

# Legislative Assembly

Wednesday, the 22nd September, 1965

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The SPEAKER (Mr. Hearman) took the Chair at 4.30 p.m., and read prayers.

## QUESTIONS (14): ON NOTICE

### POOR PERSONS' LEGAL AID

*Doris Moates: Application*

- Mr. GRAHAM asked the Minister representing the Minister for Justice:
  - Has an application for poor persons' legal assistance been received from Doris Moates; and, if so, when?
  - Has a decision been made; and, if so, what?
  - Has the applicant been advised; and, if so, when?
  - If not, why not?

Mr. COURT replied:

- Yes. The date of the application was the 2nd September, 1965.
- Yes. It has been decided not to grant legal aid.
- Yes. A letter was forwarded to Mrs. Moates today.
- Answered by (3).

### HOUSING: SINGLE UNITS

*Establishment in Fremantle Area*

- Mr. FLETCHER asked the Minister for Housing:
  - Is he aware—
    - of an urgent demand for single-unit housing accommodation in the Fremantle area;
    - that there are no such units closer than the Swanbourne area and that these are totally inadequate to demand;
    - that even assuming a Carlisle unit when built was available to a Fremantle applicant, there would be a natural reluctance to leave friends and relatives and familiar surroundings, often of a lifetime;
    - that the descendants of many pioneer families and other aged persons, who have contributed, and whose descendants are still contributing, so much to the State, are among those in need of such accommodation?

- (2) Is there any prospect of finance being available this or next financial year for the purpose of establishing single-unit accommodation in or near Fremantle, the second city of this State?

Mr. O'NEIL replied:

- (1) (a) Of the 1,461 applications received from elderly single women for metropolitan accommodation, 91 are from persons residing in the Fremantle districts.  
 (b) Yes.  
 (c) Yes; and accordingly negotiations have commenced for the acquisition of sites for such social service accommodation in the Fremantle districts.  
 (d) Yes.  
 (2) Not this financial year, but the position will be reviewed on completion of the Carlisle project in 1966.

#### **MINES REGULATION ACT BREACHES: PROSECUTIONS BY DEPARTMENT**

##### *Number*

3. Mr. MOIR asked the Minister representing the Minister for Mines:  
 (1) Will he state how many prosecutions have been taken by the department over the last five years for breaches of the Mines Regulation Act against—  
 (a) mine employees;  
 (b) mine employers?

##### *Penalties Imposed*

- (2) How many prosecutions were successful and what were the individual penalties imposed?

Mr. BOVELL replied:

- (1) 17 employees were prosecuted—one twice. No employers were prosecuted.  
 (2) All prosecutions were successful except one which was withdrawn. Penalties inflicted were:  
 £10 in 12 cases.  
 £5 in 2 cases.  
 £2 in 2 cases.  
 £1 in 1 case.

#### **MINES REGULATION ACT AND MINE WORKERS' RELIEF ACT**

##### *Compliance with Provisions: Exemptions*

4. Mr. MOIR asked the Minister representing the Minister for Mines:  
 (1) Are there any metalliferous mining companies operating in the State that are not required to

comply with the regulations of the Mines Regulation Act which provides that any and every employee on a mine must be in possession of a health certificate issued by the Health Laboratory?

- (2) Are there any mining companies which are not required to comply with the provisions of section 9 of the Mine Workers' Relief Act?  
 (3) If so, will he state which companies and the reason for non-compliance?

Mr. BOVELL replied:

- (1) No.  
 (2) No.  
 (3) Answered by (2).  
 5. Mr. MOIR asked the Minister representing the Minister for Mines:

- (1) Has any mining company been granted exemption from all or any of the provisions of the Mines Regulation Act?  
 (2) If exemptions have been granted, will he state which company or companies this applies to?  
 (3) What are the nature of the exemptions?  
 (4) What is the reason for the exemptions?

Mr. BOVELL replied:

- (1) No.  
 (2) to (4) Answered by (1).

#### **ROADS IN DUNDAS SHIRE**

##### *Allocations by Main Roads Department*

6. Mr. MOIR asked the Minister for Works:  
 (1) Will he state what amount of money has been allocated for road work by the Main Roads Department in the area of the Dundas Shire Council?

##### *Nature of Work to be Carried Out*

- (2) Will he detail the nature of the work and on what roads it will be carried out?

##### *Coolgardie-Esperance Road: Crest Widening*

- (3) How much crest widening remains to be carried out on the Coolgardie-Esperance road?

Mr. ROSS HUTCHINSON replied:

- (1) The amount is £691,890.

- (2) The work to be undertaken is as follows:—

	£
(a) Coolgardie-Esperance Road: Seal 1 mile (20 ft. wide) .....	2,000
(b) Eyre Highway: Construct and prime 59 miles (20 ft. wide) .....	425,000
Construct 45 miles .....	190,000
Maintenance Improvements .....	12,500
Water Conservation .....	15,000
Motor Traffic Passes .....	3,000
Sealing 15.1 miles (20 ft. wide) .....	28,000
Maintenance .....	4,000
(c) Sunrise Hill Road: Construction .....	1,000
(d) Circle Valley East Road: Construction ..	1,000
(e) Circle Valley West Road: Construction ..	1,000
(f) Norseman Aerodrome Road: Construction ..	500
(g) Kumarl-Lake King Road: Construction ..	2,000
(h) Balladonia-Israelite Bay Road: Improvements .....	750
(i) New Land Settlement Areas—Salmon Gums East Area: Access Roads .....	2,000
(j) General Allocation: (Not yet allocated) ..	3,500
(k) School Bus Routes: Maintenance .....	640
	<hr/>
	£691,890

- (3) After completion of the works for which funds are at present available there will remain seven crests in the Coolgardie Shire, and a number of crests totalling about two miles in the Esperance Shire.

#### MITCHELL FREEWAY: LAND ACQUISITION

*Number Acquired by Negotiation, Owners, and Sums Paid*

7. Mr. TOMS asked the Minister representing the Minister for Town Planning:

- (1) How many properties have been acquired by negotiation for the Mitchell Freeway?
- (2) Who were the owners of the said property?
- (3) What was the amount paid to each of the property owners?

*Total Amount Paid*

- (4) What is the total amount paid, for acquisition of land, etc., so far, for the Mitchell Freeway?

Mr. LEWIS replied:

The answers refer to properties acquired by negotiation for the Mitchell Freeway between Aberdeen Street and the South West Interchange.

(1) 35.

(2) Owners of Properties—

William Henry Moore.  
J. H. Moullin & Co. Pty. Ltd.  
Bunning Bros. Pty. Ltd.  
Rosenstamms Pty. Ltd.  
Richfield Tobacco Co. Ltd.  
Mortlock Bros. Ltd.  
Est. S. O'Neill (decd.) G. M. O'Neill, J. O'Neill & J. Crowe.  
Swan Brewery.  
C. E. Moseley (decd.).  
D. J. Chipper & Sons.  
Mortlock Bros.  
Mortlock Bros.  
F. J. Dorrington.  
F. A. Aurisch.  
Est. J. C. McCleery.  
Est. J. C. McCleery.  
H. A. Doust.  
H. M. & A. M. Stewart.  
Est. of Mrs Somerset.  
E. Brinsden.  
J. K. Anderson.  
R. A. Winslade.  
W. Mansfield Pty. Ltd.  
I. E. R. Marsh.  
C. H. & H. M. Hoare.  
R. J. C. Green & P. D. M. Birmingham.  
S. G. Hart.  
E. J. & H. M. Negus & A. T. & L. L. Troy.  
McPhersons Ltd. (part payment).  
Chitibin Pty. Ltd.  
Est. F. D. Sewell.  
First Church of Christ Scientist.  
H. B. Brady.  
E. Jacques.  
Acorn Syndicate.

- (3) This information will be made available in my office to the honourable member.

- (4) £1,446,769, including properties resumed.

#### SUPREME COURT WRITS

*Number in Three-year Period*

8. Mr. DURACK asked the Minister representing the Minister for Justice:

- (1) How many writs were issued in the Supreme Court of Western Australia in the years—  
1962;  
1963;  
1964?

*Negligent Driving Cases*

- (2) How many of these writs were for damages for negligent driving of a motor vehicle?
- (3) In the years 1962, 1963, and 1964—
  - (a) how many actions were heard and determined by a judge;
  - (b) how many of these actions were for damages for negligent driving of a motor vehicle;
  - (c) how many actions for negligent driving were for assessment of damages only?

Mr. COURT replied:

- (1) to (3) A considerable amount of research will be necessary to extract the information from the Supreme Court records. It will be obtained and supplied to the honourable member at the earliest possible date.

**HIGH SCHOOL AT EDEN HILL***Selection of Name*

9. Mr. TOMS asked the Minister for Education:
  - (1) Is he aware that the proposed Eden Hill high school is in the Hampton Park area?
  - (2) As Eden Hill is in the Bassendean Shire Council area and Hampton Park in the Bayswater Shire Council area, will he take steps to see that an appropriate name is given to the new high school?

Mr. LEWIS replied:

- (1) Yes.
  - (2) Any suggestion made by the local authority, or other organisation, will be carefully considered.
10. *This question was postponed.*

**RECEPTION HOMES AND "C"-CLASS HOSPITALS***Minimum Site Area: Recommendations in Stephenson Report*

11. Mr. GRAYDEN asked the Minister representing the Minister for Town Planning:
  - (1) Did the Professor Stephenson report contain any recommendation in respect of suggested minimum site areas for the establishment of reception homes, "C"-class hospitals, and the like?
  - (2) If so, what were his recommendations?
  - (3) Does the Town Planning Department agree with such recommendations?

Mr. LEWIS replied:

- (1) No.
- (2) Answered by (1).
- (3) Answered by (1).

**BUS BAYS***Provision: Main Roads Department Assistance*

12. Mr. DAVIES asked the Minister for Works:

Does the Main Roads Department assist in providing "bus bays" either—

- (a) by providing finance to local authorities; or
- (b) by carrying out the work itself?

Mr. ROSS HUTCHINSON replied:

Although the Main Roads Department does not provide direct financial assistance to local authorities, it has constructed a number of bus bays on some of the principal roads in the metropolitan area.

**TRAFFIC ROTARY***Establishment at Welshpool Road-Albany Highway-Shepperton Road Junction*

13. Mr. JAMIESON asked the Minister for Works:

- (1) When is it anticipated that some action will be taken to construct the proposed traffic rotary at the junction of Welshpool Road, Albany Highway, Shepperton Road?
- (2) Has all land required for this rotary now been acquired?
- (3) Is he now in a position to provide a plan of the proposed rotary?

Mr. ROSS HUTCHINSON replied:

- (1) The construction of a rotary at this junction is in abeyance pending a comprehensive examination of the major road system serving Victoria Park and Welshpool.
- (2) Until the further examination has been completed a definition of land requirements is not possible.
- (3) Answered by (1).

**ARTIFICIAL INSEMINATION SERVICE***Extension to Walpole, Nornalup, and Denmark Areas*

14. Mr. ROWBERRY asked the Minister for Agriculture:

- (1) What circumstances are preventing the extension of artificial insemination to the Walpole, Nornalup, and Denmark areas?
- (2) What steps have been taken to overcome any circumstances preventing this extension to these districts?
- (3) When can the dairy farmers in the above districts expect the service for their dairy herds?

Mr. LEWIS (for Mr. Nalder) replied:

- (1) The distance of these districts from the bull centre at Wokalup and insufficient numbers of trained staff would make service costly and inefficient.
- (2) and (3) Changes in techniques are being considered which may enable an efficient and economic service to be provided.

#### **BILLS (4): THIRD READING**

##### **1. Rural and Industries Bank Act Amendment Bill.**

Bill read a third time, on motion by Mr. Bovell (Minister for Lands), and transmitted to the Council.

##### **2. Laporte Industrial Factory Agreement Act Amendment Bill.**

Bill read a third time, on motion by Mr. Court (Minister for Industrial Development), and transmitted to the Council.

##### **3. Sale of Human Blood Act Amendment Bill.**

Bill read a third time, on motion by Mr. Ross Hutchinson (Minister for Works), and passed.

##### **4. State Tender Board Bill.**

Bill read a third time, on motion by Mr. Brand (Treasurer), and transmitted to the Council.

#### **WORKERS' COMPENSATION ACT AMENDMENT BILL**

##### *Report*

Report of Committee adopted.

#### **ABORIGINAL BABY'S DEATH: NON-PROSECUTION OF DR. WINROW**

##### *Tabling of Papers—Motion*

MR. HAWKE (Northam—Leader of the Opposition) [4.44 p.m.]: I move—

That all papers relating to the decision by the Minister for Justice in refusing to authorise an indictment against Dr. A. Winrow following the finding by Coroner P. V. Smith at Gnowangerup in connection with his investigation into the death of a native child, be laid upon the Table of the House.

On Friday, the 23rd July of this year, at Gnowangerup, the coroner (Mr. P. V. Smith), who had investigated the death of a baby, Jeanette Anne Roberts, held that Dr. Winrow had been careless, had failed to treat the child in the manner laid down by the Princess Margaret Hospital, and had failed to show the care and skill towards a patient that could reasonably be required of a doctor. He committed the doctor for trial in Albany in the following month.

In *The West Australian* newspaper of the 10th September, 1965, there is a published statement which is headed—

##### **Doctor Will Not Have to Stand Trial.**

The statement includes the decision made by the Minister for Justice along the lines I have just mentioned; and it also gives some, if not all, of the reasons advanced by the Minister in support of his decision. I will quote extracts from the statement which appear to me to be the more important. The first reads as follows:—

Justice Minister Griffith said yesterday that he had decided not to file an indictment against Dr. Winrow after he had studied the recommendations of several officers of the Crown Law Department.

He went on to state—

The Coroner had relied on the evidence of Princess Margaret Hospital medical superintendent, Dr. R. Godfrey that the child on admission to hospital, had severe dehydration and gastroenteritis. But Dr. Godfrey had not seen the child or questioned those who had. He had relied on the accuracy and completeness of hospital records and had made certain assumptions which were not warranted by the evidence.

That is the end of that extract. Another extract reads—

Mr. Griffith stated that in the opinion of Public Health Commissioner Davidson the hospital records might not have been complete.

On that last point I would like to quote from an article published in *The West Australian* newspaper bearing the date, the 21st September, 1965. This article is headed—

##### **Dr. Winrow In Perth For Medical Care.**

The part of the statement which I wish to quote reads—

Mr. MacKinnon—

And this is Health Minister MacKinnon—

—yesterday received a report from the Medical Department's assistant principal medical officer, Dr. John Rowe, and principal matron P. F. Lee, who went to Gnowangerup on Friday to confer with the local hospital board and inquire into the aspects of the hospital administration. Mr. MacKinnon said the two officers had inspected old and current records at the hospital and had found them satisfactory.

That statement completely rules out one of the major reasons advanced by the Minister in his statement in justification of his decision not to file an indictment in this

case against the doctor. Later in his statement, the Minister for Justice had the following to say:—

Judicial authorities maintained that before a medical practitioner should be charged with manslaughter arising from neglect, his negligence should be gross or culpable and not mere negligence.

All I want to say about that at this stage is that I would be interested to know what "mere negligence" is, especially in this instance in view of the words which Coroner Smith used when he delivered his findings in the case.

On Saturday, the 11th September, 1965, *The West Australian* newspaper published a leading article headed—

#### Questions Raised By The Winrow Case.

The first sentence reads—

Justice Minister Griffith's reasons for stopping the manslaughter charge against Dr. Alec Winrow are disquieting.

Another extract from the leading article is—

On private information from Crown Law officers and the Public Health Commissioner, Dr. Davidson, the Minister has discounted Dr. Godfrey's evidence.

Dr. Davidson's opinions should have been given to the coroner to be weighed with the other evidence. This would have avoided the situation in which one doctor's evidence, given publicly in court on a subject in which he is a specialist, has been set aside by another doctor's evidence given privately to a minister.

I might break in here to say I understand from replies given to questions asked in this Parliament since the date of this leading article that Dr. Davidson's views or opinions were given verbally either to the Minister, or through some other person to the Minister. So there is, indeed, a great deal of strength in the claim by *The West Australian* that Dr. Godfrey, who is the Superintendent of Princess Margaret Hospital, appeared before the coroner as a witness, gave expert evidence in the case, yet his findings were brushed aside by the Minister; while evidence given either firsthand verbally to him, or secondhand through another person, relating to Dr. Davidson's opinions, is accepted in preference to the evidence given by Dr. Godfrey.

A further extract from the leading article in *The West Australian* is as follows:—

Though he rejects Dr. Godfrey's opinion, Dr. Davidson has brought into the question the Gnowangerup Hospital's methods, saying that its records might not have been complete. This demands further investigation.

It is strange that any Minister of the Crown should accept as having any value at all an opinion or view from an officer of the Public Health Department—no matter how highly that officer might be placed—when that officer merely said the records of the hospital might not have been complete.

As I have shown in the quotations taken from *The West Australian* in the statement issued publicly by the Minister for Health (Mr. MacKinnon) the investigation of the hospital's records which he had authorised, and which was carried out by officers of the Public Health Department, disclosed that they were complete. Therefore the opinion of Dr. Davidson, at least on that point, becomes worthless, and any value which the Minister placed upon the view of Dr. Davidson also becomes worthless.

In the *Sunday Times* of the 12th September the leading article is headed, "The Winrow Case." One extract is as follows:—

Only a jury in an open court should have decided whether Dr. Winrow was guilty or innocent. Then, if the jury had found him not guilty, he would have been cleared completely.

Other parts of that leading article are—

But the Minister's decision, reached on evidence and opinions given privately, puts the whole affair in a highly unsatisfactory light.

For this reason it is grossly unfair to those concerned in the case—particularly to Dr. Winrow.

It is unfair to the principal witness, Dr. Godfrey, of Princess Margaret Hospital. And it is unfair to the Coroner.

On the evidence before him, but not produced at the inquest, the Minister decided that the doctor should not be tried.

If the evidence (and opinions) on which the Minister seems to have relied heavily was available, why was it not given at the inquest?

Then in *The West Australian* of the 15th September there is published a letter from the Medical Director of the Princess Margaret Hospital, Dr. Robert Godfrey. I do not know whether the Premier, the Minister for Justice, or any other Minister were surprised when they read this letter in the newspaper. For my own part I thought it was a certainty that Dr. Godfrey would not only be thoroughly justified in defending himself publicly against the criticism of the Minister, but that he would be certain to do so.

Dr. Godfrey had some very interesting and convincing things to say in the letter which was published under his name on the date I mentioned. I quote one part of it—

In *The West Australian* on Friday there appeared a report attributed to the Minister for Justice which requires rebuttal.

I imagine Dr. Godfrey would have been surprised and shocked almost beyond measure to find the Minister, in trying to justify his decision not to allow proceedings to go ahead against Dr. Winrow, had indulged in what could be described as very strong criticism of Dr. Godfrey. I quote another part of Dr. Godfrey's letter—

At the request of the coroner I have studied the file of the case and prepared a statement which I read when I attended the inquest as an expert witness.

In this report I said that I believed the baby died of dehydration secondary to gastro-enteritis. My conclusions were based on the evidence of the hospital record which was studied because it was an objective account of the baby's illness and contained observations made at the time by those caring for the child.

Some of the other points contained in Dr. Godfrey's letter appear to me to be a complete reply to the reasons or excuses put up by the Minister to the public in attempting to justify his decision not to allow any further proceedings to take place against Dr. Winrow. I quote further from Dr. Godfrey's letter—

Dr. Winrow performed the post-mortem after the death of the baby and his finding was "dehydration and neglect." Dr. Christie later repeated the examination and his finding was "probable suprarenal gland failure due to dehydration due to infective diarrhoea."

Infective diarrhoea is gastro-enteritis.

My opinion, far from being unwarranted, was objective and supported by other evidence and was one from which I believe no doctor familiar with the care of sick children could differ.

That is a very strong final statement by Dr. Godfrey in connection with the matter. It is also a very challenging statement.

It is most significant that, from the time Dr. Godfrey's letter was published in *The West Australian* up until now, neither the Minister nor anyone else has tried to undermine the case as presented by Dr. Godfrey to the public of Western Australia. In fact, the Minister for Justice, either on his own decision or on advice maybe from the Premier or some other of his ministerial colleagues, has gone into a hush-hush situation. He has nothing more to say. He makes no further attempt to try to justify the decision which he had made originally; and I will have more to say about that a bit later on.

Dr. Henn: Are you going to read out Dr. Laurie's report?

Mr. HAWKE: I have not Dr. Laurie's report.

Dr. Henn: No.

Mr. HAWKE: If the member for Wembley has it, I am sure Ministers will be very interested to hear its contents.

Mr. Moir: And members.

Mr. HAWKE: On the 14th September I asked the Premier three questions in connection with the decision of the Minister for Justice in this case. The first question asked was whether it was a fact that the statement published in *The West Australian* in the name of the Minister was factual. The Premier replied that naturally, in substance, it was. The second question was—

(2) If so, does the Government as such agree with—

(a) the Minister's action;

(b) the serious reflection cast by the Minister in his statement against the coroner concerned (Mr. P. V. Smith) and the Medical Superintendent of the Princess Margaret Hospital (Dr. R. Godfrey)?

The Premier's reply was—

(2) The Criminal Code places the responsibility for decisions of this kind on the Attorney-General or the Minister for Justice, and the Government, as such, has not considered the matter. The statement made by the Minister was not intended to reflect against the coroner or the Medical Superintendent of the Princess Margaret Hospital.

Taking the second part of the answer first, one would be thoroughly justified in asking: What was the Minister's statement as applied to the coroner and Dr. Godfrey supposed to do if it was not intended to reflect upon them? In fact it reflected upon both of them most seriously. Whether the Minister had any deliberate intention of reflecting upon them in any way or as seriously as he did, I am not in a position absolutely to say.

If he had no intention of reflecting upon them, then he must have been very desperate to find excuses to justify the decision he had made in the case. No Minister in the situation in which the Minister for Justice found himself when he decided there were to be no further proceedings against the doctor concerned, would have reflected upon the coroner and upon Dr. Godfrey unless that Minister felt there was a desperate need to try to bolster up his decision with any means available.

The first part of the answer to the second question—"The Criminal Code places the responsibility for decisions of this kind on the Attorney-General or the Minister for Justice, and the Government, as such, has not considered the matter"—is an

answer which I think is strange in all the circumstances. I am not saying it is not the correct answer in accordance with the facts. However, it surprises me to a very great degree that any Minister for Justice, in a case as serious as this one, would make a decision not to allow the processes of the law to operate, without consulting the Premier of the State, if not all of his Cabinet colleagues.

Surely it is a decision of very great importance for a Minister to override the finding of a coroner, and especially in this case where the evidence as given to the coroner seemed overwhelmingly to justify the coroner in the findings he made! The third question on that day to the Premier was—

Will he place upon the Table of the House all relevant papers?

The Premier's reply was "No." It was that answer which, of course, led to the situation which we have in this House today in the motion I have moved asking the House to decide to have the papers tabled. I think it is obvious there would have been no refusal to table these papers had they provided even reasonable justification for the decision the Minister made.

In view of all the criticism which has developed against the Minister in newspapers which normally support his side in politics, I am certain the Premier and his colleagues would have been very anxious to table these papers if the tabling of them could have convinced the public that the decision made by the Minister was even reasonably justified. The fact that the Government refused to table these papers indicates clearly that the papers, upon impartial study, would not justify the decision the Minister made in the case.

Ministers of the Government are not even prepared to agree publicly with the Minister's decision. Most likely they privately disagree with it. However, their official attitude to the public is: "We neither agree nor disagree with the decision made by the Minister". They seem to take refuge in the purely legal situation.

Mr. Bovell: Where do you get that idea?

Mr. HAWKE: The purely legal situation gives full authority to the Minister to decide whether an indictment is to be filed or not to be filed in a situation of this kind.

Mr. Bovell: He does not seem to be able to hear.

Mr. HAWKE: The Minister for Lands seems to be anxious to indicate publicly his attitude.

Mr. Bovell: I agree with the Minister.

Mr. HAWKE: Yes. I thought the Minister would. I was almost certain he would be one who would agree with the Minister, no matter how wrong the Minister might be. Perhaps the Minister for Lands might tell us why he agrees.

Mr. W. Hegney: Don't tax his capacity.

Mr. Bovell: Because he did the right thing.

Mr. HAWKE: We cannot help feeling affectionately disposed towards the Minister for Lands—

Mr. Bovell: Don't you embarrass me! Go ahead with your attack!

Mr. HAWKE: —because he has that marvellous facility of over-simplifying things to such an extent that we cannot disagree with him strongly. However, he has told the public that he agrees with the Minister for Justice in the decision the Minister made because he thinks the Minister was right in making that decision. I would hazard a guess—and I think it is much more than a guess—that the Minister for Lands has not seen the papers.

Mr. Graham: You would be right!

Mr. Toms: It would not make much difference if he had!

Mr. Bovell: I have enough information to know.

Mr. HAWKE: The Minister has not even studied the case. I would make that prediction.

Mr. Bovell: I am afraid you are a little off beam.

Mr. HAWKE: I might be a little off. I will compromise with the Minister to the extent of saying that he might have studied the case to a small extent; and I am sure before he even started to study it he felt the Minister for Justice was right in making the decision. In other words, he made his decision first and then found something in his study of the case somewhere to support his preconceived idea.

In *The West Australian* of the 17th September there is another leading article. I emphasise again that the newspapers have been very strongly critical of the decision made by the Minister in this case, and the newspapers to which I have referred do not normally criticise—let alone strongly criticise—Ministers of this Government, unless there are very strong grounds for doing it. This leading article is headed "Native Baby Case has Unsatisfactory End." I quote an extract—

the Government made a mistake in not allowing the case to be tested publicly.

Another extract—

Mr. Griffith went further than the purely legal context: he enlarged the inquiry by getting a new medical opinion from Public Health Commissioner Davidson and using it to discount expert testimony given at the inquest. Dr. Davidson is entitled to his opinion about the evidence of Princess Margaret Hospital medical director Dr. Godfrey. But Dr. Godfrey

is equally entitled to defend his views in open court, and Mr. Griffith denied him an opportunity.

A final extract—

in the special circumstances it was an ill-considered decision to halt court proceedings.

With that view as expressed in that leading article I most certainly agree.

We all know, or we should all know, that in the community there is always a thought and a feeling—sometimes with justification and sometimes without—that the more highly placed a person is in the community the better chance he has of getting preferential treatment—the better chance he has of embracing justice in any trouble into which he gets. The decision of the Minister not to allow proceedings to go on in this case has, of course, stirred up that thought and that feeling, and intensified both.

Mr. Ross Hutchinson: You would not subscribe to that feeling?

Mr. HAWKE: I would not subscribe to it; but nevertheless, as the Minister for Works would know, it is a thought and feeling in the community. When a decision of this kind is made the thought and feeling are both very greatly stirred up and extended further through the community.

I am as certain as I can be that it would have been far better from everyone's point of view for this case to have been allowed to take its normal course. It would have been better, certainly, for the Minister; and I think it would have been better for Dr. Winrow. I have as much sympathy as anyone else for this man. We know that this is not the only trouble in which he has found himself in recent times and, naturally enough, we all feel sympathetically disposed towards any person who finds himself in such serious trouble, no matter how guilty he might be.

As things stand in connection with this case, no-one will ever know for sure whether the doctor would have been found guilty or otherwise. Because of the attitude of the Government in refusing to table the papers, nobody will ever know for certain whether the Minister had anywhere near the justification for the decision he made. The Government has decided that the public is not entitled to receive all the information which is available in connection with this matter. The Premier and his colleagues have decided that the papers in the Crown Law Department and those in the Health Department, and maybe those in the Native Welfare Department, which contain—and must contain—a great deal of information, are to be kept secret.

As I mentioned earlier, the Minister has refused to accept the challenge issued to him indirectly by Dr. Godfrey. Therefore

the public would be fully entitled to believe that the evidence and the subsequent statement by Dr. Godfrey in the newspaper are reliable, expertly based, and therefore convincing. Surely we are not to expect members of the public to accept the say-so of the Minister based on some verbal say-so from Dr. Davidson to the Minister directly, or through some other channel, as against publicly declared statements by Dr. Godfrey. Dr. Godfrey is prepared to stand up to public criticism. He is prepared to have analysed statements made in public.

Neither the Minister, nor Dr. Davidson—through his Minister—came forward to challenge the very forthright stand which Dr. Godfrey has taken in the case. I know that on occasions there are good reasons why papers and files should not be made public. However, always—or nearly always—in such instances the Government of the day has offered the Leader of the Opposition, or some other member of the Opposition who is anxious to have the papers tabled, an opportunity of perusing them on a confidential basis. Not even that offer has been made on this occasion.

Therefore the newspapers and the members of the public and the members of the Opposition are entitled to believe that the Minister unfortunately in this case made a decision which cannot be justified. I am not saying that any Minister is infallible; that he could go on year after year making hundreds of decisions with not one being badly based; not one of them being worked out on wrong conclusions. There is always the possibility that a mistake will be made by a Minister; because, after all is said and done, Ministers are human.

In a case of this kind which has created such great public interest, I think the administration of the law has, to some extent, been brought into question. It has been well said and quoted many times, in this Parliament, and in most Parliaments of the world, that not only is it unnecessary that justice shall be done but it is also necessary that it shall appear to have been done. The reason why it is important that justice shall appear to have been done is to maintain and further build up, if necessary, the confidence of the citizens in the administration of the law. I am afraid the confidence of the people of Western Australia in the administration of the law in Western Australia, as a result of the Minister's decision in this case, has been weakened to some substantial extent which, of course, if it be absolutely true in fact is most unfortunate.

The Premier and his ministerial colleagues have refused to table the papers and the responsibility now falls on the shoulders of every member of this Parliament to decide whether, in the very serious

circumstances of the whole case, the papers should, in fact, be tabled as a result of a majority vote of members in this House.

**MR. BRAND** (Greenough—Premier) [5.21 p.m.]: It seems that from time to time we in this House find ourselves discussing a motion of this kind and sitting in judgment on matters which are very human and, indeed, very trying. There have been other motions of a similar nature discussed; and because of the decisions that have been made previously, I was disappointed to see this motion come forward at this point of time: not because the Government has to answer a case, or has to answer anything, but it did seem to me that the case, having run its course, would be now closed, and that no good purpose could be served if this motion were successful and the papers were laid on the Table of the House. Those papers would only reveal that what has been done, in all the circumstances, was reasonable and right.

The Leader of the Opposition, in putting forward his claim, read from newspapers and from cuttings very freely. Presumably, the leaders to which he referred were quoted as confirmation in support of the claim. I do not know whether those leaders, or any other statements made in the Press—or made by anybody—can be taken on this occasion as confirmation when on so many occasions we have heard them cast aside with a great deal of doubt. However, this is the situation of the Government as recommended to Parliament; and the recommendation is that we should not place the papers on the Table of the House. We do this because we believe the time has come when very serious consideration should be given to the laying of papers on the Table of this House and making public the whole of the records in every event such as this when a decision made is not acceptable, for political reasons or for other reasons.

I think it was said, when we discussed at length the Beamish case, that it would be almost impossible for the Crown Law Department and the Ministry of Justice in any Government to obtain free direct statements and full information, full advice from their Crown Law officers, or any other officers, if every time there was a query from the Opposition or the public the whole of the papers were to be laid on the Table of the House. Surely we must accept this! We cannot have the situation developed where every Crown Law officer and every adviser to the Government has to say to himself, "I must be very careful. I cannot give a full description because I might be queried on this or that point."

Therefore I believe that to continue to place papers on the Table of the House is not a very desirable course. Might I

say, and I would remind the Leader of the Opposition and other members here, that it is not the practice which is followed in other Parliaments to any extent at all. I presume it is for the reasons I have already given.

I have discussed this matter with the Minister for Justice who, quite naturally, is concerned. He bears a great responsibility, and I believe he has discharged that responsibility sincerely, believing that he has done the right thing.

**Mr. Graham:** He might have done the right thing, but I do not think he has satisfied anybody on that point.

**Mr. BRAND:** That is only your opinion.

**Mr. Graham:** And the opinion of many others, of course. Up to date he has apparently satisfied only the Ministry.

**Mr. BRAND:** Everybody in this House knows that is not true.

**Mr. Ross Hutchinson:** The majority of the public are satisfied.

**Mr. BRAND:** I shall refer to some notes—and similar notes are being used by the Minister for Justice in another place because this motion has been introduced there, too. To outline the justification of the decision in respect of any case of indictment—and might I say that there have been something over 30 dealt with during the time of our Government's period of office, and something over 20 during the government of the Leader of the Opposition—I cannot imagine there was any reason to accept without any doubt every decision that was made when a *nolle prosequi* was entered by the Minister for Justice or the Attorney-General.

**Mr. Jamieson:** Was a *nolle prosequi* entered in this case?

**Mr. BRAND:** No.

**Mr. Jamieson:** That is a different matter.

**Mr. BRAND:** It is exactly the same position; and in any case it is done on the advice, in the case of the Minister for Justice, of legal advisers. It has got to be done on their advice. The practice generally employed in this State in regard to indictments, as such, is that in the Act 47 Vict. No. 6 of 1883, it is contemplated that the Attorney-General may decline to file an indictment after a person has been committed for trial, and where he so declines, a certificate in the form of a schedule will be given. This principle is preserved by section 578 of the Criminal Code, which requires an indictment after a committal for trial only where it is intended to put on his trial for the offence the person charged.

Until about the year 1951—and that is not so very long ago—the practice in this State was for proceedings in a coroner's court, or a court of petty sessions, leading to a committal for trial, to be reviewed by

the Crown Prosecutor, who made such recommendation as he thought fit to the Solicitor-General; and the Solicitor-General, acting under a Governor's warrant given under section 744 of the Code, made a final decision as to whether or not an indictment should be presented or a *nolle prosequi* filed.

In or about 1951 it was suggested to the then Attorney-General that section 744 of the Code contemplated that the Solicitor-General should act only under the Governor's warrant "in the case of the absence of the Attorney-General or of his inability to perform the duties of his office or of a vacancy in the office", and that therefore the indictment should normally be presented by the Attorney-General, if available to act. This view was supported by the Solicitor-General, and the practice was then altered, and since then the Minister has made the final decision in any case where he is available to do so. Under section 154 of the Supreme Court Act, where there is no Attorney-General the Minister for Justice shall have and may exercise all the powers of the Attorney-General, except the right of audience in any court of law.

The practice has been for the Minister to make his decision after considering written reports by the Crown Prosecutor and the senior law officers available. Where the recommendations of those officers agree, it has been the practice of the Minister in all Governments to accept the recommendations; but where they differ the Minister makes a final decision.

In the case we are discussing, it must be admitted that, for some of the reasons that were pointed out by the Leader of the Opposition, it is slightly different. In fact, there had been a great deal of Press publicity given to the proceedings that took place at the inquest and to the reaction of the people of Gnowangerup. Numerous letters were received by the Minister for Justice—and some were received by me which I forwarded on to him—complaining of certain aspects regarding the conduct of the inquest and the decision of the coroner. Members of Parliament and others approached the Minister for Justice, and the Medical Department had been interviewed by the chairman and the secretary of the local shire council of Gnowangerup.

In these circumstances the Minister for Justice called for a report as to the conduct of the case before the coroner and as to whether or not an indictment should be filed against Dr. Winrow for manslaughter.

Mr. Jamieson: You get the same sort of reaction from Alabama or Little Rock every time there is an incident.

Mr. BRAND: That is really the reason for this motion being here.

Mr. Hawke: That is not true.

Mr. Jamieson: It is not.

Mr. Hawke: It is not. I deny it.

Mr. BRAND: Up to this point I did not think for one moment that it was true, but an interjection like that must be accepted as introducing a very undesirable atmosphere.

Mr. Hawke: The Premier's previous statement is not true and he knows it.

Mr. BRAND: Who knows it?

Mr. Hawke: You know it.

Mr. BRAND: I am stating a fact. An interjection of that kind is very unfortunate indeed.

Mr. Hawke: That might be.

Mr. Jamieson: You get a reaction like that.

Mr. BRAND: A senior law officer—the Crown counsellor himself—was asked to make a review of the case and to submit his recommendation. The officer did so and reported that there was insufficient evidence to prove criminal negligence on the part of Dr. Winrow, and that in his opinion no indictment should be filed. The chief Crown prosecutor made his review both of the case and of the report of the more senior officer, and finally recommended that a prosecution should proceed.

In view of this conflict of opinion the Solicitor-General made his own review and recommendation, and supported the view that there should be no prosecution for manslaughter. The Minister for Justice considered the various reports and finally made a decision supporting the views of the two most senior officers. It will thus be seen that the normal practice was followed in this case, except that there was first an independent review and recommendation by a senior officer before the chief Crown prosecutor was asked for his views. The reason for this was that the chief Crown prosecutor himself had been in attendance at the inquest.

I now pass to certain implications. The Minister, when announcing his decision not to prosecute in this case, gave certain reasons. This admittedly, was unusual. But the circumstances were unusual, in that although under section 43 (8) of the Coroners Act the coroner is required not to express any opinion on any matter outside the scope of the inquest, except in a rider, the coroner had in fact, in this case, expressed his views on the evidence as to why he was committing Dr. Winrow for trial. The Law Society of Western Australia has since written complaining of this action of the coroner. Also, there had been an unusual amount of Press publicity concerning the case; and, on the day prior to the final decision being made by

the Minister, there had been a Press article criticising the Government for the delay in making a decision.

In these circumstances the Minister felt that the bare announcement of a decision not to prosecute would not have been satisfactory; and I am sure that if, on the other hand, he had given no reasons there would have been criticism of him for that. If the Minister did err in his decision it was on the side of mercy as far as I am concerned, but the Minister has no reason to doubt the correctness of his decision. On the reports of his senior law officers he was satisfied that they had carefully and honestly considered the relevant facts and law, and that the evidence available on a trial of Dr. Winrow for manslaughter would fall far short of that degree of culpability which the law requires before a person should be found guilty of manslaughter through neglect.

It is essential, of course, that reports and recommendations of law officers should be careful, honest, and candid; and the candour required is best ensured by the Minister treating their reports as confidential to him. It is submitted that the Minister's duty is to satisfy himself that the reports have been properly made and that the recommendations correctly flow from the reports. The Minister discharged his duty and satisfied himself in the matter before making his final decision.

At this point I would like to say that, following the decision, I called for the file; and I am quite satisfied that the Minister could not have made any decision other than the one he made—and that goes for the Government, too.

Government members: Hear, hear!

Mr. BRAND: I am equally certain that it goes for everybody sitting on our side of the House, at least.

Mr. Graham: You have got them pretty well trained, then.

Mr. Hawke: There is no need to glare at them when you say that.

Mr. BRAND: I am not glaring at them.

Mr. Court: We have a sense of responsibility.

Mr. Graham: They have not seen the papers, so how would they know?

Mr. BRAND: They would know that the Minister was not likely to take such action without being quite satisfied that it was the right course to follow on the recommendation of two of the most senior officers in the Crown Law Department.

It was claimed that the failure to prosecute Dr. Winrow was unfair to the coroner. It is submitted that this is not so, any more than a decision by an appeal court, where a senior court can overrule a lesser court.

Mr. Jamleson: But that is held in public.

Mr. BRAND: In any event, the fact remains that in many cases where appeals have been successful and the lesser courts have been overruled they accept it as part of their duty—an everyday experience. It is not a censure of the magistrate if a judge decides, as is often the case, to be critical of a decision of a magistrate. In this case it seems to me that the Minister decided to take the action he did on the advice of his counsellors and not to proceed as the coroner had suggested. In that action there was no reflection on the coroner any more than there is a reflection on a lower court when a higher court upsets its findings, or when similar action is taken by the Minister in other cases.

It has been suggested further that the decision not to prosecute is unfair to Dr. Winrow himself. Dr. Winrow's solicitors wrote to the Minister complaining of various aspects regarding the conduct of the inquest. It has also been claimed that the decision is unfair to Dr. Godfrey. The Leader of the Opposition emphasised this. Surely it would not be proper to put one man on trial for manslaughter merely to enable another man to justify his views.

Mr. Hawke: The decision itself was not unfair to Dr. Godfrey; it was the Minister's opinions in support of his decision.

Mr. BRAND: In any case, in his statement the Minister put forward his reasons; and it would seem that in his reply Dr. Godfrey made his attitude quite clear; and I believe in both cases this was accepted by the public.

If the Minister had not been prepared to accept his responsibilities in this case there was a very easy way out for him. He could have allowed the matter to proceed; and if, as is suggested, this should have been done, and in any case where there is any doubt it should be allowed to proceed, it is useless to have a provision in the legislation to allow the Minister or the Attorney-General to intervene in any particular case. Why not send all cases direct to the courts? However, the provision is in the Act to ensure, as in this case, where a man is charged with manslaughter, that unless the Minister and those advising him are completely satisfied he shall not be pushed into the courts simply because someone feels that this ought to be done.

Mr. Graham: It was a magistrate after hearing all the facts.

Mr. BRAND: This was a case where our senior officers felt that the person concerned should not be indicted and there was no justification for us to send the doctor to a further court for trial.

Mr. Graham: They were not present at the inquiry, but the man who was felt that the matter should be proceeded with.

Mr. BRAND: From the way he is going on the member for Balcatta is anxious that somebody should be indicted and found guilty.

Mr. Graham: No; that is for the court to decide.

Mr. BRAND: It seems he is rather disappointed.

Mr. Graham: It is not for the Minister or the Government but for the court to decide.

Mr. BRAND: The Minister is charged with this responsibility and he acted as he felt it was his responsibility to do. Surely no-one in this House would think that for any reason at all he would have done otherwise!

Mr. Graham: Then why did you mention pressure from Gnowangerup?

Mr. BRAND: I did not mention any pressure from Gnowangerup.

Mr. Graham: You mentioned the local shire and members of Parliament and the public.

Mr. BRAND: Yes.

Mr. Graham: What bearing did that have?

Mr. BRAND: That is not pressure.

Mr. Graham: What bearing did all that have on it?

Mr. BRAND: Simply because people like that make representations—

Mr. Graham: Why did you mention it?

Mr. BRAND: —as other members have done when they are confronted with difficult problems in their electorates, it is not pressure. People make representations if they feel we are not justified in doing something.

Mr. Graham: Obviously this had some influence.

Mr. BRAND: The inference is, of course, that there has been pressure on the Government.

Mr. Graham: Yes.

Mr. BRAND: And that this decision was made for some reason, or pressure from, or consideration of the community of Gnowangerup; but that was not so, I can assure members. The Minister acted in fairness and with impartiality; and, in fact, he told people who approached him that they could not expect him to be influenced by their views, or that he would consider their views, and he had to accept the advice of his Crown Law officers and finally make up his own mind. That is what he did and for my part he has the full backing of the Government.

If there is any desire that further consideration should be given to the case it would seem to me it would be a wrong course to adopt if we decided to lay the papers on the Table of the House. Therefore it is not our intention to do so unless

so directed by the House. I believe such a course of action would serve no purpose at all; and as the situation now stands I think the least said about the whole case the sooner mended and the happier everybody will be.

Mr. Hawke: Obviously!

MR. TONKIN (Melville—Deputy Leader of the Opposition) [5.45 p.m.]: The motion moved by the Leader of the Opposition is solely for the purpose of ensuring that the information regarding this case shall be available for public scrutiny, as it would have been had the case gone to court. The information which the Government refuses to disclose, it would have been obliged to disclose had the case gone to court. So the Government tries to avoid that possibility by having a ministerial decision made on the question.

The Leader of the Opposition made no charge against anybody, nor did he suggest that anybody had done wrong in connection with this matter. He asked, in the first instance, that the reports upon which the decision had been made should be available. If the case is so clear cut and so overwhelming that it is obvious the Minister came to the right decision, what is wrong with letting the people know the facts upon which this rightful decision was made?

The Premier takes an extraordinary attitude as a leader in a democracy, when he talks about the fact that papers should not be tabled in Parliament; that this is a practice which should be discontinued. That takes us back to the methods of the Star Chamber.

Mr. Hawke: That is where the Minister for Industrial Development would take us.

Mr. Court: Good old Minister for Industrial Development!

Mr. TONKIN: That was the custom in those days: not to let people outside know what was happening; to keep it all within the Executive. Of course that is what we say is so wrong with dictatorships; that their actions are not subject to scrutiny, because no information is made available as to what they do.

Are those the lines upon which the Government is thinking? It is an extraordinary fact that the Crown Law officer who was present at the inquest, and who was sent down, I understand, to advise the coroner, was the Crown Law officer who recommended that there be a prosecution.

Mr. Court: He would have been an extraordinary individual if he had not, when he was reporting on his own work.

Mr. TONKIN: But the men who were not there advised to the contrary. I have heard it said from time to time that one of the important things in a trial in a court is the demeanour of the persons

who are there; the demeanour of the witnesses; the demeanour of the person who is being charged. The Crown Law officer who was present and in a position to observe the demeanour of those at the inquest, was the one who recommended the prosecution. But the Crown Law officers who were not present and therefore had no opportunity whatever of noting the demeanour of those present were the ones whose recommendation was finally adopted by the Government.

I think that is a weakness in the Government's case in refusing to table these papers. It is very significant that although the Government has refused to table the papers on the ground that this should not be done, the Premier, in effect, did quote from some of the papers. So he made a selection of the papers which suited his point of view. That, of course, makes the situation worse.

Mr. Brand: From what papers did I quote?

Mr. TONKIN: The Premier quoted from recommendations that were made.

Mr. Brand: I said, having read the file, I supported the Minister's decision.

Mr. TONKIN: It was obvious the Premier was quoting from certain papers that were made available to him. So we are in a position where although the Government denies all the papers to the House, the Premier adopts the attitude that he will make such of those papers available to the House as suits him, and as suits his case. In my view that weakens the Government's position in this matter, because it leads to the conclusion, inevitably, that the Government has something to hide.

Mr. Brand: It has nothing to hide.

Mr. TONKIN: Then why only make portion of the papers available?

Mr. Court: I do not know he made any of them available. He only stated the procedures and his conclusions.

Mr. TONKIN: The Minister knows quite well that he is now only splitting hairs; that the Premier definitely quoted information from papers which were made available to him.

Mr. Court: He only stated the procedures and the Minister's reasons.

Mr. TONKIN: He was not dealing with procedures at all. As a matter of fact the Premier started by saying something that was not known previously; that the Crown Prosecutor had recommended the prosecution. That would be information contained in one of the papers.

Mr. Hawke: For sure.

Mr. TONKIN: Why not let us have that paper, and see the terms upon which the recommendation was made? I do not regard it as sufficient for the Premier to

inform the House that the Crown Prosecutor had recommended the prosecution, because he places the Crown Prosecutor in the position where his advice was rejected, even though he was present at the inquest, in favour of that of superior officers who were not present. That does not build up the prestige of the Crown prosecutor very much; and in justice to the Crown Prosecutor the nature of his recommendation should be made available.

Mr. Hawke: And the reasons for it.

Mr. TONKIN: Yes, and the reasons for it. And that requires that the reasons for disregarding his information should also be made available, and that is what the Government refuses to do. Instead, the Premier commences to impute motives to the Leader of the Opposition and suggests that all he wants to do is to see that somebody is prosecuted. There was not the slightest justification at all for that conclusion.

Mr. Brand: As a matter of fact I did not say that about the Leader of the Opposition.

Mr. TONKIN: The motion merely seeks to have made available the papers in connection with the matter upon which, we are told, the decision was obvious. We have been told this afternoon that the case was so strong that it was the only course for the Minister to follow. In those circumstances what need is there for any secrecy with regard to the information which was made available? The Premier said that because of some complaints or protests which had come from the local people about the inquest and the way it was carried out, the Minister called for a report. From whom did he call for the report? From the Crown Prosecutor?

Mr. Graham: From the coroner?

Mr. Hawke: From the chairman of the shire council?

Mr. TONKIN: Surely the report of the Crown Prosecutor would have been the most important report at this stage! I would like to know who reported on this, and what was said on the way in which the inquest was conducted, because it implies that if the inquiry were not conducted properly; if it were conducted inadequately, then the man who holds the post of magistrate there is not qualified for the job he is called upon to do; and others may suffer. If this case is left where it is then, in my view, what has been said must hang over the head of the magistrate: that he carried out his inquiry in an unsatisfactory manner, which left grounds for complaint about his procedure.

The Government apparently is prepared to let the matter rest there. I place no value whatever on the fact that there were local protests; that people did not like the turn that things had taken in Gnowangerup. Why is there provision in

the law that the venue of a trial may be changed? It is because the Legislature knows that in certain circumstances local bias might result in an unfair trial one way or another.

How would the Government have got on if Ned Kelly had been tried in the Kelly country? It is a well-known fact that there was considerable opposition to any official action being taken against the bushranger by those who knew Ned Kelly in his own country. So one has to discount very considerably local opinion in matters of this kind.

Why do our law courts exist? If the Ministers can make decisions and keep their reasons secret, why do the courts exist? Obviously, in order to ensure, firstly, that justice is done and may be seen to be done. What chance is there to ensure that justice may be seen to be done if the Minister in control of the department makes a decision and the Government then refuses to make the reasons public?

So we are reaching a very serious situation if that is to be the Government's view: that it is against making available to Parliament papers of this nature, because so to do would let other people know the basis upon which decisions are being made. This attitude of Ministers making the decision is not always followed. I know of at least three cases where fathers reported their motor vehicles stolen, and where it was subsequently found by the police that the sons of these men had taken the vehicles. When they discovered this they asked the police not to prosecute, because they saw no purpose in prosecuting their own sons for taking their vehicles. The answer the police gave was that the law must take its course; that the case must go to court.

I remember that in one of those cases no punishment was awarded by the court at all; but there was no attempt by the Minister to say, "Well this vehicle was taken by the man's own son. He does not want to lay any charge against him. It is doubtful whether he really stole the vehicle and therefore no good purpose will be served by sending this to court." No; the decision was: "That is the law and it must be obeyed. It does not matter whether it was the man's own son or somebody else's son who stole the vehicle, the vehicle was stolen and the case has to go to court."

This is a much more serious matter, but this case has not to go to court, even though the man concerned was charged with manslaughter. The Minister decided this was not to go to court, even though the Crown Prosecutor advised him that it should go. But the Minister, on reports, one of which he called a verbal report, apparently decided, "No; there is no need to let judge and jury decide this matter; I can decide this"; and he did. And he

having done so, the Government says it supports the Minister's action and declines to make the papers in connection with it available, or any of the papers, except such of them as suit the Government's own point of view.

I think it is an extraordinary situation; and, of course, if it is allowed to develop, could become an utter shambles. Is this to be another precedent for future cases of this kind, where the Minister sets himself up as judge and jury, despite any decision by a coroner or anybody else? It is a most remarkable situation if that can be justified.

I have no doubt there are a lot of people in the community who agree with the decision. One will find a lot of people will agree with any decision without knowing the first thing about it. But that does not prove the decision is right; and the only way in which public anxiety about a matter of this kind can be allayed is to show all the papers in connection with the matter, so that a fair opinion can be formed upon the evidence available as criteria. But no! The Government says: "That is undesirable. We do not like this business of having to make papers available."

Of course, the Premier has had that idea only since he has been in Government. He had a different idea when he was in Opposition. So did the Minister for Industrial Development, who required papers from time to time; and it is a good thing that they should.

Mr. Brand: Did you always respond?

Mr. TONKIN: Of what use would an Opposition be in Parliament if it did not desire to know the facts about what the Executive is doing? It is not always told the truth, of course. As an example, one has only to refer to that proposal to establish an iron works in the north at Mt. Tom Price.

Mr. Brand: I thought that had gone.

Mr. TONKIN: No; things like this do not go. An opportunity will no doubt come to prove the exact situation with regard to that, where the Premier at first denied he had any proposal and let the cat out of the bag subsequently to prove that he did. With the knowledge of things like that, can one have any faith in decisions such as the one we are dealing with now, when the Government refuses to table the papers? It cannot do anything else but leave a strong doubt in the minds of many people that the Minister was subject to pressure and succumbed to it.

Mr. Brand: That is absolute nonsense and you know it!

Mr. TONKIN: It is nonsense?

Mr. Brand: Of course it is! He did not succumb to any pressure brought upon him.

Mr. TONKIN: I never said he did.

Mr. Brand: You said pressure was brought upon him and he succumbed to it.

Mr. TONKIN: I never said that at all.

Mr. Brand: Holy smoke! I must go out.

Mr. TONKIN: That is all very well—run away from it.

Mr. Graham: Temperamental!

Mr. Court: You'd better read your transcript.

Mr. TONKIN: In order that the record shall be placed exactly straight, I am going to repeat what I said. I said that the Government's refusal to table the papers will leave a doubt in the minds of many people with regard to this matter and cause them to think that there was pressure upon the Minister and he succumbed to it. Is that saying that there was pressure on the Minister? I would not make such a statement, because I do not know.

Mr. Court: It is by inference.

Mr. TONKIN: I have no information on the question.

Mr. Graham: Everything has to be inference; you won't produce any papers.

Mr. TONKIN: I am not inferring anything at all; but what I am saying is that there are strong doubts in the minds of many people about this question and it raises in their minds the thought that there was strong pressure brought to bear upon the Minister and he succumbed to it.

There is an easy way in which the Government can set the minds of the people at rest—and I think there is a duty upon it to do so—and that is to make available the papers in connection with this matter. I ask this: What harm is done to anybody or to the Government if it makes the papers available? Is it withholding them through sheer cussedness, or because of a belief that it is wrong to table papers in Parliament? Or has it some stronger reason? If it has a stronger reason, what is it?

Mr. Court: I think the Premier stated a very strong reason in regard to this action tonight and dealing with the Beamish case. I think he stated strong grounds.

Mr. TONKIN: Of course the Government has shifted its ground when one compares this attitude with that of the Beamish case—

Mr. Court: No.

Mr. TONKIN: —because it said we should not decide matters in this House; we should leave it to the courts. So I find it difficult to square that reasoning. The whole matter here is this: It is unfair, in the circumstances, to the general public and to a number of officers to leave the matter rest where it is if, by merely tabling the papers, it can be shown that, as

the Government claims, the decision was the correct one. Is not that a desirable state of affairs to reach? —and at no cost, so far as I can see, or loss of prestige to the Government, but with justice to a number of individuals. This supposedly strong case, which ought to stand right out, would become stronger if the papers were tabled. But if they are not tabled, how strong it is will not be determined. That is the attitude of the Opposition.

We have a duty, not only to the general public in this matter, but also to every officer whose efficiency and capacity have been impugned; and that involves several of them. They should not be left in that position. One of them was constrained to go straight into the Press, as it was expected he would do, to defend himself because of the situation he was left in by the Minister's attitude and the Minister's statement. Apparently the Government is prepared to let the matter rest there. For what reason? If the case is as the Premier stated, I cannot see a single reason why the papers should not be tabled—not one.

The refusal to table the papers must inevitably leave doubt in the minds of many people; and that is a bad position if it can be avoided. It seems to me it can be avoided without cost. So I strongly support the motion moved by the Leader of the Opposition for the tabling of these papers, for no other reason than to let the public become aware of the circumstances surrounding this case.

I think the Government might feel it is shielding Dr. Winrow; but it does him a disservice if the case is so strong—a great disservice—because it leaves a doubt in the minds of the people with regard to the matter; whereas, on the Premier's saying, it is so easy to clear him, because the case was so obvious. What ends the Government is serving by refusing to table these papers I do not know, because I absolutely fail to observe any advantage which can accrue to anybody if the situation is as stated by the Government. It is a most remarkable decision in the circumstances.

MR. DAVIES (Victoria Park) [6.13 p.m.]: There is very little that can be said when speaking to a motion of this nature other than what has been conveyed to the House tonight by the Leader and the Deputy Leader of the Opposition, but I feel it would be wrong to let the occasion go without expressing some concern in regard to what the Premier said when he opened his speech this evening. He said he was disappointed to see a motion of this nature come forward, but he did not give us any reason why he was disappointed. We can only suppose he was hoping, as he indicated later, that now the matter had been decided and received a great amount of publicity, that publicity would

fall off and the public would forget the rather high-handed action of the Minister for Justice in dealing with this case.

Mr. Brand: There was nothing high-handed about his action. It has been done by Ministers and Attorneys-General since 51.

Mr. DAVIES: I think we could argue on this point all night; and it probably depends on which side of the House one sits as to whether one would feel the public had been treated properly—and it is indeed the treatment of the public we are looking for in this case.

Mr. Brand: We are all interested in this, because that is not a virtue belonging to you.

*Sitting suspended from 6.15 to 7.30 p.m.*

Mr. DAVIES: Before the tea suspension I was mentioning the approach the Government had to this question and I was about to draw attention to the fact that I thought the Government was lacking in argument. The prepared statement read by the Premier outlined the procedure adopted in cases such as this; in fact, the procedure adopted in all instances where there is a possibility of an indictment not being filed or a *nolle prosequi* issued. Of course, all that was already known and I do not think it has a great bearing on the case in question. What disappointed me most was that the Premier said, during his introductory remarks, that serious consideration would have to be given to the matter of laying papers of this nature on the Table of the House in the future.

I sincerely hope the Premier does not mean what he said. He seemed to justify this argument by saying that this procedure is not adopted in other Parliaments. A lot of things are not adopted in other countries with Governments such as this. Although countries might have similar types of government, they may not have such freedom of expression. But let this not be an argument for taking away from this Parliament the freedom we have.

Already, once this session, we have drawn attention to the growing power of the Executive and this is a matter of great concern for many people not only in this House but throughout Australia. They seem to think that the Government can eventually do away with Parliament altogether. As the Premier is smiling, apparently this would be delightful.

Mr. Brand: Are they thinking of that in South Australia, too?

Mr. DAVIES: I have not heard any complaints from South Australia. As a matter of fact I have heard only good reports. I also notice that Mr. Wilson is swinging back to favour. There was a 6.7 per cent. swing to Labor in the latest polls in England.

Mr. Brand: They are not worried about the power of the Executive there.

Mr. DAVIES: It shows that the type of government which we represent, does have its virtues. Indeed, given a fair go it does a very good job. However, this is getting away from the point. As I said, the Premier was hard pressed to justify the action of the Minister. He indicated that all members on the Government side were in full support of him. In response to his appeal most of the members of the Cabinet dutifully nodded their heads with the exception of one or two Country Party members, who looked blankly ahead. I wonder if that was an indication that they do not support the Premier.

I do not propose to speak at any length, because I believe a good case has been put forward by the Leader of the Opposition and the Deputy Leader of the Opposition and it is only a waste of time to go over the points which were made and not answered by the Government. I do not propose to question the right of the Minister to act as he did. He had every right in the world to take this type of action. What I will query is whether he was well advised and whether he made the best decision in the circumstances.

I find that any argument I could put forward is stymied because of the fact that we have no information to go on, and this is the very reason the motion has been moved for the tabling of the papers. We want to judge for ourselves whether the correct action was taken and whether the proper decision was arrived at. Although some new evidence has come out in the Premier's speech, the same evidence makes me doubt that the correct decision was arrived at. The fact remains that it does not look as though we will have the opportunity to make up our minds for ourselves because we lack the information and it is impossible to form an opinion.

The newspapers, of course, can create an opinion, and I think that generally the newspapers try to be objective. I most certainly would not agree that at all times they are objective, but in a matter such as this they are able to catch the public feeling. It would appear that the public feels that all is not right and the wrong decision has been made. Not only the newspapers, but indeed people from outside whom one meets from day to day have also expressed grave concern as to whether the correct decision was made.

The answer is that if the trial had taken place then the population, I am sure, would have agreed that the decision of the court, irrespective of what it might have been, was the correct decision. In moving the motion we reflect the concern of those people, and we feel it is our duty and responsibility to bring it home forcibly to the Government. After all, what is

Parliament for if we cannot bring up matters which concern the community? We have been told many times in many different ways that we always have the right to bring matters of this nature before Parliament. We have always been told that we have this right, and I have only to refer to the speech of the Minister for Industrial Development when replying to a motion from this side of the House regarding the appointment of a parliamentary commissioner or an ombudsman. The Minister has always shown very forcibly that such a person is unnecessary because we always have free speech and matters can be fully debated in this Parliament. Indeed, his attitude has been supported by many other members of the Government. They have indicated that justice will be done if matters are brought before this House. I must confess that at one time I thought this was the answer. However, I am beginning to wonder if it is the answer.

Earlier tonight the Premier indicated that the decision had been made after various facts had been taken into consideration, and that the Minister for Justice had the right to take the action which he did. I am not questioning that right. I would point out that on other occasions, and on several occasions last year—particularly when we were dealing with the rather tragic case of Darryl Beamish—the Premier steadfastly refused to take any action in that regard because the Government felt that matters of this nature should be dealt with by the courts and not by Parliament. Parliament had no right to interfere. Here we have a complete reversal of form. In this case the Executive has taken unto itself the right to decide whether a man shall stand trial or not.

Mr. Brand: Before 1951 it was the prerogative of the Solicitor-General.

Mr. DAVIES: This action has been taken because of the concern of the people who feel that the decision could have been reached under pressure or that the Government was favouring one section of the community.

Mr. Brand: It certainly was not.

Mr. DAVIES: I am sure the Premier does not want the public to think that.

Mr. Brand: There is no reason for thinking that at all. There is not an atom of truth in it.

Mr. DAVIES: Whether there is any reason for thinking it or not, the fact remains that they are thinking it. The only way we can overcome this difficulty is by tabling the papers; and if the Government has nothing to be afraid of and nothing to hide, it could make a quick decision by agreeing to the motion. We would then know that what the Premier says is true: that the Government has nothing to hide. We would be able to judge for ourselves whether the action taken was warranted.

I do not think there is very much more I can say, but I do feel that the Government should table the papers so that we can allay the fears in the community as to whether the Government bowed to pressure or whether it had something to hide. I think the point was taken early in the evening that on other occasions when members have asked for papers and the Government has not wanted to have those papers tabled, they have been made available to the member concerned to peruse on a confidential basis. Indeed, that is what happened last year in the Beamish case. The papers were made available to the Leader of the Opposition and he perused them, and we know what happened subsequently.

I think that in a case like this I would be satisfied if the Premier said the papers would be made available to the Leader of the Opposition. I have the greatest faith in my leader. I know he would be able to judge the position for himself; and if everything had been done in all fairness, no further action would be taken and he would, indeed, make a statement to that effect. I am sure the word would soon get around in those circumstances. But not only will the Government not table the papers for the information of members and the public; it will not even make them available to one private member.

If the Government will not do as we request, it must stand condemned for the actions it has taken. What it does will only re-arouse all the concern that is in the community regarding the handling of this whole affair. Rumour upon rumour will grow, and it will not do the Government any good.

Mr. Brand: I'll bet you are not concerned about that.

Mr. DAVIES: There is a little bit of arrogance about that statement.

Mr. Brand: You want to listen. I said, "I'll bet you are not concerned about that."

Mr. DAVIES: I am sorry. I thought the Premier said he was not concerned about that. I have previously asked the Premier to speak up when interjecting.

The SPEAKER (Mr. Heaman): Order! The honourable member will address the Chair.

Mr. DAVIES: I have on other occasions asked the Premier to speak up when he interjects because I have difficulty in hearing him. We are not the slightest bit concerned with what happens to the Government. The Government can let itself in for all the condemnation it likes from the community, as far as I am concerned. We have a few words to say in condemnation of the Government from time to time. If the position were reversed, I know exactly what would happen. This is not of the slightest concern to me, but I think it is of concern to the population as a whole.

If the Government gets away with this matter and merely places a blank cover on inquiries by saying, "No, the community are wrong," I will wonder under what sort of democracy we are living. Until the Government takes some action to justify what it has done on this occasion, either by making the papers available to the Leader of the Opposition, or laying them on the Table of the House, then as far as I am concerned it deserves to be condemned.

**MR. ROWBERRY (Warren) [7.47 p.m.]:** I rise to speak in this debate with a great deal of temerity. Having listened to the Premier make his explanation and hurl his accusations that we, the members on this side of the House, want to have a certain doctor humiliated; that we want his head on a platter—

Mr. Brand: Did I say that?

**Mr. ROWBERRY:** —and that we do not approve of the Premier and his Ministers, I think it is necessary to go back and ascertain really what the debate is about. For this purpose we should have a restatement of the motion moved by the Leader of the Opposition; namely—

That all papers relating to the decision by the Minister for Justice in refusing to authorise an indictment against Dr. A. Winrow following the finding by Coroner P. V. Smith at Gnowangerup in connection with his investigation into the death of a native child, be laid upon the Table of the House.

There is no indication that we want somebody to be found guilty. If there are any inferences to be drawn, I would infer from the Premier's demeanour—his petulance and his irritation—during the debate, that he has a guilty conscience. That is substantiated by the fact that he refuses to allow anyone on this side of the House access to the papers mentioned in the motion.

I think an injustice has been done to several persons, most importantly, to Mr. P. V. Smith, the magistrate who acted as coroner; to Dr. Winrow himself; and to Dr. Godfrey, Superintendent of the Princess Margaret Hospital.

The coroner, according to the answer to a question asked by me concerning his qualifications, is a magistrate. I was told that he is a stipendiary magistrate, qualified by examination to act as a coroner.

I well remember the indignation of the Premier and several of his Ministers during a previous session when some members on this side dared to question the attitude of a learned judge in this State. There can be no doubt that in a democracy no-one can be above criticism; and no-one should be; and if there is any criticism to be offered, then it should be offered in

this forum of the Western Australian people—this democratically-elected Parliament.

I would say that the Premier and his Government have turned a complete *voile face* in this connection when compared with the attitude they had towards us when we dared to offer criticism of a member of the judiciary of Western Australia. Mr. Smith is a member of the judiciary; but in this instance the Government has completely set aside his decision, which was arrived at after evidence had been taken in open court—a court which was open to everybody so that people could listen to the evidence and could give evidence when called upon; and the evidence was given in proper circumstances and was open to everybody to hear, as it should be in a democratically-appointed court.

What is the difference between this situation and the one we are faced with now? The Minister, backed up by his Premier and the Government, has completely destroyed the integrity of Mr. Smith as a magistrate. The Minister and the Government have done that by their actions, not by their words or criticisms, fair or otherwise. They have done it by their actions to set aside his decision arrived at after hearing evidence.

The Premier says this was done because of the public attitude in Gnowangerup. But surely we are not going to allow public emotion to determine what shall be a judicial decision! Surely we are not going to allow the mob to take over and rule us!

I would like to quote to the Premier the reported utterances of a member of the Gnowangerup community when he was discussing the matter of the natives in that area. If he was reported aright he said: The best thing would be to shoot the Bs in the head—all of them. Is that the type of opinion that has influenced the Minister for Justice, or the Premier and his advisers in coming to the conclusion that the public attitude in Gnowangerup towards the coroner's inquest was prejudicial or antagonistic to the opinion that justice had not been done?

Then this man said that he quite believes that the Minister for Justice acted correctly in coming to the conclusion that he did. I would have believed that, too, until the Minister was unwise enough to give his reasons in a newspaper article which was published in *The West Australian* on the 10th September, 1965. The reasons given by the Minister in that article do not, to my mind, ring true, and do not appear to show that justice has been done; nor does it appear to a great majority of the people in the State that justice has been done.

Justice has not been done to Dr. Winrow himself. He is surrounded by an aura of suspicion as a result of the Government's action, instead of having been given

an opportunity to clear himself; and I have no doubt that if the Minister had not decided not to file an indictment, Dr. Winrow's innocence could have been established, and established for all time. His innocence could have been established in the minds of everybody in the community instead of his now having the stigma still upon his head. I do not think justice has been done to Dr. Winrow, and that is another reason why I intervened in this debate.

Justice has not been done to Dr. Godfrey, the Superintendent of the Princess Margaret Hospital in my opinion; and the Minister has given me all the evidence I require for coming to that conclusion. I remember reading about a learned judge advising a young judge who had been appointed to the bench for the first time. The learned judge said, "Give your decisions, but never give reasons"; and here is the Minister, by giving reasons, providing an opportunity to everyone who reads the article in the newspaper to doubt his sincerity.

In a question, I asked: If the hospital records were in fact not complete, why did he reject them in the case of Dr. Godfrey and accept them in the case of Dr. Davidson, who was not present at the inquest; nor did Dr. Davidson see the child in question, but only went on hearsay and assumption.

Now the fact is established that the Minister accepted evidence which was based upon assumption and not upon fact, and he decried Dr. Godfrey's evidence which was based upon fact and given under the circumstances of a coroner's inquest. Surely that in itself is enough to create suspicion in the mind of the public—and it has!

When we discuss this matter with most people they say: Why was not Dr. Winrow allowed to go before a judge and jury so that the jury could make the decision? I think that is a reasonable attitude, and I think the newspapers in this affair are reflecting, and reflecting very accurately, the reaction of the general public.

While I do not deny the right of the Minister to make certain decisions under the law, it must not be forgotten that at all times these decisions should be made in the interests of the public and not in the interests of any private individual.

A Minister who is swayed by selfish or political interests in a case such as this is, in my opinion—and I may say it is an opinion not qualified—not fit to hold the high office which he does. The public good must be the deciding factor in all such cases, and in this case there is a very grave doubt on whether the public good was considered, or whether the interests of only one individual were considered.

During the speech made by the Leader of the Opposition the member for Wembley interjected by asking: Are you going to quote the evidence of the report by Dr. Laurie? Among one of the questions I asked the Minister was—

(3) Is he satisfied that he was correctly reported . . . ?

And the answer was "Yes." I then asked—

(4) If so, why does he accept the opinion of the Commissioner of Public Health, and reject the evidence of Dr. R. Godfrey, Medical Superintendent of Princess Margaret Hospital?

At this point I want to say that it is well known among the members of the medical and nursing profession that doctors and nurses who have had intimate and long experience in dealing with sick children have something that other doctors who have treated only adults have not. A child is a helpless individual. A grown-up can explain to the doctor how he feels and explain his symptoms, and from those symptoms the doctor can build up a hypothetical case and commence treatment and if the treatment is not satisfactory he can try something else. The patient may die in the process, but if he is fortunate enough to continue on the side of life the doctor eventually finds a cure for him.

Children, however, are dumb, helpless little creatures and the doctor and nurses treating them have to find out for themselves what is the matter with them. So I think it can be said that in the event of the death of a child, a doctor, such as Dr. Godfrey, should have had more weight given to his evidence and opinion than that given to the opinion of Dr. Davidson who does not treat any patients, because he is the Commissioner of Public Health and is not a practising doctor. So the fact that the opinion of one authority was taken instead of the other opinion of the individual who had plenty of experience in this type of occurrence, is another reason why the public have suspicions whether the Minister really acted in the interests of the public good.

Part of the answer to question (4) deals with the finding of Dr. Laurie in the interests of the member for Wembley. Dr. Laurie is the Director of the Government Laboratories and he supported the evidence of Dr. Winrow and the matron by the conclusions I am now about to quote, and I want members to listen very carefully to them. The conclusions are—

We cannot find any evidence of pneumonia, infective diarrhoea, or congenital syphilis. We cannot comment on the diagnosis of dehydration and neglect since neither leaves signs easily detected by us. Our only positive finding is a probable viral infection which could have exacerbated or caused dehydration and helped to cause death.

That is the opinion of Dr. Laurie, whom the member for Wembley wanted to give evidence before the inquiry. Dr. Laurie said that it was a probable viral infection and this is accepted.

Of course, we know that after a death has occurred there are only probabilities; that medical men and scientists are very careful when making definite statements. But Dr. Godfrey made a definite statement. He did not rely on probabilities; he relied on the evidence of both the hospital records and the facts that were presented in the coroner's court. Yet we have the Minister saying—and I suppose he was advised on this—that Dr. Godfrey made assumptions not warranted by the evidence. If they are assumptions, what then is the statement made by Dr. Laurie, when he says that the child probably had a viral infection?

So you can see, Mr. Speaker—I hope you can see, anyway—that there is every reason why we who represent part of the people of Western Australia should be dissatisfied, and feel that at least the Leader of the Opposition—if the Government will allow him—should have access to the reasons which prompted the Minister not to file an indictment against Dr. Winrow. I think the whole matter has created a bad taste in the mouths of most of the people in this State, and it could also cause distrust of certain members of the medical profession; because, after all is said and done, it is well known that when a person loses his faith and trust in his doctor, the doctor may as well give that patient away, because the first thing a doctor has to establish in his relationship with a patient is trust and a feeling of well-being, or a feeling of togetherness, as the Americans say, between the patient and himself.

So it can be seen that this case is a most unsatisfactory one, and I think the Minister would have been well advised to allow it to go to a jury, and the whole case would have been cleaned up to the satisfaction of everyone. There would have been no inferences, no implications, and no feeling of distrust and suspicion against certain people. There would have been no action which could tend to destroy the feeling that people must have of the integrity of our judiciary; and surely the members of the Government should be the last of all persons to do anything which could or might destroy the trust of the public in the integrity of our jurists.

I think I have said enough to justify the action of the members of the Opposition in requiring that the papers relating to the investigation should be laid upon the Table of the House, or at least should be made available to the Leader of the Opposition.

**MR. HART (Roe) [8.10 p.m.]:** As I happen to be the member representing the area in question I think I should make a few remarks in support of the Premier in his opposition to the motion requesting that the papers relating to this case be laid on the Table of the House. The people of Gnowangerup feel that at the coroner's inquiry the full facts of the case were not revealed. They were greatly upset over what appeared to have been only part of the story when the evidence was given before the coroner.

Many people considered that the coroner's finding was unjustified and, as a result, I had numerous requests to make every effort to ensure that all aspects of the case and the full facts that were left uncovered should be placed before the Minister with a request that they be investigated. That was done; and so we pass on to the motion before the House this evening.

I would like to relate a little of the background and the history of this aboriginal baby. I think it has a bearing on the attitude held by the people of Gnowangerup. It has been said, even here tonight, that local opinion is a little biased and that the judgment of the local people could not be regarded as being level-headed. Be that as it may, the fact remains that Dr. Winrow has been the doctor at Gnowangerup for a number of years. He is a kindly and well-meaning man, and for many years has given wonderful service not only to the white population but also to the coloured population of that district.

His service to Gnowangerup and surrounding districts has been outstanding, and his name is upheld everywhere. He serves a particularly large district, and I doubt whether any other doctor in the State performs more work than does Dr. Winrow. I say that because I think it is the reason why the people of Gnowangerup were particularly upset when the finding was made; and they feel, as I have already said, that it was unjustified and that all the facts were not presented on all aspects of the case.

I would now like to give a brief history of the life of this particular baby. I know a great deal about the case has been reported in the Press, but all aspects have not been dealt with. The newspaper versions up to date have been biased against Gnowangerup. To some extent that is understandable, because only the people who live in areas such as Gnowangerup can understand all the problems that arise in a community which contains a high percentage of natives; and those who criticise would, if they lived in the district, understand more fully the good work that has been done by Dr. Winrow.

This aboriginal baby was born in the Gnowangerup Hospital on the 24th January, 1965. The mother was not very interested in the baby and it remained in

the hospital until the 14th March in the loving care of the matron and the sisters, who became very attached to it. The mother asked that it be left in the hospital because she had domestic trouble; things were a little mixed up, and she could not look after the child. She did not want to take it to the reserve.

On the 18th of March the baby was released to the mother. I think that was a Sunday. On the following Thursday the mother brought the baby back to the hospital. She said the baby was not very well, and she wanted to go to Albany. She asked the matron to take the baby in and to look after it. The matron saw the baby and was shocked at its condition. The baby was in a deplorable condition. It was obviously very ill, and was suffering from starvation and neglect. That occurred in two months and four days after the baby was born in the Gnowangerup Hospital.

I know they did their best for the baby, and gave it the very best of attention. I also know that the doctor gave of his best; but the condition of the baby deteriorated after it had made a slight recovery. I am only a layman, and I do not profess to know that side of the picture or the legal side which is being put forward this evening. But I do know the doctor and the matron did their best, and that the baby started to recover but collapsed and died on the Monday.

The doctor held a post-mortem, and another was required to be held. Subsequently a charge was laid against him and he was required to appear at the coroner's inquiry. Out of that came the sudden and quite uncalled-for verdict, as the people of Gnowangerup and many others saw it, when the doctor was charged with manslaughter.

I say to members that if that does not call for a little bit of feeling amongst the people it certainly should. I think it does not call for the remarks which have been made that the people of the district are biased. Such remarks can only come from people who do not understand the situation that arose in the district. The people were very shocked at the result of the inquiry. Many level-headed people who attended the inquiry, and whom I have known for many years—they include present and past justices of the peace—expressed the view that they thought they would never live to see an inquiry like that at Gnowangerup. So the demand arose among them that some high authority should explore all the facts, and if it was justified the indictment should not take place.

As member for the district I did what I could to pass on the various facts to the Minister. I felt I was quite justified in doing that; and, in turn, the Minister had them examined. Today we have reached the position where the indictment

was not signed and a hearing did not take place. It is said it would have been better had the trial gone on, because the doctor would have been cleared more satisfactorily, without some stigma attaching to him. I put this to members of this House: If, as the further inquiries have shown, the charge was not justified, why should any person go on for six or seven weeks with a charge of manslaughter hanging over his head? This is not the first time that annulments have taken place, or that indictments have not been signed.

On those grounds I feel justice has been done. As for laying the papers on the Table of the House, I feel that the Premier has given the answers to all those clamouring for them. Speaking for my district I say that I am quite sure the people there consider justice has been done, and I therefore cannot support the motion moved by the Leader of the Opposition.

**MR. FLETCHER** (Fremantle) [8.20 p.m.] I had not intended to speak on this motion.

Mr. Crommelin: Why do you?

Mr. W. A. Manning: Why don't you sit down?

Mr. FLETCHER: I said I had not intended to speak, and on this issue I ask members not to interject. I make this admission to the House: I am very pleased to hear the member for Roe speaking on this matter. I would have liked to obtain the same evidence which he gave to the House per medium of the papers which have been democratically requested to be tabled. They were denied to members of this House per medium of the Premier.

If the case put forward by those on the opposite side of the House is as good as they claim then why cannot the papers be tabled to enable us, on this side, as representatives of the State, to see the very good case that they have? I shall not be intimidated by comments from the opposite side about sitting down in my place, and about not speaking. I will speak when I choose to speak, subject only to you, Mr. Speaker, and to your tolerance. I intended leaving it to capable members on this side of the House, but I will not desert them in a cause like this one; and I will not desert those whom I represent, when a matter of principle is involved.

The Premier did annoy me by his attitude of assumed pique; by his smugness; and later by his levity; and then by his complacency; and subsequently even by his smiling with other members on the opposite front bench in relation to the alleged purpose of the Opposition in bringing this motion before the House. I would ask him not to smile, because this is a serious subject, and I shall treat it

as such. I repeat that the Premier did not debate the motion of the Leader of the Opposition.

The Leader of the Opposition brought evidence before this House. I do not attempt to do that because I am not in the same position to do so as the member for Roe, in that I do not represent the electorate concerned. I approach this matter essentially from the point of view of principle. It is quite evident that the Premier, those on the front bench beside him, and members on the opposite side of the House, assume that Labor is attempting to seek political capital from this motion. The Premier is aware that we know that no political advantage can be obtained from this situation.

The Premier is aware of the public apathy towards the fate of natives. The very capable Minister for Native Welfare unfortunately also knows it, and he is also a victim of public apathy in regard to the natives, and the hostility and disinterestedness that exists towards them. He is just as much a victim of public apathy to our coloured people as other members in this House.

Mr. Lewis: Can't you forget this was a native child?

Mr. FLETCHER: Yes. I prefer to look upon it as an Australian child, irrespective of its colour. Despite all the points I have made, the Minister has done his best. I would point out that sympathy does not lie with the mother of that child or with people of a similar colour. The sympathies now being encouraged are directed towards those in the medical profession who are supposed to care for the natives.

I support the motion before the House. I assert to the Premier that I do so—I repeat—not for the purpose of embarrassing the Government; not for the purpose of merely being difficult; and not for the purpose of merely supporting the Leader of the Opposition. I wanted to satisfy my mind, and I would like those on this side of the House to satisfy their minds, by having the papers tabled on this basis: that all papers can still be tabled at the request of the Opposition. I believe it to be a dangerous precedent to refuse a request for papers to be tabled.

In supporting this motion I want to ensure that democracy still exists in this House and State, and that as a representative of the people I can have the opportunity to view the papers, as a consequence of which I can speak with better knowledge. But those papers have been denied to us. I am not in the same position as the member for Roe to speak on this issue; but, as I said previously, I am speaking on a matter of principle.

Another aspect is that I would like to investigate personally whether natives were treated as human beings, as was suggested

by the member for Roe, or were left until last in a queue of people waiting to see the doctor. I would like to know whether the natives received only superficial attention or the best possible attention. I would like to read the facts, and I would like members on this side of the House to read those facts. I would also like to discover whether or not there is an atmosphere of hostility towards the native population in that part of the State which would be strong enough to drive a distraught mother from the hospital with her baby. The member for Roe assured us that was not so, but I would like to read the facts for myself. I would also like to learn from the papers whether or not similar patients have been driven from the hospital as a consequence of hostility by the doctor or the staff of the hospital.

Mr. W. A. Manning: You are trying to imply that these things did happen.

Mr. FLETCHER: A comment like that is stupid in the light of what I have said. I have been careful to say we would be better informed as a consequence of viewing the papers. I am not suggesting that these things happened. I am saying that by viewing the papers we would have written evidence before us, if such were not the case, and we would be better equipped to determine whether or not those things happened. The papers have been denied to the Leader of Her Majesty's Opposition in this State. I believe the motion to be justified, and I am doing my best to support it without any inane interjections of the type I have just received. I want to know if the Government front bench members are to run the State through the Executive.

Mr. Dunn: But you do not believe the member for Roe.

Mr. FLETCHER: The member for Darling Range is included among the inane interjectors to whom I have just made reference. Both the Deputy Leader of the Opposition and I have made reference to the fact that there is more and more evidence forthcoming to indicate that this State is now run by the Executive, as distinct from the members on this side and the opposite side of the House.

There is much more I could say on this issue, but that is my principal reason for rising. We will accept the coloured people in our State where they can be of assistance to us, I regret to say. I know the pastoral economy of our north would collapse without the assistance we get from them there.

The SPEAKER (Mr. Hearman): Order! The honourable member must relate his remarks to the motion.

Mr. FLETCHER: We would have a vested interest in caring for them there, but not in the south-west of our State.

The **SPEAKER** (Mr. Hearman): Order! I think the honourable member's remarks are a long way from the motion, which is for the tabling of certain papers in connection with a certain case. It has nothing to do with the treatment of coloured people.

**Mr. FLETCHER:** Very well. Care and attention may or may not have been revealed in the area I mentioned in papers and files that were requested by the Leader of the Opposition. We are less well-informed as a consequence of these papers not having been tabled, and the community of Western Australia is less well-informed as a consequence of the papers not being on the Table of the House for scrutiny by the representatives of the people of the State.

Before resuming my seat I want to quote the Premier's own words in support of my contention that democracy is thwarted in the manner I have outlined. The following was stated by Mr. Brand, as reported in *Hansard* No. 3 of 1964, on page 2832:—

It is not wise for Parliament to usurp the functions of the court, and to do so would be, to the best of my knowledge and on all the advice we can obtain, without precedent not only in this State but also in the whole of Australia. I acknowledge the circumstance, as someone has interjected, that this case is somewhat exceptional.

I would point out that this case is somewhat exceptional. Further on he goes on record as having said—

Parliament could, in fact, become an additional court of appeal, cutting across the fundamental democratic principle that the judiciary and the Executive should exercise their respective functions independently.

Here is the Premier, on behalf of the Government, usurping all these functions. I will not weary the House with other quotations I could make from *Hansard* which reveal similar comments made by the Premier, who denies this House the democratic right of viewing the papers that have been requested for tabling by, as I have said, a representative of Her Majesty's Opposition in this State. I have great pleasure in supporting the motion.

**MR. GAYFER** (Avon) [8.33 p.m.]: I have just listened to the member for Fremantle getting worked up into quite a frenzy and making all sorts of quotations out of *Hansard* and saying that someone said this and someone said that about laying certain papers on the Table of the House.

I am only going to say a few words, and in doing so I quote from *Hansard*, vol. 2 of 1957, at page 2288. The previous member for Dale had asked for certain papers in connection with housing to be laid on the

Table of the House. The then Minister for Housing, who is the present member for Balcatta, said—

Any other member but the member for Dale, would know or should know that it is highly improper for personal papers to be laid on the Table of the House. There are all sorts of personal and intimate details appearing on personal files which do not deserve to be bandied about in the public Press or anywhere else.

**MR. HAWKE** (Northam—Leader of the Opposition) [8.35 p.m.]: Taking first the honourable member who made the shortest speech, I think he answered his own complaint or protest because he told us the papers that were sought by the then member for Dale from the then Minister for Housing were files of a personal character dealing with a customer of the State Housing Commission. So, clearly, in that situation it would have been improper for the personal file of that individual to be tabled. That situation has no relevance to the one with which we are now dealing.

The member for Roe gave us some local Gnowangerup information. He told us of the feelings of some of the people at Gnowangerup—probably the majority of them. However, we are not, in this issue, dealing with the feelings of the people of Gnowangerup or of any other place. We are dealing basically with the finding of a properly appointed coroner who carried out a public inquiry in Gnowangerup into the cause of the death of the child concerned.

Any citizen in Gnowangerup was, I think, quite at liberty to appear before the coroner to give opinions, views, and evidence. If it so happened that some of the citizens failed in their citizenship duty in that regard, they certainly have no justification for coming forward after the coroner has delivered his finding and voicing complaints that the inquiry was not complete; that the inquiry did not investigate this; or that the inquiry did not hear from so-and-so.

Once the coroner's public inquiry was completed—and that would not be before every witness who was offering had appeared before the coroner and given his views—then surely no citizen in Gnowangerup or anywhere else in the State would be justified in any degree—not even in the slightest degree—in coming forward and criticising the conduct of the inquiry, in alleging the inquiry was not complete; or in asserting that in some degree or other there was a deficiency in relation to the inquiries carried out by the coroner.

Therefore I think we can say that the member for Roe, although he made some very interesting information available, especially concerning the physical condition of the child concerned, did not do anything to weaken or impair the manner in which the coroner carried out his

duties, nor anything to undermine the finding which the coroner made in connection with the case.

This debate has produced some interesting information. The Premier, for instance, on his own behalf and that of his ministerial colleagues, lined himself and them up with the Minister for Justice. Up till this debate took place the Premier and his colleagues were neutral. They would not publicly agree or disagree with the opinion of the Minister.

Mr. Brand: There was no question of what we believed.

Mr. HAWKE: They satisfied themselves by saying in this Parliament that under the appropriate law the Minister for Justice is clothed with certain authority. He exercised his authority under the law, and the Government was not required to make any decision in connection with the matter; and, in fact, did not make any decision in connection with it.

I know from my own experience that in a situation of this kind, when a Minister makes a decision which becomes very controversial in the public sense, his colleagues in the ministry have only two alternatives. They have either to agree with his decision and support it, or they have, through the leader of the Government, to ask that Minister for his resignation. I appreciate the personal and political loyalty of the Minister's colleagues to him, and I would not have expected any other result.

The most interesting information which the Premier gave to us was in his statement that opinion in the Crown Law Department is very divided—or was very divided on the question as to whether an indictment should have been filed in this case. The fact that there was serious division of opinion in the Crown Law Department should have made the Minister especially careful and, in my view, should have caused him to say, "My legal advisers are seriously divided in their views and therefore the proper authority to decide this case is a judge and jury."

I think the motion I have moved today is fully reinforced by the admission made to us by the Premier that Crown Law officers were seriously divided—and, of course, are still seriously divided—regarding the course which should have been followed in this matter. I would think the only time a Minister would be justified in seriously considering the making of a decision not to file an indictment would be when Crown Law Department opinion was unanimously against the filing of such indictment.

As pointed out by the Deputy Leader of the Opposition in his speech, the senior Crown prosecutor who heard the evidence at the coronial inquiry at Gnowangerup—who saw the witnesses and studied their demeanour in court—was the Crown Law officer who strongly recommended that an

indictment should be filed in this case. I am more than ever satisfied now, in view of the opinion given to us by the Premier, that the Minister's decision was unfortunate and was without adequate justification. Therefore he stands to be very strongly criticised for the decision which he made because his decision prevented the case from going into the courts and being decided before a properly constituted judge and jury.

I think it is also unfortunate that the Premier should have given us and the public the impression that there is every justification for a government refusing to table papers in a serious case of this type because to so table the papers would cause the advisers of the Government in the Crown Law Department to become reticent and timid, and cause them to refuse frankly and with candour to give their opinions and their advice as to what they conscientiously think should be done in a certain situation. After all, one must start to try to work out whether the officers in the Crown Law Department are public servants, or whether they are merely servants to the Government of the day.

Mr. Brand: This applies to any Government servant, not only those in the Crown Law Department.

Mr. HAWKE: Of course it applies to any Government servant, just as much as it might apply to officers in the Crown Law Department. That is not the point at all. The point is that the Premier claimed as an argument in favour of refusing to table the papers, that the tabling of papers such as those sought on this occasion in the House, and thereby the making public of them, would cause officers in the Crown Law Department, and maybe officers in other departments in like circumstances, to become timid, restricted, and cautious in the expression of their opinions and views on controversial issues such as the one before us at the moment.

In reply to that I ask, "Are these officers servants of the public, in the broad and general sense, or are they, under the administration of this Government, only servants to the Government and not servants to the public in the broad sense?" I would hate to think there would be officers in the Crown Law Department, or any other department who, if they thought their opinions or advice were to be published would, as a result, develop a fear and only go half as far or quarter as far as they might go if their views and opinions as expressed in writing were not likely to be put upon the Table of Parliament at some time or other.

I think the Premier, on reflection, will come to the conclusion that the opinion he offered in that direction does not carry any weight. If an officer in the situation which the Premier envisages has something especially vigorous or startling to put up by way of opinion or advice to his Minister then he does not have to put

it on paper and therefore it would never have to be tabled in Parliament or become public. That argument put up by the Premier as a reason for refusing to table the papers does not carry any legitimate weight at all.

We have found an additional person to be reflected upon as a result of the Premier's disclosure regarding the division of opinion in the Crown Law Department as to whether an indictment should in fact have been filed in this case. We find now the chief Crown prosecutor has been and is being reflected upon because his advice, despite the fact that he heard all the evidence at the coronial inquiry, and saw all the witnesses, has been rejected; whereas the sensible thing to have done in that situation, when the advice of Crown Law officers was so divided, was to have filed an indictment and allow the ordinary processes of the law to take their normal course.

As I said, I was interested during the course of the debate to hear the Premier declare that all Ministers were unanimous in objecting to this motion for the tabling of the papers; and I was even more interested and intrigued to see him swing around and look over to his members on the cross-benches and say, with a very fierce glare, that all members supporting the Government in this House are also opposed to the tabling of the papers.

Mr. Brand: You do me great credit.

Mr. HAWKE: Well, a decision on the motion will be made in the very near future and we will see whether the fierce glare which the Premier gave to his supporters on the cross-benches will bear the fruit which he expects it to bear. I am afraid it may.

This issue has been well discussed and debated. It is clearcut, even though a number of side issues have been introduced which do not really touch the central issue in any material way. The central issue, in sequence, is that at a properly constituted coronial inquiry which took place in this case, the coroner, who was also the magistrate for the district concerned, made a finding unfavourable to the doctor concerned. The matter then came to the Crown Law Department for action. According to the Premier, the Minister for Justice obtained the views of three Crown Law officers. Two of them suggested that no indictment be filed, and the third one—the one I named earlier—strongly recommended a case against the doctor proceed and a judge and jury decide whether he was guilty of the finding delivered by the coroner at Gnowangerup.

The Minister, in face of that division of opinion about allowing the processes of the law to operate, decided no further action would be taken against the doctor. This motion which we have now to decide

calls upon the Government to place upon the Table of the House all the papers in connection with the case.

Mr. W. Hegney: Fair enough.

Mr. HAWKE: Neither the Premier nor anyone who supported him on that side of the House put up a legitimate, logical, or solid reason why the papers should not be tabled. The only reason, if it can be called such, which the Premier gave to us was a reason which supported the move for the tabling of the papers rather than opposed it, and that reason was a division of opinion in the Crown Law Department about the case, the majority opinion being in favour of no further action.

I believe members of this Parliament, and the public, are entitled to see the papers, especially in view of the division of opinion in the Crown Law Department and of the information which Dr. Godfrey had published in *The West Australian* in reply to information given by the Minister in his unsuccessful attempt to justify his unfortunate action. In that situation I would hope a majority of members of this House will develop a sufficient sense of public duty to realise they represent the citizens of the State and not the Government and so enable this motion to be carried and the papers subsequently made public.

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

Ayes—18

Mr. Bickerton	Mr. Jamieson
Mr. Curran	Mr. Kelly
Mr. Davies	Mr. Moir
Mr. Evans	Mr. Rhatigan
Mr. Fletcher	Mr. Bowberry
Mr. Graham	Mr. Sewell
Mr. Hawke	Mr. Toms
Mr. J. Hegney	Mr. Tonkin
Mr. W. Hegney	Mr. Norton

(Teller)

Noes—26

Mr. Bovell	Dr. Henn
Mr. Brand	Mr. Hutchinson
Mr. Burt	Mr. Lewis
Mr. Cornell	Mr. W. A. Manning
Mr. Court	Mr. Marshall
Mr. Craig	Mr. Mitchell
Mr. Crommellin	Mr. Nimmo
Mr. Dunn	Mr. O'Connor
Mr. Durack	Mr. O'Neill
Mr. Elliott	Mr. Runciman
Mr. Gayfer	Mr. Rushton
Mr. Grayden	Mr. Williams
Mr. Hart	Mr. I. W. Manning

(Teller)

Ayes Pairs Noes

Mr. May	Mr. Nalder
Mr. Brady	Mr. Guthrie

Majority against—8.

Question thus negatived.

Motion defeated.

## TRAFFIC ACT AMENDMENT BILL

### Second Reading

Debate resumed, from the 15th September, on the following motion by Mr. Graham:—

That the Bill be now read a second time.

**MR. FLETCHER** (Fremantle) (9.1 p.m.): What, no interjections?

The **SPEAKER** (Mr. Hearman): Order!

**Mr. FLETCHER:** I have much pleasure in supporting the very worth-while Bill of the member for Balcatta for reasons which I will presently outline. I do, however, regret having heard the Minister assert that he will oppose clause 2 of this very small Bill, and I ask him to listen to my argument for its retention, because I believe the experience I will relate has frequently happened to others, and that it will continue to happen to others in the future.

In support of his contention that clause 2 should not remain in the Bill the Minister asserted that it would bring into the Traffic Act all sorts of minor damage in areas other than roads. I will relate an experience that occurred to my son in the University grounds. I do not like quoting personal experiences as examples, but this is well known to me and, as a consequence, illustrates the point I wish to make.

My son was driving quite properly through an exit out of the University grounds. He met a student driving a friend's vehicle into that exit; not into an entrance but into that exit. The student in question ran into the left-hand side of my son's vehicle. No damage was done to the other vehicle, but my son's car was damaged to the extent of £50. The amount was settled in round figures, because they assumed that the insurance company would be paying for the damage, and that they could charge what they liked for the panel beating. As I have said, there was no damage to the other car.

The other driver was obviously in the wrong. He was using an exit as an entrance, and struck my son's vehicle on the left, which demonstrates that he was not giving way to the vehicle on his right. Accordingly he was wrong in two respects. He was wrong, first of all, in using an exit as an entrance; and, secondly, in not giving way to a vehicle on his right.

My son reported the accident to the nearest police station, which happened to be at Nedlands. I visited the police station and, subsequently, the traffic office. For the Minister's edification, the Police Traffic Branch told me that since the accident did not occur on a road, it did not come under the jurisdiction of the Police Traffic Branch and, in effect, the matter was none of its business.

**Mr. Craig:** Yes it was.

**Mr. FLETCHER:** The Police Traffic Branch did not take any measurements, nor did it make any inquiries. I was not satisfied with that attitude. My son was claiming from the State Government Insurance Office and, being under 20 years of age, was liable to pay the first £25.

What was more important was the fact that he was likely to lose his no-claim bonus through a situation which was no fault of his own. My son was to receive a double penalty for something for which he was not responsible. The Traffic Branch was not interested, on the ground, I assume, that the accident did not take place on a road but in an area other than a road.

**Mr. Craig:** That is right; but they would be interested.

**Mr. FLETCHER:** The Traffic Branch was not interested enough to visit the scene of the accident. I went to the trouble of obtaining the requisite form from the S.G.I.O., and I very carefully drew a plan showing the position of the respective vehicles, and of the incident as a whole.

The other person involved in this traffic accident was also under 21 years of age. He was driving his girl friend's car, and she was also insured with the State Government Insurance Office. Because my son was under age, I wrote a polite letter to a palatial address in the electorate of Nedlands, or it could be the suburbs of Claremont or Dalkeith. I am not sure of the boundaries. But I did write to the parent who was living in that fashionable area. I could mention his surname, because he is well known in the manufacturing and commercial world of this State. He wrote back saying that his son was not responsible, and that he would not consider paying the first £25 of my son's damages. He is a shrewd businessman, and is ruthless like many of them. It is possible that this is how he amassed his wealth, which has enabled him to live at such a fashionable address.

I paid the £25. I felt he was welcome to the £25 and to his conscience. In order that my son might not lose his no-claim bonus as well, I drew a plan of the position and obtained statements from witnesses, which I submitted to the S.G.I.O. requesting an on-the-spot inspection at the University parking area. The officers of the State Government Insurance Office were subsequently good enough to investigate the situation. They visited the area though, as I have said, the traffic police did not, because the Act does not provide for it.

The member for Balcatta has introduced a Bill to ensure that such an area will come within the ambit of the Traffic Act. The S.G.I.O. agreed in writing—and I mention this for the information of the Minister and for the information of those left on the front bench opposite—that the other driver was undoubtedly to blame, and that my son's no-claim bonus would not be jeopardised.

I feel that I had £25 worth of satisfaction in posting the letter from the S.G.I.O. to the self-righteous parent of the

juvenile wrecker of my son's modest car. There was no acknowledgment of the letter, or of the blame. That parent, no doubt, has conveniently forgotten the incident in his preoccupation of amassing a fortune. I gained £25 worth of experience out of this incident. There is no doubt in my mind that clause 2 of the Bill introduced by the member for Balcatta will give some measure of coverage and protection to others involved in traffic accidents in localities similar to that which I have mentioned, and in other areas apart from roads.

I suggest that the clause which the Minister opposes is a commendable one and should be left in the Bill. It is most desirable. If it were left in the Bill, the traffic police could assist in any subsequent investigation, and their opinion would be more valuable and more legal than that of the tycoon from Dalkeith I have mentioned.

The intention of the member for Balcatta is laudable, and I feel the Bill should remain in its present form. It would then cover damage not only to a person, but also to a vehicle. I again appeal to the Minister to have second thoughts about his intention to move to delete this clause from the Bill. I have related an experience which, I am sure, must be something which has been experienced by others in the past, and will undoubtedly be experienced again in the future. It is the Government's responsibility to cover all citizens who drive a vehicle in areas such as the one I have mentioned. I have much pleasure in supporting the Bill in its entirety, and I ask the Minister, on behalf of the Government, to do likewise.

**MR. ROWBERRY** (Warren) [9.13 p.m.]: I am a bit disturbed about the necessity for this Bill. I did not hear the Minister speaking to it, but I would like an explanation as to why the definition of "road" in the Traffic Act has been changed. In the Traffic Act "road" means any highway, road, or street open to or used by the public, and includes any right-of-way. I assume from the Bill that places open to the public, and used by the public, are no longer deemed to be roads under the Traffic Act.

This fact disturbs me considerably, because it takes away considerable protection from the motoring public and the public generally. The Act says that where there is any accident causing damage to persons or vehicles on a road—and road is defined—such accident must be reported. I have a cutting from the *Road Patrol* of June, 1964, but that date is possibly prior to the alteration of the definition.

The article in question says this—

The attention of members is drawn to a decision given by a Traffic Court Magistrate in respect of charges preferred as the result of the defendant's

vehicle hitting a parked vehicle in a parking area provided by the owners of a store at Morley.

Under the Traffic Act a "road" is defined to include "any place open to or used by the public."

Whether that has been taken out of the definition since then, I do not know. I would like the Minister to explain this in Committee. Continuing—

Holding that the Morley parking area was covered by the Traffic Act definition of "a road", the Magistrate convicted the defendant and imposed a fine of £5 on each of the charges viz. reversing without taking sufficient precautions, failing to stop after an accident and failing to report an accident.

Following this decision the R.A.C. obtained a legal substance—

I think this should read "legal opinion, the substance of which is as follows." Continuing—

"A place used by the public" may include private premises where there is no legal right of access except by invitation and even where an admission charge is made.

For example, a parking area which is provided by a store for the exclusive use of its customers could be deemed "a place used by the public" and as such could come within the Traffic Act definition of "a road".

Similarly a drive-in theatre is a public place within the meaning of the Traffic Act as is also the service area of a service station.

I always understood that was so when I acted as a traffic inspector, although I had been told to the contrary by the police. I maintained the drive-in portion of a service station was a road as defined under the Traffic Act. I do not know whether this has been changed. To continue—

In fact, any off-street area to which the public has access, whether or not this is restricted by invitation and whether or not an admission charge is made, comes within the Traffic Act definition of a road.

The R.A.C. would, therefore, urge members to bear in mind that if they are involved in an accident causing damage or injury in any such area they have a responsibility under the Traffic Act to give their name and address to the owner or person in charge of the other vehicle or property concerned and to report the accident to the Police Traffic Branch or to the nearest Police Station.

I understood that all these things still obtained; and I am perturbed it is now necessary to include in certain sections of the Act a further definition of "road" which shall mean, "or any place commonly used by the public or to which the public is per-

mitted access." Apparently that is already covered by the definition of "road" in the Traffic Act.

According to the legal opinion which I have quoted a "road" is defined as, "any place open to or used by the public." I am interested to know if I have been remiss in any way in this Chamber when handling traffic Bills and not having observed the fact that the definition of "road" had been changed. I would like an explanation from the Minister in the Committee stage. I support the Bill.

**MR. GRAHAM** (Balcatta) [9.19 p.m.]: Needless to state, I am somewhat disappointed at the attitude adopted by the Minister, although I am not surprised. We have become accustomed to this. This is the seventh session that the present Government has been in charge, and the most junior of its Ministers is in charge of the all-important question of traffic; and it would appear that both this Minister and his predecessor feel they showed strength in their administration by rejecting propositions emanating from the Opposition benches, irrespective of the merit of what has been submitted.

I do not know whether the Minister's attitude is his own or that of his department; but I venture to suggest that if he confers with the Police Department, he will find that the point of view expressed in this Bill will have support in that department. I suggest, therefore, something unworthy of him—that he is playing politics.

**Mr. Craig:** You do not know what you are talking about. Do you think I would oppose this on my own personal opinion? Wouldn't I obtain a recommendation from the department? You are talking rubbish; and I am sorry I suggested I would accept the Bill in part.

**Mr. GRAHAM:** Because the Minister feels peeved at my remarks, irrespective of the merits of the Bill he expresses regret that he has not asked his supporters on his side of the House to defeat the Bill in its entirety.

**Mr. Craig:** If you had been here on Wednesday—

**Mr. GRAHAM:** I have reasons for what I have stated and I propose, in a few minutes, to analyse the attitude of the Minister. Let me recapitulate what I stated when introducing the Bill. At the present moment the driver of a vehicle, when he has an accident on the road, is under an obligation to make a report to the nearest police station, whether the accident involves damage to the vehicle or injury to a person. That is a procedure that has been insisted upon for very good reason; but two years ago the Minister reduced the definition of "road", which applied not only to highways, but also to places where the public had general access such as vehicular parks, drive-in theatres, and places of that nature.

So it is possible for the driver of a vehicle to push another car, knock in the radiator, break the headlamps, stove in doors, or anything else, and he is under no obligation whatsoever to inform the police or report the matter in any way. Neither, as the law stands at the present moment, is he under any obligation to report the matter if he severely injures a person or a number of people. The only obligation is that if he is asked for his name and address he shall supply them. If one makes a good job of hitting another vehicle and there is nobody about, he cannot be asked for his name and address. Secondly, if one hits a person sufficiently to render that person unconscious, one is not likely to be asked for his name and address.

**Mr. Tonkin:** What would be the position in the case of a fatality? Would it be a case of manslaughter?

**Mr. Craig:** Yes, it is covered under the present definition of "road" in section 31 or section 32. I am sorry, he could be charged with dangerous driving in any case.

**Mr. GRAHAM:** He could; but the important thing is that he is under no obligation to report it. If the Minister and his good lady are doing their shopping and his vehicle is in the car park I can proceed to knock his vehicle about very considerably and there is no obligation or responsibility on my part whatsoever. I think that is a bad thing. It is encouraging motorists to avoid their responsibilities.

**Mr. Craig:** You could report it.

**Mr. GRAHAM:** I could; but there is no obligation on me to do so. Indeed, there is an inducement for me not to report it.

**Mr. Craig:** You can report it if your vehicle is damaged.

**Mr. GRAHAM:** If the bumper of my vehicle is side-on to another car, there is no damage to my vehicle, but considerable damage to the one of the other motorist. If I report the matter, as likely as not there will be a claim against me or my insurance company and the rebates which I enjoy will be lost as a consequence. Therefore it is all prizes and considerations. I may have avoided what is certainly a moral responsibility but, in my opinion, it should be a legal responsibility.

**Mr. Craig:** You have the right to make it a legal responsibility by taking civil action.

**Mr. GRAHAM:** The first the Minister would know about it was when he came out from the bank or shop half an hour later. He would find his car bent in boomerang fashion, but my car is not smashed—

**Mr. Craig:** You could be charged with dangerous driving under section 32.

Mr. GRAHAM:—and there is no obligation on my part to report the accident. But if the accident occurred in a street, whether it be serious or of a minor nature, there is an obligation for it to be reported, so I am suggesting the Minister is allowing a situation which is encouraging members of the travelling public to avoid, if they can, making a report, because they might get themselves into trouble. There are many who will know they can get away with it in car parks and other places which are becoming increasingly important in our way of life as we are getting more and more of them and more cars are using them because of the restrictions on parking in roads.

I suggest the Minister is operating in a direction opposite to which he, as a responsible Minister, should. He is prepared, with some reluctance, to go part of the way by supporting the portion of the measure under which, if one hits a person, one should report the matter; but where one hits a vehicle, there is no obligation to report. If anything, I suggest it should be the other way around, if the Minister feels he will derive some satisfaction by removing half of my Bill.

If I hit an individual with my vehicle, I suppose the first thing he would do would be to take my vehicle number with the object of taking action against me. One cannot very well hit a person in his absence, but one can hit a vehicle in the absence of the driver—which, of course, is not the most important consideration—but it could involve in a considerable sum of money the person whose vehicle is damaged.

With regard to traffic matters I have always felt the important thing, as far as possible, is to have consistency, because so many of our traffic habits are a matter of operating automatically. No experienced driver is aware of going through the gears—changing gears, using the clutch, and all the rest of it. It operates as automatically as the blinking of his eyes. It should be the same with our traffic rules. If I may digress, that is why I have advocated on all occasions that motorists should give way to traffic on their right so that it becomes automatic. So, with regard to this, if there be an accident involving damage to a vehicle or injury to a person, whether it is on or off the road, it should be reported.

The only exception one would make would be on private property. If some vehicles are involved in a collision on somebody's farm, in somebody's backyard, or in a factory yard, it is a private concern; but places to which the public have access, such as car parks, drive-in theatres, and the rest of it, should be treated differently.

Merely because a definition in a Statute says this is a road to which the public have free and complete access, to come and go as they like, if an accident happens then there are certain obligations. However, in another place to which the public have general access, if the same set of circumstances occurs there is no obligation to report the accident. I suggest that is stupid; that it is confusing; and that the Minister should be the last one to permit such a state of affairs to exist.

The Minister is inclined to discredit this legislation on the ground—amongst other things—that every little accident which might occur in a car park would be the subject of a report. There may seem to be a whole lot of unnecessary activity, but it has been the position in this State for many years that if accidents take place on the road, however minor they might be, a report is required concerning them.

The Minister seems to think that the principal purpose of requiring these reports to be furnished is to enable the authorities to decide whether to put up some more "Stop" signs or some more warning signs, or something of that nature. Surely we should sheet home to the culprit or the responsible person the blame which is attributable to him, to enable legal processes to be properly discharged; because the parties then become known. Under this hit-and-run procedure which the Minister espouses we are encouraging motorists to become law-breakers and to get away with it if they can.

When introducing this measure I indicated that the Bill had its genesis in the experience of a friend of a member of Parliament. When the circumstances were first outlined to me I refused to believe them. But—lo and behold!—I found that in 1963 a Traffic Bill was passed by this Parliament which allowed, or made, provision for this escape clause with the result which I have already mentioned and which was also instanced by the member for Fremantle.

It would appear from the reading of the debate that not very many members took a great deal of interest in the Bill, and members were not fully aware of the significance of the change, more particularly as the Minister, when introducing the Bill, gave some emphasis to the fact that he was taking this step in order to conform with the uniform traffic code.

I have no objection to moves in that direction; but I think we should have a sense of responsibility just the same, and ensure that if there is a requirement—as in fact there is—to report any minor accident which occurs somewhere where the public have access to an area of road, it shall apply equally to another place to which the public have access. There

should be a requirement to make a report. The absence of such a requirement is not only making it possible for people to damage other people's property and get away with it, but it is also making it difficult for those on the receiving end. It is only in fortuitous circumstances, when somebody happens to be present and sees the offending vehicle crash into the other, that the owner of the damaged vehicle is likely to become aware of the fact that somebody was responsible. He comes from wherever he has been and finds his vehicle damaged.

I say it is a shocking thing that the person responsible for the damage has not committed any breach whatsoever and there is no obligation on him to make a report. So in my view the Minister's objection to the provision is completely without merit. For that reason, not because it is my reason, but because of the importance of it—and goodness knows the Minister ought to be appalled at the accidents which are occurring in Western Australia, fatal as well as lesser ones!—an opportunity is provided by this Bill for us to get the motorist accustomed to following the correct and proper procedure and perhaps to make him more careful. If anything does make people careless it is being able to do something and quite legally get away with it. That is what the Minister is asking us to do. Perhaps, as with some other small measures, one should be thankful for small mercies.

I feel these steps are complementary. The Minister himself when speaking on the matter of a person under the influence, provided—or allowed—in 1963 that there was an obligation for a report to be made. I do not know what difference it makes to me whether my vehicle is hit by a sober driver, or by a drunken driver. The damage can be the same. However, in the case of a person being under the influence, there is a requirement to report the accident.

I have already indicated, that I would like recorded in black and white the names of those who vote against this measure, which I regard as a very sensible and necessary requirement in our legislation. It is to restore a position which was in the Act until two years ago. My Bill seeks to insert a principle which was the principle prior to 1963.

**Question put and passed.**

**Bill read a second time.**

*In Committee, etc.*

The Deputy Chairman of Committees (Mr. Mitchell) in the Chair; Mr. Graham in charge of the Bill.

**Clause 1 put and passed.**

**Clause 2: Section 30 amended—**

Mr. CRAIG: I indicated during the second reading stage of this Bill that I would oppose this clause for the reasons

I stated at that time. However, I would like to indicate that I will accept the next amendment proposed by the honourable member. I am sorry he was not here the other night in order that he could debate, by interjection if necessary, the views I put forward. I am also sorry that—as is usual, when any opposition is shown to him—he started off to reply in a very personal vein. The honourable member referred to me as the junior Minister, which suggests I might be junior in length of service in the Ministry. As an ex-Minister he knows full well there is no junior Minister in the Cabinet.

I gave reasons why I objected to this amendment. The definition of "road" was brought into line with that in the Australian Road Traffic Code by an amendment to section 4 of the Traffic Act. However, we in this State deliberately let the original definition of road stand, where it covered parking areas and the like in sections 31 and 32 and dangerous driving and drunken driving. A person who wilfully smashes into another car—the honourable member makes it more demonstrative or more theatrical—should report the accident to the police. But if that person was by himself and the particular accident was not witnessed by anyone, I could not imagine him under any circumstances reporting to the police. If the accident occurred in front of the owner of the other car or in front of any other witness, then surely the matter would be reported to the police. If the police were satisfied with the statements of those reporting the incident, although there is no obligation for them to do so, they could charge the driver under section 31 of the Act.

Mr. Curran: Are you saying that if a collision took place and there was no witness, it should not be reported?

Mr. CRAIG: No; I was not. But I could not imagine anyone reporting the accident under the present Act. One does not have to report it because it does not occur on a road.

The only purpose I see behind this amendment is to satisfy the case pointed out by the member for Fremantle. Here again, there is recourse for redress through civil action. All accidents which occur on the road, as defined in the Traffic Act, that involve damage have to be reported to the police, and the purpose, so far as the police are concerned, in the main, is statistical. As the member for Balcatta said, it does reveal the necessity in some cases for appropriate action to be taken for the erection of suitable signs. I cannot see any obvious advantage, despite the arguments of the member for Balcatta, in agreeing to this amendment.

Mr. GRAHAM: I think I expressed myself fully when replying to the debate on the second reading. I would point out

to the Minister that if I am guilty of dangerous or negligent driving in a car park, I can be prosecuted. However, there is still no obligation on me to report the matter.

Mr. Craig: Would you go and report the accident yourself if you were the driver?

Mr. GRAHAM: I should say "Yes." I do not know, but I suppose there would be many members in this Chamber who have accidentally caused some slight damage to another vehicle. If nobody is about, or nobody directly interested, surely the proper thing is done by reporting the incident to the police or by putting a slip under the windscreen wiper of the car which is damaged.

Mr. Craig: That is a different thing. You are reporting to the owner of the other vehicle.

Mr. GRAHAM: Yes; but you report to the police. As a courtesy you let the owner of the other vehicle know who you are and how he can get in touch with you. This is not a criminal offence. If the Minister feels that anyone who is involved in a scrape or slight smash does not need to report it, then the Traffic Act is rather a foolish document.

Mr. Craig: They will have to report it if your amendment is accepted.

Mr. GRAHAM: Yes. Just as a car driver must report an accident which occurs on that property to which the motoring public have access, called a road, under the law, if an accident occurs on that property to which the motoring public have access, but which is called something other than a road, then there is no requirement to report it.

Mr. Craig: But there would be if your amendment was agreed to. The motorist would have to report every little scratch.

Mr. GRAHAM: That is something they must do at present; and it all serves a useful purpose. If the Minister accepted this amendment and opposed the other, there might be more sense in his action.

Mr. Craig: There might be more sense if he opposed both of them.

Mr. GRAHAM: The Minister is a free agent and can do that if he wants to. I am not going to get any increase in pay, or any pats on the back for doing this.

I conferred with some traffic consultants before I introduced the Bill, and it was as a consequence of their advice that the measure is before us. For that reason I am disappointed at the attitude of the Minister. I invite him to check with his advisers in order to find out what they think. It is obvious that if a person who is in a vehicle, in a place to which the public have access, does damage to another vehicle, then he should report that accident. This requirement should not be confined to highways, but should apply to other places to which the general public have access.

Mr. FLETCHER: The Minister seems adamant about not accepting the portion of the Bill relating to damage to vehicles. He did say that I had recourse to common law to obtain the £25 that I paid as a result of an accident that was no cause of my son. I admit what the Minister says, but I suggest that I have sufficient problems without becoming involved in legal argument and litigation.

The situation is bad enough as a consequence of being involved in an accident that is not one's responsibility, and involved in expenses that are not one's responsibility. Then the Minister suggests that in addition the injured party, because of the damage to his vehicle, should be further disadvantaged by having to resort to common law to recover that which is rightfully his.

I think the Minister is not being deliberately unfair or unreasonable, but I assume that my argument is reasonable. If it is necessary for me to attempt to retrieve £25, then the Minister is imposing that responsibility on other similarly aggrieved persons; and every member must know of incidents similar to the one I related earlier this evening.

I am wondering whether the Minister's attitude is attributable to the limited number of traffic police. Is the Minister concerned because by enlarging the area as suggested by the member for Balcatta, the present inadequate Police Force would not be able to cope with the enlarged area?

Mr. Graham: They were doing it up to two years ago.

Mr. FLETCHER: I am aware of the 1963 amendment and what it unfortunately did to the Traffic Act. It took away the protection that the member for Balcatta is now trying to obtain on behalf of a big percentage of the people of Western Australia.

I wonder, as I have just said, whether the Minister's opposition to clause 2 is because of the limited number of traffic police we have? Does he consider that by enlarging the area of supervision the existing force would be inadequate to cope with the position? If it is necessary, would it not be the obvious thing to enlarge the Police Force to cope with the increased area of supervision?

Mr. Brand: Many people suggest increasing the Police Force, but no-one suggests where the money should come from.

Mr. FLETCHER: I am suggesting the public should come first. Thousands of people must have had experiences similar to the one which occurred to me and which I have mentioned. I ask the Minister to have second thoughts about his objection.

Mr. TONKIN: I am fully in accord with the principle involved in the clause, and I have endeavoured to find some logic in the Minister's argument, but frankly I have not been able to. His argument appears to me that if this is agreed to there

would be an obligation to report every accident, and some of them would involve such a small amount of damage that there would be an inordinate amount of work for the police.

Why is it an obligation on a person to report an accident that occurs on a road when only minor damage is suffered? If minor damage does not matter when an accident occurs in a parking area, why should it matter when it occurs on a road?

Mr. Craig: Because there might be hundreds of accidents in the one spot, and the reporting of them is a means of overcoming them at that point.

Mr. TONKIN: Do all accidents on roads have to be reported simply to provide the police with statistics in order that they may take measures to prevent further accidents? Is that the only reason?

Mr. Craig: No; I just gave you that as one reason.

Mr. TONKIN: I cannot see why it should be any more necessary to report a minor accident on a road than a minor accident in a parking area. To put it another way, I cannot see why there should be any less reason to report an accident concerning minor damage in a parking area as compared with an accident involving minor damage on a road.

It seems to me the obligation is on a person driving a car to report an accident, however slight, in order that the police will be given an opportunity to check to see who is at fault. The police would then be in a position to lay a charge of dangerous driving, even though the accident was only a minor one. If a person knows that he runs the risk of a penalty for dangerous driving as well as a penalty for not reporting the accident, then there is less likelihood that accidents on a road will not be reported; but they still do occur. I have had brought to my notice a number of accidents where damage has been so slight that the drivers have agreed they would not report it. Then subsequently one of them has reported the accident.

Mr. Craig: You have been reading my speech.

Mr. TONKIN: I listened to the Minister's speech, but I have had practical experience of this. I will recount a personal experience. I was going home one evening along Canning Highway. It was a murky night and raining at the time. A bus pulled up some distance ahead of me and there were several cars between the bus and me. I had to slow down, and I looked in my rear vision mirror. I could see a car coming very fast behind me, and I thought: This fellow is going to run into the back of my car; and he finally did. I got out of the car and spoke to him, and he immediately realised he was in trouble. He told me he was a returned soldier, and he pulled

up his trouser leg to show me he had a wooden leg. He said, "There is no damage to your car; do not report the accident." I said, "The law requires me to report it and you to report it, but you have 24 hours in which to do it. My advice to you is to report it in the morning. I will report it now." So I went to the nearest police station and reported it. The other man must have reported it in due course, because I heard no more about it. I assume the police were satisfied because I reported no damage and he had reported no damage, and I had laid no complaint against him, so that was that.

Mr. Craig: But it often happens the other way.

Mr. TONKIN: He reported the accident because obviously he knew it was his fault, but had I fallen for that trap and not reported it and he had thought better of it and reported the accident I could easily have been in a difficult situation. Many people, acting in good faith, are over-generous to others and have taken the risk and have been caught, but in my view the police used that information for the purpose of ascertaining whether there was a charge against the driver. Why should there not be a basis for a charge against a driver in a parking area?

A few months ago I left my car in a parking area next to a store and on returning to the car I found that the side of it had been slightly damaged because somebody had driven into it. I had to put up with that because the person responsible had cleared out. What was the use of my reporting the damage?—because I had no car number or any other particular. However, if there were an obligation on the drivers of both vehicles to report an accident in a parking area there would be some possibility of a driver who was responsible for any damage being finally found out, because he may not have been prepared to take the risk of a penalty for not reporting the accident, and that is where, I think, the Minister's argument lacks logic.

He insists that accidents causing minor damage on a road should be reported and they may be the result of dangerous driving. Similarly, we may have dangerous driving in a car park, but the Minister is not insistent upon the reporting of any accident in a car park and, in my view, the result is that the unfortunate owner of the vehicle that is damaged is left carrying the baby because he has no opportunity of checking on the person who was responsible. I think he would have a little more opportunity if there were an obligation upon every driver of a vehicle to notify any such accident to the police, and I cannot see that there will be much extra work imposed on the police as a result. Also, I agree with the member for Balcatta that it would cause many more people to take greater care in a car park.

On one occasion I parked my car just beyond the former site of the Christian Brothers' College. I had been listening to a case in the Supreme Court and when I returned to my car I found it had been damaged on the side. The damage seemed to have been caused by a vehicle which tried to turn from the other side of the road, but did not have sufficient room and so struck my vehicle in the process. However, nothing happened, and that occurred on a public road.

I suggest that where a collision takes place between two vehicles in a parking area there should be an obligation on the persons concerned to report the accident, and, in my view, dangerous driving in a parking area is just as much an offence as dangerous driving on a public road.

Mr. Craig: A charge can be preferred, of course.

Mr. TONKIN: It can if one is able to find the person responsible. It is a case of first catch the hare, and if the obligation was upon that person to report the accident there would be more chance of having some basis for a charge. At present, however, the attitude of many motorists is: "Nothing can happen to you if you hit a car in a car park," and so that attitude develops carelessness towards other people's property which should not be encouraged.

I cannot see any strength in the Minister's argument that there would be too many accidents to report. If that were true it would suggest that there are a great many accidents occurring in car parks. Surely something should be done to minimise such accidents in the interests of at least the motorist because he pays enough taxes. Something therefore should be done to protect the interests of the motorists and this is something that could be done.

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

#### Ayes—19

Mr. Bickerton  
Mr. Curran  
Mr. Davies  
Mr. Evans  
Mr. Fletcher  
Mr. Graham  
Mr. Hall  
Mr. Hawke  
Mr. J. Hegney  
Mr. W. Hegney

Mr. Jamieson  
Mr. Kelly  
Mr. Moir  
Mr. Rhatigan  
Mr. Rowberry  
Mr. Sewell  
Mr. Toms  
Mr. Tonkin  
Mr. Norton

(Teller)

#### Noes—25

Mr. Bovell  
Mr. Brand  
Mr. Burt  
Mr. Court  
Mr. Craig  
Mr. Crommelin  
Mr. Dunn  
Mr. Durack  
Mr. Elliott  
Mr. Gayfer  
Mr. Grayden  
Mr. Guthrie  
Mr. Hart

Dr. Henn  
Mr. Hutchinson  
Mr. Lewis  
Mr. W. A. Manning  
Mr. Marshall  
Mr. Nimmo  
Mr. O'Connor  
Mr. O'Neill  
Mr. Runciman  
Mr. Rushton  
Mr. Williams  
Mr. I. W. Manning

(Teller)

#### Pairs

#### Ayes

Mr. Brady  
Mr. May

#### Noes

Mr. Nalder  
Mr. Cornell

Majority against—6.

Clause thus negatived.

Clause 3 put and passed.

Title put and passed.

Bill reported with an amendment.

## BREAD ACT AMENDMENT BILL

### Returned

Bill returned from the Council with an amendment.

## BILLS (2): RECEIPT AND FIRST READING

1. Mental Health Act Amendment Bill.

2. Fisheries Act Amendment Bill.

Bills received from the Council; and, on motions by Mr. Ross Hutchinson (Minister for Works), read a first time.

## PAINTERS' REGISTRATION ACT AMENDMENT BILL

### Second Reading

MR. GRAHAM (Balcatta) [10.15 p.m.]: I move—

That the Bill be now read a second time.

There is not a great deal involved in this Bill. Members are probably aware that when Parliament agreed to the legislation for the registration of painters new ground was broken so far as the British Commonwealth countries were concerned—a fact of which the Master Painters' Association and the painters' union are exceedingly proud. Because of that fact the legislation can be described, to some extent, as experimental. On account of that it has been necessary in the light of experience to make amendments in order to conform with the requirements.

This Bill is very simple and embodies only four points. However, before proceeding further I would like to say this: Because this is a matter of interest in another State of the Commonwealth, I received a letter only a few weeks ago from the acting leader of the Country Party who informed me that he was giving consideration to introducing legislation along the lines of the legislation in Western Australia. He wanted certain data from me, and I supplied it to him. Perhaps the Parliament of Western Australia can derive a certain amount of satisfaction from the fact that a political party in another State is giving serious consideration to following the pattern of the Western Australian legislation.

Mr. Ross Hutchinson: And the member for Balcatta, too.

Mr. GRAHAM: Let us be fair about this. There is nothing personal, because the member for Balcatta is only one of a total of 80 members of this Parliament. To

come directly to the Bill I suggest that two of the four provisions contained therein should bring forth no opposition whatever. The first amendment states what is meant by the word "union." The last section of the Act refers to the union, without defining which one it is. That came about, because when the Bill was introduced there was a definition of "union" with a long title and description, as it was sought to have a representative nominated by the union to be a member of the registration board. When that definition was deleted by the Government all of us overlooked the fact that the final clause of the then Bill referred to the union. The amendment in the Bill before us seeks to clarify the position to show that we are not referring to the butchers' union or some other union, but to the painters' union.

The second amendment is contained in clause 4 and relates to the "Master Painters' Association of Australia." Here the fault was mine when that title was inserted in the Act, because there is no such body. I have correspondence which I can show the Minister, if he wants to be certain on the point, that the correct title of the Federal body is "Council of the Master Painters, Decorators' & Sign-writers' Associations of Australia." No new principle is being introduced. This Bill merely seeks to give the proper titles of those associations.

Clause 3 contains the other two amending provisions. It is necessary to point out that at the present time, when painting work is carried out for a fee or reward in excess of £50, it is an offence unless the person performing the work is a registered painter. Experience has shown that the intention of the legislation is being circumvented in that invariably when any question is raised there is a pact entered into between the person doing the job and the person for whom it is being done to say that the owner of the premises has provided the paint, and therefore the £50 relates only to the fee for the job. I am certain the intention is that the £50 should include the cost of the materials.

Mr. Ross Hutchinson: Which part of that clause are you referring to?

Mr. GRAHAM: I am referring to paragraph (b). I draw the attention of members to the Builders' Registration Act. Section 4A (1) (a) provides something which is on all fours with what the Master Painters' Association is seeking, and which also has the approval of the painters' union. This section of the Builders' Registration Act states—

It shall be unlawful for any local authority to issue to any person who is a journeyman builder under section ten A of this Act a permit under section three hundred and seventy-four of the Local Government Act,

1960, to commence or proceed with any building on any block of ground in any area within which this Act applies, if the cost of the work including the cost of supplying the necessary materials and rendering the necessary service is reasonably likely when the work is commenced to exceed . . .

It goes on to specify the figure, which is not particularly relevant to the Bill before us. So the principle has been established by Parliament that when a limitation is placed on the amount of work that can be done by a person without qualifications it shall be not only for the services rendered, but also for the cost of the materials supplied.

Mr. Lewis: Does that limitation apply throughout the State?

Mr. GRAHAM: It only covers what is encompassed by the boundaries of the Metropolitan Water Supply, Sewerage and Drainage Act. In other words, it is a very limited area. It should not be necessary for me to emphasise that the Act does not, and neither is it contemplated to, interfere in any way with the person who is carrying out painting on his house or for one of his relatives. That was explained sufficiently when the original Bill was before us. This legislation has been in force for some two years, and members will readily appreciate it has not impeded the freedom or activities of the individual. It has protected the master painters and the operative painters, and it has also protected the people for whom work has been carried out.

The final amendment is contained in the first portion of clause 3, which provides that a charge, fee, or reward for painting carried out by a person who is not a registered painter shall not be recoverable by action or otherwise in a court.

Mr. Ross Hutchinson: That applies to work over a certain amount.

Mr. GRAHAM: Obviously it refers to an undertaking in excess of the amount provided in the legislation. In other words, if a painter has unlawfully carried out a painting operation—he might be painting one of the city emporiums—then if this Bill is passed he will be denied the right to sue for recovery of the amount through the law.

A similar provision appears in the Builders' Registration Act, which states—

No person who is not registered under section ten or under section ten A of this Act shall—

be entitled to recover in any court any fee or charge under any such contract or engagement.

So, again, this is not a new principle which is being introduced.

Mr. Ross Hutchinson: Have you any reasons which you can put forward?

Mr. GRAHAM: I think they are self-evident. If a person performs an act which is contrary to the law then the law should not protect him and provide him with a facility to recover in respect of that offence. Parliament recognised that principle when it passed the Builders' Registration Act, which has been in operation for 25 to 26 years.

Mr. Ross Hutchinson: You say this applies only within the area.

Mr. GRAHAM: None of the provisions has application outside the restricted metropolitan area encompassed by the boundaries of the Metropolitan Water Board. I conclude on the note that in my opinion the Bill is simple to understand. Apart from correcting two errors in names it contains two principles, both of which have been accepted by Parliament, and one of which was introduced by this Government as recently as 1961. With those comments I have pleasure in submitting the Bill for the approval of the House.

Debate adjourned, on motion by Mr. Ross Hutchinson (Minister for Works).

*House adjourned at 10.27 p.m.*

## Legislative Council

Thursday, the 23rd September, 1965

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

### QUESTIONS (4): ON NOTICE

#### WATER SUPPLIES: EUCLA BASIN

*Bores : Number, Depth, and Further Tests*

1. The Hon. R. H. C. STUBBS asked the Minister for Mines:

With reference to the Eucla basin in Western Australia—

- (a) How many bores have been sunk in search of water, by—
  - (i) the Government; and
  - (ii) private enterprise?
- (b) What are the various depths, water flow, and quality?
- (c) Is it the intention of the Government to further test this area by sinking additional bores?
- (d) If so, when can it be expected work will commence?

The Hon. A. F. GRIFFITH replied:

- (a) (i) The Commonwealth Government drilled 18 bores along the transcontinental railway line. W.A. Main Roads Department drilled 10 bores along Eyre Highway. P.W.D. drilled two bores at and near Madura. Total 30 bores.
- (ii) The bore census in the Eucla basin has not been completed, but up to date there are records of approximately 150 bores, most of them drilled for stock purposes.
- (b) Depths: Depths vary from 100 feet to 2,000 feet. The bores along the transcontinental railway range in depth from 235 to 1,470 feet. The majority are between 300 and 600 feet deep. The bores along Eyre Highway vary in depth between 350 and 750 feet. Most stock bores are less than 350 feet deep. The deepest bore is at Madura, 2,041 feet. It is the only flowing bore known.