says, "Then why put the words in?" My answer is, "To clarify the position." Clearly, the position needs clarifying because, although this evening the Minister has agreed that it does not make any difference whether or not the words go in, members will recall that when I moved this amendment some three weeks ago, he was not clear because he said that my amendment laid the position wide open. He also said that he had legal advice on the matter. It was only after I suggested to him that he might tell his legal advisers to look at the position further that he made another statement this evening.

If the Minister can so misconstrue the position, and his advisers can do the same thing, without endless research, surely in the interests of those who have to try to interpret this legislation, and in the interests of the ordinary citizen who wants to read an Act of Parliament without going to a solicitor, it is the duty of Parliament to make the measure as clear as it can be made so that there will be no ambiguity.

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

Ayes—6.

Hon. C. R. Abbey	Hon. G. C. MacKinnon
Hon. L. C. Diver	Hon. H. K. Watson
Hon. J. G. Hislop	Hon. R. C. Mattiske
	(Teller.)

Noes—18.

Hon. G. Bennetts	Hon. A. L. Loton
Hon. J. Cunningham	Hon. C. H. Simpson
Hon. E. M. Davies	Hon. J. D. Teahan
Hon. J. J. Garrigan	Hon. R. Thompson
Hon. A. F. Griffith	Hon. J. M. Thomson
Hon. R. F. Hutchison	Hon. W. F. Willesee
Hon. G. E. Jeffery	Hon. F. D. Willmott
Hon. F. R. H. Lavery	Hon. F. J. S. Wise
Hon. L. A. Logan	Hon. A. R. Jones
	(Teller.)

Majority against—12.

Amendment thus negatived.

The Hon. H. K. WATSON: In view of the Minister's attitude in this matter, and the vote of the Committee which has just been taken, it would be useless for me to move the other amendments I have on the notice paper. However, I would like to warn the Minister that he has brought down a Bill purporting to clean up an anomaly in the Act, but the Bill does not clear up the anomaly. He will find that there are still weaknesses in it; and some farmer's dependants will have heavy probate duty to pay simply through the stubbornness of the Minister in not making the Act clear. I am satisfied that it is useless to try to clarify the position further, but I record my emphatic protest at the stubbornness of the Minister in refusing to be what I consider even reasonable.

Clause put and passed.

Title put and passed.

Bill reported without amendment and the report adopted.

Third Reading.

Bill read a third time and passed.

House adjourned at 9.10 p.m.

Legislative Assembly

Tuesday, the 17th November, 1959

CONTENTS

The SPEAKER took the Chair at 4.30 p.m., and read prayers.

BETTING INVESTMENT TAX BILL

Pairs Lists

MR. MAY (Collie) [4.33]: Mr. Speaker, may I have your permission to make a personal explanation?

The SPEAKER: Very well; the honourable member may proceed.

Mr. MAY: The following article appeared in the country edition of the *Daily News* on the 13th November last:—

> Iven Manning, who had had a few hours' sleep at his South Perth flat, told me the cause of the flap in the House last night.
>
> Collie member Harry May had been paired with Ted Oldfield, but during the debate had switched his pair to another member, leaving Oldfield free to vote.
>
> "As usual in these cases, I went to look for the Speaker to vote if needed, and I hadn't realised how long the bells had been ringing," he told me.
>
> "The Speaker was only in his room, but by the time we reached the door of the Chamber, we were locked out."

I am not concerned with the latter part of the statement, but I am with the beginning. I was never paired with any member at any time during last Thursday evening and Friday morning. That is a complete denial of what was published in the *Daily News*. I point out further that it was impossible for me to switch my alleged pair to any other member, because I was never paired. I also point out that the member for Mt. Lawley was paired for the whole of the sitting and was not left free to vote as he wished. I make that explanation because they are the facts, and I think the House should know them.

MR. I. W. MANNING (Harvey) [4.36]: I wish to make a personal explanation and state that the situation is as was outlined by the member for Collie.

Mr. May: Good on you!

Mr. I. W. MANNING: A reporter from the *Daily News* engaged me in conversation and I did not know he was seeking a statement. The facts as indicated by the member for Collie are not what I told the reporter. The conversation made some mention about what took place on that particular event, but I did not give a story such as appeared in the paper.

Mr. MAY: I thank the member for Harvey for substantiating my statement.

Mr. Hawke: What about the *Daily News?*

QUESTIONS ON NOTICE

UNEMPLOYMENT

Payments to Single Unemployed

1. Mr. ANDREW asked the Premier:
   Earlier this session, when speaking on the withdrawal of the 17s. 6d. per week subsidy to single unemployed, the Premier said that each case would be taken on its merits:
   (1) Did he find any cases which he considered warranted this payment?
   (2) If so, how many?

Mr. WATTS (for Mr. Brand) replied:

(1) No.

(2) Answered by No. (1).

Note. Although no single persons received a weekly augmentation of 17s. 6d. in addition to their social service benefits, 68 persons were granted special assistance under the following categories:—

(1)	Persons awaiting social service benefits—	
	(a) Persons discharged from prison	19
	(b) Persons discharged from hospitals and mental homes	26
	(c) Others	18
		63
(2)	Persons discharged from hospitals and requiring extra nourishment	2
(3)	Miscellaneous cases	3
	Grand Total	68

Persons in categories (a), (b), and (c) were made an initial payment in accordance with the Commonwealth Department of Social Services' scale.

In the majority of cases this represented a grant of 65s.

Persons in category (2) were granted 10s. per week for a period of three months.

Persons in category (3) were made grants of up to 60s.

HOUSING AGREEMENT

Rental Rebates

2. Mr. GRAHAM asked the Minister representing the Minister for Housing:
   (1) Is it a fact that rental rebates are no longer granted in respect of houses built under the 1956 Housing Agreement?
   (2) From when did this decision operate?
   (3) What are the reasons for the discontinuance of the concession?
   (4) Does the decision affect tenants in occupation and enjoying rebates at the time of the alteration of policy?
   (5) What losses, if any, have been sustained in the fund from which rental rebates have been met under the 1956 agreement?

(6) In future, what is to be the position of a family if the breadwinner is unemployed for lengthy periods, or if the breadwinner dies and leaves a widow and a number of young children?

Mr. ROSS HUTCHINSON replied:

(1) No. It is not a fact.

(2) to (5) Answered by No. (1).

(6) Each case of application for rebate of rent under the 1956 Commonwealth-State Housing Agreement will continue to receive consideration according to individual merit. However, the commission has for some considerable time been closely watching the question of rebates in respect of the 1956 Agreement, wherein losses are borne entirely by the State; and the 1945 Agreement, in which the Commonwealth Government shares the losses. This has been with a view to finding ways and means of accommodating rebate cases as far as possible in 1945 Agreement houses. Such considerations are not effective in respect of the areas north of the 26th parallel. The matter of rebates is still receiving attention.

Mr. Graham: That is half true.

GOVERNMENT OFFICERS

Salaries, Allowances, etc. of Departmental Heads

3. Mr. GRAHAM asked the Treasurer:

(1) What salary was payable for the positions respectively of Public Service Commissioner, Under Treasurer, and Under Secretary, Premier's Department, in 1955 and in 1959 respectively?

(2) What cost, allowance or other arrangement in respect of telephone installation, rental, calls (both local and trunk) telegrams, etc., applied at the place of residence of these officers in 1953 and 1959 respectively?

(3) What car arrangement, running, mileage or other allowance was payable by the Crown in respect of these officers in 1953 and 1959 respectively?

(4) What daily travelling allowance would be payable respectively in 1953 and 1959?

(5) What emoluments from other Crown instrumentalities or payments for other duties, if any, are receivable by these officers?

(6) Are any special leave concessions available to these officers, and if so, what are they?

(7) What other considerations, not usually available to public servants other than heads and subheads of departments, are available to these officers?

Mr. WATTS (for Mr. Brand) replied:

	Public Service Commissioner	Under Treasurer	Under Secretary, Premier's Department
	£	£	£
17/11/1955	3,310	3,660	3,090
17/11/1959	3,820	3,840	3,350

	Public Service Commissioner	Under Treasurer	Under Secretary, Premier's department
1953	Rental paid by department. Calls paid by officer. Official trunk calls paid by department.	Rental paid by department. Calls paid by officer. Official trunk calls paid by department.	Rental and calls paid by department.
1959	Do. do.	Do. do.	Do. do.

Public Service Commissioner.

1953 The Public Service Commissioner is paid mileage in accordance with approval scale for public servants generally, and this applied also in 1953.
The respective rates for 1953 and 1959 are as follows :—

Area	Rate in Pence per Mile			
	1953		1959	
	Over 12 h.p.	12 h.p. and under	Over 12 h.p.	12 h.p. and under
Metropolitan	9·1	7·4	10·9	8·9
South-West Land Division	10·7	8·7	12·7	10·3
Other	11·5	9·3	13·6	11·0

1959 See above.

Under Treasurer.

1953 Car serviced at Government Garage and allowance of 20 gallons of petrol per month, in lieu of payment of appropriate mileage allowance when car used on Government business.

1959 Nil. This officer does not claim mileage allowance though he uses his private car on Government business.

Under Secretary, Premier's Department.

1953 Car serviced at Government Garage and allowance of 20 gallons of petrol per month, in lieu of payment of appropriate mileage allowance when car used on Government business.

1959 do. do. do. do. do. do.

(4)

	1953	1959
Interstate	.... Up to 63s. per day.	84s. per day but up to 120s. per day if accompanying a Minister.
Intrastate	.... 30s. per day.	45s. per day.

(5) Nil. The officers concerned perform a number of extraneous duties without payment.

The Swan River Conservation Act provides for payment of a nominal amount of £100 per annum to the chairman, who is at present the Public Service Commissioner. This has not yet been claimed.

In 1955 the then Public Service Commissioner received an allowance of £200 per annum as chairman of the Superannuation Board and the then Under Treasurer £200 as Chairman of the Fremantle Harbour Trust.

(6) No.

(7) Departmental heads are issued with passes on the State railways but no use is made of these by the officers mentioned.

I would say orally to the honourable member in reply to No. (1) that the figures have been given from the 17th November, 1955, and the 17th November, 1959. I understood earlier that there were, in the first-mentioned year, some other adjustments made. If the honourable member desires information he only has to ask for it.

OMNIBUS LICENSE

Requirements for Vehicle and Owner

4. Mr. NORTON asked the Minister for Transport:

Does the Western Australian Transport Board, in every case, when approving an omnibus license in the metropolitan area, to other than the W.A. Government Tramways Department, the W.A. Government Railways or the M.T.T.—

(1) require that such vehicle shall operate only upon a specified route;

(2) require such vehicle to carry only a specified number of passengers on any one vehicle at any one time;

(3) require such vehicle to run to a specified timetable;

(4) require the owner of such vehicle to charge fares only as specified by or approved by the board;

(5) require the owner to keep such records and statistics as may be required by the board?

Mr. PERKINS replied:

(1) Yes, for regular services. The vehicles are also licensed to cater for charter trips within a radius of 40 miles from the General Post Office.

(2) The maximum number of passengers is prescribed in the license.

(3) Yes.

(4) Yes.

(5) Yes.

CARNARVON SCHOOL

Acquisition of Site from Commonwealth

5. Mr. NORTON asked the Minister for Education:

(1) Has the Education Department or the Public Works Department been able to acquire from the Department of the Interior or the Department of Civil Aviation the land at Carnarvon required for the new primary school site?

(2) If not, what is the position?

Mr. WATTS replied:

(1) Not yet.

(2) Negotiations are not yet complete.

GASCOYNE RIVER

Conservation of Water Supplies

6. Mr. NORTON asked the Minister for Works:

(1) In view of his statement, on the 11th November, that his Government will do more in the next two months than the Hawke Government did in the past six years, can it be understood that some definite step will be taken within

the next two months on some definite form of water conservation on the Gascoyne River at Carnarvon?

(2) If not, why not?

Mr. WILD replied:

(1) and (2) Water conservation on the Gascoyne River at Carnarvon has been engaging the attention of engineers of the Public Works Department over many years. A gemco drill is on order and will be utilised to undertake borings further upstream in the river bed to see whether further basins exist. The reconstitution of the advisory committee for the Gascoyne River was completed today and it will be asked to give early consideration to the future control and use of the waters in the river, having in mind the issue of licenses under the provisions of the Rights in Water and Irrigation Act.

OSBORNE PARK SCHOOL

Sports Oval and Water Bore

7. Mr. W. HEGNEY asked the Minister for Water Supplies:

(1) Is he aware that the Osborne Park Parents and Citizens' Association hopes that within a year or two a sports oval will be provided for the children of Osborne Park School?

(2) When did the association request approval from the Public Works Department for the plan to sink a bore at the school?

(3) If no decision has yet been made regarding the request, will he explain the reason for delay?

(4) What financial assistance will be available from the Government for the project?

Mr. WILD replied:

(1) Yes.

(2) The 24th February, 1959. The proposal was unsatisfactory and was returned to the Education Department for amendment. It was resubmitted to the department on the 2nd July, 1959, and approved on the 28th October, 1959.

(3) See No. (2).

(4) £317.

PARKING METERS

Motorists Fined, Revenue, and Replacements

8. Mr. HALL asked the Minister for Transport:

(1) How many motorists have been fined as a result of parking at parking meters beyond allowable time?

(2) What revenue was received as a result of fines for the above offence?

(3) How often are parking meters checked for faults and overhauled?

(4) How many meters have been replaced because of faulty mechanism since inception of parking meters in the City of Perth?

Mr. PERKINS replied:

(1) Approximately 40 per day.

(2) Approximately £12,000 per year.

(3) Checked daily.

(4) Adjustments have been made to 168 meters over the last 12 months.

TRAFFIC ACT AMENDMENT BILL (No. 4)

Second Reading

Debate resumed from the 11th November.

MR. NULSEN (Eyre) [4.40]: This is a Bill to help a motor-vehicle driver regain his license after having had the license suspended, or after having been disqualified from holding a license for an offence under the Traffic Act. This matter will be in the hands of a stipendiary magistrate. I think this is preferable to the Minister handling the matter; and it is safer because a magistrate will have the opportunity to hear evidence. He will have a better understanding of the position and of the driver's psychological outlook.

The proposal in the Bill for an extraordinary license is a good one because the Attorney-General—or the Minister for Justice if there is no Attorney-General—has no power to grant a conditional license. I feel that the license suggested by the Bill will be a probational, conditional license. The granting of such a license will ensure protection to the public.

The Minister, whoever he may be, has to be compassionate and merciful in accordance with his prerogative. In addition, he must be fair; and it is only right that a driver who has lost his license should have an opportunity to have it returned to him. We all make mistakes; a person who does not make a mistake does not do anything. If a man did not drive a motor vehicle, there would be no need for him to make a mistake in regard to driving. Most of the mistakes that are made by motor drivers are unintentional; and the drivers are not criminals.

When we take into consideration the personal equation, the family responsibilities, and the stability of the person concerned, we have a better opportunity of assessing the person and deciding whether he should be given another opportunity to drive within the period of his disqualification. The provision in the Bill does not go beyond the time of disqualification. If the Bill is agreed to, the magistrate,

after hearing evidence, will be able to give the driver an extraordinary license. The Minister deserves credit for bringing down a Bill of this description. When we talk of an extraordinary license we speak more of a probational, discretionary license.

When I was Minister for Justice, I was often worried for days because I would feel it was quite worth while giving some person who had lost his license an opportunity to regain it; but the Minister, if he gives a license back to a person who has lost it because of some offence, cannot make any conditions. The driver concerned might make an honourable agreement with the Minister—this has been done in my own case, and I was not let down on any occasion—but the man might not honour the agreement, and could possibly kill someone.

Although the Minister has the prerogative of mercy by which he can make a recommendation to His Excellency the Governor for a driver to have his license returned to him, it is very hard for the Minister to be assured of any real security in the matter. The Bill, however, will give the public more security, as it were, than the Minister could get under his prerogative, in regard to dangerous driving. The Minister has a big responsibility. Although he has a prerogative, he does not feel he should be a rubber stamp.

I have often felt compassionate; and I have often thought, "I would like to do something for that person." I have been worried for days in connection with these matters, and eventually I have said to myself, "I just cannot take this responsibility"; and so I have put a stamp on the file stating "No action," and I have signed it. Afterwards I have thought, "Have I done right? Have I been fair? Have I acted in accordance with my prerogative of mercy?" At times I have come to the conclusion that I have not.

In these cases we get a report from the Under Secretary who goes to no end of trouble to accumulate all the information possible. He goes to the Commissioner of Police, who inquires through his officers and through the Comptroller-General of Prisons. At times I have felt that it is not fair, having received a report from these officers, to agree with it, because I do not think the Minister should throw the responsibility on to them. If the Minister hid behind their recommendation, he might prejudice them at some time or another. As Minister for Justice I always tried to avoid doing that, if possible.

A magistrate could hear and determine these cases and grant an extraordinary license, which would be a probational, conditional license. He would have the right to impose conditions, as the Attorney-General pointed out the other day. I had a case brought to me in regard to a man who had the bad luck to lose his license for 12 months. He was not a criminal, but a producer, and a very good man. Had he not been able to get his license back, his children would probably have lost nearly 12 months' schooling.

Mr. Tonkin: Surely this is not a matter of luck!

Mr. NULSEN: I say it is. I know a few people who have driven home under the influence of liquor, but they have not been picked up by the police. As a matter of fact I have on occasions had a few drinks myself before going home; but I have not been drunk, and I have got away with it. However, had I had an accident, the police would probably have said, "This man has had alcohol," and the report in the paper would not have been very creditable. I defy 20 per cent. of those sitting on the benches in this House to say they have not at times gone home in their motorcars with a few drinks in.

Mr. Hawke: In the cars or in themselves?

Mr. NULSEN: The drink would be in themselves, but they and the drink would be in the cars.

Mr. Graham: There is no law against having a few drinks and then driving home.

Mr. NULSEN: No; but it is a difficult position if a person is picked up and has odours of drink on him. Probably the honourable member who has interjected has been in the same position as I have been in. Probably he has driven home after having had a few drinks, and he has been lucky enough not to have been picked up by the police.

Mr. Graham: He has been circumspect enough not to over-drink.

Mr. NULSEN: I shall not dispute that; but I have not always been so circumspect. I will be quite candid about that.

Mr. Hawke: The honourable member has always been careful.

Mr. NULSEN: That might be so; and I have been lucky, too. I would sooner be lucky than rich at any time.

Mr. Graham: You are both.

Mr. NULSEN: I wish that were so. I believe that to be lucky is richness in itself, and I have been lucky enough to have had good health all my life. A magistrate can restore a license under certain conditions, and the person to whom the license is restored must carry out those conditions or he is liable to a fine of £100, and he loses the privilege of the extraordinary license. I think the Attorney-General gave a clear exposition of the situation; and the position, if this Bill is passed, will be much fairer for the offender, and for the public generally, than it has been in the past.

Applications for extraordinary licenses were becoming numerous, and at times it was difficult to deal with them. If a

Minister were to have the same power as it is proposed by this legislation to give to a stipendiary magistrate—and I do not think that would be right—he would be able to investigate the position and take the necessary evidence. This legislation will enable the magistrate to summon to appear before him the person concerned, and he will be able to decide whether that person should be granted an extraordinary license. By this legislation a number of people will be relicensed; whereas, under the present legislation, that is not possible. I welcome the Bill because I have had the experience of having to deal with these cases. Just before I left the Crown Law Department, I said to myself, "These applications are getting too numerous, and it is almost a one-man job to attend to them." It is a difficult situation when one is placed in the position of being able to grant mercy; and I care not what anyone says, either here or anywhere else, luck plays a big part in most things, and it plays a tremendous part in the cancellation of drivers' licenses. I commend the Attorney-General for bringing the Bill before the House, and it has my full support.

MR. EVANS (Kalgoorlie) [4.54]: I desire briefly to speak to the second reading of this Bill; and I, too, commend the Attorney-General for bringing it before the House. There is in it one virtue which I consider overrides all others: If a person desires to make an appeal against the cancellation of his motor-driver's license, so that he can drive his car for a given purpose, he will be able to place his case before the magistrate rather than the Attorney-General or the Minister for Justice. In most cases the magistrate would know the circumstances of the person concerned, and would be in a better position to give a decision. That, in my opinion, is the virtue that overrides all others in the proposition, and I have pleasure in supporting the Bill.

MR. HAWKE (Northam) [4.55]: In some respects this proposed legislation is rather extraordinary, and I will have something to say about that in a moment. I quite agree that it is difficult for an Attorney-General or a Minister for Justice to have to decide on applications which are sent in from time to time by deregistered or delicensed motor-vehicle drivers requesting that the Minister concerned exercise mercy, if that is the right term, and reinstate the driving license, or prevail upon the Commissioner of Police to do so. It is true that the Minister in that situation is placed in some considerable difficulty, particularly on the basis that he is not in a position to impose any conditions should he think that another license should be granted in any particular case. Either he must refuse to wipe out the disqualification, or he must agree to wipe it out, and agree completely; he is not able to impose any conditions on any wiping out of a disqualification and any reissue of a license.

So I sympathise with any Minister for Justice or Attorney-General in those circumstances. Nevertheless, as I said at the beginning, the Bill is extraordinary in some respects. It proposes to set up a system of retrial in respect of any person who has had his motor-vehicle driver's license suspended or wiped out. As I understand it, drivers' licenses are suspended or wiped out, as it were, only in cases of drunken driving and dangerous driving.

Mr. Watts: No. There are other cases.

Mr. HAWKE: I accept the suggestion of the Attorney-General that there are other cases. But I should say in the great majority of instances the cases would consist of drunken driving and dangerous driving.

Mr. Watts: Unlawful use of motor vehicles, speeding, and other offences.

Mr. HAWKE: I should think where that penalty was imposed for speeding it would be for speeding at very many miles per hour.

Mr. Watts: There was one case of where it was 38 miles per hour.

Mr. HAWKE: I would like to obtain from the Attorney-General more information about that case than he has so far made available because—

Mr. Watts: If you care to take a walk up to the Legislative Council—

Mr. HAWKE: —I am convinced there were special circumstances surrounding that one. Possibly the car was doing 38 miles an hour with no driver in it.

Mr. J. Hegney: There was an engine in America that did that.

Mr. HAWKE: As we know, there are many other offences committed by people in this community—offences against a hundred and one statutes, in addition to the Traffic Act. When people are found guilty of an offence against other statutes they may be sent to gaol for varying periods, or they may be fined; and, in some instances, fined very heavily. As far as I know, there is no provision for any retrial for them. They have been convicted and put into prison; or they have been convicted and have been fined.

It is true that in some instances gaol sentences are reduced; and, to that extent, there is an exercise of the Royal prerogative of mercy through the Minister concerned, or through the Governor in Council, or by the authority which releases the persons on parole—if I remember rightly, the Indeterminate Sentences Board. It is also true that when a person is convicted of drunken driving, or dangerous driving, or any other offence under the Traffic Act

which would also involve disqualification from driving a motor vehicle, or the suspension of his license, he suffers some other penalty.

He could be imprisoned, or he could be fined. I think I would be more inclined to give this proposed new legislation a trial if the person who was convicted and whose motor-vehicle license was suspended, or who was disqualified from driving a motor vehicle for a period, had to wait at least some time before he could make an application under the provisions of the proposed new law. It must be recognised that the person who would come under this proposed new law receives a fair hearing. He goes before a court; the case against is put forward by the authority concerned, and the accused person has an opportunity to put up his own defence, or to have it put up on his behalf by his own legal representative.

As the penalty of disqualification in relation to the holding and exercising of a driver's license, or the suspension of a driver's license is, in addition to other penalties, a severe imposition on the person concerned, it could be concluded, I think quite fairly, that the magistrate concerned, or the court concerned, would give very serious consideration to all the factors, including circumstances of hardship, which would be inflicted upon the accused person in the event of his driver's license being suspended; or in the event of a person being disqualified from holding a driver's license for any particular period.

Therefore, this Bill, in proposing to give a person who has been found guilty, and who has suffered these penalties, the right to apply immediately after a conviction, or after an order has been made against him, appears to me to imply a reflection on the magistrate who has tried the case, recorded a conviction, and imposed a penalty.

Mr. Watts: Normally that might be so, but I could give you some reasons for reconsidering that point of view.

Mr. Cornell: Are you not overlooking the fact that the cancellation of his license is obligatory under the Act?

Mr. HAWKE: That is so; and it is so because Parliament has decided that the offences for which the person concerned has been convicted are so serious as to justify the disqualification of that person from driving a motor vehicle for a certain period. I am glad the member for Mt. Marshall made that interjection, and brought up that point, because it is tremendously important.

I should think our main objective in this field is to protect people from death or injury from motor vehicles. That should be our No. 1 objective. After all is said and done, the motorist is entitled to every reasonable consideration, and to some mercy, possibly, in some circumstances; but our No. 1 objective surely should be the protection of the public against this particular type of motorist—the motorist who will drive his motor vehicle while under the influence of liquor; the motorist who will drive his motor vehicle dangerously and, therefore, to the danger of the public.

So, if we make our No. 1 objective the protection of the public from this particular type of motorist, my suggestion that we should approach this proposed new legislation cautiously has, I think, some merit. It is laid down in the Bill that the court may, if it thinks it appropriate or proper, have regard to several factors. They are enumerated. They refer to the character of the complainant first. The next consideration is the circumstances of the case. Whether that is the case in connection with which he was originally convicted I am not sure. The Bill then refers to the nature of the offence. That certainly would be the nature of the offence for which he was originally convicted.

The court must next have regard to the conduct of the complainant subsequent to the conviction or order. I am not quite sure what would be involved there. Clearly we cannot judge the conduct of the complainant subsequent to the conviction order in relation to the very thing which caused him to be convicted—that is, in regard to his handling of a motor vehicle —because during the period of disqualification or suspension he would not, unless he had broken the law, have been driving any motor vehicle.

The next factor to which the court must have regard is the degree of hardship and inconvenience which would otherwise result to the complainant and his family if it refrained from making the order. Doubtless we would all have a great deal of sympathy for the complainant and his family if his disqualification from holding a motor-vehicle license, or the suspension of his license for a period had, in fact, caused considerable hardship to the person concerned and to the members of any family he might have.

The last matter to be considered by the court is the safety of the public generally. Except indirectly there is no regard to be had for the family of the person who might have been injured or even killed as a result of the dangerous driving of the complainant in this instance; or as the result of the driving by him of a motor vehicle while under the influence of alcohol. I think we should make the safety of the public the No. 1 consideration in this particular part of the Bill.

Mr. Watts: Of course they are all of equal consideration so far as the magistrate is concerned.

Mr. HAWKE: That may well be; but if we could indicate somehow in the Bill that we regard the safety of the public as of No. 1 importance, that would be

desirable. I would much prefer to see the safety of the public generally included as paragraph (a) of proposed new subsection (2) rather than as paragraph (f). The Attorney-General might argue that as they might all be equal, and be considered equal by the magistrate, it would not make any difference. I would be prepared to suggest, if necessary, that we go further and make the safety of the public generally our major consideration.

Another part of the Bill aims to surround any person who is granted an extraordinary license with certain restrictive conditions. For instance, it could be that he would be able to drive only at certain times, and only in certain localities. It could be laid down that he could drive only a certain class or classes of motor vehicle; and any other conditions which were thought advisable to be included in the extraordinary license.

Those proposed conditions, I suppose, would be of some help. However, the degree to which they might help the person concerned, and the public, would depend in some instances, on the policing of them. Presumably in the event of this Bill becoming law, persons issued with an extraordinary license would become a sort of separate class and would, therefore, probably receive more than ordinary attention from traffic authorities, irrespective of whether they were covered by the traffic police in the metropolitan area, or by traffic inspectors in local authority districts in the country.

I should hope very much that these particular persons would be carefully watched by the traffic authorities concerned should this Bill find a place upon the statute book as part of the Traffic Act. I do not intend to vote against the second reading of the Bill, because I think the question of removing a disqualification, or of shortening a period of suspension, or of wiping it out altogether, should reside within the jurisdiction of a court, rather than remain in the hands of the Minister for Justice or the Attorney-General. But I was anxious to put forward the views which I have developed in respect of the Bill. I hope that other members will also express their views on the measure.

MR. WATTS (Stirling—Attorney-General—in reply) [5.15]: I am indebted to the member for Eyre for his references to the measure, and the obvious understanding that he has of the problems which gave rise to it. In regard to the remarks of the Leader of the Opposition I can perceive some grains of sense in the thoughts he has just uttered; but, in the main, they can be disposed of without very much difficulty.

As the member for Mt. Marshall interjected, a great number of these disqualifications or suspensions of licenses are the result of mandatory provisions in the Traffic Act. The magistrate has no option but to suspend or cancel the license, and disqualify the license holder, irrespective of what he may think of the circumstances of the particular case. Therefore, so far as the Act is concerned, the offender has had no trial at all, because in the normal way the penalty is entirely at the discretion of the magistrate.

There is a maximum penalty of so much fine or a certain term of imprisonment; and the magistrate may, in accordance with the particular circumstances of the case, inflict upon the defendant such, or the whole, of that penalty, as he thinks proper; whereas, in these cases—and there are a number of them now—where the penalty of suspension or disqualification in regard to motor-drivers' licenses has been made mandatory on the magistrate, he is not able to exercise that discretion. While he may be aware at the time of the hearing of many extenuating circumstances which normally would justify him, if he were not subject to that mandatory provision, in imposing upon the defendant a lesser penalty, he is obliged to go the whole way because of the mandatory provision in the Act.

It was for that reason that no time limit, as suggested by the Leader of the Opposition, was placed in this Bill; because in those mandatory cases there is no means whatever for the magistrate to take any steps at all to make an allowance for any extenuating or alleviating circumstance which might actually have taken place in regard to the commission of the offence, let alone any matters of hardship which might devolve upon the offender's family as a consequence of the conviction.

As this Bill will provide the only opportunity there is—if it becomes an Act—of having those matters inquired into, the time limit was cut out. At present, the system is that Ministers of Justice or Attorney-General, with the aid of their department, and with the aid of inquiries made, police briefs, and—on some occasions—the gaol authorities, depending upon the circumstances of each case, can take action a very short time after the suspension or disqualification. It is rare that relief would be given in a very serious case, but in other cases relief has been given, as mentioned by the member for Eyre and myself in the course of our remarks.

It seems to me that as this matter was being made a judicial matter substantially, taking all the circumstances into consideration, the magistrate should be left as free as possible to make this inquiry in any event. So in those cases the provisions of the Bill do not set up a system of retrial. They give an opportunity only for the investigation of a matter which was impossible to investigate in regard to charges, where the disqualification from

holding a license, or suspension of a license, was made mandatory upon the magistrate, irrespective of the surrounding circumstances of the complaint. All that had to be proved was that the offence was committed. In other matters, the magistrate has had removed from him all discretion as to the penalty. Therefore this Bill, in giving him discretion subsequently to inquire into the situation, is quite desirable in its present form.

The same circumstances have obviously arisen in both Great Britain, and South Australia where I looked into the legislation. The magistrate in both those places is entitled to make inquiries, and to cancel the suspension or return the license without any provision as to limitation or conditions, as are set out in this Bill.

It was for the safety of the public that that practice was not adopted in this Bill. It was considered that circumstances of hardship and in other directions might justify a restricted license, where the circumstances certainly would not justify the entire remission of the penalty. Therefore, instead of providing that the magistrate—as the other statutes which I have mentioned do—may order a return of the license after inquiry, it was decided to give authority to the magistrate, if he thought fit, to issue a restricted license.

I indicated during the second reading speech that attempts had been made by Ministers of Justice and Attorney-Generals to restore licenses on such types of conditions, but it must be on a purely honourable understanding. While I believe that in those cases the understanding has been kept—at least there has been no proof yet to the contrary—the method is not a very satisfactory one; whereas the conditions in this Bill can be enforced, as the provisions in the last two clauses of the Bill disclose.

The severity of a penalty varies very greatly with the circumstances of a person. To one man a fine of £50 and the loss of his license for 12 months mean very little so far as his livelihood and pocket are concerned. He can pay the £50 quite easily, and there is no need for him to drive a motor vehicle for the convenience of his wife and family; somebody else can drive it for him, or it may not be driven. He can travel on public transport.

In other cases a fine of £50 and deprivation of a driver's license for 12 months or longer on a person whose only occupation is the driving of a semi-trailer for a transport company, is a very much heavier penalty. Yet there is no means in the existing law of alleviating the situation of the latter. He is fined £50 and his license is cancelled for 12 months, notwithstanding the fact that he has to find, if he is able to, some new occupation other than the one he has followed for many years, at a time when occupations are not easy to find.

So the magistrate, in considering the provisions of this Bill, if it becomes an Act, will be asked to take those matters into consideration, and very often there is little question of the safety of the public being involved. There are very many cases where licenses have been taken away, or the persons disqualified, which actually do not come anywhere near involving a risk on any member of the public. The circumstances were such that a person offended against the law, and on being found out—the member for Eyre regarded it as being unlucky—the penalty was imposed, in circumstances where there was actually no possibility of causing, and there certainly was no actual injury caused to any member of the public.

The magistrate will be in a far better position to examine that situation than would the Minister for Justice, the Attorney-General, or his officers. The only places that I know of—that is, South Australia and the United Kingdom; although there may be others which I am not aware of—have not taken any steps to empower magistrates to restore licenses, extraordinary or otherwise, upon conditions.

The conditions were inserted in the Bill with the main idea of removing where desirable, any extra imposition of hardship upon the defendant in circumstances such as those to which I have referred. I hope that the House will be good enough to accept the Bill in the form in which it now stands.

Question put and passed.

Bill read a second time.

In Committee

The Chairman of Committees (Mr. Roberts) in the Chair; Mr. Watts (Attorney-General) in charge of the Bill.

Clause 1—Short Title and citation:

Mr. HAWKE: When Bills have been introduced and some of the clauses were difficult to understand, some members—including myself—have not hesitated to indulge in moderate criticism of the drafting. I rise on this clause only to say that this Bill is very clearly drafted from beginning to end. Without in any way trying to be patronising, I suggest that the Attorney-General, if he considers it desirable, pass on my views to the Parliamentary Draftsman.

Clause put and passed.

Clause 2 put and passed.

Clause 3—Sections 33A and 33B added:

Mr. HAWKE: I listened very carefully to the Attorney-General when he replied to the debate. I wonder why we are not considering a Bill to give the magistrate who tries the case originally the discretion which this Bill proposes to give to

some other magistrate or court. This proposal appears to me to be going the long and expensive way around to achieve an objective which could be achieved quicker and easier and at much less cost by amending the existing Act in order to give the court which is trying the original charge the discretionary right which is proposed in this Bill.

In the event of this Bill becoming law, the position subsequently will be that a person will be charged before a court for an offence against the Traffic Act. When he is found guilty and fined and, in addition, his right to drive is cancelled or his driving license is suspended because the magistrate has no option, then he can later—perhaps the day afterwards—apply to a court for a hearing under this provision. He will presumably involve himself in more expense and loss of time. He will have to engage legal counsel for a second time; and goodness knows how long it will take for his application to be heard and decided. During the interval from the time he has been convicted and the time when he might gain a satisfactory verdict under this proposed new law, months might have passed—certainly several weeks.

Therefore, in the instance referred to by the Attorney-General, the person concerned will not be able to drive his truck or whatever vehicle he owns. He will consequently be losing substantial income and suffering hardship, as will the members of his family. If the principle contained in the Bill be a good one—and I think that might be admitted—why not place a magistrate or court in a position where all of the circumstances could be considered at the time when the original case is being heard?

Surely that magistrate would be the person best suited to decide whether there should be a disqualification of the driver's license or a suspension of it. The Attorney-General told us that, under the existing law, some magistrates would almost certainly—had they possessed the discretionary rights—not have ordered a disqualification or suspension.

Mr. Watts: Not for the periods that are mandatory anyway.

Mr. HAWKE: They would definitely not have imposed the substantial additional penalty which would be involved in disqualification or suspension. Why not alter the law to give discretion to the magistrates who hear the original charge? Why continue to force upon them the imposition of mandatory supplementary penalties and then set up under this proposed new law another hearing altogether, perhaps by another magistrate?

Mr. Watts: It is to be the court before which he was convicted.

Mr. HAWKE: Well, by the same court then. There will be a new hearing in respect of the factors which are set out in this Bill. I suggest with all respect that the position becomes a bit rigmaroley and somewhat duplicated.

Mr. Watts: Nuh!

Mr. HAWKE: The Attorney-General makes the illuminating interjection "nuh" which I presume means "no" in this setting. Surely the Attorney-General would agree that it would be better for the magistrate hearing the original charge to have this discretionary right at that time, as against having it at some subsequent time. By attacking the problem in the way proposed by this Bill, we would be delaying the granting of justice to the accused person. The delay between the time of the original hearing and the subsequent hearing might cover weeks or months, according to circumstances. Surely the sensible and equitable thing to do is to give this justice immediately to prevent the injustice being imposed at all! To me that would appear to be not only the commonsense approach, but also the just approach.

If a person should not have what would be a severe penalty—in some cases, of disqualification; and in others, of suspension—imposed upon him, why impose it upon him mandatorily by the law, when the magistrate hearing the charge would feel the penalty should not be imposed at all? I think if we are making an attempt to see that justice is done in all the circumstances of a particular case, we should go the step further and do whatever is in our power to see that the injustice is not imposed even for a few weeks.

Therefore I submit that the suggestions I have made are appropriate and applicable, and I hope the Attorney-General will give some closer consideration to them. Most of what is in this Bill could be incorporated in an amending Bill of the kind I am suggesting. The only difference between my suggested Bill and this one is that the magistrate trying the charge in the first instance would have this discretionary authority and the right to impose the conditions which are imposed in this Bill.

Mr. WATTS: A great deal of consideration has been given to this matter; and, in fact, the amount of consideration which has been given to it is the reason the Bill is only now being discussed in this Chamber; because the original suggestion in regard to it was made many weeks ago. First of all, it must not be forgotten that Parliament, and in very recent years, has incorporated in the Traffic Act the mandatory conditions to which I referred when replying to the second reading debate. It is a matter of only a couple of years since some of them were included. I am not too sure that one was not included as recently as a year ago. Therefore, it appeared that to insert such provisions as these in regard to every case that came before the magistrates where the question

of a cancellation or suspension of the license might be involved, would be unwise; because, on the other hand, the number of applications that are likely to be made and to succeed under this Bill would, I suggest, only be a percentage of those where, under the provisions of the Traffic Act which I have just mentioned, the license has been cancelled or disqualification imposed.

The net result is that it was considered that it is only going to be in special cases, where obviously circumstances justify it, that these applications are going to be made; and that, on the other hand, the intention of Parliament in regard to these mandatory provisions—expressed so strongly on two or three occasions over the last four or five years—should not be departed from. It was intended only to place into the statute an alternative to the system of recommending to His Excellency the Governor that the Royal prerogative of mercy should be exercised by him in regard to some of these cases.

The number of cases that come before the Crown Law Department under that heading is certainly only a small fraction of the number of suspensions of license or disqualifications that are imposed by the courts in various parts of the State. Although the number of them, so far as attention is required by the Crown Law Department is concerned, is considerable—I think I said in the early part of my second reading speech that the number might be six or seven in a week—nevertheless the number of convictions where such penalties are imposed is immeasurably greater than that. Therefore it seems to me conclusively to point to the fact that with that system being put into disuse by this Bill, the number of applications which will come under this Bill will be limited to a fraction of the number that—

Mr. Hawke: Why?

Mr. WATTS: Because, as I have said, the number that comes for recommendation to His Excellency the Governor is only a mere fraction of those disqualifications and suspensions imposed from week to week; because obviously some people know they would not have a chance as there would be no question of hardship, good character, or anything like that to support the application under this Bill, in the same way as they would have nothing to support an application to the Crown Law Department. Six-sevenths of them are scrubbed. Therefore it is my opinion, after careful consideration, that this is the best way to approach the matter, for at least the time being.

Mr. GRAHAM: The Minister said the object of the measure is to provide an alternative to the Royal prerogative of mercy, instigated by the Attorney-General or Minister for Justice. As I see it, the Minister will still be in a position to exercise discretion and make a recommendation to the Governor in Executive Council. The usual procedure is for the person concerned to approach a member of Parliament, to see how far he can influence the Minister for the time being; so this will provide an additional outlet and will be an open invitation to anyone to try to get the suspension reduced or wiped out.

Mr. Bovell: The Minister would have the right to reinstate a license in full, but not partially.

Mr. GRAHAM: That is so; and that might be a worse matter still as regards the protection of the public. The power will remain with the Minister.

Mr. Watts: With the Governor.

Mr. GRAHAM: Yes; but the Minister will prepare the papers and make a submission.

Mr. Watts: I think it is extremely unlikely to have the effect the honourable member envisages.

Mr. GRAHAM: The courts are not bound in respect of penalties; and after hearing all the facts and circumstances, they often impose penalties, following which there may be either a complete or partial remission of the penalty.

Mr. Watts: That has been going on for years.

Mr. GRAHAM: That is so; and so the fact that a person makes application to the court under this provision has no effect on his fate if he approaches the Minister. The Minister made some play on the fact that under certain circumstances suspension or cancellation of a driver's license is mandatory. In that regard Parliament decided that it would not tolerate leniency being extended by the courts in certain cases, and in that respect it was rather selective. A driver's license may be suspended for any offence in the calendar; but I understand there are only four grounds on which suspension, cancellation, or a complete ban is mandatory.

The first ground is driving under the influence of liquor; and four or five years ago, in view of the position then obtaining, Parliament extended the period of suspension. I do not think it is suggested that there should be any lessening of the severity of the law in that regard. I do not think that the penalties inflicted in such cases should be reduced considerably. The second ground is reckless or dangerous driving, and then only on the commission of the offence for a second time within a period of five years. The offence is driving a vehicle on a road recklessly or at a speed or in a manner dangerous to the public. Such persons are responsible for about 90 per cent. of the accidents that occur.

It is hardly likely that a person breaking the law and committing these offences will be doing so for the first time when apprehended. Generally he has committed

the offence on innumerable occasions. The third ground is that of stealing a car, and I do not think leniency should be extended in that case. Those are the three offences with which we are concerned, apart from that of a person whose license is suspended and who proceeds to drive a vehicle during the period of suspension. In that case a further period of suspension is automatic. Those are the only cases where the court has no discretion. In all the other cases the court can refrain from imposing a penalty of suspension, or may grant varying periods of suspension, depending on the nature of the case.

While I appreciate the reason for the Minister's submission as to whether it would be wise for us to give an official imprimatur to something in regard to which Parliament has laid down specific provisions, if we adopt the attitude that a suspension is a far more severe punishment to one class of motorist than it is to another, does not that apply in respect of practically any offence? A working man may find a fine an intolerable burden, whereas a person of substantial means would not feel it at all; and so, unless and until we can lay down a basis of penalties possibly representing a percentage of a person's annual income or assets, or something of that nature, I believe any penalty imposed will have an unequal effect on different people.

In the great majority of cases the magistrate has the discretion as to whether to impose a penalty; and, if a suspension is imposed, as to its duration; but in a few cases, in regard to driving under the influence of liquor and stealing cars, and reckless and dangerous driving, Parliament has laid it down that where such an offence is committed more than once in five years, in addition to the other penalties suspension of the license must be imposed. I think those penalties should remain.

Mr. HAWKE: I move an amendment—

Page 2, line 23—Insert after the word "to" a new paragraph to stand as paragraph (a) as follows:—

(a) the safety of the public generally;

I take it that the renumbering or relettering of the paragraphs would be attended to by the clerks?

The CHAIRMAN: Yes.

Mr. Watts: I have no objection to the amendment.

Mr. GRAHAM: As I said, among the offences for which there is automatic suspension of the driver's license, there is included the stealing of a motor vehicle, or its unauthorised use; and that has no relation to the safety of the public.

Mr. Watts: That does not matter, because the magistrate must take all these things into consideration, depending on their application to the case.

Mr. GRAHAM: But the stealing of a car may not endanger the public.

Mr. Watts: But he must consider the nature of the offence.

Mr. GRAHAM: That must be taken into account in every type of offence.

Mr. Watts: But we do not want to tinker with the safety of the public generally.

Mr. GRAHAM: I do not want the stealing of vehicles or the unauthorised use of vehicles to be regarded lightly. Apart from the more serious offences, the magistrate already has discretion. The offences I mentioned earlier are the only matters that come under the purview of this arrangement, because the magistrate has already taken everything into account in deciding on the fine, term of imprisonment, period of suspension of license, and so on.

Mr. Watts: The speed with which the traffic list is dealt with sometimes prevents that.

Mr. GRAHAM: That is up to the court.

Amendment put and passed.

Mr. HAWKE: I move an amendment—

Pages 2 and 3—Delete paragraph (f).

Amendment put and passed; the clause, as amended, agreed to.

Title put and passed.

Bill reported with amendments and the report adopted.

HOUSING LOAN GUARANTEE ACT AMENDMENT BILL

Second Reading

MR. ROSS HUTCHINSON (Cottesloe—Chief Secretary) [6.2] in moving the second reading said: This small Bill, which comes to this House from another place, is designed to remove an anomaly; namely, to prevent the possible double charging of the fee of one quarter of one per cent. in regard to guarantees made under the Housing Loan Guarantee Act. When the Act was amended in 1958 to permit the granting of guarantees under section 7A. to lending institutions, in addition to guarantees being given to approved institutions operating under section 7, it was not intended that two separate fees of one quarter of one per cent. should be payable to the guarantee fund account, because it was recognised that the extra charge would be passed on and added to the interest rate payable by the home-purchaser.

A recent Crown Law opinion confirmed that the present wording in the Act requires two payments to be made, and for these reasons the Government has introduced this Bill to remove the anomaly and ensure that only one fee is paid. I understand the present Minister for Housing

approached his predecessor in regard to the intention of the original Bill on what fee should be charged. When he ascertained that there should be only one fee of one quarter of one per cent., the present Minister was convinced that an anomaly existed and that it should be rectified. I move—

That the Bill be now read a second time.

MR. GRAHAM (East Perth) [6.5]: It is true, as the Chief Secretary has pointed out, that it was never intended that more than one quarter of one per cent. should be paid by the home-purchaser. It appears the Act has become complicated on account of the fact that last year an amendment was passed providing that an approved lending institution could borrow to make available money to the home-purchaser. I have carefully read the Bill and the Act, and I cannot see that the Bill will do any damage; but neither can I see the necessity for it, because paragraph (b) of subsection (1) of section 9 provides as follows:—

> The institution shall by the last day of each quarter pay into the Fund Account . . .
>
> > an amount assessed at the rate of one-quarter of one per centum per annum on so much of that amount of the loan payment of which is guaranteed and interest, and on so much of that amount of the purchase money repayment of which is guaranteed and interest, as by the last day of the next preceding quarter
>
> was not repaid to the institution by the borrower of the loan secured by mortgage, or, as the case may be, was not paid to the institution by the purchaser under contract of sale and purchase.

Surely that confines the provision to the person who has borrowed the money to erect his home or to purchase a newly-erected one. It cannot relate to the business arrangement between the approved society and—as in one case I know of—to the insurance society which made money available to the approved lending body, which society wanted a guarantee. That was the reason for the amendment passed in 1958. To me it is perfectly obvious that one quarter of one per cent. is paid by one person only; namely, the individual who is the borrower of the loan secured by mortgage and who is purchasing under contract of sale. That can only be the home-buyer.

Notwithstanding all that, if my premise be correct, and the provision is already in the Act; if this Bill will double-bolt the door it will not detract from the intention of the Act, and I raise no opposition to it.

Question put and passed.

Bill read a second time.

In Committee

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

Third Reading

Bill read a third time and passed.

Sitting suspended from 6.15 to 7.30 p.m.

ELECTORAL ACT AMENDMENT BILL (No. 3)

Second Reading

MR. WATTS (Stirling—Attorney-General) [7.31] in moving the second reading said: This is a Bill to amend the Electoral Act. It contains a number of amendments which I will endeavour to deal with one after the other. The first amendment is to provide for the appointment of an Assistant Chief Electoral Officer who, subject to the control of the Chief Electoral Officer, may exercise all his powers and duties.

The next amendment is to provide for a minimum period of 21 days between the date of nomination and polling day. The present minimum is 14 days. It is considered the present minimum is too short in view of the system of postal voting, even as amended under subsequent provisions in the Bill, as it does not afford sufficient time for postal ballot papers to be despatched to and returned from outlying districts. The clause also provides that polling day shall be a Saturday, but not the Saturday preceding or succeeding Easter Saturday.

Polling day has, of course, invariably been on a Saturday, but there have been no restrictions on which Saturday should be used. This Bill proposes to prevent the Saturday before and the Saturday immediately after Easter Saturday from being fixed as the day for polling; for, if polling day is fixed for the Saturday immediately following Easter, it means applications for postal votes posted on the Thursday before Good Friday would not be dealt with until the Wednesday following the holidays, with the result that in many cases, the ballot paper might not be received by the elector in sufficient time for its return. In regard to the proposal that the Saturday before Easter should not be polling day, somewhat similar conditions prevail, as at least two days of the week are lost; and, in addition, delays in the completion of the poll must take place owing to the intervention of the Easter holidays; as they did in the last election held on the 21st March—which was the Saturday before the Easter holidays commencing on the following Friday.

Mr. W. Hegney: That was not the reason why you could not form a Cabinet earlier.

Mr. WATTS: I am talking about the results of the election and the difficulties experienced by the Chief Electoral Officer in regard thereto. The next clause repeals section 90 of the Act relating to postal voting, but re-enacts the section with some alterations to the existing provisions. The first subclause reinserts the provision to permit an elector enrolled for a province to record a postal vote if he has reason to believe that he will be more than seven miles from a polling place in the province for which he is enrolled.

This will enable an elector for the Legislative Council to record a postal vote if he is outside the province and more than seven miles from a polling place in the province for which he is enrolled even if he is in another place and within seven miles of a polling place within that province. The subclause will be particularly valuable to a Legislative Council elector who is in another province where there is no election; and unopposed elections are quite common in the Legislative Council and provinces cover very big areas of the State.

Mr. Sewell: What about the Legislative Assembly?

Mr. WATTS: The provisions as to postal voting are perfectly clear in the Bill as it amends the parent Act as regards the Legislative Assembly. The clause also increases the classes of persons who, outside the metropolitan area, may receive applications for, and issue, postal ballot papers. This provision is to simplify the obtaining of postal votes by persons living in the more sparsely populated districts where the officials previously authorised are frequently a long way away or do not exist in the neighbourhood at all.

It also provides for elimination of the necessity of a witness to the signature on an application for a postal ballot paper; and also enables an elector, if he cannot obtain the prescribed form, to make application by letter, although there will be a prescribed form which will be available and which, of course, applicants will be encouraged to use.

It is proposed to simplify the form considerably in order to make it easier for an elector to fill it in without having to peruse the great number of words which were previously on the form; and by another clause later on in the Bill it is proposed that larger type should be used—not less than 10 point Times—so that the wording on the form will be more easily legible. In cases where a letter is used it must be signed by the elector and the grounds of the application must be stated. A check of the signature with the records in the Chief Electoral Office will subsequently be made for verification, and this verification will also be possible in regard to the declaration which will accompany the ballot paper itself, which also has to be witnessed, as is provided in a subsequent clause in the Bill. There is also provision for a distinguishing mark to be made by an elector who is incapable and unable to sign the application.

Referring to the classes of persons outside the metropolitan area who may receive applications and issue postal ballot papers, these will, as heretofore, include the Chief Electoral Officer, the Returning Officer for a district, or a clerk of courts, and will also include the Assistant Chief Electoral Officer. In addition, members of the Police Force appointed by the Minister will be included, as will secretaries of road boards and assistant secretaries, or town clerks of municipalities or assistant town clerks; and, in places where any of the persons previously mentioned are not readily available, will include a justice of the peace appointed by the Minister.

There are quite a number of substantial places in the State where none of the officials mentioned is resident or within many miles. For example, at Ongerup there is neither a police officer nor a road board office, or any other Government official; and there are several places similarly situated. It is therefore desirable that some responsible person should be appointed; and as justices of the peace are carefully selected, and the appointment of the particular justice in the place concerned will be a special appointment, it is considered that this will simplify the position of voters and give them a better opportunity to apply for a postal vote in outlying areas.

The provisions in the Act regarding remote areas and the permanent registration of voters are not altered. By the Bill, the persons mentioned are called issuing officers; and when an issuing officer receives an application for a postal vote he shall date it, number it, and sign the endorsement; and, if it is in order, shall, after the close of nominations, post to the elector, or deliver to him in the place of issue, a ballot paper, an envelope marked "Ballot Paper", and a further envelope addressed to the Chief Electoral Officer, for the purpose of posting the declaration which will be attached to the ballot paper, and which is to be detached and completed by the elector and an authorised witness, together with the envelope containing the ballot paper.

This separate envelope system is to ensure the secrecy of the ballot is preserved. When the issuing officer has dealt with the application he shall send it to the Chief Electoral Officer. The Bill further provides that if the application is not in order, or if the issuing officer is not satisfied that the applicant is entitled to vote by post, he shall send the applicant a notice in the form to be prescribed by regulation. Another subclause permits an issuing officer, on request, to visit an elector who is ill or infirm, or a woman

who is approaching maternity, to enable that elector to record a vote, provided the request is made within seven days of polling day.

That means that prior to seven days of polling day, an elector may not be visited, but the provision is to overcome the difficulty which now exists where, if somebody is taken ill in an outer area, or in a distant country hospital close to polling day, there is no time to make an application for a ballot paper, obtain it, and return it in time for polling day. This has been particularly so when the illness has intervened within two or three days before polling day and it is a known fact that, in consequence, many persons have been prevented from voting.

The next clause in the Bill, which amends section 92 of the principal Act, sets out the procedure in regard to the ballot paper and envelopes to be followed by the elector, to which I have already referred.

Provision is made in the next clause for an elector enrolled for a district within the State to be an authorised witness outside the State. It will enable electors from this State to witness each other's signatures on the declaration required without having to find one of the authorised officers that are referred to in the parent Act when they are travelling in another State.

The next clause removes the restrictions on persons attending certain hospitals for the purpose of witnessing the declaration required before recording a postal vote, but does not remove the restrictions in regard to visiting institutions nominated by the regulations for the purpose of assisting an inmate to record a postal vote, nor to an institution or hospital at which a polling place has been established. The next clause in the Bill amends section 100 of the Act by providing that the Minister may appoint such polling places as he thinks fit in any institution or hospital.

A new section is added by the next clause to provide for the appointment of officers at a polling place established under the provision of the amended section 100, so that these officers will be appointed by the Chief Electoral Officer in the same way as other presiding officers, and may move around the hospital or institution with a ballot box, to be known as a portable mobile ballot box, for the purpose of taking the votes of those patients or inmates who are unable to attend at the polling place established at the institution or hospital. Either ordinary votes or absentee votes may be recorded in this manner.

Somewhat similar provisions have been in force in New South Wales, and they have been found to work satisfactorily. The Chief Electoral Officer is of the opinion that it is very desirable that these provisions should be inserted in the Bill. Patients who are able to move about will be able to go to the actual polling place, and it will only be those who are not able to do so who will need to be visited by the officer with the portable ballot box. It is provided that candidates' scrutineers may accompany the officer if they so desire.

Some difficulties have been experienced in the larger institutions under the existing law in finding suitable persons to authorise to arrange for the application for postal votes; and this provision, too, will do away with the necessity for canvassers going to the institutions and seeking to arrange for application for postal votes, which is the alternative to the authorised officer system which now prevails.

Except where a medical officer declares that a patient must not be worried about his voting, this proposal for a polling place and the provision of officers appointed by the chief electoral officer, in the same way as other presiding officers are appointed, will enable every patient in a hospital, where a polling place is declared, to vote almost in the normal way every voter is entitled to use.

Another provision has regard for the fact that voting for the Legislative Council is not compulsory; so, at Legislative Council elections, the officers will only visit an elector who expresses a desire to record his vote. At all such polling places two appointed officers must be in attendance; and two officers must deal with the mobile ballot box.

The next clause seeks to amend section 139 of the Act so that a ballot paper, not initialled by a presiding officer or issuing officer, shall not be regarded as informal if the ballot paper bears the watermark as prescribed by the regulations. This provision is similar to that in the Commonwealth Act and is a safeguard against any omission by the officer issuing the ballot paper. At present the ballot paper is informal if it is not initialled by the presiding officer.

It is desired to safeguard the voter from having his ballot paper declared informal. Where the presiding officer has inadvertently omitted to initial the back of it—or, in the case of this Bill, where the presiding officer has failed to do likewise in regard to postal ballot papers—the votes will not be declared informal. There have been many cases where votes have been declared informal on this ground. The elector has taken the trouble to comply with the law, and has recorded his vote, with the net result that the ballot paper has been rejected because the presiding officer had failed to initial the back of it.

The Commonwealth has overcome this difficulty by using watermarked paper; as long as the prescribed watermarked paper is used, the ballot paper is not to be regarded informal merely because it is not

initialled on the back by the presiding officer. This Bill proposes the same course of action.

Mr. Jamieson: About one-third of the present informal votes are due to that cause.

Mr. WATTS: I understand the number is very considerable. The last two clauses in the Bill amend sections 183 and 192 and reduce to a distance of 20 feet from the actual entrance to the building or structure in which the poll is being conducted the distance at which canvassers can operate. In many cases, such as schools, where there are big areas fenced in and the buildings are in the middle of the areas, the present phraseology in the Act, giving a distance of 50 yards from the nearest street or way, has presented many difficulties. A distance of 20 feet—which is similar, I understand, to that provided in the Commonwealth law—from the entrance to the actual polling place, is more desirable than the distance at present provided; and the Bill makes provision in that direction.

I think that is a fair resume of the contents of the measure. I feel sure that members will realise it is only intended to make easier for the elector certain matters which have not been overeasy to comply with in recent times, and which have occasioned considerable dissatisfaction in some cases; and to ensure, to the extent that it is humanly possible, that no improper practices are utilised in connection with the taking of the votes of persons who are sick and infirm, or who for other reasons are in an institution.

Mr. J. Hegney: Does the mobile ballot box operate in other States?

Mr. WATTS: I believe it operates in New South Wales with success; that is my advice. It seems to me to be an excellent idea. It places the whole of the responsibility for accepting the vote of the elector in the hands of persons properly appointed by the Chief Electoral Officer, and controlled by him.

Mr. J. Hegney: It takes the responsibility from the matrons.

Mr. WATTS: In many cases they were classed as the authorised persons, and their difficulties were considerable; and I do not lack appreciation of that fact. I know of one appointment that was made in a large hospital—I was advised of this, by the Chief Electoral Officer; I know nothing of it of my own knowledge—of an authorised person. There were 300 or 400 patients in the hospital, and the lady in question found extreme difficulty in coping with the matter. The forms required considerable filling in, and in the net result the Electoral Office had to provide an official to assist her in order that the votes might be taken.

Mr. Evans: That happened at Kalgoorlie during the last election.

Mr. WATTS: I did not know that it had occurred at Kalgoorlie.

Mr. Evans: The lady appointed at one hospital was a cook.

Mr. WATTS: It was with the desire to overcome that problem, while at the same time ensuring that a fair and proper opportunity would be given to everyone to vote without undue influence, that the proposal for a mobile ballot box was included in the Bill.

I hope the measure will commend itself to the House as I can say quite truthfully that it is an honest attempt to clear up certain difficulties that exist under the present law, without taking any steps whatever to prevent any elector from voting just as he thinks right. The Bill seeks also to facilitate, as far as practicable, the position of those who are a considerable distance from centres of population, but who are not living in places that come under the heading of "remote areas," and who want postal votes. The Bill has been introduced to give these people a simpler method of voting, and to provide better facilities for their votes to be taken. I move—

That the Bill be now read a second time.

On motion by Mr. Nulsen, debate adjourned.

STAMP ACT AMENDMENT BILL (No. 2)

Second Reading

Debate resumed from the 5th November.

MR. TONKIN (Melville) [7.55]: This is one of a group of Bills introduced by the Government for the purpose of enabling it to derive increased taxation from off-course bookmakers. This money will all be utilised to increase Consolidated Revenue; none of it will go anywhere else. The proposal in the Bill is to increase the stamp duty from 1d. to 1½d. on tickets up to £1, and to provide for an increase in duty from 1d. to 3d. on tickets exceeding £1. This will not be a tax upon the bettor, as was the investment tax, but an additional tax on the bookmaker.

We, on this side, have already said that we believe the rate of turnover tax is excessive; and that it will result in a possible return to illegal betting, because bettors will be called upon to pay the investment tax on very small wagers. They will endeavour to get around that imposition by finding people in the community who will be prepared to accommodate them, as such people were to be found before in Government offices, retail establishments, and in all sorts of other places. Such illegal betting is difficult to detect, and I have no doubt that it will occur in volume as a result of the Government's measures in connection with this taxation.

There is another feature about the measure which will increase the cost to the bookmaker without causing any additional revenue to be derived—or it will be a further burden added to what we regard as something that is already excessive—and that is, that the Bill will necessitate the keeping of two types of tickets in order to ensure that wagers under £1 are written down on one type of ticket, and wagers exceeding £1 are written on another type of ticket.

I understand the bookmakers suggested that it would be preferable if a flat rate of 2d. were imposed on all tickets instead 1½d. on one ticket and 3d. on the other. I attempted to work out the financial position under this proposal, if it were adopted; and on the figures submitted by the Treasurer I calculated that he would receive £6,000 a year less under this proposal than under the one in the Bill.

So the Treasurer is not likely to view that suggestion with favour; and I do not think he would be in the slightest degree worried if it caused the bookmakers added inconvenience and expense. But, of course, it just could not work in view of the fact that the investment tax proposal has been agreed to, as that necessitates the keeping of two types of tickets, anyhow. That being the case, no advantage could be derived at all from what I have said, because the proposition of providing for a flat rate of 2d. on all tickets would be completely unworkable.

Our complaint from this side is that this actually is only a subterfuge to increase the revenue, and to cloak the Government's real intentions. It would have been much fairer to come straight out and derive all the revenue which the Government says it has to get, by means of the turnover tax; because it is the same people who will pay this tax. So it is not an additional source of revenue which is being tapped, but only an added impost to the rates of tax already provided for.

One of the objections which we raise from this side—personally I regard this as a vicious principle—is that the rate of tax will be decided upon a figure which will have no relation to the actual turnover of the year in which the tax will be paid. I venture to say that if that principle were applied to any other section of the community, there would be such an uproar that the Government would be obliged to alter it. The turnover of last year could have absolutely no relationship whatever to the turnover of this year; and it is the turnover of this year, as opposed to the previous year, upon which the tax has to be paid.

For example, it is conceivable that in certain districts additional licenses could be issued which would result in the turnover of the business already in existence being cut in half. If that did happen, it would not make any difference to the rate of tax which the person had to pay, because his rate of tax would be determined upon his previous turnover; and there is no provision by which any adjustment could ever be made subsequently, because he could never catch up with it. I do not know of any more vicious principle, as applied to taxation, than that. Nobody could ever justify it; and it is the sort of thing which gives rise to dissatisfaction not only among those who have to put up with it, but also amongst all right-thinking men and women who know anything about it.

We have to keep that in mind when we are giving consideration to this additional impost, which is only another method of taxation and designed, not to correct any evil, or to give money to the Turf Club, or anything else, but to raise additional money from the same people who will pay the very substantial increased turnover tax in the first instance. Therefore it must be regarded as most unfair legislation, but just another example of the way the Government is giving money back to certain sections of the community with one hand; and, with the other, taking it from them as fast as it can.

The Government has already foreshadowed relief in land tax in certain directions, which indicates that it has the revenue to spare; but then it reaches out in other directions and, by means of various taxes of different kinds, raises additional funds and takes the money back into Consolidated Revenue.

So we have a Treasurer shifting the wealth, wherever it is, and taking it from one section, passing it through Consolidated Revenue, and then into the pockets of another section. That is an entirely new principle of taxation which we have not seen in this State for many years. There is justification for the Treasurer looking for increased taxation if his revenues are short, but it is hard for him to justify giving money away to his friends if that is the case.

If one looks at the pattern of taxation that has occurred under this Government, one will see that process going on. There is relief from taxation for a certain group of persons who are regarded as close friends of the Government; and, in order to give that relief, taxation is reduced or straight-out subsidy payments are made from Consolidated Revenue. In order to make up for the loss, the Government imposes a special tax on some other group in the community—some special group—and so takes the money back into Consolidated Revenue.

A number of instances could be given where that has occurred this session; and, from what has been foreshadowed, it is a process which will go on. But it is something new; we have not had it in this

State before. In the past, Treasurers have not found themselves able to hand out large sums of money to any section of the community, because they have been hard put to it to find the revenue. So this Government looks for other sources from which it can derive additional revenue.

When members of the present Government were in Opposition, they had complete disregard for the Treasurer's difficulties, and they criticised every attempt to raise additional money. Indeed, they used their power, both in this House and in another place, to frustrate the Government in raising additional money, despite the fact that that Government was not giving hand-outs to any section of the community, as this Government is now doing from Consolidated Revenue.

Then we got a change. The people who had previously considered that the Treasury had ample funds to finance Government requirements are now reaching out in other directions to raise additional money; but, at the same time, they are giving large sums away to their special friends. That type of Government is something new. The only people who will commend it are those who are getting the financial benefits; and no doubt they will lap it up as fast as it is made available to them.

But, of course, it will be a case of Nemesis sooner or later, and the Government will have to put up with what happens subsequently. If one sows the wind, one will reap the whirlwind, to be sure; and that is the fate that I predict for the Government. This additional stamp duty, on top of the heap of taxes already imposed, cannot in our view be justified; and we are opposed to the Bill.

MR. EVANS (Kalgoorlie) [8.6]: This Bill is part and parcel of the first one introduced into this House in relation to betting, and it is another taxing measure. As the Deputy Leader of the Opposition mentioned, it has not been introduced or designed to overcome any great evil that exists in the betting control legislation today; rather, the introduction and application of this measure will create a great evil because it will strike a severe blow at the bookmaker who, on the whole, caters for the small investor.

Before following that line, I should like members to envisage the scene in an S.P. operator's premises on a busy race-day. The clerk whose duty it was to write out tickets would need to have two books in front of him, one book with tickets stamped "1½d.", and another book with tickets stamped "3d.". In the turmoil and last-minute rush before a race commenced many clerks would be greatly confused. Therefore, I think in that respect alone the measure would be very unwieldly and cumbersome.

I should now like to pursue the line of thought with which I opened my remarks, and point out how this measure will create a great anomaly, inasmuch as the bookmaker who, on the whole, caters for the small investor, will be severely hit to leg; and, to my mind, that is not cricket. The measure which was introduced to bring into being an investor's tax was also most unfair. On that Bill arguments were put forward to show that the Treasurer stood to gain more from the smaller investor than he did from the larger investor. It was shown conclusively that a person who invests 25s. in 2s. 6d. bets would be required to pay 2s. 6d. in tax; whereas a bigger investor, who would have a bet of 25s., would pay only 6d. investment tax. That proves my argument that the Treasurer stands to gain more from the smaller punter than he does from the larger one.

In the same way the bookmaker who caters for the smaller punter will be hit to leg more than the bigger bookmaker who caters for the bigger punters. In other words, the bigger bookmakers operating in Hay Street and St. George's Terrace will not be as severely affected by this measure as will the smaller bookmakers, particularly those in the country areas who, in the main, cater for the workers. The worker—the person who has to rely upon hire purchase to equip his home—has only a few shillings to invest, and the bookmaker with whom he bets will be more severely affected by this measure than will the larger bookmaker.

I can cite the case of a Kalgoorlie bookmaker who only last week was down in Perth. He was vitally interested in this subject; and he came to Perth, where he conferred with other bookmakers. He asked one of the leading bookmakers, who has premises in William Street, how many bets he would have to write before he accrued a revenue of £250 on a normal Saturday. This bookmaker said, "I often write £250 in one bet." The bookmaker from Kalgoorlie was staggered. He is only in a small way and operates in South Kalgoorlie which, as my political opponents will know, is the working men's section of the town.

Most of that bookmaker's bets are under £1. He said that it would take him 100 bets or more before his revenue would be £250 on a normal Saturday. So it is obvious that the bookmaker who, on the whole, caters for smaller clients will pay more stamp duty than the bigger bookmaker—the man who could afford to pay the increase. For example, the man who writes one bet of £250 will pay an increase of twopence in stamp duty, because the present rate is one penny; but the smaller man could pay any amount, depending upon the value of the bets written. If he wrote 100 bets, and they were all under

£1, he would be required to pay 100 half-pennies more than he pays at present. Therefore I consider this a most iniquitous measure.

When speaking during the debate last week, I asked the Government to give consideration to the fact that the bigger bookmaker will, under the legislation which has been introduced, be let off reasonably lightly, while the smaller bookmaker will be taxed heavily. I wanted to know whether some principle could be adopted whereby stamp duty was levied per £100 of money invested. For example, one bookmaker might write 100 tickets before he took £100, whereas another bookmaker might write only one ticket for £100. Therefore I think it is more equitable if the stamp duty is levied on each £100 bet rather than on the number of tickets.

I know that the Government has decided on this legislation and is determined that it will raise the taxes. If that is the aim, the taxes should be levied in a fair and equitable manner. I repeat that because the Attorney-General may miraculously decide that there is some merit in the suggestion and may give some thought to applying it. If the stamp duty were paid on the money invested rather than on the number of tickets, it would be more equitable, and would place the smaller and the larger bookmakers on a more comparable basis. Under this measure that happy situation does not exist. Therefore, I will wait and see what happens before giving any indication of how my vote will go on this measure.

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

Ayes—23.

Mr. Bovell	Sir Ross McLarty
Mr. Burt	Mr. Nalder
Mr. Cornell	Mr. O'Connor
Mr. Court	Mr. Oldfield
Mr. Craig	Mr. O'Neil
Mr. Crommelin	Mr. Owen
Mr. Grayden	Mr. Perkins
Mr. Guthrie	Mr. Roberts
Dr. Henn	Mr. Watts
Mr. Hutchinson	Mr. Wild
Mr. Lewis	Mr. I. W. Manning
Mr. W. A. Manning	*(Teller.)*

Noes—20.

Mr. Andrew	Mr. W. Hegney
Mr. Bickerton	Mr. Kelly
Mr. Brady	Mr. Lawrence
Mr. Evans	Mr. Moir
Mr. Fletcher	Mr. Nulsen
Mr. Graham	Mr. Rhatigan
Mr. Hall	Mr. Rowberry
Mr. Hawke	Mr. Sewell
Mr. Heal	Mr. Tonkin
Mr. J. Hegney	Mr. May
	(Teller.)

Pairs.

Ayes.	Noes.
Mr. Mann	Mr. Toms
Mr. Nimmo	Mr. Norton
Mr. Brand	Mr. Jamieson

Majority for—3.

Question thus passed.

Bill read a second time.

In Committee

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

Third Reading

MR. WATTS (Stirling—Attorney-General) [8.22]: I move—

That the Bill be now read a third time.

MR. TONKIN (Melville) [8.23]: I had hoped that the Attorney-General would make some attempt to reply, on the second reading to remarks made on this side; but it is obvious that the Government adopts a contemptuous attitude in all these matters, and that it has no intention of trying to find an argument. I suppose the real reason is that it has no argument in regard to this matter and therefore it is making no attempt to find one.

I do think, however, that the Government should make some show of justifying what it is doing, more especially when it has been pointed out over and over again that it is introducing a principle into these Bills with regard to taxation which, so far as I know, has never been used anywhere else in the world. I refer to the principle of imposing a major portion of taxation by deciding on a figure which has no relation to the amount to be taxed. It could be any figure at all, depending on circumstances, with no relation whatever to the turnover to be taxed from which the Government is to derive the revenue.

One might just as well impose income tax on a farmer because of the quality of wool sold by his neighbour. It would have just as much relationship to the main proposal which the Government has in this taxation, and to which this Bill is supplementary. Having decided to impose taxation in the way it has, which is completely unfair, it makes the situation much worse by loading on top of that unfair taxation an additional impost with no special purpose other than to derive more revenue from the same source; and, as has been pointed out on this side, in imposing a duty at two different rates and increasing the rate from 1d. to 1½d. on the smaller ticket, the Government will endeavour by this method to derive as much revenue from the larger ticket as it will from the smaller one.

But of course it will not do that; it will still derive by far the greater proportion of the revenue from the very small tickets. As it can be clearly shown that the tickets written of under £1 are of a very low denomination, then 1½d. tax on tickets of such low denomination represent a very substantial percentage of tax on turnover. It is one which, I venture to say, no member of the Government has attempted to work out; and had he attempted to do so, he would have been astonished to find the high rate of taxation involved in this impost.

Taking in all the bets that exceed £1, and from the figures given by the Treasurer, I was able to calculate there are 3¼ wagers of under £1 for every five wagers above it; and knowing that substantial wagers are made above £1, the average bet in the State, which is considerably below £1, will show that there must be a very large proportion of wagers which are only of 2s. 6d.; which is the minimum bet. A tax of 1½d. on a 2s. 6d. bet is, of course, very substantial, because every time a bookmaker writes a ticket for a 2s. 6d. wager he will have to pay 1½d. to the Treasurer. That rate of tax of 1½d. on 2s. 6d., or of 1s. on £1 worth of bets, gives a figure of 5 per cent. tax on turnover, in addition to turnover tax of anything from 2¾ to 3½ per cent.

So the tax that some bookmakers will pay on their turnover could be about 8 or 9 per cent. The Government seems to think that will still leave a substantial margin of income. If that is so, then the Commissioner of Taxation does not know his job. Nor do the members of the Betting Control Board of South Australia, who put out very complete figures in this connection, know anything of what is going on; because, on the figures published, it is not possible for those concerned to pay 9 per cent. taxation and still remain in business.

Members fail to appreciate that the Betting Control Board in this State issues licenses to cater for the requirements of people in various localities; and the business differs in accordance with the locality, just as other businesses differ. For example, no working man would go to Park Lane in London if he wished to acquire certain articles. He would go to some much cheaper shopping centre. It is the same with bookmaking. If a license were held in a part of South Fremantle, it would mean that the bookmaker there would be depending on business 90 per cent. of which would be on wagers of less than 10s.

So this taxation of 1½d. on tickets of under £1 will mean a far heavier impost on such a business than it will on those in the main city block which mainly caters for those bettors who invest substantially greater amounts. That is a most unfair principle of taxation. It is axiomatic in taxation that one should levy a rate in accordance with ability to pay, and in accordance with the level of income. This tax has no relationship to the level of income; nor has it any relationship to the ability to pay. It is imposed by the rule of thumb method—or, as the Treasurer said, by way of experiment—and it will be known by December, 1960, whether it is unreal, unfair, and unjust. That is an entirely new principle to be introduced.

I can imagine farmers being placed in a situation like that, and the Government saying, "We propose to impose a tax. We do not know whether it is unreal, unfair, or unjust. We will let it stand for 1½ years and then we will find out. If it is, we will rectify the position."

In this case the Government has not even said that it will rectify the position in regard to the S.P. bookmakers. I cannot imagine the farming community remaining quiescent under a proposal of that kind. I would not be at all surprised if they marched on the seat of Government with pitch-forks! I am certain they would not accept the position quietly; nor would they regard the tax in any way as being just and reasonable, or agree to be experimented upon. If the Government has any argument, we ought to hear it; if it has not, I can understand the Government members not taking up our time in talking aimlessly.

MR. WILD (Dale—Minister for Works) [8.32]: The Government has an argument to put forward on this matter. Obviously it is going to increase the taxation in respect of S.P. bookmaking, and it is possibly going to almost double the stamp duty.

The Deputy Leader of the Opposition has talked about the severity of this tax and the amount not being known exactly. Of course it must vary; it must be different from shop to shop. One can agree that an S.P. shop in Victoria Park or Fremantle holds an average bet of 5s. to £1, as against the bigger average bet held by big bookmakers like Solley, Tudor Graham, Augustine, or Healy. Whether the stamp duty is fixed at 1d., 1½d., or 3d. a ticket, there will be a variation in the amounts paid by each bookmaker.

The tax being imposed under the Stamp Act is no different from the tax imposed in South Australia, where it is 1d. for bets up to 10s., and 3d. for bets over that amount. In this State the rate is to be 1½d. for bets up to £1 and 3d. for bets over that amount. The guess of the Deputy Leader of the Opposition is as good as mine as to the exact amount to be raised. This becomes a matter of being able to ascertain, over a period of months, whether there is any difference between the imposition under the stamp duty here and in South Australia. If we were able to assess the two rates of stamp duty being charged—that in South Australia and that in this State—I venture to say that there would not be a difference of 5 per cent. in the collections under the two ratings.

Mr. Tonkin: Five per cent. is a pretty substantial difference.

Mr. WILD: It is not. Speaking for myself, I consider that the S.P. bookmakers have got off pretty lightly. Those in the top bracket are to be taxed at the rate of only 3½ per cent. on their turnover. My view is that the rate should have been considerably higher, even though the stamp duty on tickets is to be increased.

There is a difference between the method of recording bets in South Australia and in this State. The S.P. shops in South Australia record every bet on a ticket, as is done by bookmakers on the racecourses here. I do not know of any other country in the world which adopts a system such as is adopted by the shops in this State. For those reasons it has been found difficult to arrive at a decision as to a fair and equitable stamp tax as between the smaller and bigger bets, because the returns furnished by the S.P. bookmakers to the Treasury show all the bets grouped together in various categories. There is no differentiation at all as to the size of the bets.

Mr. Elliott, the officer in the Treasury Department, was unable to present to this Government, or to the previous Government, a correct assessment as to how many bets were made below 10s., and how many above that amount. When bookmakers like Healy and Solley submit their returns, they classify the bets in a group form, showing the turnover for the Eastern States, turnover for Western Australia—

Mr. Tonkin: The Government does know how many bets are over and how many under £1.

Mr. WILD: The Treasury officer concerned was only able to take the bets of certain of the S.P. bookmakers and classify them. That was how he arrived at his estimate. There would be a great difference in the bet made in a shop in Fremantle, Victoria Park, or some country centre, as against the average bet made with the larger S.P. bookmakers, and which are as high as £5 or £10.

The proposal under the Bill is one method of increasing the tax on S.P. bookmakers. I can only say that if the S.P. bookmakers in the top brackets were to pay their fair share, the turnover tax would be 5 per cent. instead of 3½ per cent. It was only a case of Tweedledum and Tweedledee as to the method by which their taxes were to be increased. They had to pay whichever way it went.

MR. GRAHAM (East Perth) [8.36]: It is obvious this Government has succumbed —to a far greater extent than I believed possible—to the agitation and propaganda of the daily Press. If we can take the view of the Minister for Works as being indicative of the attitude of the Government, it has been so impressed with this barrage of propaganda that it actually developed a hatred against premises bookmakers; and as we saw the other evening, against their clients as well.

No evidence has been submitted to us, and I doubt very much whether evidence has been submitted to the Government by its officers, to suggest that these bookmakers are able to bear the burden that is to be placed upon them. That does not suggest that I am bursting with sympathy for the starting-price bookmakers. It was a decision of this Parliament some years ago, which was subsequently confirmed, that a system of off-course bookmaking should be introduced in Western Australia. That was a unanimous decision of both Houses of Parliament. With all its faults, that system was preferable to the back-lane and around-the-corner procedure which existed previously.

In respect of taxation of S.P. bookmakers, this Government is going to such excesses that we can anticipate a return to some of those undesirable features which existed before. There is very definitely an inducement to some of these bookmakers, through pressure of circumstances or pressure of finance, to write out a whole lot of tickets which will not appear on the official returns. There could well be developed a blackmarket in S.P. bookmaking. In other words, all of the clean-up that has been achieved by the decision of Parliament some five years ago can be undone by the irresponsible attitude of the present Government.

I have before me some figures pertaining to the activities of a bookmaker last Saturday week. They show that on that day he held 1,507 bets. Of those, 386 were at the proposed 3d. rate of stamp duty, and 1,121 at the 1½d. rate. Whereas previously, at the rate of 1d. per ticket, he would have been called upon to pay £5 17s. 3d. in stamp duty, now he is to be called upon to pay £11 16s. 7½d., or an increase of over 100 per cent.

That, together with the recent increase in the turnover tax from 2 per cent. to 3½ per cent., will increase his overall contribution considerably. His turnover tax is to be increased from £19 17s. 6d. to £32 6s. So the direct cost to him, as a result of the several pieces of legislation, will be an increase in his total contribution from £25 14s. 9d. to £44 2s. 7½d. per week. That is almost a 100 per cent. increase.

Not to be outdone on the basis of the bets recorded, the punter will be called upon to pay £23 13s. 3d. in that week. In other words, there will be nearly £68 extracted from the pockets of the off-course punters in that shop, as against less than £26 up to this time.

Surely this large increase will have some effect on the position, and must bring about some of the evils which the previous Government, with the approval of Parliament, had overcome. The present Government will not be told. It appointed a Royal Commissioner a few months ago. The Government did not wait to see one word of the report of the Royal Commissioner, but acted like a madman striking in all directions. It seems that any figure at all will do for a percentage charge or imposition. The activities of

these bookmakers do not mean anything to the Government, as long as it is placating *The West Australian* and looking after its political friends.

As indicated the other evening, the price of beer on the racecourse might be reduced. The spectator accommodation may become more luxurious. The gardens may be beautified. There may be provided spraying fountains and dancing girls and all sorts of novelties out of this subsidy of £133,000 which is to be extracted from the off-course punters from Wyndham to Esperance, and handed over to a small group of people, particularly those patronising the Ascot racecourse—people who have proved themselves unworthy of support, because normally the racecourses attract between 2,000 to 3,000 people to their wretched establishments.

I have not been there myself, but I am told that the beer served to the patrons is often lukewarm, and the containers are half-filled and are sluiced in tubs, instead of being washed. It is unknown for a race to start on time. The toilet facilities are, or until recently were, most unsatisfactory. Because people expect something better and more decent they have gone to places where better facilities are available. Yet the Government wants to prop up that class of people. Why? Because they are very nice and attend the races. They are given plenty of space in the newspapers, in the social columns, and the rest of it.

The ordinary little person in the community—and, after all, we opened a glorious Narrows Bridge that was planned by the humble man and constructed by those whose names we do not know—who desires a little relaxation and recreation, is going to have the Government lay about him with a bit of 4 x 2. This is in the interests of a handful of people who are concerned only as social butterflies; that and very little else. They are not interested in horse-racing. Remove the betting, and there would be no horse-racing.

Mr. Ross Hutchinson: A very good cross-section of the people go to the races.

Mr. GRAHAM: I wonder! I should say that there would be a very good cross-section of the people who gather about the betting shops in Kalgoorlie, Boulder, Northam, Bunbury, and other places when races are held at headquarters. Is the Chief Secretary so class-conscious that only those who are able to deck themselves out in the latest finery, Paris styles, and so on, are considered the salt of the earth and the others mean nothing?

Mr. Court: You are involving one or two on your own side, you know, in that description of the people who go to the Turf Club.

Mr. GRAHAM: That would be in the main. Just as I indicated the other evening that off-course, where the great majority invest money in shillings, there was the classical example several weeks ago of someone who invested £800 as a single bet, so there are exceptions, as we all know. I do not know what the exact objective or purpose is in connection with this legislation. Has the Government completely and abjectly surrendered to *The West Australian* newspaper, so that whatever it says is as good as on the statute book?

We know the tie-up there—that the chairman of directors of the West Australian Newspapers Ltd. was also the chairman of the West Australian Turf Club, and naturally he was pushing the borrow of his special sporting interest—if I can use that term—for which reason three, four, or five pages of racing news appeared in the Press and probably the equivalent of that many lines in connection with the activities of the elected Parliament of Western Australia. Completely out of proportion! But he was thoroughly enjoying himself amongst his cronies in the committee-room watching his horses run around the paddock and that sort of thing. But, as I say, it was an outlook which was completely warped and biased.

However, surely we have a right to expect that an elected Government could do something better than that! I can think of a hundred and one good reasons why hockey, soccer, and so on, should be subsidised, rather than the sport of racing, if it is a matter of the Crown giving assistance to a form of recreation—principally weekend recreation. Yet this Government seems to have sold its soul and outlook completely to the whims and fancies of the newspaper which I have just mentioned.

Mr. Wild: Was it not your Government that started the subsidy to the racing club and offered £1 for every person who was not in attendance this year as compared with last year?

Mr. GRAHAM: As an interim measure until such time as there could be a review of the legislation.

Mr. Wild: Therefore on that standard, there had to be a rise in tax of some sort in order to do it because you were giving to them at the rate of £50,000 a year.

Mr. Fletcher: The wrong people are called upon to pay the tax.

Mr. Watts: If the Turf Club goes out of existence it means that half the S.P. shops would also.

Mr. GRAHAM: No; as a matter of fact it doesn't.

Mr. Watts: Yes it does.

Mr. GRAHAM: It does not, because the records show that people are more interested in the races outside Western Australia.

Mr. Watts: I am not thinking of races in Western Australia. Every State subsidises race clubs. It is tremendous in

some States. It is no good putting it down to Western Australia only. It is Australia-wide.

Mr. GRAHAM: Whatever this Government agrees to do in the way of hand-outs to the Turf Club, it cannot affect the status of race clubs in other parts of the Commonwealth.

Mr. Watts: If it is so wrong, it should be abolished throughout the Commonwealth and not here alone; and therefore race clubs could not carry on, and nor could the bookmakers.

Mr. GRAHAM: I am not suggesting for one moment that it should be abolished.

Mr. Watts: You are practically saying so with all your complaints about subsidies.

Mr. GRAHAM: I have no idea as to how lacrosse has caught on with the public; but if it were in extreme difficulties in any way, I suppose all of us would shake our heads and say, "What a shame!"

Mr. Bovell: There are no betting shops in relation to lacrosse.

Mr. GRAHAM: I know there aren't.

Mr. Watts: Would you like to have them?

Mr. Tonkin: There may be a few people having a wager on the game, and they would not be paying any tax to the Treasury either.

Mr. GRAHAM: That may be so; but I cannot see how a person at Hall's Creek or Fitzroy Crossing who has a few shillings on a horse-race in Perth would have a detrimental effect on the Turf Club; or, if we put it another way, why the Government wants to extract this increased amount from those people. Under no stretch of the imagination would it be possible for them physically to attend races down here. It is completely beyond me that this Government has become so reckless and irresponsible in connection with this matter.

Mr. Wild: Realistic; not irresponsible.

Mr. GRAHAM: Not realistic, because the Government has produced nothing whatever to indicate that those who are called upon to pay this substantially increased amount are capable of doing so.

Mr. Tonkin: The Government is experimenting!

Mr. Wild: How did you know, when you imposed the 2 per cent. tax, that they would be capable of standing it?

Mr. GRAHAM: Members will recall—or should—that certain examinations were made, and there was also an approximation of the rates levied in other parts—in South Australia, Tasmania, and I think in New Zealand.

Mr. Wild: I have no doubt Mr. Healy would advise you that that is all that they could pay; but we did not have to get Mr. Healy's advice on this occasion.

Mr. GRAHAM: I do not know whether the Minister for Works is taking leave of himself to judge the previous Government by the standards that apparently apply in connection with the present one. The previous Government was not so lax and irresponsible. Initially the 1¼ per cent. was more or less a guess in order to get the organisation established; and it was felt that that was too low, and so it was increased to 2 per cent. Perhaps there could be some adjustment above that; but this Government is going from extreme to extreme without any solid facts or foundation, and without any rhyme or reason except that the daily Press month after month, and year after year, kept pumping all sorts of irresponsible stuff into it and suggested even as high as 15 per cent. Anyone who knows the first thing about the subject, or who has looked at any of the figures, knows the futility of that suggestion.

I am not barracking—if I might use that term—for bookmaking either on or off the course, or for anyone else. I think I have said before that I have never been to a race meeting in my life, and I have never had a bet in these registered premises. I am simply not interested in horse-racing. But I do acknowledge the fact that many of the people I represent are; and so far as I am aware, the overwhelming majority of them have a sufficient sense of responsibility that they do not let their families lack for the essentials in life.

If they are enjoying themselves why shouldn't they? Who am I to interfere? But I am afraid that this legislation is going to have the effect of impairing their enjoyment by making it virtually impossible for these registered premises bookmakers to continue operating or for them to engage in all sorts of paring down tactics, like putting off staff because they simply cannot afford to keep them. I am sure also that blackmarketing and all that sort of thing would arise.

I suppose there are a number of members of Parliament who have bets with off-course bookmakers; and I for example —not that I would—could become an agent for one of the bookmakers and make a record of wagers of members and whether they won or lost. It would be attended to by the local S.P. bookmaker in my district, with whom I am personally acquainted; and none of the bets need pass through the official record. That is purely a hypothetical case, of course; but that sort of thing could occur in a hundred and one different places as it did before in workshops, offices, factories, and so on. I saw it in the years prior to 1955. But apparently the Government does not agree.

I do not know whether, as the existing off-course legislation is to expire before very long, the Government is seeking to

destroy the existing set-up and make it so unsavoury that there will be some clamour for its abolition. I think that the present system has worked exceedingly well overall, notwithstanding the bewailing of the people who did nothing to help themselves and who are suffering by virtue of the fact that there are more hire-purchase agreements; that people are not working overtime so much; and that there are not so many working wives. All of those factors have had some effect; and because the Turf Club, principally, has not pulled up its socks, it has been going through a lean period.

I must say that the headquarters of the sport located in my district—the headquarters of trotting—have taken quite a number of steps which apparently had the desired result, very largely, of maintaining the attendances at Gloucester Park. But if we study these four Bills of the Government, we will see that they contain a process of subsidising, to something in excess of £100,000, the management of a so-called sport which is incapable of managing its own undertaking.

If the Government has made a mistake, which I believe it has, it will not be able to say that it was unaware of what would happen. Goodness knows it has been pointed out *ad nauseum* by at least some members of the Opposition. I am sure also that other information has been submitted to the Government which, no doubt, has a bias about it, but which at least has some element of truth, fact, and substance in it. However, the Government has chosen to ignore the warning.

My final word is that once again the imposition of the heaviest percentage is on the smaller ticket. It will make it a little more difficult for the ordinary man to record his bet, and is out of all proportion compared with what will be paid by the man who can afford to place money of some value or magnitude.

However, that is typical of this Government. The only consoling feature is that day by day and week by week more people are learning to appreciate this Government in its true colours; and that is why, while I might have had some doubts some months ago, I definitely have none now, and I would appreciate the opportunity of consulting the electors in order to see the degree to which I believe the stocks of this Government have fallen; and from what persons have indicated to me, they have fallen plenty!

MR. FLETCHER (Fremantle) [9.0]: I wish to voice my objection to this Bill and the unfair manner in which it seeks to impose this tax. The Minister for Works quoted the Fremantle bookmakers, as distinct from the big S.P. operators; and I am concerned with the small S.P. men in my electorate. I have previously expressed concern at the disproportionate amount that the small bettor is to be asked to pay, in comparison with the big bettor.

Like the member for East Perth, I have never been in an S.P. shop and am not interested in betting; but probably thousands of my electors do take an interest in it; and I do not want to see this unfair burden thrust upon them by the taxing measures in regard to betting as a whole, followed by this final imposition. The small bettor will be taxed out of all proportion as compared with the big bettor.

It seems strange that we on this side of the House should now be taking up the torch on behalf of the small S.P. man who is, in effect, a small businessman; but the present Government has demonstrated again that it is the voice of big business, as distinct from the small businessman; and the present measure is typical of the legislation that has been brought down this session. I am not surprised at the Government favouring the big man again, as distinct from the small man; and it is not surprising to me, now, that the small businessman has been the one who complained to the previous Government in regard to the unfair trading legislation and sought its protection through the medium of that Government.

Mr. O'Neil: The Premises Bookmakers' Association says that the big man will suffer more under this legislation than the small man.

Mr. FLETCHER: It is no wonder that the small businessman has turned to our Party for protection in the past, in view of the record of the present Government this session and, in particular, its behaviour in the imposition of these taxes. Like the member for Kalgoorlie, I believe there is merit in the point he made, and I commend it to the House. I know members opposite will take no notice, but he said there should be a stamp duty imposed on every £100 of business turnover.

That suggestion is fair and reasonable; and, if it were implemented, the big S.P. operator and the smaller man would both pay a fair share. It is beyond me to understand why the Government could not have thought of that as a more fair and reasonable method of raising finance. Fremantle is like Kalgoorlie, in that a preponderance of the residents are small bettors on whom the imposition of this extra taxation will be inflicted. It looks to me as though only the big operator will survive; and the smaller S.P. man, particularly in the North Fremantle area, is likely to go to the wall.

There is a dwindling population in North Fremantle, owing to the industrialisation of the district, and the S.P. operators there have found it difficult enough to survive until now. While not in sympathy with S.P. betting generally, I am sorry to see these small men going out of

business. Despite what has been said to the contrary, there would be very few of my electors who would go to the racecourses, although many thousands of them attend the S.P. shops and have their small bets—which is their democratic right, even though I am personally opposed to it.

Since there are many thousands of my electors who enjoy the privilege of having a small bet, I feel it is my duty to object to this increased imposition of taxation on them, and accordingly I voice my opposition to the Bill.

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

Ayes—22.

Mr. Bovell	Mr. W. A. Manning
Mr. Burt	Sir Ross McLarty
Mr. Cornell	Mr. Nalder
Mr. Court	Mr. O'Connor
Mr. Craig	Mr. Oldfield
Mr. Crommelin	Mr. O'Neil
Mr. Grayden	Mr. Owen
Mr. Guthrie	Mr. Perkins
Dr. Henn	Mr. Roberts
Mr. Hutchinson	Mr. Watts
Mr. Lewis	Mr. I. W. Manning
	(Teller.)

Noes—20.

Mr. Andrew	Mr. W. Hegney
Mr. Bickerton	Mr. Jamieson
Mr. Brady	Mr. Kelly
Mr. Evans	Mr. Moir
Mr. Fletcher	Mr. Nulsen
Mr. Graham	Mr. Rhatigan
Mr. Hall	Mr. Rowberry
Mr. Hawke	Mr. Sewell
Mr. Heal	Mr. Tonkin
Mr. J. Hegney	Mr. May
	(Teller.)

Pairs.

Ayes.	Noes.
Mr. Mann	Mr. Toms
Mr. Nimmo	Mr. Norton
Mr. Brand	Mr. Lawrence

Majority for—2.

Question thus passed.

Bill read a third time and transmitted to the Council.

STATE ELECTRICITY COMMISSION ACT AMENDMENT BILL (No. 3)

Second Reading.

MR. WATTS (Stirling—Minister for Electricity) [9.10] in moving the second reading said: In the policy speech of the Premier, made just prior to the last general election, it was stated, among other things, that steps should be taken to give consideration to a system of self-help in regard to electricity extensions; and in the policy speech which I delivered, it was stated that the present system of the State Electricity Commission in regard to this matter was somewhat too inflexible; and that consideration should be given to ways and means whereby that difficulty could be overcome. I would say that those are probably not the exact words used; but that was definitely the substance of the statement.

In the intervening period discussions have ensued with the chairman and general manager of the State Electricity Commission; and, indeed, through them, with the whole of the commission, in regard to some method whereby those proposals could reasonably be put into operation. These discussions and negotiations have been very carefully conducted for a number of reasons, the first of which is that the commission has received an undertaking from the Government that it will not be asked to land itself in losses through any extensions that may be made as a result of these negotiations; and that therefore some arrangement must be made to ensure that extensions, beyond the point which the commission under its present policy would agree to, must be covered either by a capital contribution or by a revenue guarantee.

A definite limit has also been placed on the capital expenditure that will be involved in any period of 12 months. For this financial year—subject, of course, to the provisions of this Bill if it becomes an Act—a maximum of £50,000 has been set aside for the purpose; and in subsequent years it will be such amount as will be determined by the Treasurer for this specific purpose. In consequence, therefore, it will readily be seen that any transactions which take place under this measure will be most carefully considered and carried out in consultation with the commission, as far as I am concerned as Minister in charge. That is an assurance which I have given it personally.

The Bill, when it becomes an Act, will provide for a statutory charge on the land to be created, which can be protected by caveat under either the Transfer of Land Act or the Land Act against the property of the person concerned to safeguard any agreement that may have been made between that person, or any group of persons, in respect of the supply of electricity made under this Bill when it becomes an Act.

Therefore, as will be seen from the principal clause in the Bill, where a person is registered as a proprietor of a life or greater estate in land under the Transfer of Land Act, 1893, or under the Land Act, 1933, or is registered as the lessee of land under Section 47 of the Land Act, 1933—that, of course, is a conditional purchase lease—and applies to the commission for the supply to him of electricity on the land, from a point beyond which the commission is not prepared to make that supply available under any other provision of the Act, the commission may make the supply available beyond that point under and subject to the provisions of this measure; or, with the consent of the Minister, may reject the application.

It should be noted that the words in question are, "on the land from a point beyond which the commission is not prepared to make that supply available under

any other provision of this Act." At present, of course, the commission has set a policy within which it is prepared to make electricity extensions. It is not prepared to go beyond that. It is not to be asked to go beyond that point by this Bill except to the extent that the capital contribution or a guarantee of revenue is to be made to its satisfaction.

The principal clause provides that where the application is not rejected, the commission shall give the applicant a statement in writing showing the amount of the minimum annual revenue, the payment of which the commissioner will require to be guaranteed by the applicant for a period not exceeding 30 years, during which the guarantee will be required to be in force unless it is previously cancelled by the commission and the amount of capital contribution, if any, which the commission will require the applicant to pay the commission for its own use in respect of the estimated cost of erecting the distribution works and the terms, conditions, and events upon or subject to which the commission is prepared to refund the whole or part of the capital contribution received by it.

In regard to the latter matter, it can readily be conceived that when the extension is made there may be limited revenue which necessitates capital contribution; whereas, long before the period of the agreement has expired, settlement and development may have been so great that it may be practicable for the commission to refund part or whole of the contribution. Hence that provision for such a case and for other similar cases.

Another part of this principle clause provides that if the applicant, within three months after the delivery to him of a statement in writing showing the amount of the minimum annual revenue, pays to the commission, or makes arrangements satisfactory to the commission to pay the amount of capital contribution mentioned in the statement and agrees with the commission concerning the terms, conditions and events upon or subject to which the whole or part of the amount shall or may be refunded; and undertakes, in a form acceptable to the commission, to pay to the commission on demand made after the expiration of each year of the period mentioned in the statement the amount, if any, by which the total revenue received by the commission in that year for electricity supplied over the distribution works referred to is less than the amount of minimum annual revenue mentioned in the statement, and delivers to the commission consents in writing to the lodging of the caveat signed by each other person, if any, who has an estate or interest in the land, the commission shall, under section 137 of the Transfer of Land Act, 1893, or under section 150 of the Land Act, 1933, whichever is appropriate, lodge a caveat in respect of the land, and, as from the date upon which the caveat is lodged, the moneys payable under the agreement will be, by virtue of this Bill when it becomes an Act, a first charge on the land, notwithstanding any change in the ownership of the land or of any estate or interest therein.

The Bill then provides that as soon as may be after that, the commission will set about putting up the distribution work agreed upon and at least annually review the supply of electricity over the distribution works erected; and, in any case, where the commission considers it reasonable to do so, will withdraw the caveat lodged, whereupon the land will be released from the charge. This latter provision will depend again on the situation that develops in regard to the number of consumers and the revenue to be derived from the land as a consequence of the extended settlement or development.

It will be quite obvious that there will be many places where persons will desire electricity extensions which, under the proposals contained in this Bill and as I have outlined them in regard to the discussions which have taken place, will not be practicable. But there are many places which are on the borderline at present; and which, in the absence of any flexibility in the commission's policy, have resulted in these places being rejected by the commission.

In this measure there is absolutely no compulsion upon anybody to enter into an agreement to make a capital contribution or to give a guarantee of revenue. When the applicant has agreed to do so, there will be a statutory charge over the land concerned. Until that time, the applicant will be under no obligation. It seems to me that it is highly desirable that there should be more flexibility in the policy of the commission in regard to this matter; and I consider—and so do many others who are concerned—that it is a reasonable proposition bearing in mind all the difficulties of the case.

Somewhat similar ideas have been adopted by the State Electricity Commission in Victoria; and it is quite clear, from information received from that source, that there is a distinct limitation on what can be done; and when we consider the fact that the commission, in this case, has been assured that it will not be asked to do anything that will land it in financial loss, which otherwise it would not contemplate, I think it will be quite clear that there will be limitations on what can be done.

On the other hand, I am perfectly satisfied that a great many cases—which otherwise would not receive attention for many years; and, in some cases, for perhaps longer than that—will have an opportunity, within a reasonable time, of entering into an arrangement with the commission, and at least there will be a

number of those borderline cases which it will be possible for the commission to attend to within the reasonably near future.

Mr. W. A. Manning: Could a road board enter into a similar arrangement?

Mr. WATTS: That is not contemplated under this Bill; but it may be done under the Electricity Act, which is a separate measure. However, that is a matter which will have to be further investigated. Local authorities can make arrangements under the Electricity Act, but they certainly would not be able to make them under this measure. I move—

That the Bill be now read a second time.

On motion by Mr. Tonkin, debate adjourned.

MESSAGES (2)—APPROPRIATION

Messages from the Governor received and read recommending appropriation for the purposes of the following Bills:—

1. Electoral Act Amendment Bill (No. 3).
2. State Electricity Commission Act Amendment Bill (No. 3).

BILLS (2)—RETURNED

1. State Transport Co-ordination Act Amendment Bill.
2. Administration Act Amendment Bill.

Without amendment.

MONEY LENDERS ACT AMENDMENT BILL

Second Reading

Debate resumed from the 22nd September.

MR. NULSEN (Eyre) [9.26]: On a casual glance at section 9 of the Moneylenders Act, I thought it was harsh and unconscionable. But since I have studied the Act and gone into it more thoroughly, I find there is nothing formidable about it at all. I might say at the outset that I disagree completely with the Attorney-General in relation to this Bill. The Bill, of course, is to amend the Money Lenders Act, and the major alteration proposed is an amendment to section 9 of that Act. In my opinion section 9 is neither formidable nor difficult for the money lenders to comply with. The amendment to section 9 deals with the payment of the principal and interest by the borrower. It seems that the major alterations are to be made to section 9 of the Money Lenders Act.

Legal advice was sought from Stone, James & Co., and on their advice a writ for breaches of the Money Lenders Act was issued. The case went to the Supreme Court; and later, on appeal, it went to the High Court of Australia. The High Court of Australia did not give a unanimous judgment but it favoured the Mayfair Trading Co., because of the breaches of section 9 of the Money Lenders Act. I think it is a coincidence that the Eastern Acceptance Co. and the Mayfair Company should have met. It was a case of the big shark and the little shark meeting; and, in consequence, causing a lot of trouble. But it was more or less an act of Providence, because it has highlighted the Money Lenders Act. There is no question that the big shark is represented by the Eastern Acceptance Co., because that organisation was charging the Mayfair Company an average of over 23 per cent. interest when, of course, the maximum allowed in accordance with the Money Lenders Act is only 15 per cent.

There is no doubt that the hardheaded businessmen concerned knew perfectly well what the consequences would be if anybody opposed them under section 9 of the Money Lenders Act, particularly if it were shown that they had breached the provisions of that Act. An average interest of 23 per cent. is, of course, extortionate. The Mayfair Trading Co. may have had to charge a fairly high rate—I believe its charges ranged from 40 to 50 per cent. We must remember, however, that this firm was selling on credit sales. It had no security; and though its collection fee of 10 per cent. was a bit high, by comparison it was small fry, particularly when one relates its activities to those of the Eastern Acceptance Co.

Mr. Watts: You know they had borrowed money from other people, too.

Mr. NULSEN: That is perfectly correct; but the people who offended against the Money Lenders Act knew what they were doing, because section 9 of that Act is very simple and easy to understand. As I have said, I thought section 9 was harsh and unconscionable. I was under this impression because of what I read in the newspapers at different times, and also because of what I heard the ex-Chief Justice (Sir John Dwyer) say in connection with it. I do not know where he got the idea that section 9 was harsh and unconscionable. I am not able to understand that at all.

In order that the people in the country who read *Hansard* can obtain a clear picture of what is contained in section 9 of the Money Lenders Act, I propose to read it. It will show them that there is nothing harsh or formidable in that provision. Section 9 reads as follows:—

(1) No contract for the repayment by a borrower of money lent to him or to any agent on his behalf by a money lender after the commencement of the Money Lenders Act Amendment Act, 1937, or for the payment by him of interest on money so lent, and no security

given by the borrower or by any such agent as aforesaid in respect of any such contract shall be enforceable unless a note or memorandum in writing of the contract is signed personally by the borrower and unless a copy thereof is delivered or sent to the borrower within seven days of the making of the contract . . . .

Is there anything hard to understand in that? It is quite simple. It continues—

and no such contract or security shall be enforceable if it is proved that the note or memorandum aforesaid was not signed by the borrower before the money was lent or before the security was given, as the case may be.

(2) The note or memorandum referred to shall contain all the terms of the contract and, in particular, shall show the date on which the loan is made, the amount of the principal of the loan, and either the interest charged on the loan expressed in terms of a rate per centum per annum or the rate per centum per annum represented by the interest charged as calculated in accordance with the provisions of the Schedule to this Act.

There is nothing in that provision which is difficult to understand. I venture to say that these hardheaded businessmen knew exactly the meaning of section 9. It was only a matter of evasion on their part. I feel that the case in question is a rare one; because, generally speaking, borrowers are impecunious individuals. They would not be borrowing money if they did not really require it.

The Mayfair company had a rather flourishing business. The receivers stepped in. The company sought legal advice from Stone, James and Co., and that advice was acted upon. It is not too much to ask for an amendment to section 9 under which the moneylender is obliged to let the borrower know how the latter stands, or what is his position after borrowing the money. The borrower is entitled to know what he is in for. Some action should be taken now, because usury is becoming a prominent feature in this State.

The Attorney-General gave, as a reason for the introduction of this Bill, that the borrower should be prevented from becoming the oppressor. It is very seldom that he becomes one. He can only become an oppressor if the moneylender does not comply with the Act. The Eastern Acceptance Co. did not, and that was proved in two courts—the Supreme Court of this State and the High Court of Australia. The borrower is usually the one who is oppressed. If we were to study the history of money lending we would find that to be the case.

I wonder what would be the position if there were no limit to the interest rate, as was the position in 1941. I remember the reaction of members on both sides of this House when the late Mr. Cross, then member for Canning, brought down an amending Bill to provide for a limit to the rate. He stipulated the limit at 20 per cent. The Bill was debated in this House, where it was agreed to, and in the Legislative Council. It was discussed thoroughly, and it was suggested that the limit should be 5 per cent., to ridicule the interest rate, but then it was increased to 48 per cent.

After members got tired of debating the limit of the rate in the Legislative Council, Mr. MacFarlane moved that the figure of 20 per cent. be deleted with a view to inserting another figure in lieu. After a division was taken, Mr. Thomson, a member of the Country Party, moved that the figure of 15 per cent. be inserted in lieu. Even the Country Party was not in favour of 20 per cent.; and to the surprise of Labor members, the Country Party reduced it in the Legislative Council.

If we examine cases which have passed through the Bankruptcy Court, we will not find many moneylenders having been made bankrupt. But hundreds of borrowers have gone through that court as a result of their borrowings from moneylenders. I am not in favour of any portion of the Bill; but clause 2, which is the essence of the Bill, should be disagreed with entirely. It contains a retrospective provision. One subclause makes good the past omissions of moneylenders. There are quite a number of cases pending at the moment, and I shall name a few of the parties concerned. I have before me a list of more than 12 moneylending companies which are so affected.

Actions are pending regarding moneylending transactions of the following finance companies:—

Custom Credit Co.
Equity Investment Co.
Fidelity Finance Co.
Terrace Finance Co.
Mercantile Finance Co.
Eastern Acceptance Co.
Nedlands Finance Co.

There has been some camouflaging on the part of finance companies to escape the Money Lenders Act. There were recent cases involving the Fidelity Finance Co. and the Terrace Finance Co.

The retrospective provision in the Bill could affect a colossal number of transactions entered into by finance firms and companies. It would be terrible if we were to condone the action of these firms in breaching the Money Lenders Act. Under the retrospective provision they will be let off.

Mr. Tonkin: That is the purpose of the Bill.

Mr. NULSEN: I cannot imagine the Attorney-General agreeing to any such provision. I know him. I do not think he has changed since he assumed his portfolio.

Mr. Tonkin: He was led up the garden path.

Mr. NULSEN: This Bill will make no difference to Gill and to the Russell Transport Co., because most of their loans were borrowed at or under 12½ per cent. In any case Gill will not have anything over after paying his creditors. In fact, there will be a very great deficit, and he will never be able to meet his obligations.

I want to read out the retrospective provision in the Bill so that it can be included in *Hansard*. Cases which have gone before the court will not come under the retrospective provision, such as those involving Eastern Acceptance Co. and the Mayfair Co., unless there has been some alteration since. The retrospective provision in clause 2 is as follows:—

> In or in relation to any extra judicial proceeding or civil action, suit or proceeding pending at or commenced after the first day of May, one thousand nine hundred and fifty-nine, other than an appeal from a judgment, decision or order of a court given or made prior to that date, nothing in any provisions repealed by the Money Lenders Act Amendment Act, 1959, or in section sixteen of the Interpretation Act, 1918, applies so as to make unenforceable a claim or right under a contract to repay any money lent under it or to payment of interest thereon at the rate provided for in the contract or at a rate up to but not exceeding the maximum rate whichever is the lesser rate, or to render unenforceable any security, document of security given for or in respect of the money lent or interest thereon at the rate provided for therein or at a rate up to but not exceeding the maximum rate whichever is the lesser rate.

That is very clear. This Bill not only deletes the provision of making the loan unenforceable in certain circumstances, but makes its operation retrospective and so makes good any past omission of the moneylenders. I ask members whether it is honourable to condone the action of people who have deliberately contravened section 9 of the Money Lenders Act. I am quite certain that no member in this House will agree, after examining section 9, that it is not understandable. It is very clear.

I should state that that provision is not peculiar to this State. I think it also appears in the Acts of Great Britain, New Zealand, and other States of Australia. It is not peculiar to this State. I feel that the finance companies have been taking a risk, because I am satisfied that they knew the Act. They have all the advisers necessary; and it is usually the accountant who handles an investment company's affairs. Therefore, they would know what they were doing. It seems to me that it is really an evasion of the Act so that the borrower will not know exactly how he stands.

I am not altogether blaming the members of those organisations; but I do blame the executives and managers, because they know what they are doing. I am perfectly sure of that. There should be some penalty which can be imposed when these people evade the law. I do not think the members of the various companies would condone or tolerate it if they knew their directors were doing that sort of thing. I am satisfied that that is the position in regard to the Eastern Acceptance Co.

I would like to ask the Attorney-General whether a regulation can be made to legally exceed the maximum of 15 per cent. Clause 3 reads as follows:—

> Section eleven A of the principal Act is amended by repealing and re-enacting the proviso to subsection (1) as follows—
>
> > For the purposes of this section the Governor may make regulations prescribing the maximum rate of interest and until so prescribed the maximum rate of interest is fifteen pounds per centum per annum.

If the Act can be overridden by regulation, what is going to happen between the rising of Parliament and the next sitting of Parliament? I say with all earnestness that the borrower is under a great obligation and owes a lot of appreciation to the late Mr. Charlie Cross, the member who brought down the amendment to the Money Lenders Act providing for a maximum of 15 per cent. The Deputy Leader of the Liberal Party cannot deny that the Eastern Acceptance Co. knew what the limit was; and yet it charged 23 per cent., which is extortionate and exorbitant.

Mr. Court: Did not the company act on legal advice? You say the section is easy to interpret.

Mr. NULSEN: As a layman I could easily understand section 9.

Mr. Guthrie: Two judges of the High Court could not.

Mr. Court: It caused the High Court judges a lot of concern. They argued.

Mr. Andrew: It was an exorbitant rate anyway.

Mr. NULSEN: Mr. Justice Taylor might have taken another view. He might have considered a course of conduct where more than one transaction was necessary. However, the Chief Justice of the High Court came to the conclusion that that

was not necessary and agreed with the ex-Chief Justice, Sir John Dwyer—and so did his colleague.

The Money Lenders Act needs overhauling and tightening up. There is a doubt in the legal profession about the meaning of the words "at a rate of interest exceeding 12½ per centum per annum". Some members feel that the words "at a rate" govern the expression, and it does not matter whether interest is paid monthly, quarterly, or annually. Others are of the opinion that 12½ per centum per annum payable quarterly exceeds 12½ per cent. The same doubt occurs over the expression of 15 per cent. in section 11A. However, no attempt has been made in the Bill to clear up any of these doubts. What I have just said is in accordance with legal advice which I have obtained, and I feel that something should be done in that regard.

No special time is prescribed in this Act for commencing prosecutions. This comes under the provisions of the Justices Act, and the time is six months. As far as the Money Lenders Act is concerned, I think the time should be at least three years, during which action can be taken to commence a prosecution. Offenders against the Money Lenders Act are difficult to detect, and a lot of secret negotiation goes on. Books and records are kept, and there should be no difficulty in that direction.

Hire-purchase companies are taking advantage of the Money Lenders Act. They must be finding it to their advantage. They are now charging up to 14.973 per cent. simple interest. I have wondered why they have not charged 14.99 per cent., because they are losing .026 per cent. in interest. I do not know what the reason is.

The general penalty under the Bill is £250. That is in accordance with section 5 (21) of the principal Act as amended by substituting the word "fifty" in the last line for the words "two hundred and fifty." That is a general penalty; yet I find for a more serious offence—that is, when any company such as a finance company exceeds the limit of 15 per cent.—the penalty is "subject to a fine of one hundred pounds."

Under the old Act, the general penalty was £50, and the penalty for exceeding the limit of 15 per cent. was £100. In this Bill the position is in reverse. Therefore, the matter cannot have been taken very seriously in regard to a person who offends against the Act. For an offence against section 11A the penalty is £100 or six months' imprisonment. I think that should be altered.

If clause 2 in the Bill were not agreed to, the Bill would be thrown out. Therefore, I do not intend to agree to clause 2. I think it is wrong that, for exceeding the maximum of 15 per cent., the penalty is only £100—it has not been altered—and yet the general penalty is £250.

As I have said before, the moneylender, generally speaking, is a shrewd hard-headed businessman who knows what he is doing, and when there is no limit placed on him, the sky is his limit. I can remember that before Mr. Cross, the then member for Canning, introduced an amending Bill to make a limit of 20 per cent., I had cases brought to me where these people were charging up to 100 per cent. and 150 per cent. on small loans. While 15 per cent. might be a little low for a loan of one, two, or three months, when the time exceeds three months and the loan runs into hundreds of pounds, 15 per cent. is too high. It is really robbing the people who want the money and who are desperate to get it. These people will do anything to get it, irrespective of how they are going to pay it back.

In England at one time the restriction on moneylenders was removed; but it was not long before it had to be re-enacted, because they were getting out of control and were making it so hot, as it were, that England became alarmed. If we studied the cases that go through the Bankruptcy Court, we would find that the majority are the borrowers. There may be a few moneylenders who go bankrupt, but not very many. Yet we have a Bill which proposes to protect these individuals.

I repeat that this section 9 of the Money Lenders Act is not peculiar to Western Australia. As a matter of fact, I think it was taken from the English Act; and other Australian States have a similar provision. I would suggest that the Attorney-General withdraw this Bill.

Mr. W. Hegney: Hear, hear!

Mr. Watts: There would be a lot of injustice done to a lot of very good people if it were withdrawn.

Mr. Tonkin: That has yet to be proved.

Mr. Guthrie: It would be the widows who would suffer.

Mr. Tonkin: There has been no evidence to prove that.

The SPEAKER: Order!

Mr. Watts: So many of them are moneylenders; that is the unfortunate part of it.

Mr. Tonkin: There has been no evidence of it yet.

Mr. NULSEN: I do not know whether there is any evidence of it. I do not think any has been submitted, and I do not think any can be.

Mr. Guthrie: There is a case before the Supreme Court at the moment.

Mr. NULSEN: There must be implications when a Bill of this sort is introduced. It must be an attempt to protect people who have deliberately evaded the

Money Lenders Act. I cannot understand why the Bill has been brought down. I had certain opinions before I studied the Act. When I did study it, I said, "Well, I have been on the wrong track." I thought that section 9 was harsh and unconscionable. But the boot is on the other foot. The finance companies are harsh and unconscionable when they exceed the limit of 15 per cent. by 8 per cent.

It is a good thing that the position has been made plain, because it might have existed for years. Generally speaking the impecunious borrower would not have the money to contest a case against the moneylender. It was lucky that the Mayfair company happened to be the one concerned. I believe, too, that had it not been for Mr. Cox, who sought legal advice, the position would not have been brought to the notice of this House.

It will be quite interesting to hear what our friends on the other side of the House have to say. I do not want to be harsh to anyone. But one thing I am opposed to is usury; and this is usury. There is no question about it at all. I think the whole position is bad; and had it not been ventilated, it might have gone on for years. I cannot imagine anyone who could be sympathetic with those who have exceeded the limit of 15 per cent. by 8 per cent. for their own gain.

I say again, that the action of these people was deliberate, because I am satisfied that those in control perfectly understood the Money Lenders Act, and knew what they were doing. They knew they were exceeding the limit of 15 per cent., and they knew what was required of them so far as section 9 was concerned. The borrower was quite entitled to the information, and it should have been given to him. He only had to be given a memorandum of the contract; and as the Deputy Leader of the Liberal Party said, legal advice was sought.

Was the fact that they had legal advice any excuse for them to exceed the limit of 15 per cent. by 8 per cent.? It is a little more than that, in fact, but I do not want to overestimate. I feel that it is a complete shame that moneylenders will take down borrowers whenever possible. I do not altogether condone what the Mayfair company did. I think the profit was a little too high; but that does not alter the fact that the moneylender received more than he was entitled to receive. That was exploitation of someone who needed the money. Twenty-three per cent. is harsh and unconscionable, and should not be tolerated by any civilised person.

MR. TONKIN (Melville) [10.3]: I am strongly in favour of amending the Money Lenders Act; but not in this way. After having heard the Attorney-General introduce the Bill, and having subsequently studied it to make myself familiar with events which led up to its introduction, I would have thought that we would not see this Bill here again, because I believe the Attorney-General in all good faith was led to believe that this Bill was going to render a service to widows. However, I am satisfied now that the Bill ought to be called a "Bill for an Act for the benefit of moneylenders and usurers", because it proposes to cancel contracts and allow usurers and moneylenders, who deliberately evade the law, to get their money back, even though they have forfeited the right to do so by the terms of a statute which they should thoroughly understand.

I think you will agree, Mr. Speaker, that the member for Eyre is mostly a kindly and temperate man who, when he addresses himself to a Bill, does so in measured tones and in the kindliest possible way. I feel that you could not help being impressed by the obvious feeling with which he spoke on this Bill. It is most unusual for him to express the straight-out opposition to any measure which he expressed to this one, and in such a forthright way. It is clear that the member for Eyre has given this Bill considerable study and thought. I am satisfied that he would not have spoken as he did had he not been fully convinced of the great injustice which this measure will do if it is agreed to.

Section 3 of the Act lays down that any single transaction at a rate of interest over 12½ per cent. is moneylending; and that is not a new principle. Cases that have been before the courts in other States have shown that that is so; and moneylending firms which have been engaged in the business for years could not plead ignorance in this matter, even if ignorance were an excuse at any time, which, of course, it is not.

I agree that there are certain doubts about section 11A, dealing with rates of interest, where it speaks of "interest at the rate of"; but, as the member for Eyre said, this measure does nothing to remove those doubts. They are there, and they will remain despite the passing of this Bill, because it does nothing to resolve them. As the member for Eyre said, no special time is mentioned in the Bill as limiting the period under which action can be taken; and so the Justices Act will apply and action will have to be taken within six months.

As the member for Eyre also said, very often these transactions involving excessive rates of interest are carried out in secret; and it is extremely unlikely that they would see the light of day within six months. If they do not, opportunity for action is past, and those concerned get away with it. I would agree with the member for Eyre that it is more reasonable to prescribe a period of perhaps three years—or even longer—during which it is possible to take action against those who

have breached the Money Lenders Act; and who, in most cases, have deliberately done so.

I will not say that there is no merit in the Bill; but it is very little—so little, indeed, that it would not justify the passing of the measure. The general penalty under the Act is at present a £50 maximum fine; but for a breach of section 11A., which deals with lending at an excessive rate of interest, the penalty is £100, or six months' imprisonment, or both. That is the law as it stands at present. Parliament previously thought that for any breach of the general provisions a £50 fine was sufficient; but that in connection with section 11A., which is there to prevent usury, the penalty should be £100 or six months' imprisonment, or both.

What does this Bill do? It provides that for all the general offences under the Act, where the penalty is now £50, it shall be lifted to a maximum of £250; but with regard to section 11A., dealing with the lending of money at excessive rates of interest, the penalty is to be £100 only. So what was previously regarded as the greater offence is, by this Bill, to be regarded as the minor offence; and it is clear that that has been deliberately done and is not in the Bill by reason of an oversight; because section 11A. is to be amended in some particulars, with no attempt to restore the balance of penalties as it exists in the present law.

I find it hard to justify this special concern for usurers, so that they shall be liable to a lesser penalty in connection with this matter, in place of the view that the legislature has previously taken in this regard. As the member for Eyre has already pointed out, the major alteration to the Money Lenders Act, as proposed by the Bill, is to section 9; and when considering the proposals in that regard we should bear in mind that with normal moneylending—I use the word "normal" advisedly—it is a case of business between a desperate borrower and a shrewd, hard-headed moneylender.

That is the position, normally. A man is in need of some money for any of a hundred and one reasons. Sometimes it is because of ill-health in the family, which has caused him to run up very high doctors' bills, or unemployment for long periods, with the result that when he goes to the money-lender he is in a desperate position and is dealing, in most cases, with a man who is well off financially, and who has had plenty of experience and whose business it is to know the law.

Who is the one that should be protected? Is it the moneylender—the usurer—or the borrower? It we protect the moneylender, we cannot protect the borrower; because we protect the money lender at the borrower's expense. Of those two classes of people, which should be given protection, if protection is to be given? Certainly not the usurer; but that is what this Bill seeks to do.

The Attorney-General—I believe in good faith—indicated, when he introduced the Bill, that one of its purposes was to protect widows and other poor people. We had a similar suggestion tonight, by interjection from the member for Subiaco, to the effect that poor people would suffer. It has been established that no money was lent to Gill's or Russell's at a rate exceeding 12½ per cent., so no widows who lent money to Gills or Russells will receive any benefit from this legislation.

Mr. Watts: Twelve and a half per cent. per annum?

Mr. TONKIN: Yes. It has been established beyond doubt, by the legal men who have gone into it, that no person lent money to Gill's or Russell's at a rate exceeding 12½ per cent., or in a way which would make them money-lenders under the existing law.

Mr. Guthrie: Are you sure of that?

Mr. TONKIN: I cannot say I am sure, any more than the member for Subiaco can say that he is sure in the opposite direction, because it is a well-known fact that in law one can be sure of nothing.

Mr. Watts: We know this for sure: that interest at 12½ per cent., payable with short rests, is more than 12½ per cent. per annum. When that is done they are moneylenders.

Mr. TONKIN: I have been assured by people who have keen legal brains, and who have had extensive legal practice, that no person loaned money to Gill's or Russell's in a way which contravened the Money Lenders Act.

Mr. Watts: I have been assured by persons with just as much experience that they did.

Mr. TONKIN: All right! That is the difference of opinion we get in law; and no doubt the matter would go to the Supreme Court, then to the High Court and from there to the Privy Council; and it is a case of who has the last guess. But this Bill does not clear up those doubts with regard to "at the rate of"; it still leaves that in the air. If the Attorney-General has had all this legal advice that he talks about, why has he neglected to put that right? Surely that is a point which ought to be tidied up!

As the member for Eyre said, it is really laughable to talk of this Bill being introduced in the interests of the poor impecunious borrower—the man who probably in 90 cases out of 100 goes to a moneylender only because circumstances force him to do so, and who is completely in the hands of the moneylender, who is a hard-headed shrewd businessman who knows the law. If there are some poor persons who

have contravened the Act are we, under the pretext of helping them, to let out all these sharks who have deliberately charged as much interest as they thought they could get away with?

We cannot help them both. We cannot help the poor old borrower unless we do it at the expense of the moneylenders. If we are to do something to protect the moneylenders and the usurers it has to be at the expense of the borrowers. I prefer to look after the borrowers because I am satisfied that the moneylenders will look after themselves.

The moneylender who obeys the law has nothing to worry about in the law as it stands, and the law was put there to control moneylenders; it was to prevent the oppression of borrowers, to stop usury, and to control the moneylender. The moneylender—and I do not care who he is or where he is—has no need of any protection or retrospective legislation if he obeys the law. But if he does not obey the law, and he tries to make more than the law says he is entitled to get, he is not entitled to our protection in any shape or form. But this Bill will give it to him; it will let him out of the awkward situation that he finds himself in because he has not obeyed the law.

As the member for Eyre has already stated, there are very few bankrupt moneylenders. I do not know that I have ever heard of any; but there have been plenty of bankrupt borrowers. So I ask again: Which section deserves our protection if we are to extend protection to somebody?

Mr. Fletcher: Those whom we represent.

Mr. TONKIN: Section 9 provides that a loan is unenforceable if no memorandum and receipt have been given. Surely it is not too much to ask that a memorandum and receipt be given when a transaction takes place! That is not an onerous provision; it is not something that is difficult to understand. Why should we protect anybody who has not done it? That requirement is deleted by the Bill—the protection of requiring a memorandum and receipt is deleted from the Act if this Bill is passed. Why? If it could be shown that it is unfair, unconscionable, or irksome, or in any manner out of the way, one might agree that it ought to be removed. But I have not heard any valid reason for its removal.

A simple provision that a memorandum and a receipt are to be provided at the time of the transaction is to be taken out of the law; it is no longer to be required if this Bill is agreed to. Not only that, but a provision in the Bill will exempt anybody who has failed to do that in the past. This retrospective provision will mean that those who have failed to do it in the past will suffer no penalty, even though the law requires that a memorandum and receipt be issued.

Are we going to be a party to that? Let us have a look at another implication. There has been evidence in recent times that hire-purchase firms, even though the business in which they have been engaged has been lucrative, have been turning away from that to the moneylending business; and the recent action of the Government in imposing a tax on hire-purchase agreements will, in my view, accentuate that trend. So we can expect to find more people engaging in the moneylending business—hence the Bill to protect moneylenders, I suppose. I think there ought to be an amendment to provide that the interest in any transaction, hire purchase or otherwise, should not exceed 15 per cent. I share the view of the member for Eyre that that rate of interest is high enough in any circumstances.

It is a rate of interest which, more often than not, lands honest and decent people into trouble because they take on contracts without realising what a killer the interest rate will be. Consequently they find they are absolutely unable to extricate themselves from the position in which they have been forced through circumstances quite often beyond their control. If we are to permit the charging of high interest rates—and we do—I will be interested to hear the answer the Attorney-General gives to the member for Eyre with regard to the proviso in the Bill that the rate of interest shall be fixed by regulation. Is it intended that a much higher rate than 15 per cent. shall be provided by the legislation? If that is so, we do not know what amount might be legal.

Mr. Watts: There is provision in the parent Act to fix it by regulation. But it has been very dubiously worded and this Bill was designed to give it clarity; that is all.

Mr. TONKIN: I am glad to have that assurance that there is very little likelihood of any higher rate than 15 per cent. being agreed to; because I repeat that, in my view, no higher rate than 15 per cent. should be permitted on any transaction.

If we had a law which was out of line with any other State or country overseas there might be some reason for bringing it into line. But the provisions in our law are similar to those which operate in other States and other countries, and they have not seen fit to rush to the aid of these poor moneylenders who are being oppressed by the borrowers. Just imagine the moneylenders being in trouble because borrowers are pressing them!

Mr. Watts: That depends on who the moneylenders are.

Mr. TONKIN: Of course it does! But the vast majority of them, with the larger sums at stake, are in the business for the purpose of lending money. The total sums

that are lent by those people who yield to the desire to lend any money they have to spare, at high interest rates, would not be very great. Also, there would not be many of those people compared with the number of professional moneylenders who are out to extract the last possible penny from the borrowers.

Like the member for Eyre, I do not like the Bill in the slightest degree; and I will do my utmost to defeat it. Whilst it could be of benefit—and I have no evidence yet that it will—to a few individuals who unconsciously have entered the moneylending class because they are receiving more than 12½ per cent. for the money they have loaned somebody, the persons who will derive the greater benefit from this law are corporations and moneylenders who have been in the business to lend money; and who, if they do not know the Act, should suffer the consequences because it is their business to know it.

I will take a good deal of convincing that there is any professional moneylender who does not know the Act inside and out. Moneylenders know all the provisions relating to their own protection and the limitations to which they can go in regard to the borrower because they have read the Act and re-read it and applied it over and over again during the course of their business. They do not need any protection, because whatever trouble they have got into has been with their eyes open.

Mr. Nulsen: And there is no need to exceed the limit.

Mr. TONKIN: I quite agree; and those who do exceed the limit and who know they are exceeding it will benefit from this Bill; because, in effect, we are saying, "We will wipe the slate clean for you and let you get your money back." There is another angle. I say this without suggesting in any way that I am prepared to applaud or condone the action of any people who hide behind the law to avoid meeting their proper obligations. That has never been a principle of mine, and I would never support anybody else who tried to follow it.

It is quite feasible that companies might have contravened this law and put themselves in an advantageous position in regard to the money that should be repaid by them; and who, on the strength of the fact that any new money could not be utilised to pay back debts, have induced new shareholders to invest capital in those companies. Those new shareholders would invest new money in the belief that the only debts they would be called upon to pay would be those that would be incurred from the time they invested their money. However, if the money of those shareholders is to be utilised to pay debts which did not exist when the money was invested, but which become debts because of retrospective legislation, that is more unfair to them than it is to the favoured people who knew what the position was if they read the law.

The man who accepts the situation as it is on the law as it is, surely needs greater protection than the person who ignores the law and who finds himself in a mess as a result. This legislation, in seeking to help people who have evaded or ignored the law, can place in difficulty those who obeyed the law and relied upon its provisions. That is a principle of lawmaking which is hard to substantiate and justify. But that is what could happen if this Bill is passed, and it should not happen.

When he is shaping his future conduct, a person is entitled to rely upon the law as it exists; not as it might be altered retrospectively by somebody at some subsequent time. We would have a nice chaotic condition in business if we practised that policy to any degree. Therefore, retrospective legislation of this type should be effected only, as a last extremity, and I do not believe that sufficient evidence has been adduced in this House to prove that the extremity of some people is such that this legislation is warranted despite the fact that it may cause injustice to some or any people. That is the view I take of the position.

I repeat that I am surprised to see this Bill again after it had been introduced. When it was first brought before the House, I was under the impression that it was to meet a difficult case, and therefore the measure was quite fair, just, and reasonable. However, when I started to delve into the matter and look for information round and about—as I feel the Attorney-General would do—I felt that the Minister's view would be the same as mine and he would not want to refer to it again. Nevertheless, here it is and I hope its life will be short. I propose to vote against the measure.

MR. ANDREW (Victoria Park) [10.34]: Like the Deputy Leader of the Opposition, I was of the opinion that, since this Bill had been explained at the second reading, and had then been placed at the bottom of the notice paper and remained there for many weeks, the Attorney-General had had second thoughts following other points of view having been put to him, and that he was not going to proceed with this legislation.

In introducing the Bill, the Attorney-General said that it would apply generally to those loans which carry interest in excess of 12½ per cent. That may be so; but there should be a wider definition in the parent Act, because that definition reads as follows:—

> The expression "money lender" in this Act shall include every person (whether an individual, a firm, a

> society, or a corporate body) whose business is that of money lending, or who advertises or announces himself, or holds himself out in any way, as carrying on that business, or who lends money at a rate of interest exceeding twelve and one-half pounds per centum per annum . . . .

It then goes on to list those who do not come within that particular category.

But it could be anybody who lends money, provided he does not come within the provisions of paragraphs (a), (b), (c), (d), (e), or (f). That is something in the Act which requires clearing up; and no steps are taken to do that in the legislation before the House. The word "iniquitous" has been used quite frequently when describing legislation that has been brought down from time to time. I do not propose to use that word myself at the moment. But like the two previous speakers, I consider that this is bad legislation; that it is appalling legislation; and that it should not have been introduced. I say that because it is like previous legislation we have had here this session, which merely helps law-breakers.

In the Royal Commissioners' Powers Act Amendment Bill there were provisions which sought to protect perjurers and liars; and now we are being asked to consider legislation which will apparently protect usurers; because, at the present time, there are certain heavy penalties which can be imposed on people who are found to be breaking the provisions of the Act. This Bill, however, actually seeks to reduce those penalties, even though people may be breaking the law.

The Attorney-General said that the general opinion of the people with whom he had spoken was that this legislation was necessary. But except in the case of the Crown Law Department, he did not quote one instance to show that it was required; nor did he mention any other country or State that had introduced such legislation.

I think that is very necessary. When legislation is brought before Parliament, good reason should be shown as to why it should be passed. That has not been done in this case. When introducing the Bill, the Attorney-General said that he sought to protect the widows. I do not know what widows need protection; because, as far as I can see, it is the big business firms which are mainly concerned. I rather think it is the old practice of trotting out sentiments to the effect that widows need helping, and so on, in order to get legislation through. I am very suspicious of this sort of thing. When I first heard this deceptive expression about widows, the tears ran down my bib, but this has been expressed far too many times by the present Government for it to be considered at all seriously.

The Attorney-General made a statement which was true at the time; that Gill had creditors who might not come within the category of being able to recover their loans from him. This was referred to in *The West Australian* of the 29th May, in an item headed, "Gill's Debts may not be Recoverable", which reads as follows:—

> Doubt exists whether about £200,000 lent by numerous people to bankrupt business manager Laurence George Gill (43), of Penguin Island, Safety Bay, is legally recoverable.
>
> There appears to be a difference of legal opinion on interpretation of the Money Lenders Act in the light of a High Court decision some months ago in a case between two West Australian companies.

That was brought up by T. J. Hughes, Gill's counsel, who said—

> In my opinion anyone who gets 12½ per cent. with the interest paid quarterly is getting more than 12½ per cent per annum.
>
> I think that almost the whole of Gill's debts are not chargeable against his estate.

I do not know how the law interprets these things; but to my way of thinking, if a person receives 12½ per cent., then, whether it is paid quarterly, monthly, or half-yearly, it is still 12½ per cent. I know that legal people raise all sorts of points of law, but I should have thought there was no doubt about that.

On Tuesday, the 20th October, the Court of Criminal Appeal gave a ruling in its decision dismissing an appeal by bankrupt manager Laurence Gill (43). I quote—

> He raised this technical point in his appeal:
>
> > That money lent by his creditors to him at 12½ per cent. interest payable quarterly meant an annual interest rate of more than 12½ per cent. as calculated under the Money Lenders Act.

He failed in that appeal, and the court has upheld the fact that no matter how it was paid, it was still 12½ per cent. So that does away with one of the reasons why the Attorney-General said he brought this legislation forward.

Mr. Cornell: Is not interest raised at 12½ per cent. quarterly more than 12½ per cent. per annum?

Mr. ANDREW: It is only 12½ per cent., not more than 12½ per cent. I have just quoted the court ruling to that effect where this view is upheld. Even though the Attorney-General has said that it is the widows who need protecting, I feel that, apart from Gill, and the Russell Transport Company, he is out to protect such interests as the Eastern Acceptance Co., Fidelity Finance Pty Ltd, and Terrace

Finance. We should look at these cases and see whether the protection is necessary. We find that Eastern Acceptance loaned £20,000 and took a debenture over Mayfair Trading Co.'s assets. The company having got into difficulties, a receiver was appointed.

The Eastern Acceptance Co. recovered £7,437 10s. The Mayfair Trading Co. consulted a legal firm; and as a result of the advice that the loan was contrary to the Money Lenders Act, it sued for the recovery of the £7,437 10s. and sought a declaration that the payment of the balance of £12,500, said to be owing, could not be enforced. The Mayfair Trading Co. recovered the sum sued for and obtained its declaration in the Supreme Court in December last.

That case triggered off the other cases to which reference has been made. There have been six prosecutions against the Fidelity Finance Co.; and in one case it was shown that 60 per cent. interest was charged. These are the hardheaded businessmen in the Terrace whom the Attorney-General is out to protect.

Recently a case was taken against Terrace Finance Pty. Ltd. for charging 22.23 per cent. That case was reported in *The West Australian* on the 26th September. The report stated—

> High Interest Costs Finance Firm £20
>
> The Money Lenders Act was made against usury and a person could be just as liable in one transaction as in a series, Magistrate T. Ansell said in the Perth Police Court yesterday.
>
> He fined Terrace Finance Pty. Ltd., c/o Dorman Gibson and Co., St. George's Terrace, Perth, £20 for having lent money at a rate of interest exceeding 12½ per cent. a year, without being registered under the Money Lenders Act.

These were the facts as reported in *The West Australian*—

> On Thursday, the court was told that Robert Stephen Couper, of R. S. Couper and Co., aerial crop sprayers, of Cunderdin, sold his asets to Clifford Francis Gooch, secretary of Terrace Finance Pty. Ltd. for £2,757 4s. 7d.
>
> H.P. Agreement
>
> Gooch then sold the same assets to Couper's manager, Alan Lloyd Fox, under a hire-purchase agreement, for the same price.
>
> Later, in Gooch's office, Fox signed an assignation of the goods to Couper.
>
> Thomas Keith Macfarlane, Registrar of Bills of Sale, showed that the interest charged by the finance company on the transaction was 22.23 per cent.
>
> Crown counsel M. F. Cahill said yesterday the profit the finance company expected to get was the interest under the hire-purchase agreement.
>
> He said the whole transaction was a sham to disguise the fact that it was a loan and to avoid the consequences of the Money Lenders Act.
>
> "The fact is that Couper's goods were security for the loan which was to be made," the magistrate said, in summing up.
>
> "It is unlikely that Couper should sell assets worth at least £18,000 for £2,757 when he was not up against the wall for money."
>
> He added that Fox admitted it was mutually understood that Couper should still own his assets.

We can see how these companies are trying to evade the Money Lenders Act. In that transaction the finance company took over the whole of the assets of the borrower. Then it drew up a hire-purchase agreement for the amount of the loan, in an endeavour to evade the Act. In this case the company was fined £20, which was a most inadequate penalty.

If the contract is not enforceable, the lender loses the whole amount of his loan. Even that is not a deterrent to finance companies, because very few transactions are brought to light. Notwithstanding the devious means which I have mentioned as having been taken to evade the law, the Attorney-General, by his amendments, proposes to allow these hardheaded finance companies to recover their loans, and at 15 per cent. rate of interest. All they are to lose is the difference between the rate provided for in the contract and 15 per cent.

Quite often the borrowers have lost all; because in most cases when people go to moneylenders they are well up against the wall. Under the existing legislation, which is the law operating in other countries and in other States of the Commonwealth, these people lose the whole of their loan. That still does not deter them from charging exorbitant interest. Under the Bill all that would happen is that the whole contract would be enforceable, except that those which charged 25 per cent. interest would be brought back to 15 per cent. All that the finance companies would lose would be the excess of 10 per cent. in the interest rate. I suggest to the Attorney-General that these companies referred to in the extracts I have read out can hardly be termed "widows."

As far as I have been able to ascertain, and from the information I have obtained, nowhere else does legislation, appearing in the form of this Bill, operate. A number of people have approached me in respect of the measure. They are not supporters of the Party of which I am a member.

They were rather astonished at the introduction of the Bill. One of them said, "The Liberal Party is being liberal to the big shot. It cares not at all for the people who need its protection."

The Bill has one or two provisions which are of some merit. Clause 4, containing proposed section 20A, is rather praiseworthy, as is clause 5 which seeks to amend section 21 by increasing the maximum penalty for the offence from £50 to £250, where no other penalty is prescribed.

In the case of a finance company, like Eastern Acceptance Co., which charged £5,000 interest on a £20,000 loan, the penalty of £250 would not worry it at all. Another bad feature about the penalty is that unless a charge is made within six months against a moneylending company, nothing can be done, and no charge will be valid after that period.

It is a great protection to companies when they can only be prosecuted within the first six months after committing an offence against the Act. It is sensible and logical to assume that if I were a moneylender and wanted to take action against anybody who had a loan from me, I would not do anything which would bring the law down upon me within the six months. I would wait until the expiration of that period and then take action. That is what these firms are doing. Under the present law, that is what we would expect them to do.

Very few of these cases ever come before the courts; they do not see the light of day. As I said earlier, the reason why there have been a few cases lately is that one firm went to a solicitor for advice; and that solicitor, under the Money Lenders Act, advised that the contract was not enforceable. If that had not been the case, years might have passed before it was discovered that that moneylender was charging a greater rate of interest. I suppose that only about one in a thousand is ever found out.

Despite this, the measure we are considering will give much greater protection. One portion of the Bill dealing with a contract which must be signed, and of which a copy must be given to the person receiving the loan, states that if the loan is for less than 12 months, the rate of interest does not have to be written into the contract. I ask the Attorney-General: "Why?" If a loan is made for less than 12 months, the rate of interest charged should be in the contract, a copy of which is given to the person receiving the loan.

I think that the hardheaded Terrace moneylenders should be very pleased that the Attorney-General has brought down this legislation. I hope it will not pass. I have given one instance where a firm was charging £5,000 per year on a loan of £20,000; and an instance of another firm which was charging over 60 per cent. interest. I am not sure, but I think the penalty is £250 for a person and £500 for a company. In any case, it is much too low. A company would only need to get away with one large loan and be in a position to pay quite a number of penalties.

I thought the Attorney-General was not going to proceed with this legislation. I thought he had seen it as we on this side of the House do, and as do many of his own supporters: that is, that it is legislation to help the hardheaded businessman and not to protect anybody who is in need of protection. I strongly oppose the Bill.

MR. W. A. MANNING (Narrogin) [11.11]: The Money Lenders Act is obviously one to protect the borrower against the moneylender, because it is clearly an Act which defines a moneylender as a person who is engaged in business for that specific purpose. I do not intend to read all the details of the Act; but a moneylender is in business for the purpose of lending money as the main aspect of that business. Section 5 of the Act reads as follows:—

> No person shall carry on the business of a money lender or do anything which constitutes him a money lender for the purpose of section 3 of this Act unless he is granted registration under this Act and is the holder of a current license issued to him thereunder.

There are also certain penalties provided for; and there are other points in the same strain in regard to licensed moneylenders.

Because of changed circumstances we are, through this legislation, seeking to protect the moneylender against the borrower, because moneylenders, as we know them, are individuals who have loaned money to firms in response to advertisements. They are not moneylenders under the Money Lenders Act; they have loaned money at a rate of interest which brings them under that Act under one heading while not in general terms. They come under the Act because they are lending money at a high rate of interest.

There is one point which I would like the Attorney-General to clear up: that is in regard to retrospective action, for which provision is made in this measure. It has been brought about because the High Court made a certain decision which meant that borrowers did not have to repay the principle which they had borrowed. I think we can all agree that anybody who borrows money should morally, if not legally in certain circumstances, repay the principal. That is a general principle which everybody should observe. If one borrows money, one should expect to repay it.

On the other hand, we have people lending money at a very high rate of interest which was set down by the Chief Justice at approximately 25 per cent. What was the reason for that high rate of interest?

Obviously the reason was that the risk was great. In this particular case, the lenders had a suspicion that they would perhaps not get their money back. That is usually the reason why a higher rate of interest is charged. They knew section 9 of the Act and charged a high rate of interest to cover its provisions. Would the retrospective provision of this Bill to force those who have borrowed money to pay back the principal mean that those people would still receive the full rate of interest which they received in the past? I know it does not apply after the coming into operation of this Bill; but perhaps some money has been on loan for 10 or 12 years, and those people have been collecting 25 per cent. for that period. Are they able to retain the high rate of interest they have been collecting and also collect back the principal?

Mr. Watts: They cannot recover more than 15 per cent. under this Bill.

Mr. W. A. MANNING: Will that go back to the time they loaned the money? If money is loaned for, say, 10 years, are they to be allowed to retain the extra interest they have received over the previous 10 years and also collect the principal? If that is the position under this Bill, I think it is wrong. The excess amount should be deductible, because the people concerned will have been collecting a high rate of interest for a long time prior to their being brought back to the rate of 15 per cent.

As I have already pointed out, the reason for their collecting a high rate of interest is because of the risk involved and the risk of section 9 of the Act being applied. If that is removed by retrospective legislation, the lenders have no right to collect that high rate of interest as well as the principal. If borrowers are going to be forced to pay back the principal—to which I do not object— the excess interest which they have been paying should be deductible from the principal.

MR. BRADY (Guildford - Midland) [11.15]: I will not speak at length, but I feel I should make some general remarks in connection with this proposal. Any Bill which provides that interest shall be charged at a greater rate than 15 per cent. is one which should be discouraged, and which I hope will not be passed by this House. A figure of 15 per cent. is excessive; and if this Government did the right thing, it would bring down the rate of interest rather than introduce a provision whereby the Governor may make regulations which could permit a greater rate of interest to be charged.

I am disappointed that the Government has introduced this Bill, and I was very interested in the introductory remarks of the Attorney-General. He made reference to the fact that moneylenders in the old days were people who were believed to be lending money at exorbitant rates, and that they were more or less practising usury. It would appear now that moneylenders are going to be brought into a respectable class by the introduction of this Bill. That is to be deplored in view of the remarks of the Attorney-General when introducing the Bill.

None of us had much respect for moneylenders in the old days. In fact, they were very often people who were held up to derision. Apparently the mantle of respectability is now going to be put on them because banks and insurance companies are lending money. In this day and age it is a crying shame to think we are going so far as to encourage this sort of thing in a decent society.

I am not going into the merits of the Mayfair Trading Company v. the Eastern Acceptance Co., and other cases, except to say that I am absolutely disgusted and shocked to think that in these days people can get up to 50 per cent. and 60 per cent. interest as some of them have been getting according to the evidence that has been given in the court. I thought that this Government, having regard for its responsibility as a Government, would have set itself out to stop this borrowing of money at excessive rates and to discourage the whole idea of moneylending.

I cannot help recalling an address I heard at a very respectable club to which some of the members of this House belong. A civil servant from India said that at one time a few civil servants there got together to try to help the under-privileged who could only survive by borrowing money at excessive rates. They decided among themselves to lend money at very reasonable rates to some of these Indian civil servants who were working with them. But what they found to their dismay was that these same civil servants were lending money at excessive rates to their compatriots. That is exactly the situation which will apply in this country if we allow so-called respectable banking institutions, insurance companies, and other companies, to lend money at excessive rates of interest to people who are in difficulties and dire need. These companies will be camouflaged under other names.

As a matter of fact, I have noticed in *The West Australian* newspaper in recent times that credit companies, not very far removed from Parliament House, are applying for registration under the Money Lenders Act. That, in effect, means that these credit companies are now in the category of the people who in the past were considered to be usurers.

I am sorry to see that this Government is encouraging that type of person in the community. I hoped that the Government would introduce a Bill to ensure that not more than 10 per cent. was charged even in regard to those cases where there are supposed to be no assets. I know one member is going to criticise me and say that 10 per cent. is not sufficient to cover those risks. We should have a sense of responsibility as members of Parliament; and the Government should have a sense of responsibility as a Government, and try to discourage people from borrowing if they have no assets; because, by borrowing under such circumstances, they only get themselves into further difficulties, especially when the rates of interest are excessive.

I know a man in my electorate who recently found himself in difficulties and wanted to borrow money on his car. The person to whom he went said that he could not lend him the money but that he would buy the car from him and sell it back to him at excessive hire-purchase interest rates. That is the sort of thing that is going on today; and this Government must know it. Many members know it, and I am disappointed to think that the Government is now going to attempt to legalise what is undoubtedly usury. I oppose the Bill in its entirety.

MR. GUTHRIE (Subiaco) [11.18]: I cannot help but feel there has been a certain amount of misapprehension about this Bill. The difficulty does not arise under section 9 of the principal Act. I agree with the Deputy Leader of the Opposition and the member for Eyre that section 9 is quite easy to read by itself and that it is not difficult for the registered moneylender to comply with it; and it never has been. The difficulty arises—and this is the reason for this measure being introduced—when people who never for one moment imagine that they are moneylenders suddenly find that that they are, in fact, classified as such.

The High Court judgment in the Eastern Acceptance case revolutionised the approach of the court to people who did not comply with the Money Lenders Act. Before the High Court decision in that case, the principle had been that a person who sought the relief had to be prepared to accept the condition; that he had to repay the money in any event.

But by virtue of a Privy Council decision in 1956 that condition became untenable. In any event, there was still a division of opinion in the High Court. The first difficulty which arises in the case of a person who carries on the business of lending money at, say, 7 per cent. per annum is that he is a moneylender within the meaning of section 3 of the principal Act, and could therefore lose the whole of the capital he invests if he forms a company for that purpose.

The second difficulty is in regard to the innocent person who has fallen victim to the wiles of these companies that send representatives into people's homes—and there are countless hundreds of thousands of pounds borrowed in this State on that basis at a rate of interest expressed at 12½ per cent. per annum, the magic of which they imagined kept the lenders outside the Money Lenders Act; and those people today are in jeopardy of losing their capital. They are the widows and orphans to whom the Attorney-General adverted.

It is true that in the Court of Criminal Appeal recently, in a case where Mr. Gill was not represented by counsel, the Chief Justice expressed some opinion on this matter. In that case the issue was not the question of what was the correct rate of interest, but whether the Bankruptcy Court had imposed too heavy a sentence on Gill, and that was the major issue to be argued. The Chief Justice expressed the opinion, when he had not had the benefit of counsel arguing the matter before him, that a rate of interest of 12½ per cent. per annum payable quartely was, in fact, not a rate of interest exceeding 12½ per cent.; but, unfortunately for him, many years ago a very distinguished Australian jurist, Sir Isaac Isaacs, had expressed the contrary opinion.

There is at the present time a case regarding the 12½ per cent. per annum rate of interest payable quarterly pending in the Supreme Court; and the decision of the Chief Justice has not deterred the borrower, which is one of Mr. Gill's companies, having borrowed money at 12½ per cent. per annum payable quarterly, from going on with the case and contending that it is entitled to repudiate its liability; so the position is not clear and could only be made clear if the question were decided by the Privy Council. For every one who will tell us that a rate of interest of 12½ per cent. per annum payable quarterly is more than 12½ per cent. per annum, we will find another who will say the opposite. We should not leave unfortunate people in that position, because they risk the whole of their savings.

Let us turn now to the corporations. I hold no brief for any of them, and am not so interested in them, because they can register themselves under the Act if they are moneylenders, and can comply with the section; it is the innocent person who once lends money at 12½ per cent. perhaps his life's savings—perhaps on mortgage, who could lose those savings because of an adverse court decision, with whom I am concerned.

Mr. Jamieson: Do you hold a brief for Equity Investments?

Mr. GUTHRIE: No, but for the innocent widows, many of whom have come to me in regard to this matter and cases of this sort.

Mr. Jamieson: And some that you made a mess of, too.

Mr. GUTHRIE: I had nothing whatever to do with that transaction. In the case of Equity Investments, the securities were prepared by Gill's solicitors. Equity Investments had no legal advice at all at the time. The member for Guildford-Midland raised a point as to why a certain finance company has registered under the Money Lenders Act. Even if it lends at 8 per cent. per annum it is a moneylender and can lose its capital. The difficulty lies in the definition in section 3. It is easy to ask why we should not amend section 3; but it is difficult to see how to do it.

We could insert in section 3 the words "a person who habitually lends money at 12½ per cent.," and then we would have to determine who is a person who habitually does that. Has he to do it two, three, four, or six times before he becomes a habitual moneylender?

Mr. Nulsen: It would be a course of conduct.

Mr. GUTHRIE: What is the habitual lending of money? We know that under this section, if it is left as it stands, any person who lends money in excess of 12½ per cent. per annum is a moneylender; and the protection proposed in this Bill is that such a person shall not lose his capital investment; and 12½ per cent. is, after all, 2½ per cent. less than the maximum rate of 15 per cent. prescribed under the Act. The protection in the Act really lies in that 15 per cent. maximum.

I also point out that it would not be very difficult for an unscrupulous person, such as Mr. Gill, to go around and borrow money from innocent people at £12 10s. 6d. per cent. per annum, and then there could be no argument about the rate of interest exceeding 12½ per cent. per annum. If any person were foolish enough to lend money, ignorant of the Act under those circumstances, he would undoubtedly lose his all.

The difficulty under the Act is that such people cannot even register as moneylenders. The High Court stated that clearly; because until they lend their money once, they have not become moneylenders; and when they have lent their money once, they have become moneylenders and lose their capital. The Chief Justice of the High Court described the 1913 amendment to section 3 as ill-conceived and crudely worded. Surely that is a strong enough reason for doing something about it!

To give an example of what goes on, these firms advertise, keeping within the provisions of the Companies Act, that they are interested in people who have money to invest; and having caused a person to write to them, they send out a representative to see that private investor in his or her home. They do not breach the Companies Act, because they are not canvassing or hawking for money, but are calling at a home in response to a request. On going to see the person concerned they paint a glorious picture of the marvellous investment which they have to offer, and work on a person who is desperate for an income and who, with perhaps £5,000 or £6,000 altogether, and wishes to build up his or her income and consequently falls for the line of salesmanship and lends the money.

The moment the person concerned lends the money, he is completely in the hands and under the control of the company. To give an example: I well remember a woman who came to me and said one of these men had called on her, and had put to her the proposition that his company was offering 15 per cent. and was just as good an investment as a company in the Eastern States which issued a prospectus through the Stock Exchange and was offering 8 per cent. She was convinced, and came to me to have the matter finalised; but I pointed out that the balance sheet of the Eastern States company disclosed that its assets exceeded its liabilities by £1,750,000 odd, while the local company had £100,000 worth of assets and £75,000 in liabilities. She did not go on with the transaction.

That sort of thing is going on all the time. The Bill does not in any way alter the situation as it has existed in the past, so far as registered moneylenders are concerned, because in that regard the law remains as it has been; and, so far as corporations entering into the business in a big way are concerned, they will obviously register themselves under the Act and comply with section 9. They will be in no trouble, and the borrowers will lose nothing; but it is the unfortunate person who does not realise that if he lends money once at a rate exceeding 12½ per cent. per annum he is losing his all, that this House must protect.

MR. WATTS (Stirling—Attorney-General—in reply) [11.25]: I do not think it is possible for me to improve on the observations that have just been made by the member for Subiaco in respect of the matters with which he dealt. But I should like to say that the more I have given consideration to this matter over recent weeks —and I have considered a number of representations that have been made to me, mainly by persons and companies concerned with moneylending—the more I have come to the conclusion that the provisions of the Bill are desirable, particularly from the point of view of those people

to whom the member for Subiaco referred, and to whom I referred when introducing the Bill; namely, those folk who have lent money, mainly in response to advertisements, at the rate of 12½ per cent. payable quarterly, or less than yearly, and about which there is no reasonable question that it exceeds 12½ per cent.

Mr. Nulsen: They don't come under the Money Lenders Act.

Mr. WATTS: They do.

Mr. Nulsen: According to the court's decision they don't.

Mr. WATTS: There are three types who come under the Money Lenders Act; and, in case the honourable member is not too clear, they are, firstly, any person whose business is that of moneylending; secondly, any person who advertises or announces himself or lends himself out in any way as carrying on that business; and, thirdly, any person who lends money at a rate of interest exceeding 12½ per cent. per annum.

Mr. Nulsen: Exceeding 12½ per cent.

Mr. WATTS: All those persons are moneylenders once the rate of interest is a fraction greater than 12½ per cent., and there is no question about it—they are the persons to whom I have referred. The member for Melville, in referring to this matter, alleged that there were no provisions in the Bill in relation to the giving of a memorandum to the borrower setting out the terms and conditions of the contract, as there were in the parent Act.

Mr. Tonkin: I thought I said that this Bill deleted the provisions that were in the parent Act.

Mr. WATTS: Yes, and gave the impression that there was nothing to replace them. The replacement is practically identical; all that is missing is the reference to the lack of unenforceability. The provision regarding the memorandum, and the rest of it, are all here in a separate clause in the Bill.

Mr. Tonkin: But what happens if they are not given?

Mr. WATTS: The contract is not, as it is in the parent Act, unenforceable.

Mr. Tonkin: There you are!

Mr. WATTS: That position has been changed for obvious reasons; because none of the people to whom I have referred—those who have loaned this money to those organisations in response to these advertisements—has given any such memorandum and so, in the absence of it, as I see it, the whole of their claims are unenforceable. That is not a desirable position. But there is nothing in the Bill which makes it easy for those concerned, as the member for Subiaco said, to do anything more than they are able to do at present; and they cannot recover more than the maximum of 15 per cent. interest. That is the difference.

Mr. Tonkin: What is the point if they have already been paid 25 per cent., as the member for Narrogin said?

Mr. WATTS: That is an unfortunate state of affairs; but the Bill provides that they shall not recover more than 15 per cent.

Mr. Tonkin: So even if they have received 25 per cent. for 10 years, under the Bill they are still entitled to get the whole of the principal back.

Mr. WATTS: Yes. They are entitled to get it back in any event so long as they have complied with the provisions of the Money Lenders Act.

Mr. Tonkin: But they have not complied with it.

Mr. WATTS: They get their principal back plus 15 per cent. They could not get any more.

Mr. Tonkin: From then on. But they have been getting an excessive rate of interest.

Mr. WATTS: How long has this state of affairs been known to exist?

Mr. Tonkin: What state of affairs?

Mr. WATTS: That these people have been doing these things and charging this excessive rate of interest.

Mr. Tonkin: This latest development is not new to Western Australia.

Mr. WATTS: I said: How long has it been known to be going on in Western Australia?

Mr. Tonkin: What?

Mr. WATTS: The charging of an excessive rate of interest.

Mr. Nulsen: It has been going on for years, but it has not been contested before.

Mr. WATTS: Why did not someone do something about it?

Mr. Tonkin: They did not have the money.

Mr. WATTS: I am not talking about the borrowers; I am talking about the moneylenders.

Mr. Tonkin: I do not think there was any need to do anything about that aspect.

Mr. WATTS: If the honourable member knew about these circumstances, and people were making such a welter of it, why was nothing done when he first heard about it?

Mr. Nulsen: Why was it necessary to interfere with the law when there is similar legislation in England, the Eastern States, and New Zealand? They have not interfered with section 9.

Mr. WATTS: As I said, this is an attempt to try to make the law conform with modern methods. Instead of moneylenders being a few persons who put up three gilt balls outside their shops, as used to be the situation many years ago, moneylenders have turned into hundreds of people who have been induced to lend money at excessive rates of interest in order, as the member for Subiaco said, to ensure themselves a more reasonable income.

Mr. Tonkin: How many people does the Attorney-General know of, specifically, who are in that class?

Mr. WATTS: How many people could I be expected to know of specifically?

Mr. Tonkin: You might know of two or three.

Mr. WATTS: I know of half a dozen at least.

Mr. Tonkin: That is six more than I know of.

Mr. WATTS: I know of at least half a dozen who are liable to be in this position. The member for Victoria Park read a cutting from the *Daily News*, and I thought I had one here which also dealt with the position. It showed the large number of people who were known to the writer and who were in that category. This was some five or six months ago.

Mr. Tonkin: No wonder all these finance companies are anxious that this Bill should go through.

Mr. WATTS: I have not heard that any of them are anxious that it should go through. The only one that I know of is anxious that it should not, which is a rather peculiar position.

Mr. Tonkin: The member for Eyre read out a list and all those people are anxious.

Mr. WATTS: I have heard from only one, and that person is anxious that the Bill should not pass.

Mr. Nulsen: They are all intending to go to the court.

Mr. WATTS: They have not indicated their anxiety to me. As far as I could discover, they were anxious to avoid responsibility for the money that they had borrowed at excessive rates of interest. As long as the law stood as it is at present they could absolve themselves from both principal and interest. I do not favour that situation, and I do not think the average citizen favours a method of that nature, which enables people to escape their liability from both principal and interest.

Mr. Nulsen: Who is at fault? If the moneylender complies—

The SPEAKER: Order! There are too many interjections.

Mr. WATTS: I think the honourable member is reasoning from false premises and arriving at a wrong conclusion.

Mr. Nulsen: I did not—

The SPEAKER: Order! There are too many interjections.

Mr. WATTS: If somebody borrows money, I think the honourable thing to do is to repay it at a reasonable rate of interest; and the maximum rate of interest under the Money Lenders Act, for a long time, has been 15 per cent., and nothing interferes with it under this Bill. That is the maximum rate of interest that can be recovered.

Mr. Tonkin: Do you condone 25 per cent.?

Mr. WATTS: I say that 15 per cent. is the maximum rate of interest under this Bill, and as 15 per cent. is the maximum that could be recovered, how could I condone 25 per cent.?

Mr. Nulsen: What about those who have been paying 25 per cent. for years?

Mr. WATTS: They are in a most unfortunate position. I do not know of any, except one, and he lost all his money. In that particular case the lenders got nothing because they did not comply with section 9.

Mr. Nulsen: Only because they did not comply with section 9.

Mr. WATTS: I do not think that the borrower is entitled to turn around and say, "Because you did not comply with section 9 I will not repay your principal."

Mr. Nulsen: That depends on the circumstances.

Mr. WATTS: I do not think there could be any circumstances in which an honourable man would evade his obligation; at least for the principal.

Mr. Lewis: Don't you think he would be entitled to some repayment?

Mr. WATTS: I am talking about the principal. I do not think that any honourable man should seek to evade his responsibility in regard to principal.

Mr. Hawke: It depends on the rate of interest, surely.

Mr. WATTS: It does not. I am ignoring the rate of interest in making that statement. I said his principal. Some people seem to think it is a desirable thing to do, but I do not; and I hope this House will not think so, either. If it were practicable to determine how many people had paid an excessive rate of interest, and we could provide some remedy for them through the court, I suppose there would be little objection to it. However, for the life of me I cannot see the way.

What this Bill seeks to do, primarily—as I and other members have said—is to prevent innocent people losing their money—both principal and interest—after they have lent it and become moneylenders,

under the provisions of the Act, without having the slightest knowledge they were becoming moneylenders and running a great risk of losing all the money they had loaned.

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

Ayes—21.

Mr. Bovell	Sir Ross McLarty
Mr. Burt	Mr. Nalder
Mr. Cornell	Mr. O'Connor
Mr. Court	Mr. O'Neil
Mr. Craig	Mr. Owen
Mr. Crommelin	Mr. Perkins
Mr. Grayden	Mr. Roberts
Mr. Guthrie	Mr. Watts
Dr. Henn	Mr. Wild
Mr. Hutchinson	Mr. I. W. Manning
Mr. Lewis	*(Teller.)*

Noes—20.

Mr. Andrew	Mr. Kelly
Mr. Bickerton	Mr. Lawrence
Mr. Brady	Mr. Moir
Mr. Evans	Mr. Nulsen
Mr. Fletcher	Mr. Oldfield
Mr. Graham	Mr. Rhatigan
Mr. Hall	Mr. Rowberry
Mr. Hawke	Mr. Sewell
Mr. W. Hegney	Mr. Tonkin
Mr. Jamieson	Mr. May
	(Teller.)

Pairs.

Ayes.	Noes.
Mr. Mann	Mr. Toms
Mr. Nimmo	Mr. Heal
Mr. Brand	Mr. J. Hegney
Mr. W. A. Manning	Mr. Norton

Majority for—1.

Question thus passed.

Bill read a second time.

HIRE-PURCHASE BILL

Council's Amendments

Schedule of two amendments made by the Council now considered.

In Committee

The Chairman of Committees (Mr. Roberts) in the Chair; Mr. Watts (Attorney-General) in charge of the Bill.

The CHAIRMAN: The Council's amendments are as follows:—

No. 1.

Clause 25, page 29, line 36—Insert after the word 'truck" the passage, ", motor cycle, motor utility truck,".

No. 2.

Clause 25, page 30, line 20—Insert before the word "engaged" the word "principally."

Mr. WATTS: Both these amendments made by the Legislative Council relate to clause 25, which deals with the question of the special provisions in regard to farmers' machinery. The first of them proposes to add motor-cycles and motor utility trucks to the list of vehicles. I am not at all clear that either of these amendments is essential; but, on the other hand, circumstances could arise which would necessitate the inclusion of these two types of vehicles in the list. I hardly think it is necessary to dispute the action of the Legislative Council in such a minor matter, and I therefore propose to agree with both amendments and I ask you, Mr. Chairman, to deal with them together.

The second amendment seeks to insert before the word "engaged" the word "principally." This has reference to a person who could receive protection under this clause, such a person being engaged in farming, which was defined as including agriculture, horticulture, viticulture, etc. The amendment seeks to insert the word "principally" to ensure that any person wishing to obtain the benefit under the clause would have to be principally engaged in any one of those industries.

What the mover of the amendment had in mind were those circumstances whereby a person who had an interest in a farming property, but obtained the substantial part of his income from elsewhere. Such cases do exist in various parts of the State, and the insertion of the word "principally" before "engaged" makes it quite clear that the major interest of the person must be in a farming property. I move—

That the amendments be agreed to.

Question put and passed; the Council's amendments agreed to.

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

ADJOURNMENT—SPECIAL

MR. WATTS (Stirling—Acting Premier): I move—

That the House at its rising adjourn till 5 p.m. tomorrow.

Question put and passed.

House adjourned at 11.46 p.m.

Legislative Council

Wednesday, the 18th November, 1959

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