: This relates to clauses 6 and 7 in respect of a reserve in the Manjimup area. The task force has come up with quite monumental suggestions by way of change for the handling of land in Western Australia. One of its suggestions is to reconstruct the various agencies handling land dealings, including the Department of Lands and Surveys and the Forests Department.

It is rather peculiar that the Government should want to detract from the traditional role of the Forests Department, which is charged with the responsibility of looking after the forest areas of this State for so many years. Yet, this task force in its report is suggesting that the Forests Department be swallowed up under a gigantic management structure which would make it only part of an overall surveillance of the State's land reserves.

The following is stated on page 30 of the report—

> The Forests Department is an effective organisation which has general land management skills and has special skills in the management of high forest, including management for timber production.

I do not quarrel with that at all. It is appropriate. It is stated also on page 59 as follows—

> The Forests Department was instituted by the Forests Act of 1918-1976, which gave the Department, under the direction of the Minister, the exclusive control and management of all matters of forestry policy, and of all State Forests and timber reserves.

That is correct. That is exactly what this Reserves Bill will do: It is suggesting that two reserves in the Manjimup area should be passed back to the Forests Department for its control, guidance, and superintendence. Yet the Government proposes, under the report, to take the power from the Forests Department in the future and put it under a gigantic land octopus. Section 7 of the Forests Act states—

> (2) The department shall have the exclusive control and management of—
>
> (a) all matters of forestry policy;

(b) all State forests and timber reserves, and the forest produce of other Crown lands;

So, on the one hand the Forests Department is recognised by the Government as being an effective and appropriate authority to handle the reserves stated in this Bill, yet on the other hand the Government is proposing that the department be swallowed up in the grand management plan and put in a back room. That indicates that a lot of conservationists are making an input into the Government's decision. On the one hand the Government encourages the Forests Department in its original role, but on the other hand it is disembowelling that department.

The Forests Department is worthy of support. This Parliament has supported strongly the Forests Act over the years, to protect the timber and forestry resources in this State. The Forests Department has had that special privilege and it was the special determination of Parliament that it be the guardian of our forest country.

I find the Government's intention to establish a completely new administration, which will mean that the forest will be put on the back burners, to be most extraordinary.

I wish to make special reference to a particular reserve which is of unique and historical interest. The reserve is in the Augusta-Margaret River area and it is referred to in clause 41 as Reserve No. 8431 at Prevelly. Prevelly is on the coast near Margaret River.

In 1978 a gentleman by the name of Mr E. G. Edwards donated some land on which a church was built. This was to commemorate the help Australian servicemen received during World War II during the campaign in Crete. On his return to Australia after the war Mr Edwards felt there should be some tangible recognition of the great assistance provided by the people of Crete. A chapel was built. Originally a reserve had been set aside on which to build the chapel but for good reason the local authority declined to permit the building of that chapel on that particular reserve. Mr Edwards had the chapel built on his own property and made it available to the people.

A request has been made for the land originally set aside for the building of the chapel to be added to the chapel site for parking and other amenities for the people using the chapel. I find that request completely satisfactory. It is sensible, because this development has become a tourist attraction in the Margaret River area. It has gained international recognition from the point of view of friendship between one country and another. The chapel is used regularly and anyone who goes to that area is most welcome to visit it. I am sure people would find it interesting, bearing in mind the background and the reason for its existence.

This provision has my full support and I commend the Government for including that reserve in the Bill. I support the second reading of the Bill.

Question put and passed.

Bill read a second time.

*In Committee*

The Chairman of Committees (the Hon. D. J. Wordsworth) in the Chair; the Hon. D. K. Dans (Leader of the House) in charge of the Bill.

Clauses 1 and 2 put and passed.

Clause 3: Reserve No. 8606 at Busselton—

Hon. V. J. FERRY: I wish to couple my remarks to this clause and clause 4. I support fully the inclusion of this reserve and the change in the vesting. The coastline at Busselton is well recognised, unfortunately, for its fragile state, and any development near the coast has to be done with the greatest of care.

It has been of major concern to previous Governments and to this Government that erosion, caused particularly by heavy storms, has caused havoc to sections of the coastline around Geographe Bay. It is important that no development should take place along the so-called approved lines to minimise any future damage to that area. It is a fragile section of the coast, and this clause has my support.

Clause put and passed.

Clauses 4 and 5 put and passed.

Clause 6: Reserve No. 17672 near Manjimup—

Hon. V. J. FERRY: I referred to this clause during the second reading debate. In fact, again we have two parcels of land in clauses 6 and 7 which are contiguous and have been included in the Bill for the same reasons.

It is worth recording that the reserves are set in high-quality jarrah forest which has an excellent potential for recreation. Unfortunately, in the past the reserves have been subject to vandalism and local citizens have been illegally dumping rubbish and generally making nuisances of themselves.

The local shire has requested the Forests Department to take over the management and vesting of the two reserves. Here again we have a local authority which is unable to satisfactorily control the activities on these two reserves and has requested the Forests Department to act, I suppose, in the role of policeman or nurseryman, in order to make sure that the area is rehabilitated and established in a more attractive way in the future.

It is recognised that the department might have expertise not only in the nurturing of trees and creating tourist attractions, but also in dealing with vandals. The Forests Department is an important department. It is amazing that on the one hand the Government recognises the quality of the department, but on the other hand, the department should have its powers taken from it.

Clause put and passed.

Clauses 7 to 54 put and passed.

Schedule put and passed.

Title put and passed.

*Report*

Bill reported, without amendment, and the report adopted.

## WATER AUTHORITY BILL 1984

*Second Reading*

Debate resumed from 18 April.

**HON. V. J. FERRY** (South-West) [8.22 p.m.]: I wish to comment on some features of the Bill before the House because it is of importance to Western Australia. It contains provisions which have great relevance to the south-west of this State, an area which I am privileged to represent.

Over the years previous Governments in this State have done a magnificent job in gradually bringing water supplies to country areas. It has been a very costly and necessary exercise and, of course, we can think back to the early days when C. Y. O'Connor implemented a magnificent scheme to supply water from the Mundaring Weir to the goldfields. Ever since that time people have been thinking more and more about providing water supplies that are potable.

However, there is one aspect which is of great concern to many people in the south-west. From time to time it has been suggested by the authorities—people have spoken at seminars on water resources—that the natural catchment areas of the south-west should provide reservoirs and water supplies for the Perth metropolitan region. The local people have reacted strongly to that sort of projection. They have in the past, and still do, recognise the very great need to provide sufficient and adequate water supplies for the growth of industry, and for people generally in their activities throughout the south-west.

It is acknowledged that the south-west has the fastest population growth rate in the State and, of course, members know the reason for that. It not only has a relatively assured rainfall, but it also has a diversity of industry—from heavy mining industries to cottage industries, apart from the natural tourist resorts—and a climate which allows people to take their holidays at any time during the year, whether it be summer or winter.

There is a tremendous need for adequate water resources for that area. Suggestions in the past that water resources in the south-west should be siphoned off to service the metropolitan area have been met with hostility by the local people and, I suppose, with good reason.

As a result of the establishment of a single water authority, I would hope that the people administering this Act will be ever mindful of the needs of the people in that fast-growing and relatively highly populated area of Western Australia. I have full regard for the provision of adequate water supplies to any other part of Western Australia. I would suggest that when considering water supplies for other areas, they should come from areas further north of Pinjarra.

One concern I have regarding this legislation is the provision for the Minister to absorb the three remaining water boards in this State; namely the Harvey, Bunbury, and Busselton Water Boards. Here again, the Government through the Minister for Water Resources (Mr Tonkin) made great play about the fact that there will be a single water authority for the whole of Western Australia. Those people associated with the areas under the control of the three water boards reacted extremely savagely to that proposal. With the passing of time Mr Tonkin realised it was a political blunder and had to acknowledge it was a mistake and has, I suggest, been persuaded by severe political pressure—

Hon. D. K. Dans: Sound commonsense.

Hon. V. J. FERRY: —to make the change.

I refer to a question that was asked in another place on 4 April 1984 and for the sake of the record, even though it is in *Hansard*, I propose to quote from page 6755, question 2733, as follows—

> Mr MENSAROS, to the Minister for Water Resources:
>
> (1) What are the exact conditions he set for the Bunbury, Harvey and Busselton Water Boards for these to escape being absorbed into a Government water authority?
>
> (2) Is he going to introduce legislation to implement these conditions?
>
> Mr TONKIN replied:
>
> (1) The boards have been advised that the following will apply—
>
> (a) boards will be charged for work, including investigation and design,

done by Government agencies for the benefit of the boards;

(b) the Government will no longer reimburse the boards for rebates and deferments allowed to pensioners under the Pensioners (Rates Rebates and Deferments) Act;

(c) the boards will be required to make contributions at the same rate as the water authority of Western Australia under the Public Authorities (Contributions) Act;

(d) the Bunbury Water Board has been asked to set firm programmes for roofing its service reservoirs and for automatic chlorination;

(e) the Bunbury Water Board has agreed to the extension of its area to Gelorup when development makes this desirable, and the Busselton Water Board has agreed to the extension of its area to the west; the Government has agreed to give consideration to assisting the boards to finance the extension of services to these areas;

(f) the price at which water is supplied in bulk to the Harvey Water Board from Harvey Weir will be increased in stages.

(2) Legislative changes are required for some of these conditions. It will be included in a broader Acts amendment Bill required in connection with the merger of the major authorities. It will be introduced in the 1984 Budget session, but will not take effect until July 1985. In addition to the matters referred to in (1), it will—

give power to the boards to create and operate reserve accounts and require them to make provision for depreciation;

give the boards power to prescribe different classes of water users;

give the Minister power to require a water board to take remedial action if water it supplies is not of satisfactory quality;

provide for the Minister to approve the rates that a water board proposes to charge in an ensuing year and the basis on which those rates are based; and

give the Minister power to require a water board to provide sufficient storage and distribution facilities to ensure a satisfactory volume and pressure of supply to its customers.

I understand that the Minister has given an assurance that these three water boards will not be taken over in the foreseeable future. What length of time that will be is anybody's guess, but I say here and now it will not be long before these three boards, which have operated extremely efficiently, are taken over by the one authority, whether they like it or not. They will be placed in a position where they will not be able to refuse or to offer any further resistance. There are all sorts of ways of putting pressure on Government agencies, and these three boards are extremely vulnerable.

One thing which concerns me is that the Minister said in his reply to the question that the Government will no longer reimburse the boards for rebates to pensioners under the Pensioners (Rates Rebates and Deferments) Act. Here the Minister is deliberately disadvantaging the pensioners who qualify for a rebate in the three board areas of Harvey, Bunbury and Busselton. It is all right for the rebate to apply anywhere else in Western Australia, but consumers in those three areas referred to will no longer have that advantage. I wonder how this fits in with the Government's intention to be even-handed and to look after people in the country areas?

Hon. D. K. Dans: Who rebates the pensioners in the metropolitan area?

Hon. V. J. FERRY: It comes out of Consolidated Revenue.

Hon. D. K. Dans: Does the board do it itself?

Hon. V. J. FERRY: The Government picks up the tab. It is not doing it in these cases.

Hon. D. K. Dans: They will remain independent boards.

Hon. V. J. FERRY: The Minister is deferring—

Hon. D. K. Dans: Are you saying the Government in addition should rebate the pensioners in that area?

Hon. V. J. FERRY: Certainly, the Government should do it. According to the answer I quoted, the Government will no longer reimburse the boards.

Hon. D. K. Dans: That is right.

Hon. V. J. FERRY: That is an indictment of the Government's attitude, particularly to pensioners, who are entitled to that rebate.

Hon. I. G. Pratt: This is not a matter of accommodation, it is a matter of continuing.

Hon. V. J. FERRY: I hope the Government changes its mind, just as Mr Tonkin changed his mind originally in respect of including these three

boards in one authority. He has changed his mind once; I hope he changes it again to give these very eligible people the continuing benefit of that right, the same as any other person who qualifies in Western Australia. The Government, and the Minister particularly, deserve the strongest censure for that sort of off-handed treatment. If it is good enough to come up with a single authority treating everyone on the same plane, it is good enough for the Government to make sure provision is made for these people.

Hon. D. K. Dans: I would think the boards would make those provisions themselves by adjusting water charges.

Hon. V. J. FERRY: That is another attitude. The Leader of the House is suggesting the boards would have paid—

Hon. D. K. Dans: I did not say that; I said I thought they would. Perhaps the member could use his good offices and apply political pressure.

Hon. V. J. FERRY: If they do, that means the people in the country areas would be virtually paying twice for that benefit.

In regard to other requirements which the Government is now requesting from and in fact imposing upon the various boards, Bunbury Water Board is now roofing its service reservoirs. That was happening anyway before the Bill was introduced, so that is an ongoing thing. There is no great problem with that, although there is a problem with finance. In the metropolitan area and in some areas in the country service reservoirs were roofed for various reasons—I think we all understand why. The Bunbury Water Board has agreed to extend its area just south of the city, and the Busselton Water Board has agreed to an extension of its area. The Government has agreed to give consideration to financing extensions of these services. That is a reasonable proposition, because if it is reasonable to take care of the rest of the State, these new works deserve some assistance. I commend the Government for that.

One thing bothers me about the Government's attitude. I refer particularly to the Harvey Water Board, which is different from the others. Bunbury and Busselton draw their supplies from their own deep bores. The Harvey Water Board draws water from the Public Works Department, which controls the Harvey Dam. At the time the Burke Government took over, the Harvey Water Board purchased that water at 3c per kilolitre. It very soon doubled to 6c a kilolitre, and in July this year, which is not far away, it will increase from 6c to 9c per kilolitre.

Hon. A. A. Lewis: Is this the Government which said it would not increase charges?

Hon. V. J. FERRY: This is the Government which said there would be no increases in charges for water or electricity or for anything else. Here is a case where the country people are being disadvantaged again. So when the Minister says these boards will not be taken over, one does not have to be a Rhodes scholar to see that if the price is continually raised it will have to be passed on to consumers, or something must be done to make the board viable. Sooner or later the board will be absorbed by the single authority as a result of the sheer weight of financial constraints.

Of course we hear from Government Ministers and others from time to time that this is a Government of the people, there is consensus which applies, and that sort of nonsense. But the hard facts are there and I challenge anyone to dispute those facts. They cannot be denied, and the Government stands condemned on those particular issues.

There is one provision, which I thoroughly agree with and that is the setting up of regional advisory committees. In my experience in matters of this type over a number of years in country areas, advisory committees serve a very useful function and enable the local people to have their input. Government officers are included, and very often they come to a sensible arrangement in the provision of services, whatever they may be. In this case, we are dealing with water, and local committees are absolutely essential. I commend the Government for continuing with this system.

Again the Government is inconsistent. Referring back to what I said a moment ago about increasing charges without proper consultation with the local boards and how they will manage if the charges are increased, this is somewhat contrary to Government's line of thought.

I believe overall the authority, after it settles down, will serve the State well. The legacy of supplying water to country areas is that the return from water sold is below the cost of the service being provided. I do not think we will ever overcome that difficulty in our State because of the geographical nature of our land, and the sparse population. That is something which must be borne in mind. The Government must be very mindful of its obligation to people further removed from the metropolitan region.

Governments in the past have had a good regard to providing water services where they could from time to time in all circumstances. This must continue. But in addition to providing new services I am concerned with the cost of supplying water to the existing services. If we have an Administration continuing in line with what has happened in Harvey, I can see that people throughout the State

will pay a lot more for their water in the future. One single authority will not make any difference in that regard, whether it is under the present system or the new system. This Government will ensure prices continue to rise, despite protests, and we will pay. I just hope that in doing its accounting for bringing supplies to people in areas away from the metropolitan area the Government does not make the charges intolerable, because, as we know, country people have to pay the tyranny of distance. Transport costs are high; everything costs much more than in the metropolitan region. I believe the State owes it to people living in country areas to be more understanding and sympathetic towards them.

I support the Bill.

**HON. D. K. DANS** (South Metropolitan—Leader of the House) [8.40 p.m.]: I thank the members who have supported the Bill and I will certainly take into account those points raised by the Hon. Vic Ferry.

Question put and passed.

Bill read a second time.

*In Committee, etc.*

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

*Third Reading*

Bill read a third time, on motion by the Hon. D. K. Dans (Leader of the House), and passed.

## BUILDERS' REGISTRATION AMENDMENT BILL 1984

*Second Reading*

Debate resumed from 4 April.

**HON. I. G. PRATT** (Lower West) [8.44 p.m.]: This Bill, I believe, has the best of intentions, but, in actual fact, has many shortcomings. I intend to mention some of them. I will begin by suggesting that the Minister consider asking his leader to put this Bill at the bottom of the Notice Paper and think about withdrawing it and having it redrafted.

The principle is one of protecting people from builders who go bankrupt. Inasmuch as one can ever protect people from dealing with persons who have financial trouble, I suppose this is worthy of consideration.

The Bill proposes to make it an option that the board may require a person seeking registration as a builder to show proof that he has sufficient material and financial resources to enable him to honour his financial obligations. Clearly, this is a rather unusual provision in a trade registration situation. Perhaps it could be looked at more appropriately in the corporate affairs context, if we are attempting to procure details of the finances of a business operation, which is what the Bill is all about.

In giving an option to the board to do this, the Minister is putting the board in a very unfortunate position, because it must then make a decision—the word "may" is used in the Bill—as to whether it will require a particular builder to show his financial capacity.

I would think that, in order to cover itself, the board will have to apply this in every case, because, if it uses its discretion and applies this provision to some builders and not to others, it will find that perhaps some builders who are not required to prove their financial resources might in fact go bankrupt and leave a series of debts and unfinished houses behind them, while some who have been required to show their financial sufficiency will be quite sound business people.

I know the Bill has been presented to us in an effort to solve the problem of builders going bankrupt and then racing off and, in the Minister's words, forming $2 companies to get back into business; but in fact the Bill goes further than that. It refers to a person seeking initial registration as well as a person seeking re-registration.

I do not think any of us would argue—I understand the industry does not argue—with the fact that a person who has gone bankrupt and left a trail of debts behind him should have someone look at him before he operates in the industry again.

However, from what I have been able to ascertain, it appears that the attitude of the industry to this issue was not sought before the Bill came before the House. The Minister may be able to assure me that the industry was consulted, but my information is that it was not consulted before the Bill came to the House.

Hon. Peter Dowding: No, there was consultation.

Hon. I. G. PRATT: That is not the story we get.

The other point is that it is my understanding that the Builders' Registration Board of WA was not consulted about the Bill before it was presented to the House. In his second reading speech, the Minister said that the proposal had the support of the Builders' Registration Board. I would like him to indicate whether it has the board's support in general principle, or whether it supports the detail of the Bill.

I would also like the Minister to tell us when he replies whether such support, if it exists, was obtained before the Bill was presented to the

House or at some subsequent date, because, I say again, the information I have is that it was not done prior to the introduction of the Bill to the House.

If the Minister wishes to deal specifically with the problem of builders who have gone bankrupt, who have left a trail of debts behind them, and who are trying to rejoin the industry, I suggest that could be specifically spelt out in that circumstance, and not included in a general reference to the whole industry. Similarly, if the Minister wishes to produce a general cover, he might care to look at a bonding arrangement rather than at asking the board to make a subjective judgment as to whether an applicant's financial position should be queried and doing it in a rather vague sort of way. The actual words used in the Bill are rather loose as drafted and refer to "financial obligations" in very broad terminology.

Just what are the financial obligations? Who will decide what they are? Who will decide that those obligations will be the same six months after the man applies for registration as they were at the time he applied?

If it is the Minister's intention that the board should continue to monitor the financial obligations of the builder, it will need a tremendous staff because it will have to check the builder's books on regular occasions. If this were done every six months—a builder's situation can change dramatically in six months in respect of the amount of work he has done—it will be a monumental job. The board will have to monitor, firstly, the financial obligations of the builder from time to time, and, secondly, his ability to meet those obligations.

Hon. Peter Dowding: It is only at the time of application.

Hon. I. G. PRATT: Well, it is not. The Bill refers to looking at the situation at the time of taking away the licence as well. If one intends to take away the licence, that is not done at the time of application.

Hon. Peter Dowding: That does not impose an obligation to monitor.

Hon. I. G. PRATT: One would need to have a reason to remove the licence. In order to take away the licence, one would have to look at the builder.

The other words I shall mention are, "when they become due". This also is something which will change from time to time. The position will change within a contract. There will be items such as penalties for late completion of contracts, which are not uncommon; there will be changes in award rates; and there will be adjustments both to the contract and to the prices of goods that are being used. Retention money may be involved.

If we put a bland statement such as "when they become due" among those varying factors, and then ask the board to make an assessment as to whether the builder will be able to fulfil his obligations in regard to them, it will need a crystal ball.

The other aspect laid unfairly on the Builders' Registration Board in this Bill is that the board, having the authority to make this judgment and to choose to whom it will apply, then is giving a seal of approval to the builder it has examined.

If the board chose to examine one builder, but not to examine another, the builder who has been examined and found able to meet his obligations will, in the eyes of the public, have the seal of financial approval of the board. He will not just have the board's approval as to his ability to carry out the job of building a house, but also the public will feel they are justified in expecting that person to be able to pay any debts he incurs. This may very well not be the case, because while the man might have money when he starts building and gets his registration, we might find that, apart from being a good builder with perhaps a good deal of money to back him when he starts, he might be a very bad businessman and, although he has satisfied the board of his ability to meet his obligations, if things go wrong, he might not in fact be able to meet them.

I believe the people with whom the builder has been dealing would be quite justified in expecting him to be able to meet his obligations, the board having said, "Yes, he is able to fulfil his obligations".

If one puts oneself in the situation of dealing with a builder who perhaps says, "I have my builders' registration. I have put my financial affairs before the Builders' Registration Board and it has said I am A-1. It has agreed I am able to carry out my financial obligations", would not one, showing some faith in the Builders' Registration Board, believe that was so and would continue to be so? I would, if I had not read this Bill.

I am not criticising the Minister personally, but this Bill has some very serious shortcomings and I suggest that, in the first instance, he take it down the ladder of the Notice Paper and then have a good talk with the industry about it and have a good think about the implications of the things which can go wrong if this Bill is put into effect.

I do not intend to endeavour to defeat the Bill. I am not asking members to do that; but I am pointing out very clearly to the Minister, that as far as the building industry is concerned, he is holding a tinderbox in his hands with this Bill and,

if he is not very careful, it could catch fire in front of his face and cause him not only considerable embarrassment, but also perhaps give him the responsibility of some severe financial problems within the industry.

Debate adjourned, on motion by the Hon. W. G. Atkinson.

## REPRINTS BILL 1984

*Second Reading*

Debate resumed from 22 March.

**HON. A. A. LEWIS** (Lower Central) [8.57 p.m.]: This Bill is virtually on a par with the Bill which we dealt with earlier. The Minister said that the two Bills demonstrate the Government's commitment to ensuring legislation is in a form which is easy to understand and readily available—this seems rather amusing after the fiasco of the previous Bill.

Since 1978 I have been interested in reprinting Bills. I have a letter from the then Attorney saying, "The reprinting programme is a continuing one and a great deal has been accomplished within the resources available".

I was not one of the first people to refer to this. In 1963 an article appeared in *The West Australian* in relation to this matter. On 16 October 1962, if members refer back to their *Hansards*, they will see that the Hon. Frank Wise, the Hon. Keith Watson, and the Hon. J. G. Hislop, had some comments to make on Statutes being reprinted.

The previous Clerk of the House gave us in this place the only set of up-to-date Statutes that I know to be in existence. It seems crazy that successive Governments have not given all members a complete set of Statutes in loose-leaf form. It would then be necessary only to produce insert pages for members when Bills were amended.

I would think in the first year it would save thousands of dollars on the cost of printing Bills. To update the parent Act all members would have to do is slip in the loose-leafed pages. They could then make comparisons and also update their Bills after amendments are carried in this or both Houses. That would be a more convenient way of doing it. I know the Local Government Act comes in a loose-leaf form. How many amendments to the Local Government Act do we have a year? I think in this session we will have three such amending Bills—more printing, more cutting and pasting for members when they could have the whole thing done in a loose-leaf form. I am assured that in 1978, 230 Statutes were printed in loose-leaf format and in 1979 a further 33 were printed, making a total of 263. I wonder what the saving in printing books of Statutes would be. The Government should go into this matter; it should look at it on an even-handed basis with the Opposition, I guess, probably getting more benefit out of it than the Government; but at least Government members and Ministers would have their Statutes being continually kept up to date.

I do not know whether *The West Australian* of 15 July 1963 is correct, but it speaks of 3 000 enactments. From 1970 to 1979, 270 Bills were handled, virtually over 10 years, making 27 a year. You and I, Mr Deputy President (Hon. D. J. Wordsworth), will not see the time when all Statutes are completed, because that is an average of about 30 a year and to complete 3 000 would take 100 years, so nobody in Parliament now will see the complete set of Statutes printed in loose-leaf form under those circumstances.

I hope the Minister, when he replies, will tell us exactly what he intends in regard to loose-leaf Bills. It is the Government's duty to all members to provide a complete loose-leaf set. I do not need to tell the Leader of the House—he has done it as have all other members—about this business of having to cut out little pieces of paper, sticking them into Acts—

Hon. D. K. Dans: Every day.

Hon. A. A. LEWIS: —and then sticking another piece of paper over that because of an amendment, the one page becoming about seven pieces of glued paper like confetti right throughout one's Act. Really in this day and age of computers and other technology we should be able to get on with this. It will save the Government greatly in printing costs.

The Opposition really has no objection to this Bill. It is complementary to the Interpretation Bill which was brought in at the same time. The Government could, with a little effort, make these Bills available in that form. The cost of printing would be greatly reduced.

While I am on my feet I must thank the Leader of the House for his effort on another Bill and on getting Bills to the House for which members previously had to pay. The Government must either make money available for printing purposes, or the Government should make money available to computerise the whole system which in the long term will save money. The Government must, through its departments, put up the money, so whichever way it goes the Government will provide the money. It seems that the poor old taxpayer—

Hon. Garry Kelly interjected.

The DEPUTY PRESIDENT (Hon. D. J. Wordsworth): Order! Interjections from members who are not in their seats will not be tolerated.

Hon A. A. LEWIS: It would seem to me that the Government must pay one way or the other and so it would be a good opportunity for the Government now to set a policy of reprinting to the standard of this House and of the Clerks to get the sets of Statutes up to date. The Government could then have Acts reprinted from the Council's set of Statutes. I do not believe it is as great a problem as has been made out. I cannot believe that the Government Printer can average only 30 Bills a year in a loose-leaf form. I hope the Attorney General has some answers on how we can get these things done fast. I support the Bill; I am sure everybody will be pleased with it.

Debate adjourned to a later stage of the sitting, on motion by the Hon. Tom Stephens.

## PODIATRISTS REGISTRATION BILL 1984

*Second Reading*

Debate resumed from 18 April.

**HON. I. G. PRATT** (Lower West) [9.11 p.m.]: The Opposition has no objection to this Bill. We have discussed it with members of the profession and they tell us that they not only approve of it, they in fact requested it. The same situation applies in regard to the registration board. The Bill really involves a change of name from chiropodist to podiatrist and it updates the Act to take account of modern practices and terminology. We support the Bill.

**HON. D. K. DANS** (South Metropolitan—Leader of the House) [9.12 p.m.]: I thank the Opposition for its support of 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 the Hon. D. K. Dans (Leader of the House), and passed.

## LAND VALUERS LICENSING AMENDMENT BILL 1984

*Second Reading*

**HON. PETER DOWDING** (North—Minister for Planning) [9.14 p.m.]: I move—

That the Bill be now read a second time.

This Bill proposes amendments to the Land Valuers Licensing Act. Three areas are addressed by these amendments: Firstly, the composition of the licensing board and the method of appointment; secondly, tightening the extent to which unlicensed activity as a valuer is controlled; and thirdly, making the actions of the board, in relation to the setting of remuneration of valuers and in laying down a code of conduct for valuers, accountable to the Minister.

Turning to each of these provisions now in more detail, the Bill provides for a slight alteration in the Land Valuers Licensing Board's composition. One person is to be nominated by the Minister for appointment. This person may be representative of the interests of consumers and this is in line with the Government's policy to ensure proper consumer representation on boards or licensing authorities.

In addition, those persons who are representative of the Western Australian Division of the Institute of Valuers shall now be nominated by the Minister from a panel of names submitted by the institute.

Similarly the member valuer who is representative of the Real Estate Institute of WA is also now to be nominated by the Minister from a panel of names submitted by that body.

The Bill provides a procedure for the submission of a panel of names and a transitional provision for existing members.

The Land Valuers Licensing Board has in the past expressed concern that the prohibition on unlicensed activity as a valuer is not sufficiently expansive and does not extend to a person who occasionally holds himself out or undertakes valuations for fee or reward where he does not carry on business. It is the view of the Government that such persons who undertake valuations for payment should be licensed. This position is reflected in the alteration of section 23 prohibiting persons from acting as unlicensed valuers.

Thirdly, the Government proposes amendments to section 25 and section 26 of the Act. These sections deal with the powers of the board to set the remuneration of valuers and to lay down a code of conduct. This Bill proposes that the board shall continue to perform these functions, subject now to the approval of the Minister responsible for the Act.

The Government has expressed its concern that boards and authorities should properly be accountable for their activities. In the areas of laying down a code of conduct and particularly, the setting of the remuneration for valuers, the Government believes that such functions should continue

to be carried out, but subject to the final approval of the Minister.

This will ensure that the board is not only accountable but also ensure in such action that Government policy may be adequately taken into account. The Bill gives effect to this intention but does not affect the existing remuneration order or code of conduct.

I commend the Bill to the House.

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

## LEGAL PRACTITIONERS AMENDMENT BILL 1984

*Second Reading*

**HON. D. K. DANS** (South Metropolitan—Leader of the House) [9.17 p.m.]: I move—

That the Bill be now read a second time.

This Bill provides for the making of regulations to require legal practitioners to take out and maintain professional indemnity insurance. In the course of the election campaign the Government made the following election commitment—

> A State Labor Government will introduce compulsory professional insurance for all practising lawyers.

Regulations to be promulgated following the enactment of this Bill will have the effect of fulfilling the Government's election commitment.

The requirement that legal practitioners have professional indemnity insurance is widely accepted both in the legal profession and the community. The Law Society of Western Australia has argued strongly for such a requirement for a number of years. The present proposals have been developed with its assistance and co-operation.

On 19 December 1980, the previous Government added the following term of reference to the committee of inquiry into the future organisation of the legal profession, the Clarkson committee—

> The desirability of requiring professional indemnity insurance as a condition precedent to the right to practise law, the manner in which such a requirement could be implemented and the desirable attributes of the scheme for professional indemnity insurance for the legal profession.

When the committee reported in 1983, it recommended that in the interests of the community and the profession, there should be a statutory requirement for every practitioner practising for the public to have adequate professional indemnity insurance cover. The committee recommended that the holding of a certificate of insurance be a condition precedent to the right to practise, and that there be one insurance scheme to be administered by the Law Society. This, subject to exemptions, would cover all practitioners.

Although the Government accepts the broad thrust of the committee's recommendations, the Bill does not follow them in a number of respects as to detail.

Clause 3 of the Bill provides for the introduction of a new section into the Legal Practitioners Act, section 85. Under this section, regulations may be made concerning indemnity against loss arising from claims in respect of a practitioner's civil liability.

The regulations may authorise or require the Law Society to make arrangements with one or more insurers for the provision to practitioners of professional indemnity insurance and may require practitioners, or any prescribed category of practitioner, to take and maintain indemnity insurance in accordance with those arrangements.

The regulations may specify the terms and conditions on which the insurance is to be provided, the amounts of insurance cover, and classes or categories of practitioner to which different provisions may apply. It is proposed that the regulations will require the Barristers' Board to refuse to issue an annual practice certificate except where it is satisfied that a practitioner holds a current certificate of insurance. Provision is made for exemptions.

The regulations provide for either a master scheme of insurance negotiated by the Law Society or individual arrangements in approved alternative forms. The Law Society's experience in this field as a result of long and detailed negotiations over a number of years makes it an appropriate body to conduct negotiations on behalf of practitioners.

It is hoped that regulations will come into operation by 1 July 1984, to coincide with the issue of annual practice certificates. That will depend, however, on the completion in time of negotiations now in progress.

I commend the Bill to the House.

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

## EASTERN GOLDFIELDS TRANSPORT BOARD BILL 1984

*Second Reading*

Debate resumed from 18 April.

**HON. D. J. WORDSWORTH** (South) [9.20 p.m.]: The Opposition is in general agreement with the rewriting of this Bill which has been completely updated rather than being amended.

As a former Minister for Transport it was my duty to work with this board and I have to admit it was very pleasant indeed to see the Town of Kalgoorlie and the Shire of Boulder working together to supply a bus service in fairly difficult conditions without any major input by the Government. During the three years that I was Minister we gave them some buses that perhaps were not quite worn out, but which were close to it. On another occasion we found a small amount of money for them.

Generally speaking, the two local government bodies run very successfully a bus service which serves the community in the goldfields without all the hassles we see in the city with the MTT and the extraordinary losses incurred by it. I believe the less the Government interferes with this organisation, the better.

I do not think there are many changes in this Bill, although it is hard to compare one with the other. One of the matters raised by the Minister in his second reading speech related to the election of the chairman. Previously that was determined by those who had to pick up the bill for any trading loss—the two local government authorities. Now the Minister is given the power to appoint the chairman. The argument put forward in support of that is that the Government now has an obligation to accept some of the losses. However, the Bill does not lay down what percentage of the losses the State Government will accept. It says that will be done by regulation. It may well be that the Government will not pick up much more than it does now.

It is unfortunate that the two local authorities have lost the ability to appoint the chairman. If the local government bodies are expected to accept that being written into regulations I believe they should have retained the power to appoint the chairman.

It would seem that this is a fairly open-handed Bill under which the board can do many things including trading under various names and carrying out transport activities and the like. It has always done a certain amount of contracting to carry workers backwards and forwards between the towns and the minesites for various companies.

During my term it also wished to set up a tourist bus service. One of the difficulties that arose related to air-conditioning because the standard of bus used for taking workers from dusty conditions at the mines and the standard of bus used for tourists coming to look at the town were different, and it was hard to use the same vehicle for the two purposes. I think perhaps the provision of services for tourists should be left to private enterprise.

I notice that provision is made in certain clauses requiring the approval of the Commissioner of Transport to be given. I guess that is one way in which the Government can keep tabs on the Eastern Goldfields Transport Board. One clause in the Bill surprised me a little. Clause 3 states in part—

> (2) If a question arises as to whether or not a person is a full time employee of the Board, the same shall be determined by the Board, and its decision shall be final.

I would have thought that in many cases such questions could have been taken to a tribunal, whether the Industrial Commission or otherwise. When an employee is arguing about whether he is employed full-time or otherwise he should have the right to go to a body other than the board for a final decision. I support the legislation.

Question put and passed.

Bill read a second time.

*In Committee, etc.*

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

*Third Reading*

**HON. PETER DOWDING** (North—Minister for Planning) [9.28 p.m.]: I move—

That the Bill be now read a third time.

**HON. D. J. WORDSWORTH** (South) [9.29 p.m.]: I raised the matter of whether a person who is a full-time or part-time employee should have to go to the board for a decision on that question. I thought the Minister was going to answer my question and I now give him the opportunity to do so.

**HON. PETER DOWDING** (North—Minister for Planning) [9.30 p.m.]: I cannot really add to the remarks in the second reading speech. I do not think this has any major impact on the form of the Bill. I undertake to get the information for the honourable member. I did not mean to be rude but I could not see that the point he raised impacted on the nature of the Bill, and I assumed, perhaps wrongly, that if he wanted to pursue it he would have raised the matter in the Committee stage. I give an unequivocal assurance that we are not seeking to keep the information from him. If I can get the information tomorrow I will certainly supply it to him then or as soon as it is available.

Question put and passed.

Bill read a third time and passed.

## INTERPRETATION BILL

*In Committee*

Resumed from an earlier stage of the sitting. The Chairman of Committees (the Hon. D. J. Wordsworth) in the Chair; the Hon. J. M. Berinson (Attorney General) in charge of the Bill.

Clause 1: Short title—

Progress was reported on clause 1.

Hon. H. W. GAYFER: During the course of debate on another Bill similar to the Bill before the Chamber, I was rather intrigued at the way the Hon. Sandy Lewis was endeavouring to make his speech last as long as possible until the Minister handling the Bill and the Opposition shadow Minister returned to their seats. I am not saying that in a derogatory fashion by any means because both worthy gentlemen are entitled to leave the room. However, I was reminded of something similar which happened many years ago, I think in 1963. At the time the Hon. A. R. G. Hawke was Leader of the Opposition and Mr Sewell was the member for Geraldton. The subject to be discussed was the deepening of the Geraldton harbour. I have been searching through *Hansard* looking for the speech but it seems to have disappeared. I imagine that it was felt to be irrelevant and so it has been deleted. I must explain this a little more fully.

The adjournment of the debate had obviously been taken by Mr Sewell and when the Bill was called on he had disappeared. Mr Sewell at the time lived in the boarding house on the corner across the road and as the hour was late it was thought that he had decided to go there for one reason or another. The Hon. A. R. G. Hawke got to his feet; he knew nothing of the Bill in front of the Chamber but he spoke to the Bill. It was one of the best speeches I have heard. He discussed the quality of the paper, the type of printing used, the formats used in setting out the Bills in the various States of Australia, the difference in the headings of the Bills, and the differences between the coats of arms. In fact, he spoke for a long time to the Bill without ever mentioning what, indeed, was in the Bill. He was doing exactly as he should have been and there was no chance that he would be called out of order.

The CHAIRMAN: I trust, Mr Gayfer, you will do the same.

Hon. H. W. GAYFER: I am speaking to the Bill in front of the Chamber because we are now going to do, by way of this Interpretation Bill, exactly what the Hon. A. R. G. Hawke said should be done many years ago. Firstly, there should be clearness of print and understanding. Certainly that is mentioned in the subsequent Bill. It is intended that Bills should be more clearly understood, and should be simpler in print. It also mentions that *Hansard* recordings of the Minister's explanation of the intent of the Bill should be taken into consideration when courts or judges are interpreting the Act. This is a good idea. At one time I went to some lengths to prove my innocence, hoping that someone would read the intent of the Bill as contained in *Hansard*. However, no-one would read it, quote from it, or do anything about it in the court. Consequently, I had to do my term of penance for the fact that the interpretation assumed was far different from the original intent.

However, I draw attention to the case which existed many years ago; the anomalies created by the framing, printing, and general lack of understanding of Bills because of their phraseology and the way they were set out, were the subject of contention in 1961-62.

Clause put and passed.

Clauses 2 to 16 put and passed.

Clause 17: Disjunctive construction of "or"—

Hon. I. G. MEDCALF: I ask the Attorney General whether this is a new clause and why he has chosen to insert it in the Bill.

Hon. J. M. BERINSON: I believe it is a new clause. It has been modelled on a clause which I am advised now appears in legislation in a number of Commonwealth countries. In common with many of the special provisions it is in line with modern practice and designed for greater clarity.

Hon. I. G. MEDCALF: I understand this clause appears in the legislation of one or two Commonwealth countries; it appears in the interpretation Acts in Tanzania and also in Hong Kong. I wonder why we should have it here since I do not think it appears in Australian or New Zealand Statutes. I believe it was rejected in New Zealand.

Hon. J. M. BERINSON: I am not in a position to give an interstate comparison in this respect. The position with interpretation Acts throughout the Commonwealth is that they are in quite a fluid state. There has been considerable interest in bringing the interpretation Acts up to date. Even as we ourselves are now moving to an entire replacement of our older Interpretation Act, so too are the Parliaments of the Commonwealth and Victoria. They are roughly at the same stage as we are except that they have the advantage over me; they have passed the legislation through their upper Houses. Other than that we are running fairly parallel. I understand that South Australia is also at the stage of looking at an entirely new interpretation Act.

In these circumstances the changes are too rapid for me to be able to check in detail the point the Leader of the Opposition is now raising. The fact remains that whether this type of clause appears in Commonwealth or Victorian Acts, or is likely to appear in the new Acts in other States as they are developed, I am not aware of any serious argument that could be put against the clause. Perhaps if the Leader of the Opposition could give some indication as to what effect clause 17 might have that he considers undesirable in some sense I would be in a better position to respond.

Hon. I. G. MEDCALF: I do not propose to make an issue of this matter because I am quite sure it has been inserted in good faith. I believe some serious arguments have been put against this clause in some other places. However, I do not propose to elaborate on it. I simply asked why it had been included and I accept the explanation given. However, the fact that the law is in a fluid state has never convinced me that we should become part of the general fluidity.

Hon. J. M. BERINSON: My reference to the fluid state of this type of legislation was really an excuse for not being able to indicate more precisely than I can where the other States of the Commonwealth are at this point.

Clause put and passed.

Clause 18: Regard to be had to purpose or object—

Hon. I. G. MEDCALF: I would like to ask some serious questions in relation to this clause. Here again is an example of the law being in a fluid state. It is fluid because it has not yet been decided upon judicially, as far as I know. The point that concerns me is whether the purpose or object which underlies the written law and which the courts now have to try to ascertain, is to be preferred to the rule that the courts should look at the plain words of the enactment. In other words, are we now to say that ascertainment of the purpose or object of legislation predominates or do we ascertain the purpose or object by looking at the plain words?

Hon. J. M. BERINSON: Does the purpose or object come before the plain words? Clearly, the answer is that it does not. That is really at the heart of much of the discussion on clause 18, and clause 19 to come. If the words are plain enough, they stand; but the basis for the requirement that we have rules of interpretation is that, so often, words are not sufficiently plain on their face to indicate which way a point should go.

The history of clause 18 will be reasonably well known to members. It had it origins in what is now section 15AA of the Commonwealth Act, which was introduced by the Liberal Federal Government. There was no secret about the reason for its introduction; it was a direct response to the difficulty which the Commonwealth was having in framing any sort of tax legislation in a way to encourage the High Court to emphasise the need to have tax obligations met.

There is a long-standing principle in the interpretation of the law, that in questions affecting revenue, the legislation should be construed strictly against the Crown. Using that sort of approach, and by adopting a literal view of the wording of relevant taxation Acts, the High Court, for years on end, frustrated the obvious wishes of the Legislature to ensure the payment of tax in certain respects. It was in response to that that the last Federal Liberal Government introduced a purpose and object clause. I emphasise that it was never argued, in the course of introducing that amendment, that a provision of that kind would help where the words of legislation were sufficiently clear to make the meaning unarguable without it.

The recent history of this sort of provision has obscured the fact that it has quite ancient sources. It is helpful in this respect to look at the report on the Interpretation Bill 1982 by the legal and constitutional committee of the Victorian Parliament. That was a large joint committee of the Houses of the Victorian Parliament, and as far as I am aware its recommendations, in all important respects, were agreed on a cross-party basis. On page 41 of the report there is an interesting reference, in connection with the purpose and object clause, to a very ancient case known as Heydon's case of 1584. This case establishes the rule of interpretation often referred to as the "mischief" rule. The quote from that case was in the following terms—

> . . . it was resolved by them, that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discussed and considered.
>
> 1st, what was the common law before the making of the Act?
>
> 2nd, what was the mischief and defect for which the common law did not provide?
>
> 3rd, what remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth? and
>
> 4th, the true reason of the remedy;
>
> and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy; and to suppress subtle inventions and evasions for

continuance of the mischief, . . . and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, [for the public good].

Hon. A. A. Lewis: Do you quote that as a pharmacist or as a lawyer?

Hon. J. M. BERINSON: I quote that as a supporter of the conclusions of the Victorian joint committee in reporting on the Interpretation Bill 1982 of that State.

The point of that quote is to bring to the attention of the Chamber that though the actual terms of the purpose and object clause may be relatively new, nonetheless the principle which it seeks to clarify has a very long and distinguished stand in the law. There is no question that it would be necessary for a court always to look at the purpose and object.

I start repeating myself when I say that is one of the reasons I suggested earlier this evening that, in the vast majority of cases, courts would not need to look at either clause 18 or clause 19. However, there are cases where there is doubt. In fact, if there was not doubt on the construction of Statutes, we would not need our courts as much as we do. There are problems of interpretation, and it is desirable to have specified clearly that, where such doubts arise, one should look to the purpose and object of the legislation when it comes to interpretation.

Let me make one thing clear. Clauses 18 and 19 do not go together. Clause 18 has a purpose of its own to fulfil. I hope we will not confuse ourselves with the thought that, to look for the purposes and objects of legislation, we are suggesting one must also look to extrinsic evidence. Section 15AA of the Commonwealth Act preceded the current move to have an extrinsic evidence clause, and it stands on its own and is self-contained within the Act. All it does is to suggest that where there is doubt as to the proper interpretation of an Act, and where the competing interpretations affect the purpose and object of the legislation, the court's attention should be directed to the desirability of its looking at the Act as a whole—that is, the Act divorced from any question of extrinsic material—and give preference to the support of the objects of the legislation rather than working contrary to it.

Hon. I. G. MEDCALF: I am familiar with the history of the Federal section on which clause 18 is based. Personally, I did not approve of it when the Federal Government brought it in, because it was directed particularly at the tax laws. When it was relevant to the tax laws there was some justification for it; but in fact it extends generally to the ambit of the law, and not only the taxation law. I did not object to the intention of the Federal Parliament—at least, to what I thought was its intention—in relation to the tax laws; but this clause extends to all laws.

I believe I am correct in interpreting what the Attorney General has said. I am also familiar with the Victorian report, and I am aware of the fact that the committee did come down with a report in favour of this general proposition. That does not necessarily convince me, because there are many diverse opinions on the scope of this question—

Hon. J. M. Berinson: I concede that.

Hon. I. G. MEDCALF: —on both sides. I want to make it quite clear that the Attorney General has said—

Hon. J. M. Berinson: In case it should be used as extrinsic evidence?

Hon. I. G. MEDCALF: Indeed. I do not wish to hoodwink the Attorney General. I believe his remarks will be deemed to be the intention of the Parliament; that is why I want him to commit himself, as I believe he already has.

Is it correct that, earlier, in his comments, the Attorney General said, "The purposes and objects rule is not to predominate over the plain meaning rule"?

Hon. J. M. BERINSON: Yes.

Hon. I. G. MEDCALF: I should have prefaced that by saying, "Anything you say will be taken down and may be used in evidence".

Hon. J. M. Berinson: I will now oppose clause 19!

Hon. I G. MEDCALF: My next question is whether the first rule of construction will remain—that the court will look at the plain, ordinary meaning of the words of the written law in order to ascribe a meaning to them.

Hon. J. M. Berinson: I may have missed the point. Would the Leader of the Opposition clarify in what way his present question differs from his earlier one?

Hon. I. G. MEDCALF: At present, the first rule of construction in the interpretation of Statutes is that the court will look at the plain, ordinary meaning of the words. The purpose or object may be gathered, presumably, from the plain, ordinary meaning of the words. Is that the intention of this clause?

Hon. J. M. BERINSON: A moment ago, I asked the Leader of the Opposition quite seriously to clarify for me the distinction between this question and the earlier one. I thought earlier we had reached the point of my making clear that the purpose and object clause of the Interpretation

Act should not take precedence over the plain meaning of the provision sought to be interpreted.

I am not trying to be evasive, but I am having difficulty in differentiating between the previous question and this one. If the Leader of the Opposition is asking whether the courts would be expected to look also to the plain meaning of the words of the Act in order to decide what are the purpose and object, I would expect that would be the case; but really that is for the courts to decide, not me. I do not read anything in clause 18 to disturb the ordinary rules of construction and interpretation.

This is designed to meet the special case where there is some doubt based on the application of the standard rules as to the proper construction of a provision; and only then are the courts enjoined by clause 18 to look to the purpose and object clause to ensure that the purpose of the legislation appearing from it should be given preference over an interpretation that worked contrary to that.

Hon. I. G. MEDCALF: I fully appreciate that the Attorney General is not trying to be evasive; nor am I trying to confuse him. But it is an example of the problems which may be faced by a court that we find such difficulty in communicating with each other across this Chamber in relation to the clarification of the intention of the words used in clause 18. That is why I trust that when the courts do come to interpret clause 18, they will pay some attention to our remarks—subject of course to our approving clause 19. I hope they pay some attention to the remarks made in this Chamber, particularly those of the Minister handling the Bill. What I am saying is that, at present, if a court is asked to interpret the words in a Statute, it is really being asked to interpret the purpose or object of the words in the enactment. That is what courts are asked to interpret, and to do that they look at the plain, ordinary meaning of the words.

Hon. J. M. Berinson: That was your first question.

Hon. I. G. MEDCALF: It is also the second question, and I take it that the Attorney is saying that in order to interpret the purpose or object, the courts will be expected to look at the plain, ordinary meaning of the words.

Hon. J. M. BERINSON: I think the position is becoming clearer, if only slightly so. As I now understand the position, we are really talking on two different levels. The first, which relates to the earlier question by the Leader of the Opposition, involves the application or the approach to the plain meaning of the words in a particular provision in an Act. Our earlier discussion brought us to the stage where what I was saying—to be quoted for or against me in due course as anyone wishes—was that when one is dealing with a particular provision one should be looking to the plain meaning of the words, and one should only be going beyond that when the plain meaning of the words still leaves room for argument.

What the Leader of the Opposition is now referring to, as I understand it, is the means by which one determines what is the object and purpose of the legislation taken as a whole. That does not necessarily go to the same words involved in his previous question. They referred to the words of an individual provision.

What clause 18 is wanting to introduce is a look at the object and purpose of the Act taken as a whole; and looking at the nature of the Act—perhaps even declarations within the Act as to its purpose—the courts will proceed whenever necessary to decide whether they should have recourse to purpose and object in coming to the particular construction.

If the question really comes down to asking whether, when we are looking for the purpose and object of the Act, should we look at the Act as a whole and consider the plain meaning of the words in it, then as I said in the earlier case, the answer would be, "Yes".

Hon. I. G. MEDCALF: If the words have a plain and ordinary meaning, I take it the Attorney is saying that a court should not be looking any further, and that the plain and ordinary meaning would be sufficient for the court without proceeding further to look at other purposes or objects

Hon. J. M. Berinson: Do you mean the plain meaning of the particular provision?

Hon. I. G. MEDCALF: Of the words used.

Hon. J. M. Berinson: Of the provision or of the Act taken as a whole?

Hon. I. G. MEDCALF: The words used in that particular Statute.

Hon. J. M. BERINSON: I really do not think I can take this matter further. I think I have made it clear enough that in looking to the purpose and object of an Act one would expect, on the basis of clause 18, that a court would look to the Act itself for an indication of its purpose and object. If this query is really directed to whether a court should also look at extrinsic evidence—

Hon. I. G. Medcalf: No.

Hon. J. M. BERINSON: Then I will not pursue that matter further.

If the Leader of the Opposition is asking whether I would expect a court, in seeking to determine the purpose and object of an Act, to look primarily to the plain meaning of the words

of the Act taken as a whole, again I would say, "Yes".

Hon. I. G. MEDCALF: I thank the Attorney for his explanation. I have a feeling I should not press this matter any further because it may become confusing to the courts in due course when they come to examine the intention of this legislation.

Hon. J. M. Berinson: I think that is wise.

Hon. I. G. MEDCALF: I do not expect the Attorney to make any further comment because it might spoil what has already been said. I appreciate that this is a new concept, a quite different concept, involving legal problems. The mere fact that we have had this rather complicated discussion, trying to ascertain exactly how the existing law in regard to the interpretation of Statutes will be affected, is an indication of some of the complexities of this legislation which will be debated in the courts by lawyers in the future.

A clause similar to this is already part of the Federal law, and it was inserted by the previous Liberal Government, as the Attorney has reminded me. I do not propose to oppose its inclusion in the Bill, although I will not necessarily follow the same line in respect of the next clause.

Clause put and passed.

Clause 19: Use of extrinsic material in interpretation—

Hon. I. G. MEDCALF: This clause really does introduce some points of extreme complexity and difficulty. The clause is based on the Federal provision and I understand it is similar to a provision included in the Victorian legislation. The clause provides that in the interpretation of any provision, should there be any material which is not in that provision which could assist in the ascertainment of the meaning of the provision, consideration may be given to it. In other words, the "material", some of which is defined later, can be all sorts of things which are not necessarily in the Statute but which can be looked at by a court.

I freely admit that a court is not compelled to look at this material unless the clause applies, but of course a court could be compelled to look at this material. This material may be written or oral; there is nothing to say it has to be written. So we could have a situation where quite a lot of material might be available for consideration by a court, which material might or might not have been in the exact contemplation of Parliament at the time it passed the legislation.

Clause 19(1) provides that in considering any provision of written law, if there is any material which may assist with its meaning, consideration may be given to that material to confirm that the meaning is the ordinary meaning conveyed by the text of the provision, taking into account its context and the purpose or object underlying the written law. In other words, the ordinary meaning of the words may be ascertained by looking at all this material.

The question arises: Why should the courts need to look at this material in order to ascertain or to confirm that the ordinary meaning conveyed by the text is the ordinary meaning of the words? Further, what do the courts do with the material if it does not confirm the ordinary meaning? Do they weigh up that portion of the material which confirms the ordinary meaning against that portion which does not confirm the ordinary meaning? How would the courts make a decision?

We are laying down the provision which the courts will in future have to use if this clause applies when the courts have to interpret the written law. In order to ascertain the ordinary meaning of the words, where presumably there is some doubt otherwise the courts would not be doing it, the courts may take into account all this other material. But what about material which does not confirm the ordinary meaning of the words as distinct from that material which does confirm the ordinary meaning? What are the courts to do? Would not the courts be better off to stay with clause 18 and ascertain the meaning of the words by their plain, ordinary meaning in conjunction with the purpose and object of the enactment?

Hon. J. M. BERINSON: I have to repeat yet again that clause 19 is not the sort of provision that will be the run of the mill subject of discussion, or attention, in ordinary cases.

Hon. I. G. Medcalf: No, but it will be in interpretation cases.

Hon. J. M. BERINSON: Yes. It is designed for special cases, with a view to overcoming the difficulties which will otherwise arise.

If we consider the preamble to clause 19, two reservations apply before anything else happens; one is that the extrinsic material must be capable of assisting in the ascertainment of the meaning of the provision which requires in the first place that there should be some need to have assistance in the ascertainment of the meaning of the provision. Secondly, the clause is in a form which permits, rather than requires, the court to look at these possibilities.

I concede quite readily that just as all of clause 19 is designed for the special and unusual case, so is subclause (1)(a) designed to deal with an even narrower situation. It is correct to say that if the ordinary meaning is clear enough, and no problems arise, why should a question as to the use of extrinsic evidence even be posed? The limited

special cases in which that might arise are suggested by clause 19(1)(b)(ii), although that does not cover all the possibilities.

It is possible for example to have a provision in an Act which seems clear enough on its face, but is inconsistent with another provision of the same Act. It may be necessary in such cases to look elsewhere for some way of giving sense to the apparent incompatability.

There is also the possibility, more directly related to the suggestion of clause 19(1)(b)(ii) that the clear meaning of a provision, if applied, could lead to a manifestly absurd result. That is not the sort of thing that happens every day of the week. It is not the sort of thing that has often come before the courts or is likely to come often before the courts, but it is the sort of thing that has arisen in the past, and which can arise again. It is towards that possibility that clause 19(1)(a) is directed.

Perhaps I might go a little beyond the direct question to refer more generally to the provisions of clause 19 of the Bill, as this has been the subject of quite wide ranging earlier comment.

I have already said at an earlier stage that this Bill as a whole, and this clause in particular, are not to be seen as some outrageously radical move, but rather as a measure to bring us somewhat up to date.

There have been two major discussions of this provision in recent times. One led to the report of the Victorian legal and constitutional committee to which I have already referred. I will say no more about that at this stage other than to indicate that that committee, after a very extensive investigation and report, came down in favour of a provision substantially the same as clause 19.

The second exercise was a symposium on statutory interpretation which was held in Canberra on 5 February 1983.

Hon. I. G. Medcalf: That was the first exercise, wasn't it?

Hon. J. M. BERINSON: The first in time. This symposium had a pedigree which I would expect the Leader of th Opposition to regard as respectable in that it was organised by the former Liberal Attorney General, Senator Durack.

Hon. I. G. Medcalf: You are making it very difficult for me.

Hon. J. M. BERINSON: But, what made it more respectable if I may say so, with no disrespect to Senator Durack, were the people who took part in the symposium and the remarkable degree of agreement which these very prominent jurists and lawyers reached on what they recognised as a contentious and arguable issue. None of the contributors was interested in denying that the admission of extrinsic evidence was arguable, that there were points to be said for and against. At the end of the day, however this impressive array of people came down in favour of it. All sorts of reasons were expressed. I will quote two of them, although I am tempted to go much further. One of the quotes I will come to in a moment really goes to the heart of the question we have to address: It is a comment inviting legislators to look away from the form of judicial expression on the use of extrinsic evidence and to look at the facts; that is, at what judges actually do.

When we get the judges standing up and saying what they actually do, what emerges is that they do this: They say they should not look at extrinsic evidence when asked to declare a position on it, but in practice they look at extrinsic evidence. None is shy about saying that he looks at extrinsic evidence.

I do not believe I would be the only practitioner to have discussed these questions, quite unrelated to this Bill, with judges in our own State, and have heard them say—not as though they are giving one a privileged or a State secret—"Well, you know, of course we are not supposed to be looking at the *Hansard*, but of course we all do". Of course they all do. They have probably done so for centuries. They certainly do it now.

One of the undesirable things about having a system which says that one should not do something which it is quite sensible to do and which is in fact done, is that no-one really knows when it is being done. It is then not possible to look at the sources that are impressing the judges from time to time, and argue against them.

Hon. Tom McNeil: It is just as well you are bringing in a professional insurance indemnity.

Hon. J. M. BERINSON: I assure the honourable member that that is a matter of pure coincidence.

Among the contributors to the symposium were Lord Wilberforce; Sir Maurice Byers, QC, who was then the Solicitor General of the Commonwealth; Mr Justice McGarvie of the Supreme Court of Victoria; Justice Sir Anthony Mason of the High Court; and Dr Gavan Griffith, QC, the Solicitor-General of the Commonwealth, all of whom were able to bring, in aid of their general position in favour of a clause such as clause 19, expressions of opinion from other prominent jurists.

Hon. I. G. Medcalf: They were not looking at clause 19, they were looking at the proposition.

Hon. J. M. BERINSON: Quite so. They were looking at the proposition, but I put it to the Committee that the proposition that they were putting is reasonably mirrored in the terms of

clause 19. If there is any respect in which a member believes that clause 19 does not meet the general proposition which was supported by the eminent persons to whom I have referred, I would be interested to consider that. I do not think that is the case.

I do not wish to take this business of quotations too far or I will end up trying to incorporate the symposium in *Hansard*, but there are two passages which I think are particularly instructive for our purposes. The first is by Dr Gavan Griffith, QC, which appears on page 32 and reads as follows—

> Clearly the legitimate use of resource material is governed by the questions which one asks of it. As Murphy J said in *Sillery v. R.* (1981) 35 ALR 227 at pp. 232-5, why not use parliamentary debates as direct evidence of parliamentary intention if this is what clearly is disclosed by reference to the debates? If, as in *Dugan*, reference to the debates furnishes no assistance, then no harm is done.

That is to cover the position where we have the sort of confused discussion the Leader of the Opposition and I had a few minutes ago. To continue—

> Probably this will be the result in most cases where these materials are resorted to. There seems to be no objection to asking the question, as did the Federal Court in the *TCN Channel 9* case (1982) 42 ALR 496, whether the material is cogent evidence of the mischief aimed at.
>
> On another view, the conventional rule that debates should not be cited in argument creates readily appreciable dangers. We know that on occasion both courts and practitioners consult parliamentary debates and other extrinsic material. As Lord Hailsham LC put it:
>
> If they really think the court's practitioners do not read blue books in order to find out what statues mean, they are living in a complete fool's paradise.
>
> *(New Law Journal*, 13 August 1981 at p. 841)
>
> Whether or not they refer to them in judgments, it is unsatisfactory that the judges themselves may read debates as they feel they may be assisted by them. The court also should be assisted by argument as to their use. It is surely better that there be an opportunity for arguments directed to the materiality of references to *Hansard*, Second Reading speeches, explanatory memoranda and the like in the manner accepted by the Federal Court in the *TCN Channel 9* case.

I believe that that is a very fair statement of the position which exists and which in a sense would be regularised by a provision of the type of clause 19. I will refer to one other contribution to the symposium, that of Justice Sir Anthony Mason of the High Court. Among his comments, which I indicate are extracted from a longer statement, are these—

> That there are anomalies in the present law is beyond question . . .
>
> All this indicates that there is now doubt and uncertainty as to the status of the old rule . . .
>
> It is generally felt that this doubt and uncertainty should be set at rest by the Parliament or by the High Court, preferably by the Parliament . . .

It continues—

> However, I should record that it is generally agreed that cautious use should be made of extrinsic materials and that their potential to assist is restricted to cases of ambiguity. Predictably, it is thought that reports on which legislation is based should be legitimate aids. There are perhaps some misgivings about the use of *Hansard* and greater reservations about the use of the old style explanatory memorandum, and the proposed go-go style explanatory memorandum circulated contemporaneously with the Bill. In favour of their use is their relevance. They have the potential to illuminate meaning, even if that potential is realised, as I think it will be, only in rare cases. What the Minister says in his Second Reading speech as to mischief and interpretation and the history of the Bill, as it is amended, or withstands amendment, may prove decisive when the statute is obscure . . .

It continues—

> Recourse to extrinsic materials will better enable a court to protect itself from criticism that its decision is inconsistent with the intention of Parliament as expressed by the Minister in his Second Reading speech. The court will be entitled to refer to the speech in case of ambiguity and express its reasons for concluding, if need be, that the statute cannot bear the interpretation which it is claimed is supported by the Minister's speech.

Those extracts state what I was trying to say earlier in this debate, although they put it better than I have. They do emphasise, as I have tried to do, that what we are dealing with is an approach to the exceptional case and not to the run of the mill case. We are approaching this on the basis

that we can reasonably rely on the courts to be cautious in their use of such material, to restrict its use to proper cases only, and to do so in a way not presently available, which would permit both parties before the court, if appropriate, to express their view on that extrinsic material before the court arrived at a decision on the basis of it.

Despite statements in some quarters—I do not include the comments by the Leader of the Opposition—I do not believe that this clause will change the courts of law and judicial construction, and force a person into poverty while his lawyer takes more time to obtain even more references.

The truth is this is a clause of limited application, but one which has the support of impressive authority and which offers a useful aid in what has always been a difficult area of interpretation and construction.

Hon. I. G. MEDCALF: I am familiar with the symposium held in Canberra and I have followed it carefully. I have had access to the Victorian committee report and I am aware of the various comments of different judges which were quoted by the Attorney, including the quotation from Mr Justice Murphy and others.

I know there is quite a difference of view between judges on this matter. Those judges who had the view—I think Lord Wilberforce was another and I am not sure whether the Attorney quoted him—that one should look at the extrinsic material were discussing a proposition. We are talking about a Bill before the Chamber which is couched in language which has only just been prepared, never tested, and has only been put into law by the Commonwealth Parliament in the last few weeks. Those judges did not have the Bill before them when they made those comments. They were talking about the general proposition and they were saying, as the Attorney has pointed out, that judges look at *Hansard* anyway. It is true that some judges say that, and it is also true that some judges would not say that and would not necessarily look at all material, including Law Reform Commission reports, parliamentary committee reports and so forth.

However, that is not really the main point. The main point is that we are giving to a court the power to decide that the words used by Parliament are manifestly absurd or unreasonable. It will be the court that will decide whether the words are manifestly absurd or unreasonable. The court will say, "Yes, this is the Statute of Parliament as passed and the words are unreasonable".

Lord Justice Denning has indicated, on a number of occasions when Statutes have come before him, that they are unreasonable. He is on record, and is quoted in the same report to which the Attorney referred, that he was not going to wait for Parliament to change the law and that he would change it himself. He has said that the court will change the law because it is unreasonable and, in his opinion, it is manifestly absurd.

Hon. J. M. Berinson: But it was quite often changed back.

Hon. I. G. MEDCALF: He said that it would take too long to decide the real meaning. That is really the most significant point in this exercise—the court will say that the words used by Parliament are unreasonable and they will be interpreted in a different way, bearing in mind the purpose or object of the enactment. The court will say that it will look at all the material that is available, whether it be written or verbal, including the items mentioned in subclause (2), and that it will reach a conclusion as to what Parliament intended and use that meaning instead of the words used.

I do not think that is good because opinions must differ. What the judge says is really only his opinion. It is well known in matters of law that judgments are basically matters of opinion. If a person wants the views of a particular counsel on some subject he will receive an opinion. The court's judgment is simply an opinion and one will obtain different opinions from different judges. It is an obvious statement, but one that has to be repeated from time to time because people do tend to get away from the fact that the law is not an exact science. We may have one judge who thinks something is reasonable and another judge who will say that he thinks it is unreasonable. It is up to the court to consider whether the words are reasonable or unreasonable. That is the crux of this matter and that is the danger in this exercise. The quotations given by the Attorney General were not directed to that specific point. They were directed to the general proposition of looking at *Hansard*, and examining the object of reading certain material outside the legislation. A decision that a provision is unreasonable in this situation is, I believe, one which substitutes a judge for the Parliament and that is going too far.

It is desirable that I should shorten my comments. I had, in fact, dealt only with the first part of the clause, but the Attorney has dealt with other matters contained within it. Therefore, I should proceed by indicating other objections which should be examined in relation to subclause (2). The subclause reads as follows—

> (2) Without limiting the generality of subsection (1), the material that may be considered in accordance with that subsection in

the interpretation of a provision of a written law includes—

(a) all matters not forming part of the written law that are set out in the document containing the text of the written law as printed by the Government Printer;

Is that the intention of Parliament—the matters which do not form part of the written law which happen to be in the document printed by the Government Printer? Subclause (2) continues—

(b) any relevant report of a Royal Commission, Law Reform Commission, committee of inquiry or other similar body that was laid before either House of Parliament before the time when the provision was enacted;

Whether or not Parliament specifically adverted to those reports in the debate apparently irrelevant. It continues—

(c) any relevant report of a committee of Parliament or of either House of Parliament that was made to Parliament or that House of Parliament before the time when the provision was enacted;

I do not object to a report of a committee of the Parliament. It continues—

(d) any treaty or other international agreement that is referred to in the written law;

That does not reflect the intention of Parliament. The treaty may have all sorts of qualifications in relation to that particular jurisdiction. It continues—

(e) any explanatory memorandum relating to the Bill containing the provision, or any other relevant document, that was laid before, or furnished to the members of, either House of Parliament by a Minister before the time when the provision was enacted;

I cannot agree that such documents reflect the intention of Parliament. It continues—

(f) the speech made to a House of Parliament by a Minister on the occasion of the moving of a motion that the Bill containing the provision be read a second time in that House;

This refers to the Minister's second reading speech which reflects, I assume, the Minister's intentions. It continues—

(g) any document (whether or not a document to which a preceding paragraph applies) that is declared by the written law to be a relevant document for the purposes of this section; and

Therefore, anything that is considered to be relevant is available whether it has or has not been examined by the Parliament. It continues—

(h) any relevant material in any official record of proceedings in either House of Parliament.

The question that arises is: When is the relevant material, and what material in the official record is, to be considered? Does one look at all the comments made by the members in the House—members of the Government and the Opposition—or is one selective? What does one do with the material that does not confirm the ordinary meaning of the words or does not provide the meaning which one may be looking for?

Subclause (3) also introduces problems. It is intended to be a saving clause because reference is made to it in subclause (1) and it reads as follows—

> In determining whether consideration should be given to any material in accordance with subsection (1), or in considering the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to—
>
> (a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; and

One cannot quarrel with the obvious intention of subclause (3). It is to avoid prolonging proceedings and to enable people to rely on the ordinary meaning of words, but at what stage does the subclause apply? It may apply only after one has examined all the material. Having examined all the material one may decide that it then applies and the material should be excluded. Do not blame me if that prolongs the proceedings.

Hon. J. M. Berinson: You do not even look at the material if the context is clear enough. You start to look only where you feel the need for something more than what is before you.

Hon. I. G. MEDCALF: If one were intending to dispute the particular meaning of a particular phrase in a Statute, one would be looking at the material, and one would be entitled to go to all this material and other material in order to attempt to show that it had some other meaning. It is not explained at what stage clause 19(3) applies. Does it apply before the proceedings are instituted, or during the course of the proceedings? Is there a pre-trial determination of this issue? Is it possible to have a pre-trial determination to decide whether or not one should have a look at the

material? Will one have the right of appeal if the judge decides not to look at it? These are some of the unanswered questions arising out of this legislation.

While there are many reasons given in these two reports that there are situations in which the intention of Parliament should be more closely examined, it is the method by which this is to be done which has always proved a difficulty. It is a difficulty still, just as it has been when it has been considered on previous occasions.

I do not doubt it has been considered previously. I think the prospect of trying to put into words, concepts such as we have clauses 18 and 19 has proved to be difficult. Some ideas are very difficult to explain in words and to put into a law which does not allow innumerable loopholes and make things more difficult than before. When all is said and done, the object of law reform is to produce a simple, workable solution and not to complicate matters. That object has been overlooked.

This provision is premature. The Attorney at an earlier stage said it was desirable to have the same kind of law on this subject as the Federal Parliament, perhaps because our courts will interpret Federal Statutes as well as State Statutes. In theory that is fine, but we must have a law on which we can rely and which will not complicate proceedings. Here we have one which will increase the cost and the length of proceedings.

The Government is obviously intent on proceeding with this, even though it has not been tested in any way. I am sorry about that. I believe that this is eminently a matter which requires much further careful consideration. The fact that it has been put into law by the Federal Parliament does not convince me one iota. Many mistakes have been made by the Federal Parliament, and I do not think we should copy it merely because the Federal Parliament has it and some think therefore that it must be a good idea, and because perhaps the concept has been endorsed by a few people on certain occasions.

For those reasons I am opposed to the provision. I do not propose to vote against the clause, but I wish to record my opposition. I believe the reasons I have given are valid and that there will necessarily be changes in this law in the future, both by the Federal Parliament and I trust by those other Parliaments which have rather naively followed the Federal Parliament's example.

Hon. J. M. BERINSON: The Leader of the Opposition has made some point of the fact that the symposium to which I referred was talking about a general proposition and not the terms of this Bill. That is true enough. On the other hand I suggested earlier that there is no apparent difference between the terms of this Bill and the sort of proposals that the symposium was supporting. I think that is in fact the position.

I referred earlier to the fact that Bills, in either this form or virtually the same form, have now passed through the Senate in the Commonwealth Parliament and through the Legislative Council in the Victorian Parliament. In both those cases, as is the case in this State, it has not been a question of the "tyranny of the majority" operating. It has been a result of flowing from extensive earlier discussion and consideration of which we have the benefit. I think it is fair to say that the Senate, in particular the Senate committee on legal and constitutional matters, which is a very strong forum, has applied itself on many occasions to a detailed and effective examination of constitutional and legal difficulties.

The fact that the Senate finds itself able to adopt a provision which is I believe identical to clause 19—in any event it does not differ from it in any significant way—is an expression of support which I think should give us rather more confidence in the ability of this clause to work than the Leader of the Opposition is prepared to give it credit for.

The Leader of the Opposition says that there is a risk here; the courts might go astray and say that it is their opinion that counts rather than what Parliament has to say. He referred to Lord Justice Denning, who I think it is fair to say did adopt that sort of approach from time to time.

Hon. I. G. Medcalf: That is quoted in the Victorian report.

Hon. J. M. BERINSON: Lord Denning was an adventurous judge, and he was held in the highest esteem. He is nonetheless a judge who not only has the distinction of pioneering many of the current trends of the law, but also the distinction of having been reversed more often on appeal than any other judge on his bench. So there is a limit to the extent to which judges can go off on gamuts of their own. The system itself ensures safeguards against judges doing that, and it is with no disrespect to Lord Denning that I say that that is what happened to him on very many occasions.

The Leader of the Opposition referred to clause 19(2), which lists the various sorts of extrinsic materials which might be considered. He said that some of that material would be more acceptable in future than others. I agree with that. In fact, again, without going into too much detail by way of quotation from the symposium and the Victorian report, that is agreed by everyone.

One of the points on which they are nearly all agreed is that while it should be open to look at

the *Hansard* record as a whole, nonetheless, it should be accepted that Committee debates will be less useful than the Minister's second reading speech, or the apparently set piece responses by members of the Opposition. That is in the nature of things, and I think we have had some experience of that tonight.

It is a question of the courts applying themselves to a reasonable application of this provision. There is no reason to expect the courts to be less reliable in bringing a commonsense view to bear in a matter like this than on the innumerable other matters which are put to them.

Although not too many members have spoken on this clause, I believe the debate has been fairly extensive. I have tried to cover as best I can the various points raised. I would suggest to the Committee that it would be appropriate now to proceed to vote on clause 19.

Hon. H. W. GAYFER: I rather fear to step into the arena where two worthy gentlemen have been discussing this clause. I must be honest and say that as a layman I rather welcome this clause, particularly subclause (2)(f) which states—

> The speech made to the House of Parliament by a Minister on the occasion of the moving of a motion that the Bill containing the provision be read a second time in that House.

I have always believed that section 66 of the Road Traffic Act is being administered not as was intended by Parliament, but in fact a different interpretation is placed on it by the Police Department in general. I refer to that section which allows police officers to apprehend drivers of motor vehicles for no reason at all. They could be looking for drivers' licences, or even a tail light out—something like that; something really inconsequential. The police officer proceeds to ask the driver to blow into a bag. That, to me, is a very unreasonable course to follow, especially if one remembers that in respect of that provision at the time it was introduced by the Hon. N. E. Baxter, he had this to say in the second reading speech—

> It is now proposed to dispose of the necessity for both grounds of belief and provide that a person may be required to have a preliminary test if a policeman reasonably suspects him of having been in an accident involving personal or property damage or, alternatively, of having committed an offence against the Act or the regulations or, indeed, of merely having driven with alcohol in his body.
>
> Even then, as so widened, the provisions do not amount to random testing since there must be some external factor known to the patrolman at the time of his requiring the preliminary test.

I stop there because these words are virtually the same as those uttered by the Hon. R. J. O'Connor when he introduced the Bill in the Assembly in the first place.

The point I am making is that in my opinion there is no right for anyone in this State to take random breathalyser tests. In this State, so different from other States, there has never been a time in Parliament when any member has voted for random testing. I have certainly never heard the proposition of random testing brought forward to this Chamber.

However, I have seen it in action where motor vehicles have been directed into various bays on the highway in order that the drivers may be tested with a breathalyser. This is done whether or not the driver has been drinking. If that is not random testing, I do not know what is. However, it was stated clearly by the Minister on page 3174 of *Hansard* of 1974—that section has not been amended since—that this was not to be taken as a medium of random testing.

I am aware of a case where this matter was examined closely by a court. Indeed, the judge came down on the side of the plaintiff to the effect that the judge indicated he did not believe the legislation could be interpreted in that way.

Hon. G. C. MacKinnon: He was a pretty worthwhile fellow, wasn't he? He was a reputable citizen.

Hon. H. W. GAYFER: I firmly believe that if the words in the second reading speech of Mr Baxter could have been taken constructively in that court at the time, it could apply in the future that the provisions of the Act do not include random testing. If, indeed, that is the case, the Act will need to be spelt out more clearly. Perhaps the Parliament should consider random testing as it applies in the other States of the Commonwealth. That would be fair enough. If a provision is in an Act which is passed by the Parliament, it should be abided by, but if the interpretation of a Minister introducing a Bill indicates that certain provisions do not apply, I fail to see how anybody can remove an interpretation from an Act which was not meant to be there anyway when it was passed by the Parliament.

In spite of the legal point put forward by the Hon. Ian Medcalf, I welcome the fact that a speech made to the Chamber by a Minister when he moved that the Bill be read a second time, will be allowed to be observed in the courts.

Hon. I. G. MEDCALF: I make it clear that in the comments I made about the decision of Lord

Justice Denning, which was quoted in one of the reports read by the Attorney General, I was not in any way being critical of him. Indeed I have the highest respect for him. I have met him, I have had one or two conversations with him, I have corresponded with him, and I have read many of his writings. I know his methods and they are fairly drastic when it comes to changing the law.

While having that high opinion of Lord Justice Denning, it does not in any way alter my views in respect of the right of a judge to declare unreasonable the words of Parliament and to substitute his own meanings for them. However, I do not propose to proceed further along that line. I have made the point that I wanted to make it clear that, as far as Lord Justice Denning, now retired, is concerned, I am not in any respect being critical of him. Indeed, I have applauded some of his decisions rather than those which have been made in the House of Lords which overruled him on a number of occasions.

I could perhaps add that the procedure of appeal is not always available, and, in many cases, it is not always possible to appeal against the decision of a single judge, or, indeed, some other judicial functionary. In those cases, one will not be able to do anything about it if a judge decides that some word is unreasonable. That will be the end of it and there is no appeal from it. That is one good reason this Parliament should continually espouse the right of appeal, as, indeed, I have endeavoured to do on many occasions, and this is an illustration of its value.

If we intend to give to the court the right to decide that words are unreasonable when another judge might have decided they are reasonable, and there is no right of appeal, we should be aware of the possible consequences of what we are doing. Perhaps my friend, the Hon. Mick Gayfer, might bear in mind that had his constituent been subject to some Statute in which there was no right of appeal, he might have been in a worse situation than that in which he found himself.

Clause put and passed.

Clauses 20 to 76 put and passed.

Clause 77: Repeal—

Hon. J. M. BERINSON: I move an amendment—

> Page 45—Add after subclause (3) the following subclause to stand as subclause (4)—
>
> (4) Notwithstanding subsection (1), section 47(2) of the Interpretation Act 1918 and the Second Schedule to that Act shall continue to apply to any Act to which that section applied immediately before the commencement of this Act.

This amendment seeks to overcome a gap which would otherwise have existed as a result of the repeal of the earlier Act. Earlier today I provided the Leader of the Opposition with an indication of the reasons leading to this amendment. They are rather technical and hardly need elaboration at this point; but I just explain that this does nothing more than preserve the position in the existing Act in an area which it was never intended to change.

Amendment put and passed.

Clause, as amended, put and passed.

Title put and passed.

Bill reported with an amendment.

## ADJOURNMENT OF THE HOUSE

HON. D. K. DANS (South Metropolitan—Leader of the House) [11.09 p.m.]: I move—

That the House do now adjourn.

*Prime Minister: University of Western Australia Rally*

HON. V. J. FERRY (South-West) [11.10 p.m.]: For a few minutes, I will mention a matter that is deserving of comment and sanction. I refer to a front page article in *The West Australian* of Friday 20 April 1984 which showed a photograph reported to have been taken on the university campus where the Prime Minister (Mr Hawke) is watching two competitors drink and run at the university rally. The heading of the article is "Boasting a record" and it reads as follows:

> "I don't want to boast," the Prime Minister, Mr Hawke, said yesterday, "but I have been known to hold a record at this."
>
> Officially starting a beer-skolling relay—combined with a light sprint—at the University of WA, Mr Hawke said that he was a terrible runner, but better at the other.
>
> And, the man who holds the record for drinking a yard of ale in record time at Oxford University was appalled at the size of the paper cups used for yesterday's exercise.
>
> "How piddling small they are," he said.
>
> "In my day a good scholar would have passed them up. These wouldn't even be a thimbleful. Something so small would have been ignored."
>
> At the university last night Mr Hawke received an honorary degree of doctor of letters.

This is a picture of supposedly the most popular Prime Minister of Australia and I am appalled at his public patronage of a so-called sport.

The DEPUTY PRESIDENT (Hon. P. H. Lockyer): Order, please! There is far too much audible conversation in the House.

Hon. V. J. FERRY: This activity can only be described as demeaning. One would have thought that a Prime Minister, especially this Prime Minister, who wants to bring Australia together, would not allow himself to be associated with the promotion of alcohol, especially amongst young people who themselves are would-be leaders in their own community, the University of WA. The Prime Minister, on his own admission, according to the Press reports, appeared to be quite proud of his record as a beer guzzler.

Hon. D. K. Dans: He is in the *Guiness Book of Records.*

Hon. V. J. FERRY: He has admitted that he was a terrible runner but was better at the beer guzzling part of it. One should have regard for the social and health problems, associated with alcohol. It is well known that it is a tremendous social problem and we have the Burke Government in Western Australia spending some $6 million on education against smoking when at the same time the Prime Minister is seemingly promoting beer guzzling. I just wonder where the credibility of the two leaders really lies. Mr Burke is an acknowledged habitual smoker and I wonder whether the $6 million spent will change his habit.

Hon. Mark Nevill: What are your vices?

The DEPUTY PRESIDENT: Order!

Hon. V. J. FERRY: Here we have the Prime Minister of Australia seemingly promoting beer drinking, especially by people in so-called sporting activities. It is very degrading that he should even be associated with that aspect, although obviously he has reformed from his habits of younger days and I give him credit for that.

Hon. Mark Nevill: Did you have a well spent youth?

The DEPUTY PRESIDENT: Order, please!

Hon. V. J. FERRY: The point is that he is the Prime Minister of Australia and he should be setting an example. It is well known that alcohol is the cause of tremendous misery.

Hon. D. K. Dans: It kills worms if you drop them into a glass of it.

Hon. V. J. FERRY: Our Prime Minister should be condemned for his lack of concern about this question.

Question put and passed.

*House adjourned at 11.13 p.m.*

## QUESTIONS ON NOTICE

### POLICE: CRIME

*Organised: Tapes*

947. Hon. I. G. MEDCALF, to the Attorney General representing the Minister for Police and Emergency Services:

(1) Has the Minister read the reports of organised crime in Australia in *The Age* newspaper of 2, 3, and 4 February last?

(2) Is he aware that allegations are made that—

(a) tapes placed by police over seven years have revealed that Sydney-based crime chiefs had close links with illegal activities in other States and Territories;

(b) intelligence-gathering police in every State and Territory have reported on the activities of a particular crime figure; and

(c) in Perth, the crime figure supplied girls to policemen, then filmed them in compromising situations?

(3) What steps if any have been taken to request copies of the tapes of transcripts?

(4) If not, why not?

(5) Are any of the allegations being actively inquired into by WA State authorities?

(6) If not, why not?

Hon. J. M. BERINSON replied:

(1) I have not personally read the reports but I understand that the Commissioner of Police is aware of the general tenor of the allegations referred to in question (2).

(2) (a) See answer to question (1);

(b) the identity of the crime figure mentioned in *The Age* is not known, but all Police Forces exchange intelligence about criminals as a normal part of their function;

(c) see answer to question (1).

(3) The Commissioner of Police has not requested copies of the tapes or transcripts.

(4) The Commissioner of Police relies on intelligence from the Victorian police who are monitoring the matter and advise that no action is required by the Western Australian police.

(5) None of the allegations is being actively inquired into by Western Australian State authorities. I am also advised by the Commissioner of Police that there is no confirmed instance of attempts to corrupt police officers with the type of tactic referred to.

(6) See answer to question (4).

### PASTORAL INDUSTRY

*Leases: Elvire and Koongie Park*

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

Further to his answer to my question 910 of Wednesday, 11 April 1984, will the Minister advise if it is necessary for the Minister for Lands and Surveys to approve the transfer of any pastoral lease, and if so, has the Aboriginal Development Commission requested his approval for the transfer of Koongie Park and Elvire pastoral leases?

Hon. D. K. DANS replied:

The transfer of a pastoral lease is subject to the provisions of sections 115 and 115A of the Land Act 1933. Representations have recently been made on behalf of the Aboriginal Development Commission for the purchase of Koongie Park and Elvire Stations.

### COURTS

*Legal Information Retrieval System*

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

(1) What arrangements have been made for setting up a Western Australian data base for a computerised legal information retrieval system, and to what extent has the State Government agreed to contribute to the cost thereof?

(2) What progress may be expected in this area?

Hon. J. M. BERINSON replied:

(1) Preliminary work has been carried out by the Justice Information Systems Support Centre. This will continue and additional funds will be sought in the 1984-85 Budget.

The Under Secretary for Law and the Government Printer have also been involved in discussions regarding the

possibility of reprinted Statutes being maintained on the Government print data base and subsequently incorporated into a legal data base.

The Under Secretary for Law is also involved in meetings with various officers to co-ordinate development of these proposals.

(2) Progress will depend upon experience in New South Wales and Victoria.

## EDUCATION: STUDENTS

*Isolated: Financial Assistance*

966. Hon. D. J. WORDSWORTH, to the Minister for Planning representing the Minister for Education:

(1) What financial support is currently available for families who through their isolation have to send their children to a school far away enough to necessitate the use of boarding or other facilities for accommodation?

(2) Is the Government considering the reduction of this support?

Hon. PETER DOWDING replied:

(1) Assistance is available from the Commonwealth Department of Education and Youth Affairs as follows—

Up to $2 572 a year for senior secondary students, up to $2 282 a year for other secondary students, and up to $2 067 a year for a primary pupil—including a basic $927 free of means test in each case.

In addition, the State Education Department pays a supplementary allowance of $250 per annum to those students eligible for only the basic $927, to ensure a minimum payment of $1 177 from both State and Commonwealth sources.

(2) No.

## GAMBLING: CASINO

*Burswood Island: Advice to Lord Mayor*

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

I refer to his answer to me on 17 April where it was stated that the Premier advised the Lord Mayor that the Government intended to proceed with the Burswood Island site for a casino, and ask—

It is correct that the Premier gave the Lord Mayor one hour's notice of the Government's intention before announcing it?

Hon. D. K. DANS replied:

The Government's intention to consult with various parties was affected by the premature public knowledge about this matter. The exact time referred to is unknown.

On Wednesday, 18 April, he had a lengthy, meaningful discussion with the Lord Mayor.

## PORT

*Fremantle: Container Berth*

968. Hon. TOM KNIGHT, to the Minister for Planning representing the Minister for Transport:

(1) Is it correct that the Government intends to establish a new container berth south of Fremantle?

(2) If "No", is the Government aware of any move for the Fremantle Port Authority to establish a container berth south of Fremantle?

Hon. PETER DOWDING replied:

(1) and (2) Long-term future port development plans include a proposal for the installation of container facilities south of Fremantle.