Legislative Council

Wednesday, 2 May 1984

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

SPORT AND RECREATION ACTIVITIES

Select Committee: Extension of Time

HON. TOM McNEIL (Upper West) [2.28 p.m.]: I seek leave of the House to present an interim report of the Select Committee on Sport and Recreation Activities in Western Australia.

Leave granted.

Hon. TOM McNEIL: I am directed to report that the Select Committee on Sport and Recreation Activities in Western Australia requests that the date fixed for the presentation of its report be extended until Wednesday, 31 October 1984. I move—

> That the report do lie upon the Table and be adopted and agreed to.

Question put and passed.

BILLS (2): INTRODUCTION AND FIRST READING

1. Acts Amendment (Bingo) Bill 1984.
2. Casino Control Bill 1984.

Bills introduced, on motions by the Hon. D. K. Dans (Leader of the House), and read a first time.

RESERVES BILL AND RESERVES AMENDMENT BILL 1984

Third Reading

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

INTERPRETATION BILL 1984

Report

Report of Committee adopted.

REPRINTS BILL 1984

Second Reading

Debate resumed from 1 May.

HON. I. G. MEDCALF (Metropolitan—Leader of the Opposition) [2.30 p.m.]: This is a short Bill to which the Opposition agrees in principle. Like the previous Bill which we discussed yesterday, the Interpretation Bill, this Bill was, in fact, an initiative by the Opposition when in Government. There is a Cabinet minute on the record which indicates that in January 1983 we approved the preparation of a Reprints Bill. So the Opposition clearly agrees in principle with the contents of this Bill and with the action taken in bringing the law up to date, generally speaking, in the manner provided in the Bill.

I do not propose therefore to say very much at the second reading stage in relation to this Bill, although I shall make some comments during the Committee stage. So far as the second reading is concerned, I suggest to the Attorney that it would be a good idea, when preparing the second reading speech—if I may be so bold as to say so—to emphasise some significant changes which do occur under this Bill and which otherwise members of Parliament may be unaware of. I have always found—I say this with some humility since I do not wish to adopt a stand in relation to this kind of matter—that it is very desirable to acquaint Parliament in detail with some of the more significant changes. Usually when one does this, Parliament has no objection, once the members are properly informed. If they discover changes inadvertently, either in the course of looking at the legislation or in the course of debate, or even after the Bill has been passed, there is justifiable reason for their taking the view that the matter might not have been expressed as fully as it should have been.

I would have thought it desirable to explain in a very brief sentence of one line what is meant by the written law. I know this is a very elementary matter, but I have always found it desirable, if one is referring to regulations as well as Statutes, to say so, because many members of Parliament do not appreciate that one is dealing with regulations as well as Acts of Parliament. The same thing applies in relation to the fact that it will no longer be necessary to have a legal practitioner give certificates in relation to the verification of Statutes or other written law. While in my opinion that is not significant, nevertheless it may be held to be significant by some, and I think there is a very easy explanation which, in a sense, is already found in the notes which the Attorney made available to the House.

A few slightly more detailed references to the contents of the legislation would enhance the opportunities for the House to understand exactly what is in the Bill. It is then up to the individual members to read or to study it if they wish. No-one can then say they have been misled in any way, or that the position has been misrepresented to them.

Not that I am saying there is any attempt to mislead; I am merely suggesting it may well be desirable to emphasise some significant changes, or some changes of principle which are brought about by repealing three pieces of legislation which have been in force for some years and which

deal with regulations as well as Acts of Parliament and substitute one new Reprints Bill, with which we agree in principle.

Question put and passed.

Bill read a second time.

In Committee

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

Clauses 1 to 4 put and passed.

Clause 5: Attorney General may direct reprinting—

Hon. I. G. MEDCALF: I simply draw attention here to the point which I made earlier. Under subclause (3) it appears to me that there is no longer any need for a qualified legal practitioner to be involved in giving the certificate required. I think that is the position. The certificate henceforth may simply be given by an authorised officer, whether or not he is a qualified practitioner.

Clause put and passed.

Clause 6 put and passed.

Clause 7: Amendments of a formal nature—

Hon. I. G. MEDCALF: I would like the Attorney General to explain the meaning of subclause (3)(g), which provides that an authorised officer may substitute for a reference to a written law or provision thereof a reference to any other written law or provision where, by virtue of certain other Acts or certain other legislation, the former is to be read or deemed to be read as a reference to the latter.

Hon. J. M. BERINSON: That is a very fair question, though I cannot pretend it is one to which I have specifically addressed myself.

I think the effect of this clause is simple enough, though I would have preferred to be able to bring an example to mind. That is my problem at the moment; I confess that I cannot. It seems to me, however, that clause 7(3)(g) is clear enough on the face of it. It refers, as it indicates, to an ability to refer to an Act by a title other than what appears in the Act to be reprinted, if that is authorised by the effect of either the Interpretation Act or any other written law. Perhaps we came somewhere close to it, although I do not suggest it is directly to the point, with the discussion yesterday on the Interpretation Bill. A number of cross references were referred to in the amendment to clause 77. That arose from the fact that the second schedule to the 1918 Interpretation Act drew on an earlier piece of legislation which I think was the Ordinances Act. There was an interaction between that earlier Act, the Police Act, and the old Interpretation Act; and by incorporation of some of the provisions of those earlier measures, the required effect was achieved.

I am not able to suggest that is precisely the point, because I frankly cannot recall, without going back to the actual terms of the legislation, whether the titles of the various Acts became interchangeable in the process. The general principle, though, is clear enough.

The important thing to understand is that clause 7(3)(g) restricts its effect to those cases where specific authority is given, either by the Interpretation Act or by other written laws. In other words, it has no effect arising out of its own terms which would authorise references to be interchanged. It merely provides a power in the draftsman who is occupied in the reprinting of an Act to give effect to what one of these other provisions allows already.

Hon. I. G. MEDCALF: I thank the Attorney General for his enlightening explanation of that provision. I now turn to subclause (4) which gives an authorised officer very extensive powers in relation to changing some of the provisions. For instance, an authorised officer may omit any referential expression. That term is defined earlier and I do not have any objection to it; nor, indeed, do I object to any of these provisions. However, I shall raise one or two points.

Under paragraph (f) an authorised officer may omit any repealing provision, including any list of repealed laws. That provision concerns me a little, and, when I went through the Bill, I put a question mark rather than a tick beside it, because it seemed to me to be rather useful to have a list of repealed laws in the Statute. It is really a very useful provision.

If there were some way to get around this so the information were still available, I would have no objection, but I feel that perhaps we may lose something if we do not have lists of repealed laws merely for the sake of clerical ease, or for whatever reason. We are accustomed to this in most Statutes where a schedule shows the laws that have been repealed as a result of particular legislation which might be before the Parliament from time to time.

I raise that matter and I feel there must be some convenient explanation. I would be grateful to hear it.

I refer now to subclause (5)(b) where an authorised officer may correct any error in spelling, grammar, or punctuation. For that purpose he may make amendments not affecting the meaning of the written law. That is sometimes a difficult exercise. While I applaud the ability of authorised

officers to correct spelling and grammatical mistakes, opinions sometimes differ as to what is a grammatical mistake, and many an argument takes place in court in relation to both grammar and punctuation.

In saying that, I am well aware that one of the rules for the interpretation of legislation is that one does not take any notice of punctuation marks, particularly commas, but my own experience has been that this rule is ignored frequently and commas are deemed to have considerable significance in some situations.

Indeed, the Bills of Sale Act, a copy of which I have here, has had commas in peculiar places in section 54 for a long time, and, as a result, there has been many an argument as to whether that Act applied to hire-purchase agreements in relation to various agricultural items.

I would hope that, in his zeal for correcting punctuation, no authorised officer would take out all the commas, because he may well find that he does in fact make a change in the substantive law, and, although he is not to do that under the clause, it is a hidden danger which he should be made aware of. If he acts in good faith, he will still not be under any particular responsibility.

In illustration of my point, I quote section 54 of the Bills of Sale Act—

> 54. Nothing in this Act contained shall apply to any agreement for the hire, with or without a right of purchase, of any household furniture, tools of trade, sewing-machine, piano, musical instruments, bicycle, cash registers, billiard tables and accessories, implements, machines, machinery, engines, vehicles,—

This is the point of the comments I have made. We come to the word "vehicles" which has a comma after it, and then, to continue—

> —and appliances used wholly or in part for agricultural or pastoral purposes, . . .

The question which has arisen is as to whether the comma after the word "vehicles" really has any significance and whether it is not intended to read "vehicles and appliances used wholly or in part for agricultural or pastoral purposes". In that case the words "used wholly or in part for agricultural or pastoral purposes" would then qualify the word "vehicles" and a few other things, probably as well as appliances.

Therefore, if there is no significance, in commas, which is the rule of construction, no notice should be taken of any of these commas and we would have a great hotchpotch. There would be a considerable mess and certainly a big change in the substantive law.

I mention that to illustrate that we take some notice of punctuation in spite of the rule. These rules are frequently disregarded, even by the courts. Therefore, it is a practice fraught with some danger for an authorised officer, who may simply be an officer of the department and not necessarily a legal practitioner, to start removing punctuation marks, thinking, in his zeal, that he is acting in accordance with the recognised rules of construction.

I make those points, because I feel they are of some significance. We are permitting these additional powers to be given to authorised officers. While I am not opposed to this—indeed I see many benefits in it—I do draw attention to the possible effects of this measure.

Finally, I ask the Attorney General what happens if the authorised officer makes a mistake and in fact does make a change under subclause (6) of this clause? The Attorney General issues a direction to the Government Printer after he has received a certificate from an authorised officer. When he issues his certificate to the Government Printer the amendment has been effected in accordance with this proposed section and such a certificate shall be evidence for all purposes and be admissible in all courts as evidence that the amendment has been lawfully made in accordance with this proposed section. I suppose that is only prima facie evidence but, nonetheless, it is fairly conclusive and if a mistake has been made, would it or would it not affect the substantive law?

Hon. J. M. BERINSON: The Leader of the Opposition is asking three questions on subclauses (4) to (6), and the first of those goes to the question of clause 7 (4)(f) which permits the authorised officer to delete a repealing provision. The Leader of the Opposition did suggest that it could be useful to retain a list of the repealed provisions but, frankly, I am not at all sure of what the utility of that course would be.

Hon. I. G. Medcalf: It is the list of repealed laws that I thought was useful.

Hon. J. M. BERINSON: Yes. In a particular case, it would, of course, be open to retain the list, and it will be noted in that context that this subclause is directed only to authorising the officer to do certain things. There is no suggestion that he is required to make such changes.

Perhaps we can take the example of the Bill before us. Clause 9 (1) lists four Acts which are to be repealed by this Bill. We need, obviously enough, to have that list in this Bill so as to give effect to the intention, but I frankly wonder what will be the utility of this list if it continues to appear in future printings of the Act. As I see it, the earlier Acts either have effect or do not have

effect. Whether we continue to say that they are repealed or not in future printings can obviously not affect the fact that they are in fact repealed and have no further use by way of reference.

If one came on some future occasion to the Statutes Compilation Act, which is the first Act on the list of repealed legislation, and thought, "Oh, this is an interesting Act and someone is not complying with it", and sought to do something about it, nothing would follow whether or not the future reprint omitted continued reference to the repeal. The Act simply has no effect, and no-one could rely on it. Moreover, the repealing Act gives no help to a person who comes to an old Act and perhaps misleads himself into thinking that it still applies. Obviously enough, the repealed Act cannot have any reference to the later Act which repealed it.

For practical purposes therefore, when one is trying to decide whether he can rely on a piece of legislation, he has to adopt other means, among them I suppose most obviously, a reference to the index of current Statutes. All I am trying to suggest with all of this is that there does not appear on the face of it to be any real utility to the continued reference to repealed Acts. Secondly, in any event, there is always the fall back position that if there is some particular reason to retain it in special circumstances the flexibility is there for the authorised officer to do that.

The Leader of the Opposition next referred to clause 7 (5) (b) which opens the way for the correction of any error in spelling, grammar, or punctuation. The example that he brought from the Bills of Sale Act is a good example of the sort of problem which may be caused by an overenthusiastic application of this ability to correct the punctuation, for example. I say two things to that: The first, with which I would think the Leader of the Opposition with his extensive experience would agree, is that about the last place one would look for overenthusiastic or less than cautious officers would be in the office of Parliamentary Counsel. Experience, no doubt, has taught them limitless patience, and certainly adequate caution. There would be no risk going on the experience that I have had with the officers of that section, that there would be anything which might be regarded as unintended or overenthusiastic use of a provision of this kind.

The second thing to be said is that the clause itself refers to the correction of any error in spelling, grammar, and so on. I emphasise the word "error" because this will indicate the limitations of the provision. In fact, in the explanatory memorandum that was circulated, I believe that point was made clear. Members will note the reference there to the fact that clause 7 (5) (b) will enable the correction of obvious and unambiguous errors.

No-one reading the Bills of Sale Act could suggest that the comma in the particular place to which the Leader of the Opposition referred was there in error. It might be said that its position in the sentence is confusing or that it opens the way to ambiguity, but it could not be said that it was clearly there in error.

Hon. I. G. Medcalf: It has been said.

Hon. J. M. BERINSON: I wonder what the judge decided when that was suggested. Whatever he decided, I think it could not have been expressed to have been based on the view that the comma was in its current position in error. I take a risk in guessing that because I am not aware of the case to which the Leader of the Opposition is referring. I would suspect that the judge, whatever he thought about the origins of the comma's position, would have found some other way in which to support the construction at which he arrived.

Hon. I. G. Medcalf: He probably read *Hansard* and decided it was manifestly absurd or unreasonable.

Hon. J. M. BERINSON: One will be able to speculate better on that in the future than in the past.

The further question by the Leader of the Opposition related to whether a change brought about in the reprinting process could change the substantive law. The position clearly is that that is not intended and that it is not the effect. It is reasonable to adopt the Leader of the Opposition's own phrase in referring to the reference to the effect of the reprinted Act as prima facie representing the law but not being conclusive of it. Indeed, that is the position with the reprinting of legislation now. An error in the reprinting, whether at the printer's or in the office of Parliamentary Counsel in the course of the dreadful paste and scissors job which is required when large numbers of amendments are required to be incorporated, cannot operate to affect the substantive law. My understanding is that this is not only the intention of this Bill but also its effect.

Hon. I. G. MEDCALF: I thank the Attorney General for that explanation of the matters I raised. I do not propose to press any of them other than to make two points. The first is that I have always found in practice that it is very useful to have in an Act a list of the Acts which are repealed. Although what the Attorney says is true and correct in logic and theory, namely that if an Act has been repealed it has no force in law and therefore one does not need to say so, it is very useful to have the details before one as a quick

reference to the legislation repealed by the Act with which one is concerned.

I agree that clause 9 could be left out and it would have no effect on the legal application of this new Act, but I still maintain that it is useful to have a list of repealed Acts. If we do not have the repealing provision there should be some reference somewhere in the text of the Act to a list of the repealed Acts. It may be one of those matters which we were discussing yesterday. It may be one of those items which are declared to be part of the Bill and which are included in the text of the Bill—those items which come under items of extrinsic material which might be examined. Somewhere in this Bill one could have a list of these Acts. It is fair enough to take out the repealing provision, but there should be a list of repealed Acts somewhere so that one has a reference and can immediately trace the history of a section. That is necessary for lawyers when representing their clients in relation to a particular matter; they can look quickly at the continuity and it enables them to go to the right sources. It does not mean they do not have to examine the old Acts and make sure they were repealed. It is nevertheless a very handy source of information, and it is information that should be available.

I commend that point to the Attorney General as being very useful in practice, and the attention of Parliamentary Counsel should be drawn to it.

That brings me to my second point, which is that the Parliamentary Counsel perform an excellent service. We are fortunate in Western Australia in having a most excellent section in the Crown Law Department under the Chief Parliamentary Counsel. It has been built up in recent years and comprises some people of considerable stature in the legal world in relation to their specialist activities. I am quite sure they would not make the kind of mistakes that I have been talking about. I am sure they would exercise great care.

We may not always have such people. Indeed, we did not always have them in the past; that section had to be built up from a very poor start a few years ago.

It used to intrigue me to hear members of the Opposition who are now in Government criticising language these counsel used and the way they went about their business. It is music to my ears to hear those words from the Attorney General now in praise of the Parliamentary Counsel's office. I believe they do a fine job and they are worthy of support.

Clause put and passed.

Clause 8 put and passed.

Clause 9: Repeals and Savings—

Hon. I. G. MEDCALF: The point I wish to raise in connection with this clause is that the repeal of those Acts may have some bearing on future practice in relation to the description of legislation. I am not suggesting all those Acts necessarily would have the same effect; they would have different effects. I am referring to the second Act, the Amendments Incorporation Act 1938. It is my understanding that that Act has certain requirements in it to the effect that when an Act of Parliament is referred to it must contain a reference to the original year in which that Act was enacted, and to the latest year of the amendment of the Act. One would have, for example, the Stamp Act 1921-1983.

I believe that by repealing that Act we may be taking out that requirement, and a change of practice may occur about which the Attorney has not told us. In future, legislation may simply refer to the date of the original enactment without any reference to the last of the years in which the Act was amended.

Hon. J. M. BERINSON: This again is a very reasonable question. It was the subject of discussion between the Chief Parliamentary Counsel and myself; and I am reluctant to go into detail on the effect to which the Leader of the Opposition refers without access to my notes on the point. I would like to clarify this for the Committee, and I think no harm would be done if we left that overnight.

Progress

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

SUPREME COURT AMENDMENT BILL 1984

Second Reading

Debate resumed from 12 April.

HON. I. G. MEDCALF (Metropolitan—Leader of the Opposition) [3.11 p.m.]: We have before us a very short Bill to amend the Supreme Court Act to increase the number of judges from seven to 10. That figure excludes the Chief Justice, who comes under a separate section of the Act. At the present time, the Supreme Court comprises the Chief Justice and seven judges, and the proposal of the Bill is to increase that figure by three to allow for a Chief Justice and 10 judges.

The Attorney General has indicated that the appointment of an additional judge to the Supreme Court may well be made in the near future. Over a period of time it will be necessary to increase the number of judges in the Supreme Court. I have said on other occasions that probably within four or five years, perhaps by the

year 1990, we shall need another three or four judges in the Supreme Court. It is possible to increase the number of District Court judges without any change in legislation because the District Court Act is open-ended; there is no limit on the number of judges who may be appointed. However, in the case of the Supreme Court, which is the highest court in the State, there has always been some reluctance on the part of Parliament to grant any open-ended power to the Executive to appoint extra judges unless there is an immediate need.

This is because the Supreme Court carries with it the highest judicial functions in the State and has the task of interpreting regulations and Acts of Parliament, and adjudicating on issues between citizens at the highest level, not only before a single judge in the first instance, but also on appeal before three judges. Sometimes that is the end of the road and there can be no further appeal. The court is a very important one, and until the advent of the Federal Court in recent years there was no question that Supeme Courts throughout the country held the highest judicial position. I am excluding the High Court, of course, which is a Federal court and presides over the entire country. Within this State the Supreme Court always has held and still does hold this high judicial position.

It is for that reason that Parliament regards with some jealousy any move to increase the number of judges without good cause being shown. In other words, it is necessary to explain why provision should be made for another three judges of the court at this time. I believe a very good explanation is required and I reserve my position in relation to that point.

I would like to say also that before any more judges can be appointed, some changes will be necessary in the accommodation arrangements of the court. I dare say this would apply even to the appointment of one judge. I do not know if those arrangements have been made already; possibly they have. Certainly on the last occasion when the number of judges was increased by one, it was necessary to provide what one might describe as emergency accommodation by taking over a room occupied by some of the staff and refitting it slightly for the occupation of the new judge. I do not know whether that seventh judge is still occupying the same room or whether some other accommodation has been found. However, I am certain that the Government must present a plan for the Supreme Court, and it is quite essential that we know what that plan is. A plan has been before the Government for some time, of which public knowledge has already been given. It provides for the existing library to be taken over for the accommodation of judges and perhaps for an additional court. Of course, that means moving the library. The construction of a library over the car park and a walkway between the existing building and the floor over the car park where the new library would be was mooted and, indeed, tentative plans were drawn up.

I believe it is quite possible to construct such a building in a way that would be harmonious with the existing building and probably not even disturb the architectural appearance of the Supreme Court. It would not even be as high as the Supreme Court because it would start at a lower level. Even if two floors were constructed, I doubt whether it would disturb the architectural symmetry of the Supreme Court, which is a handsome building, situated in a favourable location, and regarded by most people in Perth as part of our heritage. We would not want to disturb the appearance of the Supreme Court, and it is essential that the Government put forward a plan for such reconstruction.

When we discuss giving the Government power to appoint a further three judges it is an empty power unless plans are put forward to demonstrate how the building can be made to work effectively through the next decade or two. If an effective plan is put forward I believe the building will last well into the year 2000 and possibly longer. Any money spent on that would be money well spent because the alternative is to provide expensive new accommodation at an unknown cost on some land in a different location. It is not likely to be in such a favourable location, and such an alternative is not one which any Government should be willing to face in these times of financial stringency. I know the argument about financial stringency always comes up, but I believe it is essential to this exercise that there must be a realisation that the Supreme Court building must be reconstructed, a new library must be set up, and an extension of the building over the car park is a logical step.

It may be that other people will have other ideas; but I raise that suggestion because the plan has already been put forward by the Public Works Department, and it seems to be a sensible proposal. We should hear something about that. I hope the Attorney General will tell us something about it—what the Government's plans are and when we may expect to see some reconstruction of the building.

On the subject of the ministerial statement which the Attorney General released simultaneously with the presentation of this Bill, which was really part of the argument, I believe that there should be a more constant and better system

of monitoring the situation in the Supreme Court. I am not saying that the previous Government devised a perfect system, but certainly we had a very frequent reporting on the exact situation in the courts. We received reports from the Chief Justice and other functionaries of the Supreme Court as to the exact state of the lists. Indeed, throughout 1982 I examined these reports personally each month, after they had been examined by the Under Secretary for Law.

We watched with considerable interest as the time delay, which had been about nine months at the beginning of 1982, was cut down to about eight months. In other words, there was an eight months' delay on the hearing of civil cases from the time that they commenced until they were actually brought on before the court. That time was being cut down, and it was with very great concern that I became aware late last year that the time had gone out to 13 months which, in the circumstances in which we operate in Western Australia, is generally considered unacceptable.

I may say that in some of the other States where the delays can be much greater, it would be greeted with wild enthusiasm; but here we are used to a more efficient service from our courts, although public recognition of this fact is not generally accorded. However, we have a very efficient service in terms of the public not having to wait for their cases to be heard.

It was with very great concern that it was suddenly realised that the situation had deteriorated markedly. I know the Attorney General explained, to the best of his ability in his ministerial statement, why this occurred. Indeed, he drew on the comments made by the Chief Justice at the closing ceremony at the end of last year. One of the reasons given by the Attorney General is that one of the judges was engaged on one case for a long time, and I know that that was so. Another reason is the great growth in the appeal work.

Hon. J. M. Berinson: That is the major single factor.

Hon. I. G. MEDCALF: Of course, that is largely due to the growth in legal aid. As I was at some pains to point out on previous occasions, I received criticism on this score arising out of the very benefits which the previous Government had conferred on the public by way of legal aid. The criticism was that not only were the courts unable to service the greater number of cases coming before them, but also the Crown Law Department was not able to handle them efficiently. All these factors combined and built up; but we were very concerned to realise that the period had gone out to 13 months.

Of course, the Government has taken some action. In fact, it did much the same as I did two years ago with the appointment of the Chairman of the District Court as a commissioner and the appointment of another judge to the District Court, which the Government could do by executive action. Now the Government asks us to amend the Supreme Court Act. The only difference in this case is that the Government seeks the appointment of three judges to the Supreme Court.

Hon. J. M. Berinson: I believe that the earlier occasion only had the use of a commissioner until the new judge was apppointed. We have made it clear that we propose to keep the commission going, as well as the new judge, for some considerable period.

Hon. I. G. MEDCALF: That may well help the situation; but it indicates the lack of need for the additional judges.

That is the only point on which I differ from the Government. We support the principle of the Bill, but I must say that in relation to the provision for the appointment of three judges, the Opposition reserves its position.

HON. P. G. PENDAL (South Central Metropolitan) [3.26 p.m.]: I will make a number of observations not unlike the comments made by the Leader of the Opposition.

It occurs even to a layman that a Bill seeking to expand the major section of the judiciary in Western Australia by three Supreme Court judges is excessive. However, the Leader of the Opposition has canvassed that matter; and in some of the private conversations between the Leader of the Opposition and the Attorney General in the last few minutes, perhaps some answers were forthcoming. I will raise a parallel argument as to whether the appointment of three judges may well be premature, for another reason entirely.

The Attorney General, the Leader of the Opposition, and indeed other people would be aware of the moves afoot in Australia to bring about an integrated court system in the Commonwealth and the States. The members who attended the Constitutional Convention in Adelaide in April last year will recall that, amongst many items under discussion, that particular issue was emotional, to say the least. Certainly I have mixed feelings about any system that would swallow the Supreme Courts of the States into a system of integrated courts; I said as much at the convention in Adelaide.

Other people around Australia, with all shades of political opinion, feel rightly protective of the very long and honourable records that the Supreme Courts have achieved around Australia;

therefore anything that tends to break up that system will be viewed with disfavour by a great number of people. However, some people believe that this will occur inevitably.

If it is inevitable, one is entitled to ask, in the context of this Bill, whether the Government—whatever Government is in power—ought to be considering the appointment of three more Supreme Court judges before we know the outcome of a system of integrated courts.

One could argue that the Supreme Court system as it is might well demand an extra three judges over a set period. Equally, one could argue that under an integrated system of courts, there may not be the need for the increase of three judges.

That is the reason I raised the point about whether the Government is being premature in now bringing to the Parliament a Bill that seeks to increase the number of Supreme Court judges by three. I guess anyone with any experience in the bureaucracy, including the bureaucracy of the courts, would know that even if the extra three were not found to be necessary under a system of integration, there certainly would be no pruning of numbers and work or activity would be found to keep the extra appointees occupied. It does seem to me to be a Government decision that should be made at a later date after that system of integrated courts has been at least announced and then discussed by Parliaments around Australia, by the legal profession, and indeed by members of the judiciary themselves.

So, while I give my own degree of reluctant support for this move, and while I support the remarks made by the Leader of the Opposition to the effect that the Opposition reserves its judgment on the three extra appointees, I bring to the Attorney General's notice my own view that the Government's move may be premature because the integrated system of courts has not been finalised. Some people hope that system will never be finalised, although we are told by people learned in the area that that is rather like sticking one's head in the sand. I hope the Attorney will respond to my comment about prematurity and indicate whether it has been discussed or considered in the context of the proposals for an integrated system of courts.

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [3.32 p.m.]: Whether or not the judges of our Supreme Court refer to *Hansard* for purposes of interpretation following the Bill we recently passed through this House, I hope they will not look too far into the debate on this Bill as it has gone so far. If they did that I fear very much that they might be led into the false expectation of the early appointment of three judges. I do assure the Leader of the Opposition and the Hon. Phillip Pendal that there is absolutely no prospect of that happening.

I am caught in some difficulty here because the argument against expanding the number of appointees to 10 has proceeded on certain bases of principle. This forces me to make quite clear that there is no principle involved in the numbers specified in this Bill. It is purely a matter of efficiency in terms of dealing with parliamentary time and process.

Hon. H. W. Gayfer: Why not come back to us.

Hon. J. M. BERINSON: Precisely because that appears to me to be a very inefficient means of using the Parliament. On earlier occasions we have pointed out and acted on the understanding that it is undesirable to have to keep coming back to Parliament for matters of relatively limited significance.

Last year, in the Budget context for example, we moved a whole range of amendments with the effect that increases in certain taxes and charges should not have to be brought by way of legislation to the Parliament every year, but should be permitted by regulation. This year, and indeed this session, we are faced with extreme pressure on the legislative progamme as well as on the facilities of Parliamentary Counsel to produce the material. It may well be said that one cannot have much trouble introducing something like this, and that one just looks up the last Bill of this sort and changes "nine" to "ten". Nonetheless, in the course of doing that a whole process is put into operation, a whole apparatus starts churning. One has to have, as the Leader of the Opposition would well remember, submissions to Cabinet, Cabinet approvals, instructions to counsel, instructions to the Government Printer, and instructions all over the House in order to have something which does not amount to very much.

If anyone really fears there is any danger about moving to 10 and would rather move to nine—I hope not to eight—I would not get excited about it.

With due respect to the earlier comments made by the Leader of the Opposition, while it is true that the Supreme Court does have a very special standing, it is not the sort of court that one might look to swamp with new appointments in order to get different decisions. We do not need to fear a re-run of the 1930s Roosevelt approach of trying to flood the Supreme Court of the United States in order to resolve some of his frustrations of the time.

The Supreme Court does not deal with the sort of business that would give anyone the incentive to

juggle the numbers in that way. In any event, I do not believe this move would be acceptable to any responsible Government. There is no call for these fears even if we were to move to a larger number of judges. I tell the House quite clearly that there is no intention to have three extra judges, although the fact that we see the need for long-term service by a commissioner of the Supreme Court is itself an indication that if we wanted to press the point we could be justified perhaps in appointing two judges.

Whether or not I might have been remotely tempted to propose that the court be increased by more than one judge before last December, I assure the House that since December I would have lost all such ambition, the relevant day being the date on which I was appointed Minister for Budget Management. It is a very expensive enterprise to appoint new judges. The costs go well beyond the salaries of the judges themselves. They go to the support staff and the expansion of the whole apparatus. As the Leader of the Opposition has quite properly pointed out, we are currently at the stage in the Supreme Court where the costs go to heavy obligations in terms of capital expenditure as well. No-one I know of in any position of responsibility in the Government has the ambition to put that process in train—certainly I do not.

Attention has quite properly been drawn to the problems of accommodation in the Supreme Court. Earlier today and on other occasions the Leader of the Opposition has taken some quiet pleasure in suggesting that some of my current positions might not reflect precisely what I might have said at various moments in Opposition.

Hon. P. H. Lockyer: That surprises me.

Hon. J. M. BERINSON: He has said that on several occasions, and while it may surprise the Hon. Philip Lockyer, it does not surprise me. As I recall, I have been ready to admit that I have recognised significant changes in circumstance in the meantime. Further than that, I think members might acknowledge that I have been prepared to accept that earlier I was wrong and that I simply know more about it now.

I introduced this passing thought for purposes of reciprocating some of the Leader of the Opposition's kind attention to my earlier attitudes, because while I accept that it is now clearly a matter of some urgency that the facilities of the Supreme Court be expanded, the fact is that a serious element of urgency about this same requirement was clearly apparent before the present Government came to office.

Hon. I. G. Medcalf: It is much more serious now.

Hon. J. M. BERINSON: It is not just a question of needing to replace the library so as to provide additional space for judges' chambers. The fact is that the library itself has outgrown its accommodation and all sorts of temporary measures are now required to accommodate the material of that library.

Among other reasons which I might bring to assure the House that there is no early prospect of the appointment of more than one additional judge to the Supreme Court is the fact that we could not fit him in. To accommodate the additional judge, to which my public announcements have already made reference, it has been necessary—not to put too fine a point to it— to evict the Barristers' Board from the Supreme Court building. That having been done, there is simply nowhere else to go. We have therefore been looking seriously at the proposal for an extension of the Supreme Court building. We are following earlier general directions, simply because that is the only way to go. The only alternatives are to build over the car park or to leave the Supreme Court site altogether. That would be quite unacceptable. On the other hand, the earlier plans could not be simply dusted off and put into operation.

On current indications it appears that the earlier plans will have to be reduced in scale. That is not just because of considerations of cost, but because further advice on the planning implications is that the building on the scale originally proposed would not fit as well aesthetically into that site as is required by the special character of that court, and of the building.

However, work is now being done on that and a proposal for a Supreme Court extension in one form or another will certainly come into the Budget submissions of my department for 1984-85. That of course is not to pre-empt or anticipate what decisions might be made by the Government in setting priorities for the capital works programme. We will need, as a minimum, to keep this proposal going forward to the stage of having made very clear what our actual building proposal is.

Having made those points I have also covered the question raised by the Hon. Phillip Pendal about the significance of proposals for the integration of the courts, in one way or another. That whole integration question is a serious one and I do not minimise its importance. All I think it is necessary to put, in the context of my other comments, is that that is not really a relevant consideration for current purposes since it depends on an assumption that three judges will be appointed at some early stage. As I have said in a number of ways, there is no prospect of that.

Question put and passed.

Bill read a second time.

Sitting suspended from 3.45 to 4.02 p.m.

In Committee

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

Clause 1: Short title and citation—

Hon. I. G. MEDCALF: I listened with interest to the comments of the Attorney General in relation to the plans for the Supreme Court. I would be the first to admit that the new building must be architecturally harmonious with the existing court building. Of course, that is very important indeed because the Supreme Court is a feature of that part of Perth as it is in the centre of the Supreme Court Gardens. It would be most undesirable if a bodgie-type construction went up.

I draw attention to the fact that the 1981-82 Budget allocated an amount of $50 000 for Supreme Court works and buildings. I do not have the expertise necessary to untangle the intricacies of what the Public Service did with the Budget allocations and I am not in a position to say to what extent that money was expended. I understand that part of the allocation was for the actual alteration of the room for the judge to whom I referred earlier. Also, part of the allocation was expended in the preparation of plans and drawings in relation to the reconstruction of the library and contruction of the new building over the car park. While I agree that further work may have to be carried out and we certainly want an architecturally harmonious building, I point out that in 1981-82 urgent work was started by the previous Government and some water has flowed under the bridge since then. I am pleased to hear there will be very substantial expenditure in the next year or so on to the reconstruction of the Supreme Court.

Clause put and passed.

Clause 2: Section 7 amended—

Hon. I. G. MEDCALF: Of course, this is the only substantial clause in this Bill and it increases the number of judges from seven to 10. This is of real concern. I have listened to the comments of the Attorney General and the Hon. P. G. Pendal. If, as the Attorney General says, there is no intention of appointing another three judges, I am of the opinion that it is taking things a little too far to provide for the appointment of an additional three judges, particularly in relation to this court which is the highest in the State hierarchy. It is not necessary to make this provision if there is no intention of making the appointments.

I do not liken the provision for appointment of judges to a provision for prescribing fees in the Bills of Sale Act, the Companies Act or any other legislation. This is a far more important area and one we should approach with great caution. Also, if the Government does provide for the appointment of three judges, it will come under great pressure to make those appointments which the Attorney General has no immediate intention or desire to make. My experience has always been—I do not wish to preach—that if one has a vacancy which is unfilled, there will immediately be pressures to fill it from every quarter, whether or not the people involved are qualified. That is the rule throughout the Public Service and I think it is a matter on which most members will have had general experience.

It would be a tactical error on the part of the Government to simply proceed with the provision for the appointment of another three judges when it has no intention of making such appointments and has good reasons for not doing so. There is no immediate need. The Attorney General has explained that the commissioner who is there at present will become a permanent commissioner and, therefore, in a sense, he is another person—acting as a judge. He is a highly qualified person, the Chairman of the District Court; he was formerly a criminal lawyer, and an outstanding judge, and he is held in the highest respect. Whether he remains in that position is a matter between him and the Government. Having made the decision to continue the appointment of the commissioner and to appoint a further judge, the creation of the expectation that a further two judges may be appointed when, in fact, they will not be, is a tactical error.

I do not liken this to the simple increase in fees by prescribing a new regulation and I am sure the Attorney General does not, either. Nor do I think it is a very expensive process to pass a Bill of this nature. Parliament exists for this purpose, so that the cost of running Parliament is there already.

Hon. J. M. Berinson: It is not the cost, but the time.

Hon. I. G. MEDCALF: Well, the cost and the time. Parliament has a fair amount of time at its disposal. While I accept that, at times, Ministers do not have so much time at their disposal, nevertheless, members of Parliament are prepared to do their duty properly and attend to such legislation as the Government puts before it.

Of course, the actual preparation of another Bill of this nature is really only a five minute job involving changing the number, and then the printing and so on takes a little more time, but there is really nothing significant in that.

I strongly urge the Attorney General to have another look at this provision. I would be most grateful if he would consider the points that have been made today in relation to this matter. I believe he will see there is some substance in them and I ask him to have another look at the question I have raised.

Hon. H. W. GAYFER: I rise briefly to support the remarks made by the Leader of the Opposition in respect of the provision in the Bill which will allow three judges to be appointed. Like the Leader of the Opposition, I do not believe the answer given by the Attorney General to my interjection during the course of the second reading debate provided adequate reason for the provision for three judges to be included in the Bill.

The Attorney General mentioned cost; he mentioned the preparation of the Bill, although he did say it was no great effort to do so, but nevertheless it had to be done; and he mentioned other reasons. However, if we look at those reasons I am sure we will find they exist in respect of much of the legislation we bring into this place and we should not have restricted powers in respect of any of the legislation which comes before us.

The provision to allow for three more judges to be appointed is far too wide, because the Attorney has admitted it is intended to appoint only one.

Hon. J. M. Berinson: I have not "admitted"; I have asserted it.

Hon. H. W. GAYFER: The Attorney said also that the exercise of appointing more judges is in itself expensive, anyway.

We should look at the matter. I cannot see any great reason for the provision for three judges. I agree with the Leader of the Opposition that this is what we are here for. We are here to look at this type of legislation, especially in respect of judges, and the provision is a little too wide in its present form.

Hon. J. M. BERINSON: I have assured the Chamber as clearly as I can that there is no intention to appoint three additional judges whether or not the Bill is passed in its present form. There are two directions in which one can go from there. One is to say the Chamber should take my word for it and rely on the fact that I will be able to resist the pressures that are threatened.

Hon. H. W. Gayfer: If you were on this side, you would be arguing in the same vein. You are a lovely fellow, we all know that.

Hon. J. M. BERINSON: I recognise that the contrary point can also be put; namely, "If you don't intend to appoint three judges, why have three, given the background to this legislation?"

Since I have already stated that there is no principle attached to the proposal for three additional judges, it is not a question of going to the barricades and I do not propose to do that. It would seem to accommodate the views of all sides were I to move an amendment to reduce the number from 10 to nine. That would accommodate the proposal for one extra judge and would recognise that we are already, in effect, in the position of looking to nine extra judges, given the services of the Commissioner of the Supreme Court.

However, I take the opportunity to correct any impression that might have been given by the reference of the Leader of the Opposition to the services of the commissioner being in the Supreme Court on a permanent basis. The term which I used, and which I used deliberately, was "long term". There is no intention that that should be permanent. It would be inappropriate to regard a commissioned appointment as being on a permanent basis for a judge of the standing of the Chairman of the District Court.

Hon. H. W. Gayfer: Does the person who holds the position of commissioner always have the same standing?

Hon. J. M. BERINSON: I shall clarify that further, because the comment indicates that members might believe that we are looking to a permanent position of commissioner whether or not it is the particular judge involved. We are not considering that either.

I shall elaborate on the matter: We are trying to deliver something in the nature of a short, sharp shock to the backlog of the civil court. One of the big problems of the backlog as it develops is that it tends to feed on itself. There is always the risk in that circumstance of practitioners listing matters for trial either when they are not prepared for trial or when they do not really believe that a trial will ensue. The reasoning is that since they have 12 months up their sleeves, they might as well let the negotiations flow and see what happens at the end of the process. So it is necessary to deliver something in the nature of a concentrated attack on the backlog if one intends to really meet the problem.

It may appear to members that even two judges in a court of 10 or 11 may not be sufficient for that purpose. However, if one recognises that the pressures of the Full Court have meant that as few as two or even one judge of the Supreme Court has been available for civil cases for some time, members will appreciate the potential effect of adding two to that number.

With that clarification, I move an amendment—

> Page 2, line 4—Delete the numeral "10" and substitute the numeral "9".

Hon. I. G. MEDCALF: I appreciate the Attorney's having taken this view, which is entirely logical and I welcome it. I would be prepared to agree that that would be an appropriate amendment and it receives my support. I may have mistakenly thought that the Attorney General was referring to a permanent commissioner, but I see now he was referring to a long-term commissioner and that is far more appropriate, because one would not want a permanent commissioner there, although in effect it amounts to much the same. With the appointment of another judge and a long-term commissioner, in effect we have two judges there, because the long-term commissioner is, in all respects, the kind of person who is qualified to be a Supreme Court judge, being the Chairman of the District Court. It is entirely logical to amend the Bill in the circumstances and I indicate the amendment has my support.

Hon. H. W. GAYFER: I thank the Attorney General for consideration of the arguments that have been put forward. I appreciate it very much.

Amendment put and passed.

Clause, as amended, put and passed.

Title put and passed.

Bill reported with an amendment.

QUESTIONS

Questions were taken at this stage.

BILLS OF SALE AMENDMENT BILL 1984

Second Reading

Debate resumed from 12 April.

HON. I. G. MEDCALF (Metropolitan—Leader of the Opposition) [4.28 p.m.]: The Opposition has no objection to this Bill. It is in accordance with the companies and securities arrangements to make uniform, procedures which have already been adopted in the other States in respect of debentures and charges given by corporations. I do not need to say anything further, other than we support the Bill.

HON. H. W. GAYFER (Central) [4.29 p.m.]: When the Minister replies to the second reading I ask him to clarify for me the term "co-operative" that is used. In his second reading speech he mentioned current larger co-operative companies and securities regulations and further on he again mentioned co-operative companies. As far as I am aware, this does not apply to the Companies (Co-operative) Act, yet it is misleading in its terms. Being a little interested in that quarter, I would like some clarification of how the term "co-operative" is being used in connection with the matter before us.

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [4.30 p.m.]: The term "co-operative" does not relate to companies, but to the scheme of which the Act is a part. The co-operative scheme involves the Commonwealth and all States and provides that the legislation in all relevant respects shall be identical. I believe the honourable member must have put a different construction on the use of the word in my speech.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

Third Reading

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

CRIMINAL CODE AMENDMENT BILL 1984

Second Reading: Defeated

Debate resumed from 10 April.

HON. JOHN WILLIAMS (Metropolitan) [4.32 p.m.]: I do not feel very adequate in speaking to a debate on a Bill of this kind because I am a heterosexual. I am not a practising homosexual and I think that is one ingredient which is missed in a debate of this sort. If we were to believe the statistics there would be at least two homosexuals among the members in this House. I have not been able to identify them and I do not want to.

The Hon. Grace Vaughan to whom the Hon. Robert Hetherington paid tribute, brought a similar Bill to the House knowing full well that at the time an investigation had taken place—one conducted by an Honorary Royal Commission of the House—and had come to certain conclusions. When the Hon. Grace Vaughan was replying to the speeches in summing up the debate she supported the view I put forward then; that is, although the practice was repugnant to me as a heterosexual and I was totally uninformed even after some investigation, I felt greater investigation should have taken place following the Honorary Royal Commission. Grace Vaughan agreed with that entirely but it seemed to me she wanted to take the matter one step at a time.

I applaud the Hon. Robert Hetherington for bringing this Bill to the House as he put it—and I am not quoting him accurately—out of respect for Grace Vaughan and the work she had attempted

to do. I do not think I have misquoted him, but I have not quoted him very accurately.

I am disappointed with the Bill because if honourable members look at the Criminal Code they will see that chapter 22, which relates to offences against morality, covers sections 181 to 206. We are attempting, even with the late addition of the amendment on the Notice Paper, to alter but one section. It is my contention that in this day and age the time is ripe for a complete investigation into total sexuality within our society.

Of late, a gentleman of the Crown Law Department, Mr Murray, has been engaged or may have completed his task of revising the whole of the Criminal Code and making recommendations as to where and when it should be amended, rewritten and examined. More than that, we are only doing this piecemeal and that is wrong. There should be a full, thorough, and frank investigation. It is no use our quoting America and other places and the Wolfenden report because that was a British report. That is not the answer. We do not live in America or the United Kingdom; we live in Australia and the mores and taboos of the society in which we live can be vastly different. We can think differently about matters such as this.

In support of this I would like to quote a small piece from a book written by Dr D. J. West who is a consultant psychiatrist, a reader in clinical criminology at the University of Cambridge, and a fellow of Darwin College. The book is titled *Homosexuality Re-examined*. He first wrote the book in 1955 and the edition I have is the 1977 revision. As legislators it pays us to think about some of the things he writes. On page 299 under the heading of "Social controls" and the subheading "The status of the homosexual citizen", he writes—

> Law and custom sometimes differ. If people treat him decently in everyday life, it does not matter so much to the homosexual if the penal code classes him officially a criminal. From the somewhat niggardly degree of 'decriminalisation' introduced in the 1967 Act it by no means follows that homosexuals in England will henceforth find ready acceptance by workmates, employers, landlords, parents or other individuals upon whom their existence depends, or that their dealings with the legal and welfare systems will run as smoothly as those of the citizen who has no sexual stigma. No amount of civil rights legislation can save the homosexual from social discrimination if his presence in any ordinary community evokes disgust and hostility, and if public opinion holds on to the belief that homosexuals are untrustworthy and unreliable people and a danger to youth. Opinions of this kind have been long entrenched, not only in popular belief, but in the authoritative pronouncements of medical and other self-declared experts.

That is what we are up against as legislators in trying to effect a small reform. The people of this State object, and some of them quite loudly, to the passage of the small reform suggested by this Bill. I have no doubt I am not the only recipient of numerous letters and telephone calls from all sorts of interested people. I might say that of the letters I have here only three support the legislation as such.

On the last occasion a Bill of this nature was debated I did not receive as many letters as I have received in respect of this Bill. I have no doubt that the Hon. Robert Hetherington will refer in his second reading reply to the letter forwarded to every member of the Parliamentary Liberal Party by Mr David Myers, who is the President of the Campaign Against Moral Persecution. Mr David Myers is the same Mr Myers who gave evidence to the Honorary Royal Commission and whose advice was accepted and sought by all members sitting on that commission. Perhaps his letter has some telling effect. I believe I have supplied a copy of the letter to the Hon. Robert Hetherington, but if I have not, I apologise to him and will provide him with a copy. The letter reads as follows—

> Dear Member of the Parliamentary Liberal Party,
>
> I enclose a copy of my recent letter to the Premier re the Bill for the Decriminalization of Homosexual Acts shortly to be presented to the Parliament.
>
> I want to assure you that the gay community of Western Australia does *not* support this Bill. It perpetuates the kind of inequalities and discrimination against which we have campaigned for years. This is largely seen in the age-of-consent clauses which state 18 years for male homosexuals but 16 years for lesbians and heterosexuals.
>
> Moreover, the Bill, the draft of which we have seen is not competently designed as you will see in some detail in the enclosed.
>
> We will be obliged if you will vote to defeat this Bill *in its present form* when and if it is introduced into the House, and elect to support a worthier Bill at a future date.

I will not read the enclosed letter which was sent by Mr David Myers to the Premier, because I do not feel it would add any value to the debate.

However, the minds of many people could be made up from reading that letter.

The point that perturbs me more than anything is the fact that a number of Christians—I am not sure to which denomination they belong—have written to members of the Liberal Party asking them not to support this legislation. I am not completely swayed by those letters because all religions have something to say about homosexuality. If any member were to read the report of the Honorary Royal Commission, on which the Hon. Vic Ferry and myself served, he might be amazed to find that all the evidence that was tendered to the commission by the churches and various other religious bodies at that time is still up to date. They do not seem to have moved very far away from what they said to the commission.

At the risk of boring some members, although it will certainly be of interest to others, I will quote again from West. Members of the public write to members of Parliament in all honesty and sincerity and many of them hold church discussions about this subject. One must certainly have a certain cognisance of what is said and how it is said. West, in *Homosexuality Re-examined* at page 120 refers to what I have said, but some of the terms will not be known to my fellow members and they are certainly not known to the community at large. Eighty per cent of the community consider homosexuality to be either mutual masturbation or anal intercourse between two males. They do not realise what a large area homosexuality covers, or how deep the ramifications are of legislation we may, or may not, pass, because it leaves certain questions unanswered. I will quote now from page 120 of West's book—

> The word sodomite, an abusive term for a male homosexual, originates from a story told in Genesis 29. A group of men from Sodom storm Lot's house demanding 'Where are the men who came to you tonight? Bring them to us, that we may know them.' (The Hebrew word translated as 'know' can mean 'to copulate'.) Lot proffers his own virgin daughters in the place of his guests, but the intruders will not accept. A similar story appears in Judges 19. A Levite and his concubine are staying as guests of an old man in Gibeah. Some local men, 'sons of Belial', storm the house and want the Levite. The host offers the concubine so that they will not rape his guest. In this version, the men accept the concubine and 'abuse her all night'. They let her go in the morning and she returns, only being now so contaminated she receives no gratitude for having saved her man, but is killed and her body dismembered into twelve pieces.
>
> In Genesis, the story of Lot is followed by the grim statement that, as a punishment for the wickedness of its citizens, the Lord destroyed Sodom and all its inhabitants with a shower of brimstone and fire. Christians have always assumed, although the contrary has been argued (Bailey, 1955), that the sins in question were homosexual. Biblical references to 'sodomites', and their banishment by the kings of Israel (I Kings 15,22), do not necessarily refer to uncomplicated homosexuality. The original Hebrew refers to 'kedeshim' which in the modern English version is translated as male cultic prostitute. These were probably priests of the ancient cults of the Great Mother, male eunuchs or transvestites, who offered their bodies in the temple as a form of religious sacrifice. Their homosexuality must have constituted a double abomination, for besides detracting from the goal of tribal proliferation, it was also associated with the ritual of an alien religion. On the other hand, some references in the Old Testament, notably Leviticus 20—'If a man lies with a man as with a woman, both of them have committed an abomination; they shall be put to death . . .'—appear to condemn homosexual practices under all circumstances. A special horror of homosexual temptation between blood relations is exemplified in the story of the curse Ham brought upon himself through catching sight of his father lying naked in his tent (Genesis 9).
>
> The sparse and obscure references to homosexuality scattered about the Old Testament were of course greatly amplified by later Christian authorities. St. Paul, well known for his sexually repressive doctrines, and for the saying 'better to marry than to burn', predictably condemned homosexuality in the strongest terms. In his Epistle to the Romans (I, 27) he referred to the punishments men may expect who 'leaving the natural use of the woman, burned in their lust one toward another . . .' Centuries later, the same sentiments poured forth in the edicts of Justinian. In the year 538 (Novella 77) this Christian emperor declared: '. . . certain men, seized by diabolical incitement, practice among themselves the most disgraceful lusts, and act contary to nature: we enjoin them to take to heart the fear of God and the judgment to come . . . because of like impious conduct cities have indeed perished, together with the men in them.' This puts in a nutshell

> the essence of the traditional attitude to homosexuality, a tradition that has inspired the criminal laws defining homosexual acts as unnatural, or offensive to God, and prescribing the severest penalties (Brinton, 1959).
>
> Jewish rabbinical law incorporates similar prohibitions. Marriage and procreation is a sacred duty, celibacy forbidden. Masquerading as a member of the opposite sex is specifically condemned. For acts of anal intercourse between males, whether committed for secular reasons or as part of a heathen religious rite, both participants merit death by stoning (Epstein, 1948, p. 136). Whatever some persons may believe about the actual habits of some of its adherents, the Moslem religion also officially condemns homosexuality, although not in quite such violent terms as in the Judeo-Christian writings. The Koran (Khan, 1971) repeats in several places the biblical story of Sodom and the transgressions of the people of Lot.

Mr President, I hope by quoting from that book I have consolidated this point. Over the centuries—I could speak on the historical side—we as human beings have been conditioned not to accept homosexuality, both by our religion and by the laws which have sprung from religion, and, of course, from the teachings of other scholars from time to time.

Here we are almost at the end of the twentieth century, and around the world there has been a stirring for reform; reform without any thought of acceptance by the community at large of practices which 95 per cent, or perhaps 99 per cent of the community find to be repugnant, unnatural and not according to the law. I am surprised, even amazed, that when I move amongst some of my colleagues, not particularly in this House but from other places, to find they have no real idea what homosexuality is all about. Neither do they want to find out. The whole thought of it is completely repugnant to them.

Let met tell the House what the Honorary Royal Commission said in summing up homosexuality and how it was looked at in the community.

The following is on page 22 of the report—

> At present heterosexuals seem to hold four rather well defined opinions regarding homosexuality.
>
> (1) The homosexual is a dirty pervert who belongs in gaol. This seems to be supported by the fact that homosexual acts are against the law in all States of Australia, ranging from life imprisonment to 14 years.
>
> (2) The second opinion is one of tolerance by heterosexuals. It holds that homosexuals will be tolerated if they do not touch or try to indoctrinate minors. Many persons concerned with law enforcement favour this position.
>
> They suggest that private acts between consenting adults should go unpunished. Pederasty and its fears for the community will be discussed at greater length in the Report.
>
> (3) A third opinion holds that homosexuality is an illness that requires treatment. This view was once held and often supported by psychiatrists, and conflicting evidence has been presented to the Commission.
>
> (4) A fourth and final opinion holds that—
>
> (1) Homosexual relationships have as much power as antidotes for human aloneness as do heterosexual ones.
>
> (2) Homosexuals are healthy and as capable of happiness as heterosexuals.
>
> (3) It is arrogant to view persons as perverted or ill simply because their sexual orientation differs from the norm.
>
> (4) One should be sensitive and loving towards homosexuals, treating any sexual advances as compliments rather than a cause for rejection.
>
> (5) Interpersonal relationships should not be influenced by a knowledge of another person's sexual orientation, i.e., homosexuals and heterosexuals should be viewed and treated as human beings rather than products of different sexual orientations.

It is within the framework of those four different opinions that the rest of the report went on to look at the question of reform of the Criminal Code.

The question which remains unanswered is that saying homosexual acts between consenting adults in private shall not be an offence is not really legalising homosexuality. The commission found some questions disturbing—do not forget these were asked of us by homosexuals, because at the time the matters were not within our terms of reference and we could not give answers. Do not forget, honorable members, that this report was written in 1974. The Hon. Grace Vaughan introduced her Bill, and it was dealt with on 5 October 1977. Here we are six or seven years later and we have not made one iota of progress in attempting to solve these problems. Not one piece of information has come in since that time. I will suggest a course of action to the Hon. Robert Hetherington later in this debate.

Confronted with questions of this nature, I wonder how my fellow members in this House will react? How will they explain the situation to their constituents? I suggest that each and every member takes to heart these questions and perhaps someone may provide the answers.

I look at the Attorney General particularly because he is the chief law officer; but, de facto, the questions asked by these people bother me. If the Attorney, with all the panoply of the law behind him, had the courage to introduce the answers to some of these questions, I suggest to him that he would be hounded from pillar to post, because they are very difficult and touching human problems.

The following comes from page 44 of the report—

> (1) Where a bi-sexual partner of a marriage consorts with and has sexual intercourse with a partner of the same gender, is this then sufficient grounds for divorce in a Court of Law on the plea of adultery?

I must remind the House that I am asking the questions which were asked of us.

Hon. J. M. Berinson: That is a question without substance. Adultery is not in any event a ground for divorce.

Hon. JOHN WILLIAMS: I thank the Attorney for that answer. The report continues—

> (2) Should couples living together in a homosexual partnership, be entitled to the same privileges as regards tax allowances, home loans, etc., as the married heterosexual couple?
>
> (3) Should homosexuals be allowed to adopt children?
>
> (4) In emergency situations, as in consent for anaesthetic for operations, the rights to visit restricted to next of kin, can those living as homosexual partners be entitled to the same privileges?
>
> (5) Can homosexual partners make Wills in favour of each other and can they be assured on the demise of one or the other, that the Will be as valid as a Will between married heterosexual couples, without interference by disapproving relatives who maintain that the "partnership" was not legal or natural?
>
> (6) Does the removal of homosexuality as an offence guarantee on a de facto basis, the above points?

They are questions for which we had no answers. We might have found the answers had it not been for the fact that we were not allowed to go outside our terms of reference.

I would have liked far more information and a great deal more knowledge about homosexuality and sexuality in total, because times change. The older one gets, the more conservative one becomes and does not want to change.

Hon. D. K. Dans: I don't know about that.

Hon. JOHN WILLIAMS: I do not know what sort of change the Leader of the House has in mind, but he will probably tell me later.

Hon. D. K. Dans: It keeps me young.

Hon. JOHN WILLIAMS: Someone else may wish to commit himself, but I do not want to be a part of it because I think I have done my fair share in investigating matters of this nature. If anybody wants to he might follow up what the Hon. Grace Vaughan said she would have done had she stayed here longer. I have no doubt that a complete and absolute investigation is required and it should be State-wide—in fact, right cross Australia. I do not know whether the Hon. Robert Hetherington has the desire to suggest such a thing, because until this subject is aired and some of these old prejudices are summed up we are doing nothing for the homosexual, or for the enactment of this legislation.

I made my position quite clear in 1977 when I said I would not support any Bill that came before this House in that form. This reform, although required, is minuscule in comparison to the total problem that we have within our society with respect to homosexuality today. It was never my intention to disappoint the Hon. Robert Hetherington, but I told him at the time that I would think very deeply about it. I applaud his motives for bringing the Bill to the House, but with the present climate of opinion outside this House I cannot see that by instituting this reform we would do any good at all for homosexuals.

We might lull homosexuals into a sense of false security and be faced with the terrible questions that we would have to face if it were done in this way. I think the Hon. Robert Hetherington should try to find some method by which a thorough and absolute investigation of total homosexuality throughout Australia can be carried out. It appears to be a daunting task. Sir John Wolfenden undertook such a study in England, but it took him four or five years. If it can be done in one country it can be done in another, and I have no doubt that the ALP, which supports this motion wholeheartedly, would have the wherewithal and access to members of some groups other than those within the parliamentary structure who have the ability to investigate this matter impartially

and let the whole of Australia discuss it and bring it out into the open.

That is all I have to say as my contribution to this Bill. I have taken into account the many representations made to me. I am not at all happy with my attitude towards it, but I remain absolutely convinced that we will be doing nothing for homosexuals if we pass this Bill.

HON. LYLA ELLIOTT (North-East Metropolitan) [5.06 p.m.]: The Hon. John Williams is not the only one who is unhappy with his opinion of this Bill. I was very disappointed to hear his speech today.

Hon. P.G. Pendal: At least he was free to come to that conclusion, unlike members of the Labor Party.

Hon. Robert Hetherington: Why don't you shut up for once?

The PRESIDENT: Order!

Hon. LYLA ELLIOTT: The Hon. Phillip Pendal is very touchy in the early stages of this debate. I hope he gives us the benefit of his thoughts later.

This Bill represents the third attempt in this State to reform the law in relation to homosexual acts between consenting adults. It highlights some of the problems that are thrown up by our bicameral system of Parliament when we try to achieve reform.

Hon. D. J. Wordsworth: Is that a fair thing to say when a previous measure was passed in this House?

Hon. LYLA ELLIOTT: On the first occasion, the Tonkin Labor Government introduced a similar Bill in 1973. That Bill was passed by the Legislative Assembly. When it reached this House it was referred to a Select Committee which subsequently became an Honorary Royal Commission, and we heard about the work of that commission from the Hon. Robert Hetherington and the Hon. John Williams. Despite the fact that the Honorary Royal Commission brought down its recommendations in 1974, recommendations which were basically in line with the principle contained in this Bill, the Government of the day failed to act on them and to change the law.

In 1977 we saw a second attempt to achieve reform in this area when a Bill was introduced by the Hon. Grace Vaughan. Unlike the first Bill, passed through the Legislative Council, but it foundered in the Legislative Assembly.

I was hoping that on this occasion we would see this Bill passed by both Chambers. I was very disappointed by the attitude expressed earlier by the Hon. John Williams. I thought that he of all people, having studied the question as deeply as he has done and having chaired the Honorary Royal Commission, would have appreciated the need for reform in this area. He seemed to justify his opposition to the Bill on the ground that we now need a national inquiry. Some reform has already been introduced in other States and in the ACT, so I do not see why we cannot proceed in this State at least to introduce some partial reform.

I agree that many sections of the Criminal Code are in need of reform and review, but we are constantly amending legislation piecemeal. We do not always wait until we have a comprehensive overhaul of an Act before we introduce amending legislation into the Parliament. We are always amending Acts as we see a need; when we find something in urgent need of amendment, we introduce an amending Bill.

Whenever legislation of this nature is introduced, it is inevitable that all members will receive letters and approaches from various people in the community who hold strong opinions on the subject; they will approach us and demand that we vote for or against the legislation.

This of course is part of the democratic process and it is the right of any person, or group, to lobby his or her member of Parliament; but what is important is that we keep these approaches in perspective. With one exception I have not received any indication of opposition to the legislation from the major churches in this State. I remember well the time of Grace Vaughan's Bill when that legislation had the support of the Roman Catholic Archbishop and the Anglican Archbishop of the day.

The Hon. Robert Hetherington referred to the Wolfenden Report. I was rather amused when the Hon. John Williams said we should not refer to reports of other countries, but he continued to quote Dr West of the Cambridge University. However, I return to the Wolfenden Report, which was responsible for reform in Great Britain. This committee was chaired by Sir John Wolfenden who was the Vice Chancellor of the Reading University. The committee was the result of pressure brought to bear on the British Parliament by the Church of England Moral Welfare Council.

The Wolfenden report made a clear distinction between homosexuality and homosexual offences. It said, "Homosexuality is a state or condition and as such does not and cannot come within the purview of the criminal law". It further stated, "Especially we are concerned that the principles of the function of the law should apply to those involved in homosexual behaviour no more and no less than to other persons".

All members are familiar with the Royal Commission on Human Relationships set up by the Whitlam Government in 1974 which brought down its report in 1977. One of the issues dealt with by the commission was the question of law reform in respect of homosexuals. It dealt with discrimination against homosexuals and took a great deal of evidence on the issue. In its report the Royal Commission said that many churches had submitted evidence which stated it was their view that homosexuality between consenting adults should not be considered a crime and that it was not a sphere where the law should be concerned. This did not mean they necessarily approved of it, but they felt it was a matter for moral judgment and not criminal action.

The Royal Commission itself stated that homosexuals were not seen by members of the commission as constituting a social problem, but rather as people who might justly claim to be discriminated against by society at large and in law. It had evidence placed before it of discrimination, physical assault, and blackmail of homosexuals.

The conclusion drawn by the Royal Commission was that whatever the various moral views put forward, it seemed unnecessary to include homosexuality under the Criminal Code. It decided that a homosexual act should not constitute an offence as such, but only in circumstances where a heterosexual act would amount to an offence; for example, in cases of rape and indecent assault or an offence against public decency or order. This is what the Bill introduced by the Hon. Robert Hetherington seeks to do.

There is no doubt in my mind that the more enlightened members of the heterosexual community accept that the existence of homosexuality is a fact of life and criminal law relating to the private lives of homosexuals is cruel and archaic.

I have not been able to obtain recent opinion polls that may have been conducted on this subject. I asked the Parliamentary Library whether it could obtain some recent Gallup polls but that was not possible.

However, some years ago a national opinion poll was held and 68 per cent of those interviewed said that there should be some kind of law reform. The Law Society adopted the policy 10 years ago, "That this Society recommends that the criminal law be amended to remove therefrom as an offence homosexuality between consenting male adults in private". At the time the Law Society pointed out that it was essentially a moral issue, that the law had no proper place in the enforcement of morals in that area, and that individuals of adult age should be free to decide for themselves their mode of sexual behaviour. I would be surprised if the policy of the Law Society has changed in that time. I feel quite certain that that would still be its attitude today.

Reform in this area has taken place throughout the world and it will continue to take place in those countries and States where education on the subject of human sexuality has produced a more enlightened and understanding society.

Throughout history minority groups or those with different lifestyles and beliefs from what has been regarded as the norm have been subjected to terrible repression and brutality. This is still happening in some countries, and we are all familiar with the situation in Pakistan where adulterers are still stoned; terrible things like that are still happening.

We have come a long way in this society and in this day and age we do not burn people at the stake for their beliefs, but we still have laws on the Statute book which are oppressive and do not belong to the twentieth century. While some of these are not actively enforced by the authorities, their presence is sufficient to encourage discrimination against and victimisation of certain people in society, for no other reason than their sexual preference.

To support this legislation, which will lift the oppression suffered by a minority of our community it does not necessarily mean that those who vote for change approve of the sexual behaviour of that group. This could apply equally in other areas of sexual activity.

One example is that a devout Roman Catholic heterosexual may have strong objection to the use of the pill, or other contraceptives, on moral or religious grounds, but nobody today would suggest that we should write into the Criminal Code that it is an offence for people to use contraceptives, because some people object to them on moral and religious grounds.

In conclusion, I wish to quote an extract from a church statement which appeared in evidence in the Royal Commission on Human Relations report. It reads as follows—

> In matters of private morality the state rightly seeks to give the protection of the law to the young, the innocent, the unwilling and the incompetent. However, while adultery fornication, homosexual acts and certain deviant sexual practices among competent and consenting adults may violate Judaeo Christian standards and moral conduct we think that the penal law is not the instrument for the control of such practices which are privately engaged in, where only adults are

> involved and where there is no coercion. We favour repeal of those statutes that make such practices among competent and consenting adults criminal acts.

That sums up my thinking on this Bill, and I urge all members to support it.

HON. V. J. FERRY (South-West) [5.20 p.m.]: This Bill is described as a private member's Bill, but in reality it is a Government Bill and the Government is obviously supporting it. Therefore under ALP rules it must be a Government Bill.

Hon. Robert Hetherington: That is not true. Get your facts right.

Hon. V. J. FERRY: That is very interesting. My understanding from the public reports leading up to the introduction of the Bill into this House is that it appears the ALP made a decision to support the Bill. As is customary for members of the ALP, they abide by Caucus decisions—and full marks to them, because they stick to their rules.

As a result of the situation in which members of the ALP find themselves, it is obvious that the Labor Party members in this Chamber will support the Bill. It would be surprising to learn that all the members of the ALP in this Chamber really did support the Bill and did not have a view contrary to the Caucus decision. ALP members are a sample of the community in which we live and it is strange that a minority group in that party does not have a contrary view to that of the Caucus. I would be interested to hear the opinion of those members who have a contrary view in order to gain the benefit of their thinking. Even if those members supported the Bill in the end, it would be interesting to hear their views in this debate.

Hon. Lyla Elliott: I am waiting to hear your thoughts on this Bill.

Hon. V. J. FERRY: I am in a very privileged position as member of this House, because I have the right to vote according to my conscience. I have exercised that right on a number of occasions, and no member of the ALP can point his finger at me and say I am inconsistent in that approach. I have voted according to my conscience on a number of issues over the years and I will continue to do so.

For the sake of this debate I can only suggest that if ALP members are of the one mind on this issue it is of little avail for me to address my remarks to them. I will address my remarks to my colleagues who are not members of the ALP because they have a free mind and can vote according to their conscience on this Bill. I may have more success in persuading them, because they are people of character who can make up their minds, or have that privilege so to do, without the edicts of party policy lines. I will leave it at that.

I respect the Hon. Robert Hetherington for the work he has done in this Parliament. I have found him to be an honourable man who has always endeavoured to do what he thinks should be done. However, I was disappointed in his second reading speech and I will quote the last paragraph on page 9, which reads as follows—

> And I might add, that as far as I am concerned, two gentle men quietly committing homosexual acts in private are infinitely to be preferred to men who beat and abuse their wives and children.

Why include that in a second reading speech? It does not do the Hon. Robert Hetherington's case any good. If it is wrong to beat one's wife and children, it is wrong to do other things. It is a poor example and I will leave it at that point. I could quote further from the second reading speech but it is not necessary.

As was pointed out by the Hon. John Williams, and referred to by the Hon. Robert Hetherington, it is 10 years since an Honorary Royal Commission was given a very restricted brief to investigate homosexuality in this State. All members in this Chamber know the reason for the Honorary Royal Commission.

A Bill introduced into this House was referred to a Select Committee for its examination and subsequent to that the committee was converted into an Honorary Royal Commission to enable it to complete its investigations and report to the Parliament. That is history.

However, I remind members in this House that the work of that Honorary Royal Commission was the result of a narrow brief and it did not examine the way in which the ramifications of homosexuality may affect the community. I tend to agree with my colleague, the Hon. John Williams, when he suggests and, in fact, advocates, that some organisation in this State or country should engage in the widest investigations possible to give the people of this State, and of Australia, an opportunity to examine the various ramifications that will flow from any changes to the existing law.

The Honorary Royal Commission made reference to other questions. A number of unanswered questions were listed by the Hon. John Williams relating to the effect of changing laws throughout the community.

It is evident there is a great deal of misunderstanding within the community as to what homosexuality really is. On the one hand, I believe that many people in the community are somewhat fearful of discussing the subject and on the other hand

others are fearful that their lifestyle may be changed by way of influence, whether it be through schools, social environment, etc., as a result of changes to the law. Many citizens within the community are very ignorant of this subject. The consequential effects of any proposed changes to the law as a result of this Bill need to be carefully studied in order to determine whether the bulk of the community will understand the full implications of any change when it comes to making a decision.

I suggest that recent information from the Western Australian community very clearly demonstrates the great uncertainty in the minds of many people, and while this uncertainty prevails there is a solid component of public opinion which conveys to me the need to exercise great caution in this matter. Public opinion is divided on this issue.

I come down on the side of preferring to wait for a comprehensive examination of all aspects of homosexuality. Undoubtedly, there would be far-reaching consequences if changes were made to existing Statutes. We have no knowledge or surety of these consequences and, accordingly, I prefer not to support this Bill.

HON. G. C. MacKINNON (South-West) [5.30 p.m.]: I suppose one or two people would be surprised if I did not speak to this measure. Miss Elliott has referred to the fact that in 1977 I led the debate on behalf of the Government, although that is slightly misleading because the then Government's attitude was the same as it is now. Members had a free vote. Nevertheless, I gave a detailed speech at the time which I do not intend to repeat.

On that occasion I was followed by Miss Elliott who referred to some of the matters which she mentioned tonight. I spent some time during that debate pointing out that the activity of the police *vis-à-vis* homosexual couples living peacefully together was pretty minimal. I listed the cases that had been taken up by the police in various categories. For those members who might be constrained to look at them, they commence on page 1769 of the 1977 *Hansard* and proceed to the commencement of Miss Elliott's speech on page 1777.

Hon. Robert Hetherington: I accept the evidence you provided.

Hon. G. C. MacKINNON: I appreciate that; I think Mr Hetherington did at the time. It is purely a matter of record.

The real argument in the matter is whether we should have laws which are observed in the breach and in the execution of which there is a degree of tolerance. I think it is a perfectly satisfactory way to go. It is a pity that a couple of years ago the Liberal Government was persuaded that it was not the way to go with regard to gambling and one or two other activities. The Liberal Government was persuaded, mainly at the insistence of the Press, that if a law is there, it should be rigorously pursued. I have never believed that should be the case and I do not believe it now. It is not the general practice of any Government other than a totalitarian Government, and I accept that that is the way things should be.

For example, we have traffic speed laws which are certainly not rigorously policed because it would not be physically possible to do so. I doubt whether anybody has not at some time or other transgressed the speeding laws and got away with it. If the laws were to be rigorously policed it would be necessary to have a policeman on every bend in the road. Mr Hetherington might argue that my analogy is an absurd one, but I think it is perfectly reasonable. It is reasonable that the law should be there and policed conveniently. With regard to speeding, more policemen can be put on road patrol to increase the number of people charged and the number of policemen can be decreased in that area, depending on the needs of the police and the circumstances. Most of us as law-abiding citizens have regard within reason for the laws, and we are aware that some laws are not rigorously policed.

I think that is a reasonable attitude with regard to gambling. I am aware of the dangers of corruption in that field, but that is a different matter and one can have vigorous laws against corruption. The same arguments have been raised with regard to prostitution. When I was the Minister for Health, Jim Craig—whom very few members would remember—was the Minister for Police and Traffic. He was regularly asked by the Press what he intended to do about the brothels in Hay Street in Kalgoorlie. His standard answer was, "What brothels?" He would say that the matter had not been brought to his attention. If he was questioned further he would say, "I will await a complaint. Police act on complaints". Now and again the brothels were raided and the Press would say that it had been brought to his attention and what did he intend to do? He would tell the reporters that it was a matter for the local jurisdiction who would act on the complaint. In other words, he played a Nelson trick. Nevertheless the fact remains that these places existed, they were kept as clean as could be, and they worked satisfactorily for everybody.

I remember listening to a very good radio talkback programme in which Mr Dowding was taking part. He was asked about the decriminalisation or legalisation—they are the

same thing—of prostitution. He said that he would be somewhat alarmed if it were a perfectly legal occupation and his daughter, when asked what she would be when she grew up, replied that she would be a prostitute and would need to take a special course to follow this perfectly legal occupation.

A member interjected.

Hon. G. C. MacKINNON: I do not think this is a matter for lighthearted and crude levity. It is a serious matter and members should treat it as such.

Several members interjected.

The PRESIDENT: Order!

Hon. G. C. MacKINNON: This again is an example of laws which are sometimes not policed with absolute rigidity. I have no objection to that in principle. It can be argued that it provides openings for corruption and the like; however, that is a different kettle of fish. Corruption is a different matter altogether and corruption should be policed rigorously. One cannot police every law and look to the fact that nobody infringes a law. We have laws against all manner of things, including murder; yet murders are still committed. However, because it is a heinous offence such crimes are followed up and we try to find the murderer. Yet even then we have degrees of murder and discretion is used. The burden of my speech in 1977 is to the effect that discretion is used under present laws.

With regard to the technicalities of what causes a person to be homosexual or heterosexual, I do not know whether it is genetically based or learnt behaviour. As far as I am concerned it does not matter a great deal.

I listened to two people speaking on a radio show the other day; one person was in favour of the legislation and the other was opposed to it on various grounds. The person in favour of the legislation asked what the other would do if his son came home and said he was not heterosexual but homosexual. I thought the answer was distinctly unsatisfactory. If I was in that situation, I would be as upset as if somebody in authority had told me my son was handicapped in some way or another.

I would regard it as being unfortunate and a handicap, in exactly the same way. The person who suffered from it obviously would not feel that way, whatever the handicap. The only sorts of handicaps one feels sorry for are, in the main, physical ones. It is quite possible that the people in this category may feel some remorse. I understand that that is so, but I do not know for certain, because I have never suffered from that particular problem.

I feel sad about physical handicaps because I suffer from one or two of them myself. I was born with some of them, as we are all born with some handicaps. We are not all Einsteins, brilliant athletes, or whatever we want to be. However, one or two handicaps have been forced on me through other activities. I know how serious they are to contend with, and I would think that anything that took one away from the acceptable norm would be difficult to cope with.

Any parent who was faced with the situation to which I referred earlier would be sorry about it. He would do what he could to alleviate the situation; but I am not sure that one would want the laws changed because of that. It is a situation one must accept, whether one's child was handicapped mentally or physically, or whatever might be the situation. There is no reason to change the laws because of that.

My problem in the legalising of these untoward activities—these activities which do not lead mankind in any particular survival direction—has always been the second and the third steps. Let me give a specific example. I happen to be the President of the Scout Association of Australia, Western Australian Branch. It is fair enough to claim that is the largest boys' organisation in the State. There are even a number of jokes levelled at that organisation, and those jokes have a bearing on this Bill; but that is beside the point. One faces the problem that step 2 down the line from legalising homosexuality is sexual discrimination Acts, and the like.

Let us consider the situation of the Scout Association advertising for a camping commissioner. I suppose all members understand the structure of the scouts; they have a chief scout, who is normally the Governor; they have a chief commissioner who administers the uniform side of the movement; under him there are commissioners for various activities as well as group leaders, scout leaders, and associated scout leaders. I think most people understand roughly the way in which the system works. If the organisation wants a commissioner in charge of camping, it looks for a person with qualifications such as the Gillwell badge or Wood Badge, which is the result of a special course done by scout leaders. Members might have seen scout leaders wearing a shoelace with two little wooden beads on it, indicating that the special course has been carried out, qualifying a person for the award. There are many other qualifications which would come to the minds of honourable members. An applicant could be a fellow who is chock-full of qualifications and, after

the carriage of this Bill, is openly and frankly a homosexual, living in private with a friend of his, in whatever relationship they choose—not breaking any laws, and being perfectly "proper".

Let us say that the Scout Association was foolish enough to say to the man, "Well, you are very well qualified, but of course we cannot accept you for the position because too many parents would refuse to allow their children to go camping with you". I am quite sure that Mr Hetherington will say or suggest that those parents are a little square and perhaps notice should not be taken of them if they take that step; that is as may be. The fact remains that a number of parents would not allow their children to go under those circumstances. Honourable members would have within their circle of friends people of that ilk. We have all received letters indicating that many people have terribly strict views.

The next step down the path is that the man is refused the position, and he trots along to the discrimination board and takes legal action. It could well be a case in which the board says, "Well, now, you can't discriminate on the grounds of sexual preference, or whatever. You have got to employ this man". The organisation says, "Well, we're not going to. We find it quite impossible, under all the circumstances, to employ him". At that stage, the Government would have to come into it because the organisation would be breaking the law if an Act dealing with discrimination was in existence. The organisation would be told that it would have to make a choice. It would either have to backtrack and say, "Yes, all right, under the circumstances we will employ that person", or it would have to say, "Well, we're sorry but we can't do anything about it". Then the Government would say, "Well, we're sorry, but in those circumstances we can't continue your financial assistance. You can take the choice whether you want the help or not".

When Mr Hetherington is replying, in case he says that that is far-fetched, let me assure him now that that sort of thing has already happened. It has not happened in Western Australia, but it has happened elsewhere.

Hon. Kay Hallahan: Not in Australia?

Hon. G. C. MacKINNON: Not in Australia. It has happened, and the proof can be secured if Mr Hetherington wants it.

The problem that I see is the one down the road—the second, third, and fourth steps. It concerns me greatly, and that is why I believe that the lesser of the two evils is the diminution of police activity in accord with public opinion.

I am quite prepared to accept the assertion of Mr Hetherington, Miss Elliott, and others who have spoken on this, that there has been a change in public opinion. Many people do not think it is a good thing, but nevertheless it has taken place. Public opinion on many matters has changed. It is not long since a dinky-di Australian was laughed at if he was seen in a pair of suede shoes. Many things have changed, and not the least is our attitude and our degree of tolerance to the people who behave differently from ourselves.

We are more tolerant in many ways. Many people would think, of course, that tolerance has gone a bit too far. I have heard fathers of girls who believe that the present acceptability of sexual activity is perhaps a little more tolerant than it ought to be. Fathers of boys never seem to have the same degree of antagonism to that tolerance. That is unfair, but it is a fact nevertheless.

The point I am trying to make is different from the one I made in 1977. Then I pointed out the degree of tolerance that the police had shown—a very understanding degree of tolerance. I point out that every single one of us believes in selective policing. No Minister for Police has ever suggested that we should have automatic radar guns every couple of hundred yards on every major highway. In other words, if the policeman is not in sight motorists, know that the point might be stretched a little, and they might increase their speed to 120 kmh.

We are selective, even on a simple thing like that. In many other ways we are selective, and that is a reasonable course of action. I am quite sure that Mr Hetherington will disagree with me because he is very keen on the step that he is taking.

The other reason that I have felt no urge to change my mind on this matter is that I am concerned about the second, third, and fourth steps along the path and in that connection I gave an illustration which has not yet caused the Scout Association of Australia any concern but which I have certainly thought about in my capacity as president of the WA branch of the association when considering Mr Hetherington's Bill; because there is no doubt that while on its own the legislation would cause no problem, it could cause problems in respect of sexual discrimination, and indeed in at least one part of the world, it already has.

For that and several other reasons on which I will not elaborate, and which have been touched on by other members, it is my intention to continue my past practice of voting against this proposed legislation.

HON. KAY HALLAHAN (South-East Metropolitan) [5.52 p.m.]: I support the Bill very strongly in the context that interpersonal relationships should not be an area of concern to the Criminal Code or to law enforcement agencies. That is a point on which I find it very difficult to compromise and indeed even to see why other members in this House do not feel as strongly about it as I do.

I should say at the outset for the benefit of my constituents and of people who supported my election to this House, that I believe personal relationships which do no harm to others should not be the subject of legal sanction. I say that because I, like other members who have spoken, have received a deluge of letters in opposition to this Bill. However, I have given the matter very serious consideration and have been unable to find in any of the letters sent to me any justification for altering my strongly held belief that homosexuality is not a matter for the law. For the benefit of my constituents, I make the point that my support of this Bill is not a reflection of my approval or encouragement of homosexuality. I simply am of the opinion that people's sexual preferences are a matter of their choice.

My experience in workplaces prior to coming to this Parliament, as a social worker, counsellor, and a police constable, leads me even more strongly to the view that I hold. The activity of some members of the Police Force in the area of harassment of people who lead a homosexual lifestyle I find quite untenable, and I think of the figures and statistics brought to the attention of the House by the Hon. Graham MacKinnon are not a true reflection of the threat under which a lot of people live. The fact that people are harassed is no myth, we cannot say that the myth does not exist simply because it is not reflected in Police Department statistics. It is not a very comfortable way to live when the very basis of one's lifestyle in fact constitutes a criminal offence. That is the thing that I would very much like to see removed from the Statute book. It does have a devastating and destructive effect on people. Living outside the norms of our society, as members would know, creates suffering in overt and covert ways. To then have it labelled as criminally offensive to have an interpersonal relationship with a man—I say "a man" because we all know that women have not come under this restriction in our society but that men do—is undesirable.

"Kindness" is not a word that is used very strongly in this place, but I would have thought that an act of kindness in the greatest strength of the meaning of that word in 1984 would be to remove those provisions from the Act. I hope that sufficient support in this House today will enable that to happen.

The Royal Commission into Human Relationships which finally reported in 1977 was later followed by an edited selection of material which was published in paperback form under the title *Australians at Risk*. This book researched the question of homosexuality and I draw members' attention to a paragraph on page 319 which is interesting because it touches on the attitude of homosexuals, and we have not dealt with that subject so far in this debate. The paragraph reads as follows—

> The attitude of most homosexuals is that homosexuality is a normal variant, like left-handedness. Perhaps the most sensible conclusion is that there are a variety of reasons that may account for an individual's homosexuality, but as Altman writes: 'The question of the genesis of homosexuality ceases to be of great concern once one is prepared to accept homosexuality as neither a sin nor a pathology but rather as one way of ordering one's sexual drive, intrinsically no better nor worse than the heterosexual and with the same potential for love and hate, fulfilment or disappointment.'

That is a very useful passage in considering the Bill before us. It perhaps brings the point to mind that some complex and social reasons for supporting this Bill could well be explored in the Committee stage. I am of the belief that only a civilised and sexually mature society can allow preferences. Tolerance of differences is an underlying fundamental of the Liberal democratic State. Again that is something I believe in most sincerely.

I make the point that this Bill is not about discrimination against homosexuality. It is not about rights of homosexuals, although it is worth noting, having said that—and it has been referred to already—that in the United States of America the Federal Government has adopted a policy of non-discrimination against homosexuals in its employment programmes. I again make the point that we are not considering the whole question of rights but are simply talking about a very narrow parameter to remove a lifestyle from a section of the Criminal Code.

I now want to refer to an article in *The Bulletin* of June 1981 which examined the differences in the law between the various States.

Sitting suspended from 6.00 to 7.30 p.m.

Hon. KAY HALLAHAN: I refer to the June 1981 issue of *The Bulletin*, which I think is useful to this debate. It examined the differences between the various State laws and one factor which

I think members opposite would be interested to hear is that the State Council of the Victorian Liberal Party declared its support for the decriminalisation of homosexuality in 1974. We are now a decade further on and it would seem that perhaps we have not reached that point in this State.

I would like to refer to the question of homophobic attitudes—the fear of homosexuality and opposition to it—which like all other prejudices is born and nurtured in ignorance. The phrase, "homophobic attitudes" is a rather good one in describing what we are dealing with in relation to the letters we have received concerning the Bill before the House and what we have heard tonight in this debate. It is referred to in an article by Lex Watson on gay rights legislation, and it is a good illustration that what we are dealing with is a serious prejudice.

Personally, I find it difficult to equate an understanding of the Christian faith based on love, with the letters I have received which appear to be based on fear. It has been my belief that anyone's understanding of love includes the knowledge that it can overcome fear and I, like other members in this House, was bombarded by letters from people declaring themselves to be Christians, but who were hobbled with incredible fears.

I refer again to the book, *Australians at Risk* and the excerpts from the Royal Commission into Human Relationships. I make the point that this was a very big review of human relationships in Australia. I am not sure what previous speakers would require to satisfy the needs they see to undertake intensive studies on human relationships. This report is regarded as a significant milestone in our national heritage in respect of the examination of human relationships, and it was completed in 1977.

It seems to me that the evidence we need is available to us, but for some reason we are not open to it and we want to reject it. On page 187 is the statement—

> Time and again, our evidence showed that Australians generally have scant understanding of their own sexuality.

I think that factor creates a good ground for fear and perhaps it explains what we are witnessing. It makes me wonder whether one of our national traits is not a deep seated discomfort with our own sexuality. The position of professional authorities is clear on the subject matter of this Bill and I will conclude my remarks with the following passage because it is a useful one on which to end. It gives us some reference to the people who deal in this area. They have expertise and members of Parliament and others like to refer to people with expertise because it is useful to do so and makes them feel safe. That is understandable. I quote as follows—

> The American Psychiatric Association in April 1974, voted to cease classifying homosexuality as a 'mental disorder', as it was not deemed appropriate to call homosexuals 'sick'.
>
> Both the Australian and New Zealand College of Psychiatrists and the Australian Psychological Society have condemned discrimination against homosexuals, and urged that the present criminal laws be changed.

I hope the Bill will gain the support of all members in this House.

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [7.36 p.m.]: This is a private member's Bill, but it should not be thought that this is a matter on which the Government has no opinion. The Government does support this measure, and its introduction by the Hon. Robert Hetherington was not with a view to separating the Government from the issue, but mainly out of respect for his own work in relation to it. There is as well the additional factor that matters of this kind have always been regarded as appropriate to be dealt with on a private member's initiative.

There seem to have been two strands to the argument against this Bill. Most opposition in the debate has been on the basis that the Bill goes too far. On the other hand, Mr Williams says it does not go far enough because it does not look at all questions of sexuality. Mr Williams also suggests that the whole question might better be left to a comprehensive implementation of the Murray review of the Criminal Code.

That is a recipe for paralysis. The Murray review is a huge work which extends to over 500 pages and refers to every provision of the Criminal Code. For practical purposes if we wait for full-scale implementation of the Murray proposals, nothing will happen. The "too hard" basket will be the inevitable end of that exercise. On the contrary it seems we will best get movement by taking one issue at a time. As a Government we will be doing that on other matters, and it is clearly appropriate in the case of homosexuality.

The issue raised by this Bill is self-contained and can stand or fall on its own. The question is: Do we, or do we not, accept the view that homosexuality between consenting adults in private should not attract a criminal sanction? That is all this Bill does. While other issues such as the right of homosexual couples to adopt children are interesting enough, they are not relevant to the issue which this Bill involves.

As to the other arguments which have been raised against the Bill in recent lobbying, these seem to come down to two. In the first place it has been strenuously argued that homosexuality is contrary to the teachings of the Bible and therefore a sin. It has also been suggested that the passage of this Bill would encourage homosexual practice. As it happens I take seriously the guidance which the Bible offers, but we have long since passed the point where we can adopt biblical standards in our criminal law. It is not just the separation of church and State as a principle which is involved, although that is fundamental in our society. More important is the fact that biblical standards are simply not acceptable by our community as a basis for justifying coercion by the State. If support for that view is needed it can readily be gained from the merest glance at the context of the same biblical passages which proscribe homosexuality. These have had ample mention in recent weeks and members will be aware of them, but to quote them for the record I turn firstly to Leviticus, chapter 18, verse 22—

> [22]You shall not lie with a male as with a woman; it is an abomination.

Leviticus chapter 20, verse 13 reads as follows—

> [13]If a man lies with a male as with a woman, both of them have committed an abomination; they shall be put to death.

Nothing could be clearer than the lesson which Leviticus chapters 18 and 20 have to teach on the subject of homosexuality. However, chapters 18 and 20 say very much more. For example, in the same section of the Bible we learn of the prohibited degrees of marriage. As it happens some of those are still reflected in the restrictions imposed by the Marriage Act, but many of the biblical prohibitions are not. What is perfectly legal now is made subject by Leviticus to the punishment of death. Leviticus also establishes adultery as a capital offence. In our society far from being a criminal offence, adultery today is not even a ground for divorce. It might be noted that chapters 18 and 20 also proscribe on pain of death both idol worship and disrespect to parents. They also attach severe penalties to intercourse during menstruation and contravention of the dietary laws.

I subscribe to a tradition which accepts the guidance of the Bible in all these matters of conduct, though not to the penalties which were, no doubt, necessary in the barbaric times in which they were specified. I am prepared to commend that guidance to others, but I cannot for the life of me see that I am entitled to impose it on others where no detriment to third parties is involved, and no more for homosexuals than, for example, adulterers.

In recent times we have seen a move from that position in the return to fundamental theocracies in a number of countries. In Pakistan adulterers have been publicly flogged. In Iran adulterers have been executed. We recoil in horror at these developments, and well we might. Yet that is the logical extension of the sort of view which has been put in some quarters in opposition to this measure. That is not a basis on which this Parliament can possibly proceed.

I believe it is also an error to treat this Bill as likely to encourage homosexuality. Morally the Bill is neutral. It neither approves nor disapproves and in that sense there is no question of encouragement involved. At the practical level it is also undeniable that the criminal law on homosexuality between consenting adults in private is, for practical purposes, simply not enforced. For practical purposes one might go further and say it is also unenforceable. With or without the criminal law, the practice of homosexuality will continue. Better that it do so within the proper constraints which this Bill preserves and is consistent with the general standards which can command community respect.

HON. P. H. WELLS (North Metropolitan) [7.46 p.m.]: Some years ago I lived in Kalgoorlie. In those days, and I expect it is still the position today, at one end of the street were the churches and at the other the illegal brothels.

A member: How do you know?

Hon. P. H. WELLS: We had a look. Does the member mean to say that he has never had a look? In fact the tourist bus goes down there quite regularly.

The DEPUTY PRESIDENT (Hon. P. H. Lockyer): I suggest the member directs his comments to the Chair so that he does not attract interjections.

Hon. P. H. WELLS: In directing my remarks to the Chair, it is not a hidden fact that the illegal operation of prostitution continues in that particular town. It is recognised by most people that it is better to leave it where it can be seen, although they are not prepared to legalise it. That has been suggested, but if it were to be legalised throughout the State, there might be some degree of "glamorisation" which might encourage something which most people will accept is not good in our community. I believe much the same argument has some reference to parts of this Bill.

In 1983 I started to put my case together when I had some discussions with Detective Sergeant Alan Mitchell, or whoever was the special police-

man responsible for this type of law, and particularly that relating to attacks on young children. I was staggered to understand that the Crawley beat, as it was referred to down by the University then, was a homosexual beat which was known internationally. I received a copy of the gay magazine, in which I notice the ALP advertised. I began to learn more about homosexuals because I believed I should understand their point of view.

I want to say, in terms of the Bill, that I can accept some of what has been said in favour of the Bill. There is some need for further debate in terms of penalties. I have asked opinions of various people, and not one church in this State would agree that a homosexual should be shot.

Then we come down to what is the law, and ask if the penalties are appropriate. I think most people will agree that there is some need to look at that section of the law. I wonder if the presentation of the Bill in this form, going through the normal process of the parliamentary system, gives adequate time for discussion within the community? As often happens with Bills concerning contentious issues, on which the Government should want the community to have some say, it should allow opportunity for adequate debate on the Bill within the community. Some of those who oppose the Bill may well accept some parts of it. Some people may feel that they have been cheated by not being given adequate opportunity for debate. Some organisations have not had the opportunity to discuss this issue. If the Government is honest in its intentions in this area it should provide the community with the opportunity to have as much debate as it wants.

I am suggesting that there is no real necessity to rush a Bill like this through the Parliament. If one is trying to change people from that which some find obnoxious, the only way to succeed is either by bulldozing or by reasoning. That will not happen in a short period.

Some statements which have been put out may well be rebutted, but in terms of the response to this particular Bill, I have received one piece of correspondence which says, "I want you to support it".

There is a reasonably large homosexual community. The only contact I have with that community tells me to oppose the Bill, rightly or wrongly. All the other correspondence and lobbying opposes the Bill. This is a lobby group which is entitled to lobby members of Parliament.

I will read a petition which arrived rather late. I received it tonight, or I would have presented it earlier. Twenty-four people signed this petition regarding the decriminalisation of homosexual acts. It reads as follows—

> To the Honourable Members of the Legislative Council of Western Australia in Parliament assembled. The humble Petition of the undersigned citizens respectfully showeth:
>
> That the proposed changes to the Criminal Code relating to homosexual acts should be withdrawn, and the Code be maintained in its present form, in the best interests of the whole community.
>
> Your Petitioners humbly pray that the Legislative Council in Parliament assembled:
>
> Rejects any proposal which in effect would expose the community and our children to unnatural sexual acts, which destroy the code of decency, and legitimises acts of depravity.
>
> And your petitioners will ever pray.

That was presented to me earlier this evening.

A letter in connection with this Criminal Code Amendment Bill was addressed to the Leader of the Opposition. The original was signed by a number of responsible church people—Fred Anderson, Senior Minister, Forrestfield Bible Fellowship, and chairman, Perth Charismatic Ministers Fellowship; Gordon Nel, President, Seventh Day Adventist Church WA; Mr Sykes, representing the Fellowship of Independent Evangelical Churches WA; Major Wall, Divisional Commander, Salvation Army; and Jeff Hopp, Director of Jesus People Inc. These people expressed an opinion. They are as entitled as any others to do that. One may not agree with their opinion. I will not go through every point they raised, but the first paragraph says this—

> We wish to express our objection to proposals to legalise homosexual behaviour in private between persons age 18 and over.
>
> In support of our objection we note the following facts concerning (i) our beliefs in homosexual behaviour; (ii) Legalisation of homosexual behaviour; (iii) Anti-discrimination legislation for homosexuals; (iv) Education on homosexuality.

I refer to their concern in respect of education, because I believe they have struck the real feeling in the community. In paragraph 4, which is concerned with education on homosexuality, they have this to say—

> 4.1 We are aware of the homosexuals' insistence that homosexuality be presented as a valid and positive sexuality to school children through sex education and personal development programmes.
>
> 4.2 We are aware of Premier Burke's statement to the homosexual community (*Western Gay*, May 1983) that "moves in the education area will have to be

considered in the light of the success or otherwise of the decriminalisation and anti-discrimination legislation", and that the Premier's statement implies that his Government will proceed with pro-homosexual educational programmes, provided there has not been too much fuss about its decriminalisation (legalisation) and anti-discrimination moves.

4.3 We are aware that the ALP's 1982 State Platform commits the present Government to "ensuring that in sex education programmes, homosexuality is presented as a capacity fundamental in some human beings, the expression of which is basic and natural."

4.4. We are aware that many members of the community—not merely Christians—do not accept the minority and judgemental view that homosexuality is "basic and natural", and would be alarmed at the prospect of their children being taught such a view at school.

I believe that there is a great fear in the community, and nothing has been done to allay that fear in this Bill, which will have the effect that homosexuality will be taught as natural in our schools. The community at large finds that prospect abhorrent. Therefore many people, on those grounds alone, without understanding any part of the Bill, have a certain amount of fear because they do not want these things to happen. I could well accept that it might not be the intention of the Government to do such a thing, but certainly the statement made by the Premier in *Western Gay* of May 1983 does not allay those fears. In fact it leads the community to believe that the success of this Bill will mean that eventually those things will be taught in schools. That will create in the minds of many parents a fear that they do not want that type of education.

If this Bill succeeds, and that subject is likely to be taught in our schools, I will seek to introduce into the House a private member's Bill to prevent homosexuals who advocate their way of life from entering schools. I do not believe at this moment the community wants or accepts that it is right that that type of teaching should be carried on in our schools.

I come back to Mr Hetherington's second reading speech on this Bill. He says that certain laws will prevent this behaviour in public. This Bill in some ways accepts it. The Premier, as the leading person in the Government party, has led the community to believe that there is a good chance this matter will be included in the education of our children.

Let me give an illustration of how this type of thing happens. In an effort to stem the tide of "X"-rated video films during the last session, this Chamber quite innocently inserted certain provisions in the relevant Act. Those provisions were to the effect that "X"-rated video films should be kept apart from other video films. It was believed by doing that our children would be protected. I ask members: What has been the effect of that? The effect has been to glamorise this matter, and now we virtually have a sex shop in every community. In many of the video shops now there is a separate section which exists in an endeavour to encourage people to go there. The attitude is, "Once you are over 18, you want to see what is behind these doors. Here is where you will find the really hot stuff". Indeed, it has got so hot that the Government realises something must be done about it.

As the Hon. Kay Hallahan said, this has nothing to do with the Bill; but I point out that an innocent act in this Chamber has resulted in the creation of an octopus in the community, despite the fact that members believed they were doing what was right.

Because the Government has not given the community the opportunity to debate this matter adequately, it may well be that we shall pass the Bill tonight—it will be virtually rubber stamped in the other Chamber—and we could find our education curriculum is changed. It may well be that, without any direction at all, this could occur, because the law has been changed. Just as occurred in respect of video shops, we may find something in our community which we did not want and which could affect our children.

In its present form, the Bill should be opposed. I say that, firstly, because it will create fears which may well be unnecessary, and also because the Government has not answered some of the major questions in the community; secondly, we have a responsibility to the community and, at this stage, the community has indicated that, because of the pressure to pass the legislation, it is not acceptable; and, thirdly, I have a responsibility to the families in my community who have expressed clearly their real fears about this legislation affecting the education of their children and their lifestyles.

Therefore, I urge members, particularly those who have a conscience vote, to think seriously about the children and the parents who accept responsibility for the education of their children. I suggest to the Government that, if this legislation which may well have some good points is ever to

succeed, it should find some way in which adequate public debate is allowed.

HON. P. G. PENDAL (South Central Metropolitan) [8.03 p.m.]: In debates of this kind I suppose all of us tend to assure each other that the law does not have a place in determining the morals of the community, yet it is my experience that all of us invariably take not the slightest bit of notice of our own urgings in that regard, because, as I see it, the fact is we all tend to feel that the rest of the community ought to behave according to our own lights. For example, if we, as individuals, tend to be conservative in our thinking, we generally believe that other people ought to see things accordingly. If, however, we have a *laissez-faire* or a more libertarian outlook, it is natural that we tend to believe there is no harm in the rest of society taking that stance alongside us. I detect something of that note even in the speech from our colleague, the Hon. Bob Hetherington.

I put it to the House that even he takes a moral stand in the early part of his second reading speech when he refers to the fact that this Bill does not attempt to alter those things which he finds—now I use his words—"undesirable and offensive".

I say that, because it is important for all of us to recognise that we do in fact make a moral decision about many acts of behaviour in our community in a general sense and that, despite our protestations, we all make moral judgments about the specific contents of Mr Hetherington's Bill.

The second observation I make is that, like others here, I have some recollections of the debate in the United Kingdom in the late 1960s which led to the decriminalisation of homosexual behaviour in that country. I can certainly recall quite vividly that one of the reasons advanced for supporting the legislation in the United Kingdom was that once and for all it would rid the UK of the means by which individuals could become targets for blackmailers.

It was thought, rather naively as it turned out, that decriminalisation would leave the blackmailer without a target. We all know now that many eminent Britons have in fact fallen foul of public opinion, not because they have become targets of blackmailers as such, but because they have become targets of people who would disclose their homosexuality. In other words, homosexual acts may well now be legal in the UK, but those acts are not necesarily acceptable to the people of that country.

So really we are back to the starting point of my remarks, which is that we are dealing with a question of attitude, of acceptable behaviour in a community that looks upon homosexuality with a mixture of outright rejection on the part of some, puzzlement on the part of others, and, in some very rare cases, indifference.

Like anyone else, I have my own views and among them is that homosexual behaviour is not the norm. Without injecting my own bias at this point, I simply emphasise that statistically it can be shown—that is why I use the term not in a derogatory sense—that homosexuality is indeed against the norm.

So far we have heard many references in the debate to the uncertainty of those statistics. However, the research of Kinsey in the United States is, I am told, still regarded as the best and probably the most comprehensive source of information on the incidence of homosexuality. As old as that study is, it claims that, among males, something in the order of four per cent are exclusively homosexual all of their lives.

I could quote other figures about people who have transient or passing homosexual experiences, but the point I make is that statistically, with four per cent of the population said to be exclusively homosexual, one is entitled to take the view that homosexuality in that statistical sense is not the norm.

I take issue with some of the assertions made by the Hon. Bob Hetherington, and I use the word "assertions" advisedly, because Mr Hetherington told us in his second reading speech that—

> The one thing that has become increasingly clear to me is that homosexuality, whether male or female, is not something that is acquired or caught through association. In the majority of cases, it is a disposition or an orientation.

I would accept, and the advice I have taken from as many people as possible is, that the inborn factor may have more relevance in medical terms than has been believed to be the case in the past.

However, I put it to the House that there is ample evidence in the most recent research literature that sexual orientation is most strongly determined by environmental factors, and that is a matter to which some reference has been made by previous speakers. Indeed, one of the authorities quoted was Dr West. Apparently, unlike my colleague, the Hon. John Williams, who was picked up on the point by Miss Elliott, I have no hesitation in quoting Dr West simply because he comes from another country.

Significantly, Dr West is regarded as one of the finest, one of the most reliable and—most importantly in these circumstances—one of the most compassionate and tolerant references on the sub-

ject of homosexual activities. In part, he says this—

> According to one school of thought, exclusive homosexuals form a sort of third sex possessed of an inborn physicial predisposition that sets them apart from the rest of humanity... This way of thinking was one very popular among homosexuals themselves since it relieved them of all personal responsibility...

He goes on to say that that way of thinking—that is, that people are born homosexuals—has fallen into a large measure of dispute because of, in his words, "the failure to discover convincing evidence of any underlying physical anomaly in the majority of cases".

I put it to the House that, in those circumstances, it is most important and, indeed, it is vital that members do not blindly accept as fact the assertion that has been made as one of the cornerstones of Mr Hetherington's speech. I respectfully put it to the House that it is an assertion on his part and nothing more.

However, having said that, I believe that a solution or at least a part solution may be found in ways other than in supporting this Bill. Mr MacKinnon is one member at least who has referred to that part solution in the course of this debate. It is one that I personally would be prepared to endorse and in fact recently I spoke about it publicly in my electorate at some length. That is, reference has been made to laws relating to the soliciting for prostitution in this State to the effect that those activities have been the subject of an officially sanctioned policy by this Government and previous Governments for something in the order of a quarter of a century under which that form of sexual activity has been made the subject of a policy of toleration and containment.

Again it is important that members bear in mind that it is not a partisan approach which has been adopted by unrealistic people. Indeed, it has been a bipartisan policy adopted and officially known to the community for a quarter of a century by people who are realistic enough to know that, whatever one's attitude towards prostitution in that particular case and certainly whatever attitude one adopts towards prostitution in the light of modern day thinking by women's liberation groups—despite those pious hopes—one will never stamp out that practice.

I put it to the House that it is quite within the capacity of this State to apply to people of homosexual orientation the same principle of toleration and containment at an official level that has applied in other forms and has principally applied in the case of the practice of prostitution. In reality it is a policy already adopted, I put it to the House, in respect of homosexual behaviour in this State in more recent years.

I believe that I saw statistics recently which showed that only three prosecutions had either been launched or had succeeded in Western Australia in the past 18 months. One is not naive enough to believe that there have only been three homosexual acts in Western Australia in the past 18 months, so therefore one is entitled to assume from that that there has already been adopted unofficially, and I would submit rightly, a policy of toleration and containment towards homosexual people in this community. Indeed, that belief has also been confirmed by a homosexual who discussed the matter with me in my office and who drew the line, as most responsible people would, in terms of that policy not applying to minors.

Surely, the fact that we have had only three criminal prosecutions in the last 18 months in itself is an indication that homosexuals in this community are not harassed. If, however, they are harassed and humiliated it may well be time that we changed the stance from being an unofficial one for toleration and containment and indeed made it an official one, because I for one, whatever my attitude towards homosexuality in itself, do not subscribe to the view that homosexuals should be harassed or humiliated because of that practice.

Hon. Robert Hetherington: How can you make this official?

Hon. P. G. PENDAL: That is a fair question. I think we should do it precisely the way it is done in relation to prostitution currently under Mr Hetherington's Government and previously under Liberal Governments. I well recall under the Tonkin Government Jerry Dolan was the Minister for Police and I discussed with him the matter of prostitution under his Government's policies in the sense that any vice attached to prostitution and any ill effects in terms of health—as Mr Hetherington well knows, prostitutes are apparently subjected to regular health tests—would bring action; in other words, the previous Government and the one before that adopted that policy and officially it was recognised that soliciting for prostitution could continue provided it was contained.

I seriously put it to the House that this solution could be applied in the case of homosexual activity. One is entitled to ask me therefore why it is that one takes this, that, or some other view because, as I see it, we have only three choices on the subject before us. Many people will say we have only two. One choice is to decriminalise homosexual behaviour. The second choice is to leave the

law as it presently stands so that homosexual acts are a criminal activity. The third choice, the one which I am suggesting, is the policy of toleration and containment. My explanation as to why I arrived at that solution or suggested solution is a pretty simple one. For example, if this Parliament were to decriminalise or legalise homosexual behaviour, people who were still going through the process of sexual maturity would be entitled to make an assumption from that action of the Parliament that the Parliament was saying that it is normal behaviour and that it was now acceptable behaviour.

Hon. Robert Hetherington: What about lesbians? There are inconsistencies there.

Hon. P. G. PENDAL: I agree there have been inconsistencies, but there have been inconsistencies on that one since the time of Queen Victoria. Better minds than mine and, with respect, better than that of Mr Hetherington, have attempted to come to grips with that; but I suggest that the same would apply to the case of lesbians as would apply to male homosexuals in respect of what I am talking about.

Hon. Robert Hetherington: You want it made a crime then so we can tolerate and contain it?

Hon. P. G. PENDAL: I do not. If the Hon. Robert Hetherington wants to fight about it, I will give him a fight. The member already knows that I have not attempted in the past to pretend that there is a solution to that question, because on the radio programme that we shared some weeks ago I was at least honest enough to admit straightout that I had no answer in logic to that. Mind you, Sir, there is plenty about what Mr Hetherington and other speakers have said earlier that has no basis in logic and I intend to come to that in a moment. Presently I am attempting to keep the debate on a calm and rational basis and not one that tries to bring in matters extraneous to the central theme of Mr Hetherington's Bill and to the solution that I am trying to put to the Parliament.

Having said what I believe would be the effect of decriminalisation in the minds of people still going through the process of sexual maturity, I do not make any reckless or extravagant claims, as some people have done, about the floodgates being opened if this Bill were passed. I do believe that people are entitled to read into the actions of Parliament—and in this particular case there would be every likelihood that young people would read into legislation of this kind if passed—that it gives some sort of imprimatur to homosexual behaviour. I refer particularly, I repeat, to those people who are still arriving at full sexual maturity, whatever that might be.

I refer to another quotation from the works of Dr West, which has some relevance to this debate. He says—

> While unhesitatingly urging a tolerant, liberal attitude to homosexual practices and insisting that our modern pluralist society should be able to accommodate persons of homosexual orientation without making a fuss, . . .

Those last words are very innocuous sounding and are central to that passage and indeed consistent with what I have said about an officially sanctioned policy of containment and toleration. I repeat—

> While unhesitatingly urging a tolerant, liberal attitude to homosexual practices and insisting that our modern pluralist society should be able to accommodate persons of homosexual orientation without making a fuss, . . .

While Dr West is saying that should happen he says—

> I do not think that the homosexual way of life should be glamorised.

Once again I urge members to consider that expert testimony from a world-renowned specialist is not unlike the alternative to the dilemma that I suggest. I think it requires serious consideration by this Parliament.

I offer a final comment from the work of Dr West because again I think it supports my view that a solution other than that suggested by Mr Hetherington is available. Dr West says—

> Ideally, the law should be the handmaiden of social justice, and not an instrument for making the lives of unpopular minorities worse than they need be.

Again I put it to the House that this is yet another argument in favour of an officially sanctioned policy on toleration and containment, not one for legalisation. In the course of the public debate, particularly over the last few weeks, a number of inadequate comparisons have been made between the plight of homosexual people and the plight of other people who are regarded as part of the oppressed minorities in the community. For example, there has been some comment to equate the plight of the homosexual with the plight of Aboriginal people, the plight of women, or the plight of some other group in the broad context of human rights. I put it to the House that that has been one of the more fallacious arguments and I suggest that it has been even a little bit mischievous as well, because there is no parallel at all between the situation of a homosexual, on the one hand, and the situation of an Aboriginal, a

woman, or someone else who is in a minority situation.

Homosexuality is accepted even by homosexuals themselves as a behavioural matter; being a woman, or an Aboriginal or someone else is not. Therefore to see homosexual rights merely as an extension of other basic rights in our community is, I put it to the House, to misunderstand the very basis and nature of the argument.

In the course of the debate a number of members have tried to draw a parallel with law reforms whereby the practice of adultery has been removed as a ground for divorce. Indeed, the latest person to discuss that, and I am surprised that he did, was the Attorney General of Western Australia. I put it to the House again that we are dealing with a fallacious argument. It is quite true that adultery is no longer a ground for divorce, unlike the old days of only a decade ago where proof of adultery itself could lead to the dissolution of a marriage. But adultery having been removed from the Statute book as a ground for the dissolution of a marriage has not altered the fact that adultery can still lead to the dissolution of a marriage.

Hon. Robert Hetherington: I am just agreeing with you.

Hon. P. G. PENDAL: I think that is what threw me. I mention the point rightly made by Mr Williams when he asked the question from a document that he posed as evidence: If a male in a married situation had a homosexual affair, obviously with another male, would that or should that be ground for a divorce? Of course, even at that stage the Attorney General interjected on the Hon. John Williams and said, "Look, that is irrelevant because even heterosexual adultery is not a ground for the dissolution of a marriage any more".

It is still a relevant point that a person, whether male or female, involved in a homosexual or heterosexal act of adultery in today's enlightened times can still find himself in a situation where it becomes the ground or leads to the ground of irretrievable breakdown of marriage, and therefore ground for divorce. Therefore, I am surprised to hear the Attorney General attempt to prop up that rather weak old argument.

Hon. Robert Hetherington: It is mainly because you did not listen to his two arguments.

Hon. P. G. PENDAL: I took great notice of Mr Berinson's argument as I usually do, and I am sure that is a fair assessment to have drawn from his speech.

I want to touch on a question which is part of the community debate—the age of consent—and whether the age for homosexual relations can rightly be the same as for heterosexual relations. To some extent the Campaign Against Moral Persecution has really based its whole argument around this point and has said it wants the Bill thrown out because it should not contain that discrimination. It will come as no surprise to anyone when I say I certainly have no hesitation in supporting the body of opinion that suggests the age of consent in relation to homosexual acts ought to be higher than that for heterosexual acts. That is no great revelation because many so-called advanced countries and thinkers have taken that view, even in places where homosexual activities have been legalised.

I refer to the report of the policy advisory committee on sexual offences which was presented to the British Parliament in 1981 and recommended the age of consent for females in a heterosexual relationship should be 16—and I think that would be retained in the Act—and that the minimum age for homosexual relations between consenting adults should be 18. That is now the age in Great Britain.

Hon. Robert Hetherington: You know that is what the Bill says.

Hon. P. G. PENDAL: Yes, I appreciate that, but a serious part of the debate has been whether it is fair or just to have differing ages for legalised homosexual activity as opposed to heterosexual activity. I am saying that that is a body of opinion which is supported around the globe.

Some comment was made earlier by the Hon. Kay Hallahan about the attitude of the Victorian Liberal Party to this matter. I do not know what that has to do with this debate. All it shows is that a group of people on the other side of Australia have a different view from me. I pointed out by way of interjection that only a few days ago the Premier of New South Wales (Mr Wran) made known his intention to introduce legislation in the New South Wales Parliament to decriminalise homosexual acts. The irony is that in New South Wales the Labor parliamentarians have a free vote, but not for long, because Mr Wran made it clear publicly that if he could not get homosexual law reform from his members in a free vote he would appeal to the State body to overturn that and put those Labor parliamentarians in the same position as their counterparts in Western Australia who do not have any option.

I do not think it does anything for the debate to raise the position of the Liberals in Victoria. Whatever the party there has decided, the Liberal parliamentarians in Victoria still have the right afforded to members of the Liberal and National

Country Parties in this Parliament to exercise a free vote.

I oppose the legislation for the reasons I have outlined, but I believe some grounds exist to explore ways by which the policy of toleration and containment that is applied in certain other delicate aspects of the law might be applied to the law relating to homosexual conduct in Western Australia. On that basis I would be prepared to see more official sanctioning provided it does not legalise that conduct and therefore be seen by the people of Western Australia—

Hon. Garry Kelly: How do you do that?

Hon. P. G. PENDAL: The member has been out for half an hour—

Hon. J. M. Brown: He was luckier than we were.

The PRESIDENT: Order!

Hon. P. G. PENDAL: We wait on Mr Brown's contribution to the debate. It is typical of members on the other side of the House that they cannot be relied on to make any sensible contribution to a debate, they resort to inane, juvenile and puerile comments. It will be most interesting to listen to Mr Brown, Mr Piantadosi, and others. As Mr Ferry rightly pointed out, his appeal when speaking to the House was not to the Labor parliamentarians because he said there was no point as their minds had been made up for them. His appeal was to the Liberal, National Country Party, and National Party members in this House who were still capable of being swayed, and that is what I have attempted to do in opposing the Bill.

HON. ROBERT HETHERINGTON (South-East Metropolitan) [8.38 p.m.]: My introducing this Bill into this House has been an interesting and saddening learning experience for me. I have found out a great deal more about human nature and prejudice than I knew before. I have listened to the debate with great interest but with no great joy.

I want to take as my text, if I may have a text, a statement from John Stuart Mill, and I suggest members read Mill on liberty because he was the founder of liberalism and the liberal philosophy in Great Britain and we are very much in a liberal democracy in Mill's tradition. This quote is from his introduction to his essay on liberty written in 1859. It states—

> The sole end for which mankind are warranted individually or collectively in interfering with the liberty of action of any of their number is self protection.

People have argued that we have to protect people, by the law as it stands, from a change in attitudes. Again I agree with Mill who said we have to protect people's rights to express their attitudes, and we can never be sure that the opinion we are trying to stifle is wrong and that it is wrong to stifle it even if we are sure.

I will deal first with Mr Pendal's remarks because once again he misquoted me, as he did the other day on the radio.

Hon. P. G. Pendal: I thought it was a civilised debate on the radio.

Hon. ROBERT HETHERINGTON: I am trying to have a civilised debate here. The member got me wrong about my remarks on my dissatisfaction with the Bill. In my second reading speech I said—

> My Bill leaves in the code, even in the sections I am amending, inconsistencies and things that I find undesirable and offensive. I did not regard it as my province to remedy such other matters.

To illustrate the point I was making I will refer to a section of the Bill which deals with having carnal knowledge of people who are idiots or imbeciles. This is one of the clauses that I find quite offensive—the language is offensive—but I was advised when drawing up the Bill that at present there is no satisfactory alternative definition. The Mental Health Act which gives alternative definitions has not been proclaimed and I was advised I should leave this until later when other legislation to amend the Criminal Code in other ways is brought down by the Government.

There are inconsistencies in the Bill because I was trying to establish something that had been accepted by a majority of this House before; that is, a simple principle of justice to individuals.

I want to deal with some arguments put forward about tolerance and containment by Mr MacKinnon and Mr Pendal. The Hon. Graham MacKinnon referred to gambling, speeding—which I thought was drawing a pretty long bow—and prostitution, and Mr Pendal wanted to treat homosexuals like prostitutes. So do I. Individual prostitution is legal. As far as the individual actions are concerned, if a woman wants to prostitute herself quietly, discreetly, and privately, between two consenting adults it is a legal act. Furthermore, she can prostitute herself to a woman as well as to a man, which is more than a homosexual can do. The laws about prostitution and gambling are to do with the control of groups and public order. The laws about prostitution are about soliciting in the public street and the running of brothels.

The notion behind the idea of tolerance and containment of brothels and organised prostitution is to make sure that some control over it exists,

and if brothels become a public nuisance or a menace they can be shifted. If males move in rather than female madams they can be shifted, and organised prostitution can be controlled. In the same way the law on gambling is not terribly interested in gambling between two consenting adults in private. It has to do with organised gambling, and this is where the whole point of containment and control is debatable—are those aspects desirable and is this the best way to operate the law? Certainly this has no relation whatever to my Bill.

This Bill is to do with relieving individuals from the odium of a crime; that is, two individuals acting in private. I think it would be a good idea if we stuck to this, which is the nub of the whole thing. Individual male homosexuals whether we approve or disapprove of their activities should have the same rights in private as adult heterosexuals and adult female homosexuals. As far as I am concerned there is something to be grappled with here; it is logical that one should either criminalise lesbian activities or decriminalise male homosexual activities. I have followed the logic of my views in that I believe in individual liberty for people with whom I do not agree, but who are not necessarily harming others, and I believe that female and male homosexuals should be treated with the same justice.

This leads me to believe we should change the Criminal Code. We should amend it in order to allow male homosexuals in private to indulge in homosexual acts. We should not make homosexuality a crime because homosexuality is not learned behaviour. Here I will take issue with Mr Pendal when he quoted Dr West. I know Dr West is an able authority, sympathetic, and deserving of the whole range of comments Mr Pendal made about him. However, Dr West is not the last word and everything he says is not true. A great deal of debate is taking place about the causes of homosexuality. I have not argued, and I hope it was not thought that I had argued, that the majority of homosexuals have some inborn characteristic and that there is a congenital basis for homosexuality. I know that many young people emerge as homosexuals without necessarily having any pressures upon them. They are simply attracted to people of the same sex.

Other people become homosexuals through learnt behaviour; but those who say that the majority become homosexuals by learnt behaviour and the environment are not correct. It is a far more complex subject than that. We know that some people are homosexuals and since introducing this Bill I have discovered through reading Masters and Johnson that after therapy, some homosexuals become heterosexuals. Masters and Johnson have stated they can do nothing with people who are committed to their homosexuality and they do not try. Those people have to face the fact of their homosexuality. Of course, the problem that faces them is: do they just say to themselves that what they are doing is sinful; or do they indulge in sexual practices as heterosexuals? I do not believe the law should touch this problem and we should not have to look for a total view or a total inquiry into sexuality in order to establish this. This principle has been established.

I say to the Hon. John Williams and the Hon. Vic Ferry very carefully that the work of their committee was very valuable and established something which I accept and which my reading since has caused me to continue to accept; that is, homosexual practices between consenting adults should not be part of criminal law. Whatever else we may find, I do not think that will change. I suggest to those two members and to the Hon. Peter Wells that they give this Bill a second reading and debate the clauses. We could have some interesting debates. We could debate this Bill in this forum, and I point out to the Hon. Peter Wells that this is a forum for debate. I would not back away from it; I am prepared to debate this out because I believe wholeheartedly in the issue. If people do not accept my view, then they do not accept it. However, from the speeches I have heard I do not think I will have the opportunity to debate the Bill fully.

I do not accept the notion of containment and toleration under the law. I have read the debates which occurred at the time and I do not believe it was seriously argued by any serious person when the Wolfenden report was brought down that legalising homosexuality in Great Britain would solve the whole problem of blackmail. I was very careful in my second reading speech to say it would help solve the problem of blackmail, because the blackmailer would not have the final sanction of acting as a common informer and sending a person to gaol or having him on a criminal charge. I know that blackmail will continue, and I accept what Mr Ferry said about the attitude towards homosexuals in the community.

If we change the law in the next couple of weeks the feelings against homosexuals will stay; they will not change overnight. However, I do not agree with Mr Williams that we will have done nothing for homosexuals. We shall have given them some peace in one area; they will know they cannot be brought to court through private activities or through an accident of the police learning about their activities through other inquiry or because somebody informs on them. I think the Bill is well

worth having and I do not think it will then proclaim to the world that homosexuality is now okay and the same as heterosexuality. I do not believe that for one moment and I do not believe anyone in this House believes that.

I suggest to Mr Pendal that his arguments about the departure from the statistical norm of homosexuals, which means they are aberrant, could apply to left-handed people today. I think it is very dubious to argue from those kind of statistics. I point out that people did judge others on the fact that they departed from the norm and were left-handed. The very word "sinister" in our language comes from the latin word for left handed—bar sinister meaning the one that goes from left to right, the sinister person meaning the one who departed from the norm.

I do not regard a departure from the statistical norm as reason for keeping laws against practices by any particular group. I cannot accept that argument; I do not accept that argument; and, I think it is not a good argument.

I will not play around and say I am not making moral judgments. In introducing this Bill I am making a moral judgment. I believe a repressive law is immoral, and is not good law. As I said in an article not published in a paper, the free society has to be tolerant, it is a very fragile creature and it has to tolerate not only the things we think are all right. The day was when we would not tolerate people of divergent religious beliefs; we burned them. That was our tolerance. We now say that we are all tolerant and tolerate each other. We learnt that toleration in the United States because there was no dominant church and when they federated they had the choice of religious toleration or endless wars in which they had seen other religiously intolerant countries engaged.

We must learn to tolerate the things of which we disapprove. Many things are done in the sphere of sexual activity by heterosexuals which I regard as abhorrent, unpleasant, nasty, and immoral. However, I am not going to introduce a private member's Bill to try to ban them because I do not believe we should do that. Nor do I believe that we should judge one Bill on what might happen with steps 1 and 2. I take the point made by Mr MacKinnon about the scouts and I realise that, in fact, if we were an informed society we would not really worry about adult homosexuals with boy scouts because most adult homosexuals are not interested in boy scouts sexually. Many adult heterosexuals are, but not necessarily adult homosexuals. But, I realise that it is not acceptable in our present society. There is nothing in the legislation being brought down that talks about equal opportunity or tolerance or equal rights for homosexuals.

The equal rights legislation will refer to sex but not sexual preferences. This Bill makes no provision for education about homosexuality in schools. I am informed—and perhaps Mr Pendal and Mr Wells might worry about this—that some schools in their sex education classes teach that there is such a thing as homosexuality. I believe this should be taught. That does not mean I am suggesting it is, or that I am holding it up to be a desirable alternative lifestyle. As a matter of fact I am one of those old-fashioned people who, much as I like individual homosexuals, am not prepared to give homosexuals equality of esteem. But I am not going to say we should not pass this Bill because the next step and the next step will be this and that. We can point to many things which happen in America because it is a litigious society and far different from ours. To argue in this instance on the basis of what has happened in America is not to produce a very valid argument.

I was saddened by the speech by Mr Williams. I had hoped—and I had not understood what he said earlier—that he would, in fact, support the Bill. I had believed that the logic of his own position as chairman of a previous commission of inquiry would put him on the side of the people who believe homosexual acts should not be part of the criminal law.

I refer to two points he raised: One of them is not terribly germane to the Bill, but I refer to it as he raised the point. The other is the letter from David Myers who is the President of the Campaign Against Moral Persecution. Mr Myers is still more or less a friend of mine, although our conversations are a little terse when we speak because of the letter he sent to Liberal members. I think it was a betrayal of his own cause. However, that is for him to decide and I understand what he is saying. He seeks a situation where there will be equality between homosexuals and heterosexuals.

My Bill does not give that. I am interested in this, because if David Myers gave evidence to the Honorary Royal Commission, I presume that then, as now, he believed that the age of consent for homosexuals should be 16; yet the commission brought down a recommendation that it should be 18. That is very interesting. In 1977, two members who were on the commission voted for 16 as the age of consent. Now I am bringing down a Bill in line with their recommendations; but Mr Williams wants a total inquiry and Mr Ferry wants to wait. That is sad.

We cannot have a total inquiry. Certainly I have made further inquiries into sexuality. I went to the Hobart conference on rape in 1980, at my

own expense, in order to hear what was said. I have been active in promoting legislation in line with the recommendations of that conference. I am hoping that before the year is out, we may have such legislation, but I do not believe that we can do it all in one lump. If we do, we will have legislation that is so indigestible that even if we could get it drawn up within five years, we could not have it passed.

Next I will look at incest. It is not that I want to decriminalise it; it is a serious problem which needs new legislation, but I am not sure what kind of legislation is needed. That is one of the problems being faced.

Hon. P. G. Pendal: That is what they are now recommending in the UK.

Hon. ROBERT HETHERINGTON: A committee in the United Kingdom has recommended that incest between adult brothers and sisters—adult siblings—should be allowed. It argued that sometimes adult brothers and sisters are separated, and they do not know they are siblings. They can meet, fall in love, form a sexual relationship, and they are not doing anybody any harm. I am not sure that I agree with that.

Several members interjected.

Hon. ROBERT HETHERINGTON: As the Hon. John Williams said, I cannot disagree without hearing all the evidence.

I would not want to touch incest at present, because I must do a vast amount of reading. I am prepared to consider legislation on rape, because I have done a vast amount of reading on that. I am prepared to bring down a Bill on homosexuality, because I have done a vast amount of reading on that, and I believe that the thrust of my Bill is legally desirable and morally right.

When I say "morally right", I mean from the point of view of liberal humanistic principles—and I am a liberal humanist. It is also morally right from the point of view of Christian humanistic principles, and I believe it is morally right from the point of view of any Christian principles based on the maxim, "Love the lord thy God, and thy neighbour as thyself". If homosexuals are our neighbours, and we love them and they love us, they will not take advantage of us because they are friendly. That does not apply to all of them. A percentage of homosexuals are untrustworthy, nasty, and aggressive, as a percentage of heterosexuals are untrustworthy, nasty, and aggressive.

Anyway, I moved away from talking about David Myers. The Campaign Against Moral Persecution takes the view that 16 years should be the age of consent, and if that cannot be legislated for, they want nothing. That is a foolish attitude, because it is better to reform slowly. One of the pressures I have received since introducing my Bill is in regard to putting 18 as the age of consent. Originally I wanted 16, but I believe that we should look at the ages of consent for homosexuals and heterosexuals. We should consider the whole business of the age of consent; so I am prepared to take this gentle step, and then go on to examine things further.

I will not stop here. As long as I am in the Parliament, I will be interested in reforming the law wherever I can make a contribution.

Hon. Neil Oliver: Like all of us.

Hon. ROBERT HETHERINGTON: Not like all of us, but like most of us. I do not think that is true of all of us. Let us not fool ourselves. We are not all marvellous. I am not fooling myself that I am marvellous; but I have certain interests which I will follow.

I do not accept the statement by Mr Williams that 99 per cent or 95 per cent of people are opposed to the Bill. I do not know what the percentage is; but our community has a great deal of tolerance to homosexuality now. I have received many letters—organised letters of protest—and many of them have just said, "I strongly object to your Bill because the *Bible* says . . . ." When I met the people on the steps of this Parliament I said, "All right, the Bible says, and you believe, that homosexuality is a sin. It also says that other things are sins. Does that mean they should be part of the criminal law?"

Some people like Mr MacKinnon have said that the law should be there as an example of what we stand for.

Hon. G. C. MacKinnon: I did not really say that.

Hon. ROBERT HETHERINGTON: I am sorry if I misquoted the honourable member. I quoted him very gently because he was there and he could correct me. I retract my statement. However, some people said just that—that we need the law there as a standard.

Hon. G. C. MacKinnon: I said I did not object to a law which you could not totally enforce. It is a philosophical approach which you have misconstrued.

Hon. ROBERT HETHERINGTON: I argue that this is all right for groups, but not for individuals. We will differ on that one. I am sorry that I added Mr MacKinnon's name to that comment about the people who wanted the criminal law to stand as a moral guideline.

If we were to use the law as a moral guideline, we should logically include lesbians. One of the

things that interests me is that female homosexuality has been legal all the time, but people do not seem to worry about it. If we changed the law on male homosexuality, people would still not be worried about it. Many young people would not know that the law had been changed.

The lack of knowledge of people about the law is amazing. During the last election campaign I spoke to a minister of religion who was opposing the Labor Party platform. When I went around to see him, we had a friendly debate and agreed to differ. When I told him that female homosexuality was not illegal, he was surprised. I give him full marks for consistency, because he said, "We will have to campaign to get that done". He can campaign—that is his right—but I hope he does not succeed. Certainly we should change the law as far as homosexuals are concerned.

I should take up Mr Williams' challenge about the matters we must consider in relation to the six questions asked on page 44 of the commission's report. Question No. 6 is as follows—

> (6) Does the removal of homosexuality as an offence guarantee on a defacto basis, the above points?

The abolition of the law as it stands will not guarantee anything very much, except that people will not go to gaol or be taken before the courts for activities in private. That is all that will be guaranteed. I am sure that it will not guarantee that homosexuals will be accepted, or that their lifestyle will be accepted. I do not believe that will occur; but some people seem to fear it. Indeed, homosexuals will still suffer from the same prejudices.

Mr Pendal was a bit bemused about one of the questions, which reads as follows—

> (1) Where a bi-sexual partner of a marriage consorts with and has sexual intercourse with a partner of the same gender, is this then sufficient grounds for divorce in a Court of Law on the plea of adultery?

Mr Berinson pointed out that we do not need to ask that question, because although homosexual relations are likely to break up marriages, divorces are not granted on the ground of adultery any more. Mr Berinson did not argue anything more than that.

Mr Berinson also argued that in Leviticus it says that adulterers should be put to death. If we are to quote from Leviticus, adultery as well as homosexuality should be part of the criminal law. Perhaps we should be consistent and say that we really should not make any of these things part of the law.

The second question in the commission's report is as follows—

> (2) Should couples living together in a homosexual partnership, be entitled to the same privileges as regards tax allowances, home loans, etc., as the married heterosexual couple?

My answer is "No", but I may be wrong. Certainly, I do not want that one sorted out before my Bill is passed. It is something we can think about. I believe that the privileges of tax allowances on home loans were based on the fact that heterosexual couples often bring up kids, and so we are thinking about families. That is quite a good basis for providing tax allowances. Perhaps we should reform our idea of tax allowances, but this is a very complex question. I have no answer but a prejudiced one: No, as far as I am concerned, this is irrelevant to the Bill.

On the question of whether homosexuals should be allowed to adopt children, my gut reaction is "No". It would be a long time before we were prepared to legislate for that, if ever. That can wait, because we do not have to answer that with a "Yes" or "No" before deciding that homosexuals should be allowed to practise their activities in private legally.

The next question is as follows—

> (4) In emergency situations, as in consent for anaesthetic for operations, the rights to visit restricted to next of kin, can those living as homosexual partners be entitled to the same privileges?

To that, my answer clearly would be "Yes", and I believe that we should change the law. In fact, I am working on a Bill now to give anybody the right to nominate another person as his or her personal representative, whether they be male or female, homosexual or heterosexual partners, or nonsexual partners. I am quite prepared to debate that question and see what people think about it.

In relation to the question of whether homosexual partners should make wills, I believe they should be able to do so.

Although I am prepared to answer some of the questions and put the rest in the "too hard" basket, I do not think we must wait for the answers to be given before we legalise the activities of homosexuals. Let us take away from them the sword of Damocles which is always hanging over their heads if vicious policemen want to use it. I know Mr MacKinnon will tell me that very few policemen have been vicious lately, and I accept that.

Hon. G. C. MacKinnon: I do not think the sword of Damocles really hangs to the extent you imagine.

Hon. ROBERT HETHERINGTON: This is where Mr MacKinnon and I disagree. I believe that the sword is much more "Damocles-ian" than he thinks.

Hon. G. C. MacKinnon: All I know is that a considerable number of people are quite open about homosexuality, and they lead quite happy lives.

Hon. ROBERT HETHERINGTON: I know one couple that my wife said were not homosexuals at all, but just a married couple. They just lived a quite happy life, and were quite open about it. I do not know whether they are "open" or "closed"; they are just there.

There is always the possibility that this can be done and that this should be withdrawn.

Hon. G. C. MacKinnon: You are talking about a matter of public opinion.

Hon. ROBERT HETHERINGTON: I am not arguing about bias, and I do agree with the member about bias. I know that he personally is one of the unbiased people on this issue.

Hon. G. C. MacKinnon: I try to be; I am not really.

Hon. ROBERT HETHERINGTON: The member is pretty good for an aged heterosexual such as I am. We belong to the same class, there.

We do not want the possibility of legal stigma; this must be removed.

The problems raised by the people who oppose this Bill are not real problems. As members will realise, the Law Society is quite clear on where it stands. It has believed and does believe now that the law should be changed. The lawyers believe the law should be changed, and I am in agreement with the lawyers.

The other thing is the matter of public opinion. It is true that there has been a great deal of protest. I have a great pile of letters, many of them repeating the same argument, many of them repeating no argument, such as, "I disapprove of your Bill because it is against the law of God", and, "I disapprove of your Bill. I do not think the police should have any part in policing people's private activities and I do believe heterosexual activity in public should be banned as being indecent". I wrote back to say that I agreed and that the person should be supporting the Bill, not opposing it. On the evidence before me, I do not believe that the opposition represents a majority. If I did believe it, I would still try to get this Bill passed, because it is a principle that is basic to free society where we have most of the other principles basic to a free society.

We have this law, and it stands here not as anything that does much good except to frighten some homosexuals, to worry some young boys who are homosexual and to drive them to suicide. It is a symbol of our intolerance and we too have not reached the stage of being a free society.

I suggest to honourable members that if they take seriously the liberal principles that are common to both our parties, they should not think about their own prejudices. It is not a matter of whether we find homosexual activities repulsive or immoral; it is a matter of whether, in this instance, consenting adults, as long as they do not impose themselves outside, have the freedom of choice to do something we do not approve of, and have the freedom to choose a different morality.

Martin Luther fought for that right and Calvin fought for that right for himself. Christian churches have fought for that right, yet many of them now are trying to deny a group of people that same right, because they say that God has forbidden this. What God has forbidden or not forbidden is something that people have to face up to themselves. It is not the role of the criminal law to intervene in victimless crimes. I do not want people to think I am backing away from the issue, or being apologetic; my stand is not one of principle.

If this Bill is defeated now, I will be very sad; but I will fight for a similar Bill to be introduced in the future, and as long as I am in this Parliament I will not be happy until we have taken out of the Criminal Code the laws against homosexuality. That does not mean I like it. I have all the prejudices of other people and I could shock some of my homosexual friends if I told them what I thought about their practices. If we are to be true to our liberal principles and if we are to be a liberal democracy, we need to accept that minorities must have rights, and not that the majority should decide the morality of the rest.

De Tocqueville talked about the tyranny of the majority, and as long as this law stays on the Statute book it is symbolic of the tyranny of the majority and it should be removed; therefore I commend my Bill to the House. It should receive a second reading. It might not, but it should. I am prepared to argue it clause by clause and inch by inch, publicly or privately with anyone.

Question put and a division taken with the following result—

Ayes 15

Hon. J. M. Berinson	Hon. Garry Kelly
Hon. J. M. Brown	Hon. A. A. Lewis
Hon. D. K. Dans	Hon. Margaret McAleer
Hon. Peter Dowding	Hon. Mark Nevill
Hon. Graham Edwards	Hon. S. M. Piantadosi
Hon. Lyla Elliott	Hon. Tom Stephens
Hon. Kay Hallahan	Hon. Fred McKenzie
Hon. Robert Hetherington	*(Teller)*

Noes 18

Hon. W. G. Atkinson	Hon. I. G. Medcalf
Hon. C. J. Bell	Hon. N. F. Moore
Hon. V. J. Ferry	Hon. Neil Oliver
Hon. H. W. Gayfer	Hon. P. G. Pendal
Hon. Tom Knight	Hon. W. N. Stretch
Hon. P. H. Lockyer	Hon. P. H. Wells
Hon. G. C. MacKinnon	Hon. John Williams
Hon. G. E. Masters	Hon. D. J. Wordsworth
Hon. Tom McNeil	Hon. I. G. Pratt
	(Teller)

Question thus negatived.

Bill defeated.

BUILDERS' REGISTRATION AMENDMENT BILL 1984

Second Reading

Debate resumed from 1 May.

HON. NEIL OLIVER (West) [9.26 p.m.]: While I understand the Minister's intentions with this legislation, I believe he has been misguided by his department and not been properly informed. Although the Minister's sentiments are the correct ones, the Bill is not in accord with what he actually wants to achieve.

The Bill will not do what the Minister wants it to do, because if a builder has a liquidity problem—just as any business can have a liquidity problem—this could well lead to a complaint being made to the Builders' Registration Board. However, the provisions of this Bill would make it unwise for the board to intervene at that time. The Minister, being a qualified lawyer, would understand that.

This is consumer legislation, but I do not think it is oriented towards the consumer. The Minister should re-examine the Bill in detail and then introduce a new Bill. The Minister should not look uninterested.

Hon. Peter Dowding: I am listening with bated breath.

Hon. NEIL OLIVER: I do not know how the board could examine the capacity of a builder to meet his commitments at the threshold point as they fall due. That is why the Minister should be interested in my remarks.

I am rather doubtful about how it will be implemented, because with the proposal put forward in this legislation, how can one arrive at a satisfactory situation? I suggest that the Minister might look at the New South Wales, Victorian, and South Australian legislation. I would be interested to know whether the Minister has examined the legislation in those States.

I ask the reason this legislation is on the Notice Paper at this time, because we read in the newspapers only last week that the Government has planned a reorganisation of the registration systems in this State, and the Government has decided to do that.

Hon. Peter Dowding: No it did not.

Hon. NEIL OLIVER: I understood that from my reading of the paper.

Hon. Peter Dowding: Don't believe everything you read in the paper.

Hon. NEIL OLIVER: The Government has a lot of advisers and public relations people whose job it is to make certain that what they have published in the paper is correct. I read that this reorganisation would come under the umbrella of consumer affairs. I am not critical about that, I accept that it will occur. The point I make with the Minister is whether the Builders' Registration Board has agreed to that. I would like the Minister to tell me whether he has the full accordance of the Builders' Registration Board.

Hon. Peter Dowding: Yes I have.

Hon. NEIL OLIVER: Then I question on what date was it received?

I would like the Minister to refer to the situation in the United Kingdom where there is excellent consumer protection legislation designed to protect consumers totally. The Minister in his capacity as Minister for Consumer Affairs should also look at legislation in the United States of America.

It appears to me that the amendments contained in this Bill are a move in the direction of the New South Wales legislation. Three years ago *The Australian Financial Review* produced an article about this subject. It was not so much consumer orientated; bureaucracy was the central theme. I hope the Minister has a copy of that article and has examined it.

I would like to draw the attention of the House to the fact that in Victoria if one purchases a new home it is registered under the home builders' liability scheme. That is the situation if one purchases a home which has been built since October 1984. In that case one will have the protection of that comprehensive scheme for six years.

The Minister being a legal person would know that when a person goes to settlement on a property, legal people are involved. It is the bread and butter of legal practice.

When one goes to settlement one looks to search the title and mortgage and when that title is passed across the table it is unencumbered. In Victoria another piece of paper is introduced by the home builders' liability fund or the Master Builders Association Limited. Since 1974 no solicitor in Victoria has put a property up for settlement unless that document is included with it; therefore valuers and lending authorities tend to place more emphasis upon this insurance scheme.

I agree with every action the Minister intends to pursue in this way. The protection provided by that guarantee applies not only to the purchaser at the first stage; it is an ongoing situation. It is transferable to further purchasers. I believe that is excellent and I hope the Minister has examined that legislation.

I also hope the Minister when replying will give me a reasonable answer, because otherwise it would appear to me the Minister is purely rubber stamping his departmental proposal. I hope he will be prepared to be part and parcel of some new ideas. I imagine he travels around Australia and meets with his opposite numbers to discuss these proposals.

In conclusion I draw the attention of members to the fact that in the United Kingdom the National Home Builders Council has now completed over 10 million new houses under a guarantee scheme which involved 99 per cent of the houses built in the United Kingdom.

The scheme came into effect under a Labor Government, with its total support. This council is an independent non-political, non-profit making body which has been approved by successive Governments and has the approval of building societies, local government authorities, consumer associations, owner-occupiers, building employees, organisations, and trade unions. The council has set standards for new houses and endeavours to generally raise standards. It intends to ensure that no purchaser of a new house will be materially out of pocket because of defects.

I commend the Minister for his legislation. I support it, but I wish him to clear up two points for me: I wish to know whether the proposal he is putting forward has the approval of the Builders' Registration Board, and I would like to know whether he is sufficiently convinced that the board has the expertise to make a judgment at any time. I ask this because of the number of complaints the Builders' Registration Board may receive. I would like to know whether it will have the expertise to decide in the interests of the consumer, especially if a builder does not have the ability to meet his accounts as they fall due.

HON. TOM KNIGHT (South) [9.43 p.m.]: I make it clear from the outset that I am totally opposed to this Bill. The Minister stated that the Bill will entitle the Builders' Registration Board to take into account at the time of application for registration and subsequently, in relation to the revocation of that registration, the material and financial resources available to a builder to meet his financial obligations as and when they become due.

Over the years builders have always had to stand up to some sort of scrutiny. I was in the building trade for some 24 years—

Hon. S.M. Piantadosi: When were you in liquidation?

Hon. TOM KNIGHT: —and financial references were necessary at most times when jobs were carried out. Builders are asked for bank references or bank drafts as proof of financial standing. I have done work for big companies which have required a bank draft to show that I have the financial standing to pick up the job. What has been done with this legislation is nothing new.

This legislation will make it illegal for someone to become a builder unless he can prove his financial standing. This is taking away the right and privilege of people to go into business.

Over the years it has been left to builders to prove to the people for whom they are working that they can carry out the job assigned to them. Under this Bill young people will be exempted from going into business. The second reading speech continues—

> The proposal has the support of the Builders' Registration Board.

Not to my knowledge. When I first heard that this Bill was to be introduced I checked with the Builders' Registration Board and I found that it had no knowledge of it. It continues—

> The board will be entitled at the time of application to consider the financial resources of the builder particularly in circumstances where a builder who has recently failed seeks to recommence operations under a new corporate structure, such as a $2 company.

That second part of the sentence refers to when they are in liquidation. The first part says, "Particularly in circumstances", which refers to the fact that when a young builder is seeking registration he will have to prove the same thing.

I look at it on the basis that as builders have operated for years and have stayed in business for years, I believe we are taking away freedom of choice and the opportunity of a free and private enterprise from those people. This country has been built on that philosophy. I am surprised that

the Opposition is not opposing this Bill more violently because it brings in socialism and it will kill private enterprise. Young people will never have the chance of starting off in business for themselves.

A young builder, with limited capital, will find it hard to operate. Secondly, a young person having served his apprenticeship and having the capacity as a person, a tradesman, and a builder, and even having passed his builders' registration exams, will never be able to save enough money from his weekly wages, after paying his living costs, to have between $30 000 to $50 000 behind him to go into business.

Hon. Peter Dowding: It does not do that, because it does not require you to demonstrate a particular level of financial resources. Only the level that your obligations may require.

Hon. TOM KNIGHT: Yes, when they come due. How can a person sit down now and say that he will be able to meet his financial obligations when they are due if he has $50 000 in the bank today and his financial obligations will come due in six months' time? How can anyone sit down now and say what his financial obligations will be in six or 12 months' time? For someone seeking builders' registration, which will be his livelihood probably for the rest of his life, that is a long time to look ahead and work out his finance.

I look at it on the basis that a young person also has an obligation to purchase a car, and if he marries he also has the problem of purchasing a block of land, his own home, furniture, and all the other subsidiary things that are required at that time in his life. People with the opportunity, the ambition, and initiative have always been able to take that chance. When a building is priced, a profit of margin is costed into the building and at the end of the construction it will be found whether a builder is making a go of it or not. The fact is that the monthly accounts come in after the work is done and if a builder organises his business properly—a young builder, having done his builders' registration exams knows how to handle his business—and he looks to the future, he does not need to have the money in the bank to organise his job because by the time his payments become due the progress payments have been made to him.

This Bill will take away the right of a young person to go into business. I am surprised this sort of legislation has been introduced. It appears to be a totally acceptable two-page Bill, yet it is taking away all the principles that we, on this side of the House, have lived up to as the philosophy and backbone of what we preach—free enterprise, freedom of choice, and the right of the individual. This is all being taken away. The second reading speech states—

> Conversely, the board will be entitled to cancel registration when it becomes apparent a builder is insolvent and unable to meet his financial commitments.

That is understandable. When a builder is unable to meet his financial commitments he is out of business, anyway. If he ceases to become a practising builder, and he has this sort of commitment hanging over his head, he is automatically excluded from builders' registration.

The board will work on the basis that a young builder with a $2 company will not have the right to operate. Someone with $200 000 in the bank will have the right to operate and that person need not be a successful builder. However, the young person who starts off a $2 company with no financial backing will not be given the opportunity to prove he has the capability and capacity to become successful. I have seen a lot of $2 companies become successful businesses. I have also seen businesses with $200 000 in the bank and the only difference between that business and the $2 company is that it takes the former that much longer to go broke. Where is the difference? The difference is that we are taking away the right of young people and the right of the individual to move into an industry. In other words, a person who starts off as a carpenter today will die a carpenter in 50 or 60 years' time because no-one will give him the opportunity to go into business unless he wins lotteries.

If a person has no financial backing or initiative to move into business he will be penalised. The opportunity might arise at the age of 40, when he has paid off his $40 000 building society loan—by the time it is paid off it will have cost him $120 000—and this Bill will eliminate him from ever being able to mortgage his house with the bank to go into business. This Bill is totally unacceptable. With due respect, Mr Minister, I believe that not enough thought has gone into it.

I have been involved in the building industry since I was 14 and I know what happens in it. I have seen young people go into the building business without two bob to bless themselves with and today they are successful builders. However, under this Bill, young people will not be given the opportunity to go into business. Members on the other side of the House would like to think that their sons would have the opportunity to go into business and be successful businessmen if the opportunity arose, and that is the sort of thing this Bill will take away from the people I support.

This Bill seems completely innocuous; but it is almost as dangerous as the industrial relations

legislation. It is taking away the rights of people. We will kill the builders of the future; we will not have them unless dad was a successful builder and his son has taken over the business. Tom Brown who lives on the corner, who comes from an ordinary working class family, who turns out to be a good tradesman, and who has initiative, will not have the chance to go into business. That is what upsets me.

I totally oppose the Bill. I am surprised at some of the speeches of members who have supported the Bill because I am sure they have not read into it the connotations that I see which will affect the future of the building industry and the future of the young people in this State.

HON. PETER DOWDING (North—Minister for Consumer Affairs) [9.53 p.m.]: I thank members for their comments and I can assure the Hon. Tom Knight that his perception of this Bill is incorrect, despite his experience in the industry. I think he will agree with me that the Builders' Registration Board is by and large composed of people representing the major sections of the building industry.

Hon. Tom Knight: I agree with you, but they are tied into the Bill.

Hon. PETER DOWDING: No, they are not tied into it at all. The Builders' Registration Board does represent the industry and it has given its unequivocal support for this Bill.

Hon. Tom Knight: It will cover a closed shop industry from now on.

Hon. PETER DOWDING: I will seek to persuade the Hon. Tom Knight. I hope he will listen to me because I listened to his comments.

It would be an error to assume that the results were as the Hon. Tom Knight predicted. I make it quite clear that if there were any impracticalities in the administration of this Bill, if it becomes an Act and a hint of what the Hon. Tom Knight was concerned about actually occurred, and if there were risks involved in the wording of this Bill, then the Builders' Registration Board would be the first to seek an amendment and the Government would give it its support.

Hon. Tom Knight: If that were the case I would be seeking your support.

Hon. PETER DOWDING: If it is, I am sure the Hon. Tom Knight will be lobbying me for my support and he will get it. That is not the intention and I am sure the Hon. Tom Knight understands that industry is concerned about some aspects of the building industry. To meet some of those concerns this amendment has been introduced.

The first question I address concerns the Builders' Registration Board's attitude to this Bill. It should be explained to honourable members because some members have suggested the board is not behind the Government.

Hon. Tom Knight: They said they had not heard about it.

Hon. PETER DOWDING: Let us get it straight. The board, as it was constituted, had discussed the Bill and I understand had given it its full support. There was a change in the constitution of some members of the board and when the Bill was introduced those members had not had it drawn to their attention. Why the secretary of the board had not drawn it to their attention is not a matter that comes within my province.

Hon. I. G. Pratt: What was the time span there?

Hon. PETER DOWDING: I cannot answer that, but when some members expressed concern that they had not any personal knowledge of the Bill I met with them.

At that stage the Bill had been introduced into the House. I had a meeting with them and at the end of that meeting they deliberated in my absence. Subsequent to that I was given a letter from the Builders' Registration Board confirming that the board resolved to support this Bill. The Hon. Tom Knight should know that the board, which represents a variety of interests of the industry concerned, supports this legislation.

It is appropriate now to look at the context of what the board already does. The board, at the present time, is engaged in the issue of approvals for registration. That is an event which can occur at a variety of times. It can occur with the tradesman who wants to move into the area of being a builder. At that point the board must look at the man or woman's age, character, competency, training, and experience. All of those are matters which have to be considered. I am not doing this in detail because I think it is appropriate I deal with it further in the Committee stage. I hope the Hon. Tom Knight will understand that I am not trying to gloss over these things—I am making broad reference to them.

What is being suggested now is that the board "may" and not "shall" address these requirements. That is, these representatives of industry—as the board is largely constituted—may if they think it is appropriate—not on every occasion—have regard to the resources of the applicant in relation to his obligations. That does not mean the man or woman has to show he or she has a very substantial bank balance.

Hon. Tom Knight: It indicates it in section 9A of the amended Act.

Hon. PETER DOWDING: Is the Hon. Tom Knight referring to the section 9A or clause 9?

Hon. Tom Knight: I am referring to clause 3 which amends section 9A.

Hon. PETER DOWDING: It says, "may require".

Hon. Tom Knight: But that becomes "will".

Hon. PETER DOWDING: It does not become "will".

Hon. Tom Knight: You know it does and I know it does.

Hon. PETER DOWDING: With respect to the Hon. Tom Knight, it cannot become "will".

Hon. Tom Knight: It becomes "does" then.

Hon. PETER DOWDING: It is a very marked distinction from the existing provision of the section which has a set of mandatory requirements. The Builders' Registration Board must look at the age, experience, qualifications, and capacity in terms of training and the like. One may look at resources.

Hon. Tom Knight: You may refuse an application, and you may refuse to register. I am aware of all that, but what will happen? I think I will be appealing to you.

Hon. PETER DOWDING: I would welcome that.

The subject of the analysis is simply the capacity to meet those obligations when they fall due. That does not mean one must have a bank balance equal to the debts one is likely to incur; it means one must have a programme which is likely to work. It is therefore quite untrue to say that when a young man comes in and says he wants to build houses, the board says more than, "We would like to know more about your financial position".

Hon. Tom Knight: That would almost necessitate costing out every builder's job and being his tally clerk.

Hon. PETER DOWDING: No, because the board does not do this each time the builder does a job; it does it at the time of the issue of a licence. It does not do it week by week or month by month. It looks at the applicant who wishes to enter this industry; it looks at certain requirements. It would like to know something about his financial position and how he will deal with his obligations. If the young man says, "My first job will be Observation City; I am going into debt to the tune of $20 million to get this up," the board may well say, "Hang on a second, how are you going to meet your obligations?" That might be an appropriate time for it to say that.

But what is more likely is that this Bill is directed at the failed builder, the man who has failed in the past and who has a track record which the board knows means he will not manage. Take the case of a nominee of a $2 company saying he wants a licence. What can the board do now?

Hon. Tom Knight: I was talking about the young person we will put out of business.

Hon. PETER DOWDING: That is not the concern of the board at this stage.

Hon. Tom Knight: It should be the concern.

Hon. PETER DOWDING: It is not concerned about that because there will be no change in the practice.

Hon. Tom Knight: You said in the Bill—okay, I do not agree with it.

Hon. PETER DOWDING: The Interpretation Act suggests we should be looking at the Minister's comments in *Hansard* to interpret words which are equivocal.

Hon. Tom Knight: That will save you a lot of worries.

Hon. PETER DOWDING: Where there is some doubt as to the interpretation one can look in *Hansard* to see what I have said. There is no way in which the board can prevent the person with a bad financial track record who comes back for another go. He cannot be excluded unless this amendment is accepted. That is what the amendment is directed at; it is not directed at the traditional mechanism for people entering the industry.

That was discussed with the board. That was the philosophy the board conveyed to me, and it is the board which will be operating this provision. That is the way I expect it to operate.

Hon. Tom Knight: I only hope you are right.

Hon. PETER DOWDING: That is all I can say to the Hon. Tom Knight in relation to that.

There is something more important; that is, it is not simply left to the board to make the final judgment. The whole process of the appeal system has been altered so that appeals are all by way of rehearing. In other words—and I think this may allay some of the concerns of the Hon. Tom Knight—it is not simply the case that the board takes a major role and it is up to the appellant to demonstrate that the board's decision was wrong. When it comes before the magistrate it is heard by way of rehearing. In other words, it is a review of the board's decision—not simply whether it was right or wrong, but whether in all the circumstances the magistrate wants to come to the same conclusion or to another conclusion.

If members are not familiar with the difference between an appeal of the sort which exists now

and an appeal by way of rehearing, may I say that it is much easier for the applicant to put his point of view and for it to be reconsidered by way of rehearing, and that is the protection which has been built into this piece of legislation. Even if the board were to go off the rails, or to take a view of its obligations different from that expressed by me, and by the board to me and by me to the board, it would still go to appeal by way of rehearing so that the magistrate could make a fair judgment on the matter.

Hon. D. J. Wordsworth: Is the appeal *in camera*? In other words, do the findings become public?

Hon. PETER DOWDING: Well, it is an appeal which goes to the magistrate under section 14. To that extent I guess it is.

The other area of concern that the board has expressed in the past—it was certainly expressed very strongly last time—is that this power ought to exist as justification for cancellation. Without that it is not only the consumers who will not be protected, but the suppliers as well.

Hon. Tom Knight: The Hon. Neil Oliver said—and I also know this indemnity exists—

Hon. PETER DOWDING: It will protect the suppliers, because it means that there is a finite point at which people will not be able to continue to trade to the detriment of the industry.

Hon. Tom Knight: That is the position now. You can deregister any builder at the present stage.

Hon. PETER DOWDING: Under what provision?

Hon. Tom Knight: Under his financial situation, or for faulty workmanship.

Hon. PETER DOWDING: For faulty workmanship one can; but unless one has some power to look at the financial resources one does not have that option.

Hon. Neil Oliver: Could you elaborate on how the supplier would be protected?

Hon. PETER DOWDING: Before I go on to that, in reply to the Hon. Tom Knight, one of the areas of concern is that the provision of clause 7 does not exist in the Act at the present time. This only applies in the case of fraud or misrepresentation, conviction for a crime, or negligence or incompetence in connection with performance, and so on. The board does not have the power to cancel or to suspend the licence under the present legislation.

Hon. Tom Knight: Or financial problems?

Hon. PETER DOWDING: Yes.

Hon. Tom Knight: Most of the traders do that anyway.

Hon. PETER DOWDING: There are plenty of traders who get caught.

Hon. Tom Knight: And plenty of builders who get caught.

Hon. PETER DOWDING: Of course there are. It is a very competitive industry.

Hon. Tom Knight: I agree with you.

Hon. PETER DOWDING: What we are saying is that this piece of legislation, as far as the board is concerned—and I think the member will agree it is a responsible board—

Hon Tom Knight: I have always supported them.

Hon. PETER DOWDING: It represents all sections of the industry. It will not take this power as a mandatory power; it is only an opportunity. I believe and the Government believes it will exercise this power in the interests of the industry as a whole, and that includes young people coming into the industry.

Hon. Tom Knight: That is my concern.

Hon. PETER DOWDING: I have been very impressed with the support that the industry gives to the young people coming into it. I was at the Master Builders' Association presentation which the Hon. Gordon Masters regrettably missed on Monday night. The master builders were very supportive of the young apprentices who had completed the apprenticeship scheme. In fact they were giving direct encouragement to these young men when they had had some experience and were moving into the area of becoming registered under the Builders' Registration Act.

The board itself is representative of the industry which supports the very process the member has expressed concern about. The board will not use its mandatory powers in order to inhibit that process; it will use those powers in the area specifically where it has perceived there is a problem.

Hon. Tom Knight: It does not say that in the Bill.

Hon. PETER DOWDING: It does not direct them how to use those powers.

Hon. Tom Knight: We discussed the Interpretation Bill the other day. Following that, it would eliminate young people in many cases, and that is what worries me.

Hon. PETER DOWDING: The Interpretation Bill did not say that at all. It is not a mandatory power; it simply gives the board the opportunity to bring in that provision.

The PRESIDENT: Order! It has become apparent that the Hon. Tom Knight has not finished his speech and he is endeavouring to do so now.

Hon. PETER DOWDING: I cannot really say more than this. It is not obligatory on the board to exercise that power. If it does exercise it, it has obviously to be exercised in a way which protects the interests of the trade, and that is what the board is established for. There is nothing in the Bill, and nothing has been said by me, which would steer the board away from operating within those parameters. It does not have to avail itself of these powers, and if it does it may apply them or not as the case may be.

Hon. Neil Oliver: How does it protect the supplier?

Hon. PETER DOWDING: I cannot pursue that matter other than by repeating what I have just said. I think it will be appropriate to pursue that during the Committee stage.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (the Hon. Lyla Elliott) in the Chair; the Hon. Peter Dowding (Minister for Consumer Affairs) in charge of the Bill.

Clause 1: Short title and citation—

Hon. I. G. PRATT: I rise on the title of the Bill because I believe, having listened to the Minister's second reading reply, what we should be debating is the "Builders' Registration Bill 1984 Minister's Second Reading Interpretation Bill". In actual fact what he has been telling us is going to happen is not in the Bill, it is in the second reading speech. He raised this subject himself. He said we have had the Interpretation Bill, and it is what is stated in the second reading speech which counts.

The Minister also said that the Bill does not direct the board how to use its powers. If we pass the Bill tonight we will give the board power with no direction how to use it. In some areas it must consider competence. To me, this Bill is much too vague and loose. It does not really address itself to the problem which the Minister told us he is trying to solve.

It addresses itself to the whole building industry. Once it has addressed the whole building industry, it throws the word "may" into it, so that it will apply to some, but not to others.

I ask the Minister to be specific as to how the levels of financial obligation will be laid down by the board under clause 3. The Minister's attitude to the Bill, and his attitude to Parliament, are most unsatisfactory.

Hon. PETER DOWDING: I am sorry the Hon. Ian Pratt finds my attitude unsatisfactory. I am sorry he has also clearly misunderstood what I have been talking about in relation to the Interpretation Bill. What I said was that if members are arguing that there is ambiguity in the plain meaning of the words in the Bill, then under the provisions of the Interpretation Bill those seeking to interpret the proposed Act may make reference to debates in the House; hence they would see quite clearly that the Government did not intend that this should be a mandatory requirement that the board should consider the financial resources of every applicant for registration as a builder.

Fortunately, however, the Bill does not contain ambiguous words. The words are clear and unequivocal. They clearly and unequivocally leave it to the discretion of the board and to the board alone as to whether it will call into question the financial resources of the applicant. It is appropriate for that discretion to lie with the board as that is where the financial obligations of the applicant will be called into question.

The board is representative of industry. It serves the industry and it is the intention of this Government and previous Governments that the board should be the servant and the watchdog of itself and industry. In that way, I have confidence in the board that it will ensure it uses the provisions of the Act only when it, as the representative of industry, regards it as appropriate.

There are some provisions in the Builders' Registration Act to which the board must have regard in applications for licensing. It may not ignore the age of the applicant; it may not ignore the qualifications and experience of the applicant; and it may not ignore the training of the applicant. It must have regard for those matters.

The board need not have regard for the financial resources of the applicant, but when the board in its wisdom views it as appropriate for it to have regard for these matters, it may, if it wishes, do so.

I cannot put it more clearly than that. I have faith in the board, because that is why we have a board. It is intended to be representative of industry. It is intended to be industry's watchdog of itself and it is a function that it carries out effectively. As a representative of industry, the board supports the industry, and wants those discretionary powers. I can only say on behalf of the Government that it is appropriate that it should have them.

Hon. I. G. PRATT: In the second reading debate I asked the Minister whether he had consulted industry on the matter. He nodded his head and said he would answer the question in his

reply to the second reading debate. There are two major industry groups and I ask the Minister whether he consulted them and, if so, what were their reactions to the Bill?

Hon. PETER DOWDING: The major representatives of the industry are on the board. The board has discussed the Bill and has agreed to it. I am informed that, prior to my becoming Minister, discussions were held with the members of the previous board and with members of industry. I am informed at that time the industry was supportive of the measure. I have no knowledge of that. I can only say, in relation to the discussions I had with the board that I have outlined already, I left the meeting and, at some later stage, under the signature of the chairman, I received a letter confirming that the board had resolved to support this proposal.

Hon. I. G. PRATT: Do we then have it on record that the Minister did not consult the Master Builders' Association of WA or the Housing Industry Association, which are the two professional bodies representing builders in this State?

Hon. PETER DOWDING: No, the member does not have that on record. I repeat what I said: I understand that prior to my becoming Minister these matters were raised with the industry.

Hon. Neil Oliver: With the board or the industry?

Hon. PETER DOWDING: With the industry. I am informed they were also raised with the then members of the board. I understand that the members of the board were supportive of it. I understand those members of the board included representatives of the two industry groups to which the member referred; and when I spoke to the board, representatives of those particular industry groups were present. I had a very lengthy and amicable discussion with the representatives of those two industries and the end result was that they confirmed their support for the Bill.

On Monday night I was with the people from the Master Builders' Association. That was after the Bill had received some publicity. I can simply say that no-one raised the issue with me. That is obverse consultation. The matter had been raised with the industry and certainly no-one spoke to me about it and no-one has approached me since the Bill has received publicity.

All I can say is that I believe from those facts that industry has had the opportunity for input and that, given the board's support—bearing in mind the board is representative of the industry—I believe consultation on this issue has probably proceeded far enough.

Hon. I. G. PRATT: We have heard many words, but, if members will pardon my expression, let us get down to the guts of it. Did the Minister discuss the Bill with the Master Builders' Association? Let us establish that first—yes or no?

Hon. PETER DOWDING: I really cannot advance the position further. I assume by the "Master Builders' Association" the member means the executive of that body. If he is asking whether there has been a formal meeting between myself and the executive to discuss this Bill, the answer is, "No".

Hon. NEIL OLIVER: If that is the case, has the Minister consulted with the Housing Industry Association; that is, not with the nominee of that association, but with the association in its own right?

Hon. PETER DOWDING: I keep making it quite clear that, as I understand it, before I became the Minister discussions took place with the industry. I do not know whether the Minister, members of his staff, or members of his department had specific discussions with the boards or committees of those organisations to which the Hon. Ian Pratt and the Hon. Neil Oliver have referred.

I had discussions with the MBA, but I have not sat down personally with the full board and discussed this issue. However, I repeat what I said: I think the board is representative of the industry and I am surprised members opposite seem to have some doubts about that. Quite frankly I have never heard any member of the industry being critical of the composition of the Builders' Registration Board. I would have thought that the board was made up of representative of the industry of the highest calibre who represent not only the interests of the board, but also the interests of the industry. I would expect there to be a free flow of discussion between the board representative of the particular industry and the industry concerned. Members opposite apparently do not think that authority exists in the nominee of the industrial groups. I happen to think that it does.

It is an extremely fine board and, without drawing adverse comparisons with anything else, it is a board which has taken a great interest in these issues.

I can only say to members opposite that the board supports the legislation. It may be good fun at 10.30 p.m. to run this matter through for a while, but members cannot get away from the fact that the board supports the Bill. If members are in any doubt about that, there is documentary evidence of it. The board has resolved to support the Bill.

Hon. I. G. PRATT: The Minister seems to be determined to exhibit his abysmal ignorance of the portfolio under this control. The Builders' Registration Board is not the executive representative of the building organisations. People are delegated to sit on the board for the purpose of registering builders, not to decide on the policy of the building organisations. The two organisations would be extremely interested to ascertain the Minister's opinion of the authority and the fact that he has suggested they should be subjected in their policy decisions to the whims of the board.

The Minister is very reluctant to say definitely that he has not done what he should do and what this Government claims to do all the time; that is, to consult with the people concerned. Of course, when I questioned the Minister, I was aware he had not consulted with the organisations. For him to say, "I have had discussions with members of the Housing Industry Association, but I have not sat down with its executive" is a very cheap attempt to try to write into the records of the Chamber the fact that he consulted with them when in fact he has not.

I give the Minister another chance. Has he corresponded with them? Has he had the decency to write a letter to them and make them aware of the fact that he intended to bring the Bill before the Chamber and ask for their opinions on the matter?

Hon. A. A. LEWIS: It is obvious to the Chamber that the Minister has not done his job. Either he or the Attorney is misleading the Chamber. The Minister will correct me if I am wrong, but I understand he said that the board could come back and have a look at the *Hansard* if it needed to understand what the Government meant when it brought forward the legislation.

Hon. Peter Dowding: No. I said that, under the Interpretation Bill, if the plain words of the Statute were equivocal or unclear, in interpreting those words which were unclear the judicial interpretation could be achieved by reference to *Hansard.*

Hon. A. A. LEWIS: The Minister put it far better than I could.

Last night I tackled the Attorney to the effect that the cost to industry of allowing these matters to come back through the legal system would be multiplied greatly. It is clear this matter will get into the legal system and it will cost the applicants a great deal more money.

The Attorney said "Oh, they don't have to and they probably won't", and 24 hours later the Minister has not really consulted with the industry groups. He has not seen his predecessor so he does not know what the results of his predecessor's discussions were.

Hon. Garry Kelly: Are you saying the words are ambiguous?

Hon. A. A. LEWIS: I ask the member to listen to what I am saying because I am usually fairly clear and the Minister is fairly intelligent and he usually understands. I have let him put his interpretation on this.

Hon. Garry Kelly: Did you hear him?

Hon. A. A. LEWIS: I did hear him, but he is contradicting what the Attorney tried to tell the Chamber.

Hon. Garry Kelly: Not supporting the fact?

Hon. N. F. Moore interjected.

Hon. A. A. LEWIS: Is the Hon. Garry Kelly going to tell me that it will not cost more for the applications to be put before the board? Dead silence! I want to know, with the way the Minister is handling this matter, if he thinks any extra costs will be applied to the application. I am a builder. I am not talking about a builder or an intending builder and, Mr Oliver, he will need more legal advice.

Hon. Peter Dowding: Do you want my answer?

Hon. A. A. LEWIS: Let me finish my speech.

Hon. Peter Dowding: You asked me to interject. I am telling you the answer is, "No".

Hon. A. A. LEWIS: It is highly out of order for the Minister to do this.

Hon. Peter Dowding: The answer is, "No".

Hon. A. A. LEWIS: Here we are. The Minister has interjected out of order and said there will be no extra costs.

Hon. Peter Dowding: No, I said I did not expect there to be.

Hon. A. A. LEWIS: No, the Minister did not. He said the answer was, "No". He cannot even remember what he said. He cannot remember whether he saw the industry.

Hon. D. K. Dans: Maybe this debate will extend into the first week of the school holidays.

Hon. A. A. LEWIS: Whether he remembers the facts or not, he comes into this Chamber and says there will be no extra costs. The Minister is showing how absolutely incapable he is because he is telling us that there will be no extra costs. Last night the Attorney told us it was highly unlikely that there would be any ambiguity in the wording of this.

Hon. Garry Kelly: Do you say the Bill is ambiguous?

Hon. A. A. LEWIS: I say the member should go to see the P & C. If his Leader and the Whip

cannot deal with him, I might have to do so very shortly.

Hon. N. F. Moore: You will get into trouble from the Minister.

Hon. A. A. LEWIS: What worries me is that within 24 hours of the Attorney, in his very quiet and nice way telling me—

Hon. Peter Dowding: Why don't you think about this Bill, Sandy, instead?

Hon. G. C. MacKinnon: Mr Lewis, please.

The DEPUTY CHAIRMAN (Hon. Lyla Elliott): Order!

Hon. A. A. LEWIS: I did not have any intention of talking to this Bill until—

Hon. D. K. Dans: That is an admission.

Hon. A. A. LEWIS: I personally do not very much like the Builders' Registration Board and I had no intention of speaking on this Bill, but I sat here doing my job listening to the legislation going through. I listened to the debate and I was horrified when I heard the Minister make the statement about the Interpretation Bill because, Madam Deputy Chairman, your constituents and everybody else's constituents will pay more for housing if this Bill goes through, especially if the Minister is right and the Attorney is wrong. This is what worries me about this Government. It cannot, even with two Ministers sitting next to each other, stick on a straight line. The Minister has by interjection told me that there will be no extra cost and I do not believe that. If there is any ambiguity in the words, he said the board can come back.

Hon. Peter Dowding: I do not believe there is any ambiguity.

Hon. A. A. LEWIS: A lot of people disagree with the Minister.

Hon. Peter Dowding: No they don't.

Hon. A. A. LEWIS: Yes, they do.

Hon. Peter Dowding: They do not know.

Hon. A. A. LEWIS: I will not make a second reading speech. The Minister has heard members point out where they think the doubts are. The cost to the home builder will be horrific and I want the Minister to explain to me why he gets into all this garbage. I think it is like consumer protection Bills of all kinds. The only person that it affects is the consumer, by extra costs. Due research has gone on into how this department is handling this. The Minister said at one stage that the board supports the Bill. Of course the board would support it. Is the board worried about the cost to the consumer? The people I represent will be affected. Those people must really be living with Hans Christian Andersen—that is fairly valid—if they think they can implement more and more conditions and put those conditions into Bills with no increase in costs.

I want the Minister to explain how the costs can be kept down, how any reputable builder, either established or potential, will not suffer from much higher costs under this Act than he would have previously.

Hon. I. G. PRATT: Before the Hon. Sandy Lewis made his very valid contribution on costs, I had asked the Minister if he would tell us whether he had made any moves to honour his obligations and the obligation that this Government currently claims to be honouring of consulting people, by corresponding in any way with either of those organisations that I mentioned, the Master Builders' Association and the Housing Industry Association. It appeared that he was going to sit there and not answer the question. I suggest to him very earnestly if he intends to do the same thing again, that he think twice about it and then get on his feet, move to report progress, and take this Bill away and discuss it with the trade organisations involved. That is what the Premier is claiming that this Government does, and in this case obviously the Minister has not done so. He has shown no interest in answering the questions, so I give him the chance now to get off the hook by reporting progress.

Hon. NEIL OLIVER: Does the Minister intend to respond to the previous question?

Hon. Peter Dowding: Say your piece.

Hon. NEIL OLIVER: I am a little concerned. I said during my opening remarks in the second reading debate that I supported the general thrust of the Minister's legislation, but increasingly as the debate goes on and I listen to other people speaking, I am beginning to wonder just where we are because the Minister did not answer my question.

Hon. Peter Dowding: I am sorry. What was your question?

Hon. NEIL OLIVER: My question related to the system in Victoria and New South Wales. The Minister did not answer that question.

Hon. Peter Dowding: I cannot answer it.

Hon. NEIL OLIVER: Good, then I accept that the Minister has other things on his plate, but I really do not believe this Bill is based at the Minister's feet. I really believe it is based on the advice that he is receiving and I believe his advice is wrong. I support the Minister; I have said I agree with the Bill, and I believe it has been put forward with the best intention. I now say to the Minister that in actual fact it will work in reverse. What I would like to know is does the Minister believe he is following the right course?

Hon. Peter Dowding: The answer to that is I do and I am supported in that view.

Hon. G. C. MacKinnon: Your proper answer is you hope so.

Hon. PETER DOWDING: Yes, I do believe I am following the right course. I am supported in that view and am given sustenance from the support that the BRB has given this legislation. I hope the Hon. Neil Oliver did not think it remiss of me not to answer questions on matters not contained in the Bill. I am not armed to do that. I am sure he knows that currently we have for public discussion a report which talks about a comprehensive insurance scheme to protect people against unsatisfactory dealings and I hope that in due course he will make his contribution to the Committee on the concept of that insurance scheme. It would cut the costs and that is one of the problems in these areas.

The overall concept of a comprehensive insurance scheme has been discussed. When I have met with representatives of industry and consumer groups as yet nothing has been formulated and it is far too early to say that I would see this as a proposal for this year's legislative programme, but it is the sort of thing which we should all keep under review, and, if the honourable member has any points of view about it, I would welcome hearing them from him in due course.

I cannot take the Hon. Ian Pratt's proposition any further. I really have made clear the level of consultation that has existed. I do not carry departmental files or my own correspondence files around with me and I certainly do not intend to cause any affront, but I make it clear that I have given an indication of what consultation has occurred. That is consultation. If the Hon. Ian Pratt wants to categorise it as a total failure of the policies of the Government in the area of consultation, then so be it.

The Hon. Sandy Lewis has suggested that increased costs may flow from the use of the new Interpretation Bill provisions in interpreting this Bill. I thought I had made it quite clear that I did not believe that the proposed insertion of the words in clause 3 create any ambiguity. I think it was obvious that I did not believe the Interpretation Bill would be required to interpret this Statute if amended. Everyone could be given the support of knowing that if it ever did become the view of the board or the magistrate on appeal that there was any ambiguity he could always refer to the Statutes and debates instead of going to perhaps a more extensive mechanism to solve that difficulty of interpretation.

Hon. I. G. PRATT: If what the Minister has just told us were not so serious it would be laughable. He said there may be information in the files, but he does not carry them around and he has done enough anyway. That is not good enough for me or for the Parliament, and it is not good enough for the building industry to be treated in that way. I ask him again will he report progress and do what he should have done—consult with the two organisations representing builders in Western Australia?

Hon. PETER DOWDING: I do not wish to report progress. This legislation should not be held up in view of the heavy legislative programme the Chamber is facing which will take us well into the May school holidays if it is interrupted.

Hon. G. E. Masters: And beyond.

Hon. PETER DOWDING: Mr Pratt is asking if I have done certain things. I have told him what I have done and he is in a position to make an assessment about it. If he has been in touch with the industry as he implies, the industry has had the opportunity of talking with him about the legislation. Its representatives certainly have not asked to speak with me. I have confidence in the Builders' Registration Board as a group which represents the industry in a very real way.

Hon. I. G. PRATT: The Minister exhibits his lack of understanding when he tells us the board represents the industry. It does not. The board comprises a number of members, some of whom are nominated by those organisations. They are nominated for the specific job of registering builders. They do not represent the policy of those organisations. It is like saying that one went to a bowling club and met someone from the East Fremantle Football Club and asked him about certain matters and walked away with his thoughts and ideas, claiming them to be the policy of the football club. How ridiculous, and the Minister's remarks are equally ridiculous. The Minister obviously has not done his job and consulted people. The next matter I want answered is whether this means the Minister is ignoring his Government's policy of consultation with industry, or has he decided it does not apply to him?

Hon. TOM KNIGHT: The Minister said the Hon. Sandy Lewis claimed it was obviously going to be more costly to follow this Bill through. I do not think Mr Lewis meant that. He was saying this Bill will make it more costly for people to apply for registration because of the information they have to supply. The Minister said he did not expect it would be more costly. I believe that is totally incorrect because the information that has to be put forward by someone applying for registration to show he will be able to meet his commitments by a certain date takes a lot of work and substantiation, and it could involve accountants,

banks, and possibly property consultants and quantity surveyors. It will be more costly to get registration.

Hon. PETER DOWDING: These provisions do not come into force unless the board wishes it. The board will not make this inquiry of every applicant; only in circumstances in which the board thinks it is appropriate will it demand information of this sort. Not every applicant will have to provide this information. In a case in which the board has some reason for concern and wishes to have this information, it will be able to demand the material, if this Bill is passed. If that increases the cost of the applicant in those circumstances it will be because the board regards it as necessary for the proper performance of its functions.

It is not mandatory and it is not expected that the board will do this on every occasion. Not every applicant will be in that situation. It is deliberately put in the Bill so that the option is open to the board. It does not mean every applicant has to come forward with the material. That policy aspect must be emphasised—it is not mandatory. I can say from my discussions with the board that it was not my impression that the board would insist on information from each applicant, but it has a string to its bow. I do not believe Mr Knight can really successfully argue that that will mean increased problems for applicants. Where the board sees danger signs this proposed subsection may be brought into force.

Hon. TOM KNIGHT: How does the board determine this from a string of applicants who have served an apprenticeship and whose background is in different building companies, or who have trained in technical colleges? How will it decide which applicants to check? The Minister is indicating that the board is trying to ensure that the industry and consumers are protected, but some will be allowed to walk straight through and gain registration without having to put forward any information or background. The Minister said it was not obligatory to check out everyone. This provision is more dangerous than I thought because it discriminates against certain people.

Hon. PETER DOWDING: Mr Knight should look at the Act to see what comes out of the applicant's interview with the board. In particular I refer him to section 10, which deals with the process of sharing information between the applicant and the board. It is not a question of a man or woman applying for a builders' registration certificate and the board knowing nothing about that person. The board conducts an interview and its officers go through that person's training and practical experience. All the warning signs and the points at which this proposed new subsection ought to be triggered will come out of that evaluation process.

It may be that the board will ask how much he has in the bank what sort of work he will do, and how he will fund it. The applicant may say he intends to start in a small way doing small cottage jobs of $10 000 to $20 000 and that he has certain resources, and that is the end of the penny section. On the other hand there may be times when the board is concerned—and it has happened in the past, and I believe the industry is concerned—that people who do not have sufficient financial resources and who have a history of collapses return once again to prey upon the community.

Hon. Tom Knight: There is no problem with that.

Hon. PETER DOWDING: Under the present Act the board cannot knock them out.

Hon. Tom Knight: I know that.

Hon. PETER DOWDING: The board cannot get them under section 10 as it stands. We are trying to give the board the discretion to be able to get them. There is no change in policy about who should and should not be registered. I do not believe Mr Knight can read a change of policy into the plain words of this Bill.

It is a small point but an important one, that this is a discretionary provision. In the exercise of its functions the board may or may not have recourse to this proposed subsection. I trust the board to use it in appropriate cases because it represents the industry and it is involved in the industry.

Mr Knight might give some thought to this question: Which is the first group to kick up if the board goes off the rails and improperly uses its discretion? The applicant has a right of appeal but the first group to complain will be the industry itself. It is a very responsible industry. That is the point at which the problem is solved. If every judge on the bench had a nervous breakdown and started to do silly things, solutions are available. If the board goes off the rails and acts in a way that affects the industry and changes the policy on registration that has been in effect since the year dot—or since 1939 when the Act was introduced—that is the time to concern ourselves. At present we are moving for a discretionary power.

I understand Mr Knight's concern is real and genuine but I do not believe he would maintain it if he thought about what it means to give this discretionary entitlement to the board.

Hon. TOM KNIGHT: The Minister has failed to convince me. Clause 3 of the Bill refers to architects and so on; clause 10 deals with any

person not being a company, and clause 13 talks about cancellation of registration for fraud and other grounds. The Minister said the board could use its discretion. I do not believe that when one is looking at someone's livelihood and one demands information from that person, one should not demand it from all the others, because they are all in the same situation. I agree that initial approaches will be made to discover the background, training, and qualifications of an applicant. The Minister said the board could call in someone and ask how much money he had in the bank. What about the chap who comes in tomorrow and is not asked how much he has in the bank?

I am trying to protect every young person. I agree that bankruptcies must be checked. I am not worried about the architectural side of things; they should not be registered as builders, anyway. I am talking about young people and this Bill is aimed at stopping young people coming in, or making it so awkward for them that it is impossible.

Hon. Peter Dowding: It is not aimed at that and you have no evidence to support it.

Hon. TOM KNIGHT: That is how I read it. It is laid down that every young person coming in will have to meet the qualifications and prove his ability to meet commitments by a due date. If one man has to do it, everyone should have to do it because they are all going into the industry on the same basis. If we want to protect the board, the industry, and the public, everything must be put on an equal basis. It is like saying that the Minister can travel down Stirling Highway at 80 kmh and not get booked, but if I do the same I will be booked; it is a matter of discretion.

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

Hon. TOM KNIGHT: We are looking at people's livelihood and future, and particularly young people. The Minister says the board does not have to use the power, but it is there nevertheless.

Hon. Peter Dowding: Do you think it will use the power improperly? Do you have no faith in the board?

Hon. TOM KNIGHT: I have a lot of faith in people but we have been let down on occasions just as the Minister will have been let down by people on occasions in his life.

The Minister should not say that it has not happened to him. I know of no person who has not been let down through this faith in humanity at different times and has not been disheartened by it.

Hon. PETER DOWDING: The discretion already exists. The member is confusing two points. He is continually saying the board "has to". The board does not "have to"; it "may", if it wishes, have recourse to this section. Let us look at the discretions the board has at present. A person has to satisfy the board under the existing Act that he has attained the age of 21 years—that is not terribly equivocal—and is a person of good character. Immediately discretion is being exercised by the board as to what is "good character". Of course the board exercises discretion, as do justices and magistrates. The point of having the board is that it is representative of industry and understands how it should exercise that discretion. The board will exercise this discretion. properly and presumably if it does not do so we change the board. It has very wide discretionary powers—much wider than those we seek to insert—as to the analysis of what is meant by "good character." The member may not like people with long hair. He may not like homosexuals and think a homosexual is not a person of good character. However, the board has discretion in these matters. Section 10 (b) (iv) (II) of the Builders' Registration Act states—

> although not having complied with the requirements of item (I) of this subparagraph has nevertheless had such experience in the work of a builder elsewhere than in the State, as to render him in the opinion of the Board, arrived at in such manner as the Board thinks fit, competent to carry out building;

One could not get a much better exercise of discretion than that. Without any reference to some formal criteria the board is entrusted with the discretion of determining whether a person has adequate competency. I suppose one person could go before the board and succeed and the following person may go in and fail and claim to have been discriminated against. The board is responsible and already has the widest discretions we could conceivably give to a licensing authority. I have not heard complaints from the industry about the discretionary powers of the board or from Mr Knight about the exercise of these powers. It is a red herring to suggest that giving the board further discretion—that is, it may if it wishes look at the financial resources of the builder—is somehow dangerous.

However if the member thinks it is I will not persuade him any further.

Hon. TOM KNIGHT: I am disappointed that the Minister has suggested that I am drawing a red herring across the trail; my comments were genuine. The Minister says that the board has discretionary powers and that the members of the board are practising builders. They could be in the building trade and could be involved in tendering

against people applying for registration. They could lose tenders because they think their tenders will be the lowest, yet they can sit and pass judgment on whether a young builder can become registered.

Hon. Peter Dowding: And they can make judgments about his personal character and competence.

Hon. TOM KNIGHT: The Minister is right off the beam. This could create a dangerous situation. One of the members of the board could have tendered for the same job as an applicant for registration and his application could be refused because his price is lower than the board member's price. That is the danger created by checking the builder's financial ability, building capacity and his initiative to run a business.

This point does not matter in clause 3 but I would oppose it in clause 4. Referring to sections 10 and 13 of the existing Act, I support the Minister's point that any bankrupt builder needs to be looked at and required to prove that he can carry on his business. However, I am concerned about young people and the Minister has missed the point. I am not drawing a red herring across the trail. I am concerned about what could happen once we pass the Act and the provisions are on the Statute book. The provisions of the Bill could be used without regard to the intent of the Minister with respect to discretion. The discretion could be used in a discriminatory manner against certain people and I believe that what applies to one should apply to all.

Hon. I. G. PRATT: When we consider this clause we are really deciding whether there should be a title or, indeed, a Bill. I believe the Minister has certain responsibilities with regard to whether there should be a Bill and those responsibilities are not being faced up to. It is quite clear that the Government has not consulted the organisations involved. It is clear that the Minister has not had the common decency to contact those organisations and he has completely negated his Government's stated policy of consultation. It is also my opinion that he has misled this Chamber because he endeavoured to convey the impression that he has carried out proper consultation. He said the board is representative of the industry; that is like saying the potato board is representative of the potato industry and the DIA is representative of the dairy industry. It is not so. The Minister does not have a basic understanding of how trade organisations operate. I do not intend to speak any more on this clause but I shall question other clauses.

I make it clear that if the Minister does not think he has the responsibility to the portfolio he represents, the Premier has a responsibility to this State and Parliament to seriously consider this Minister's performance on the Bill and do something about it.

Hon. NEIL OLIVER: I believe the Minister's aims are honourable and he is moving in the right direction. I do not want to be critical of the Minister because I support him in what he is endeavouring to achieve through this legislation. However, I think the legislation will work in a reverse direction to that which the Minister hopes to achieve.

I support the Bill, and I support the Minister in what he is putting forward. All I say is that it may be unworkable. The Minister can be only as good as his staff. That is not meant in any disrespectful way. The Minister has the wrong information. His aims will actually be reversed. His aim is to protect the consumer, but in fact this will be to the detriment of the consumer. Probably the Minister has other legislation and other matters on his mind, but in all sincerity I say that this Bill is not in accordance with the explanatory remarks contained in his second reading speech.

I would like the Minister to take this Bill away, look at it, ask his staff to examine it, and bring it forward again. We have another three or four weeks before we go into recess.

I appreciate what the Minister is saying, and I accept his sentiments. This is an excellent piece of legislation, but at this time the amendments will work totally against the principle which he aims to put forward.

Clause put and passed.

Clause 2 put and passed.

Clause 3: Section 9A amended—

Hon. I. G. PRATT: This is where we get back to the business of saying that the board may require an applicant to do something. It is the first of two clauses which uses this phraseology. I would like the Minister to tell us why, when he has gone to such great lengths to repeat that the board must consider age, character, competence, and trading experience, he says "may" instead of making it obligatory for the board to consider the resources of all people applying for registration.

Hon. PETER DOWDING: Neither the board nor the Government believes it is necessary to have every applicant run through his or her financial resources. That has not been necessary to date in every case. It has been identified as necessary in cases where the board has not been able to avail itself of it.

It is not intended to change the policy of registration. It is not intended to change the practice of people moving from trades to becoming builders;

therefore it is not the intention to require the board to look at the financial circumstances of each applicant.

Hon. I. G. PRATT: The members on this side of the Chamber have said quite clearly that we all agree something needs to be done in the case of builders who really are operating fraudulently; they have gone bankrupt, and they are getting back into the industry to defraud more people. We do not want them in the industry, and the industry does not want them operating. But I do not believe this is the way to solve that problem.

If we are looking at the business capacity of someone and his potential liability to the community, the proper way to do that is through corporate legislation. The Minister is really reinforcing that by saying that these other things which directly affect the competence of applicants must be looked at; but the board is concerned about their bad business management or plain dishonesty and the effect that might have on the community. I do not believe this is the correct clause in which to include such a provision.

In this clause we are referring to architects, engineers and so on being registered. If the Minister is looking towards getting builders who have already been operating back into the industry after going bankrupt, why is it put into this particular clause? Does he think a builder who has gone bankrupt will come back and register again as an architect?

If that is not the intention of the clause, what is its intention? How is the board to make that judgment about which of these people it will require to front up with finance and which will be required to front up with the other areas of competence?

Hon. PETER DOWDING: The Hon. Ian Pratt's question is really, "Why is section 9 section 9 and not section 10?" I do not know. Section 9 of the Act deals with architects and other things, and section 10 deals with builders. When we come to clause 4 I will deal with this query. That is one of the areas where the Hon. Tom Knight has expressed his real concern. I will leave that subject till we reach clause 4.

Hon. I. G. PRATT: I will repeat my question. If the Minister listens carefully he might understand. I said that this clause amending section 9A refers to architects and engineers.

Hon. Peter Dowding: That is right.

Hon. I. G. PRATT: I said if he intends to pick up the builders who have gone bankrupt and want to get back into the industry, which he tells us is the main thrust of this Bill, why is he amending section 9A? Or is he suggesting that the bankrupt builder will go away and qualify as an architect and then come back for registration?

Hon. PETER DOWDING: I am not suggesting there are people who apply for registration as builders who have a history of financial impropriety in their past dealings, whether they are architects, builders, engineers or whatever. The board does not want to license people who fall into that category.

Clauses 3 and 4 are broadly the same. Clause 3 deals with section 9, which deals with people who are applying in one particular sphere. Section 10 deals with people who are applying in another sphere. We are talking about giving the board power when and if it wishes to look at the applicant's financial resources in order to ensure that we do not get people who have improper financial positions.

In reply to the question as to why we do not put it in corporate legislation, one answer is because they might not be corporations. Another is because we think the Builders' Registration Board is the proper body to license these people. We do not put it in the corporate affairs legislation.

Hon. I. G. PRATT: I want to be very sure I understand exactly what the Minister saying, so I ask him to reinforce my understanding, if it is correct. Is he saying now that he is spreading the net wider than the builder who has gone bust and who is trying to establish what the Minister referred to as a $2 company, and is he applying it to anybody who has a history of financial instability in any other field?

Hon. PETER DOWDING: No, I am talking about the board having the power, when considering applicants for registration as builders, where the board considers it appropriate to look at the financial resources of those people, to be able to do so. Whether the builder comes in under clause 9, which means he has certain qualifications, or under section 10, which means he has certain qualifications, the point of licensing is the point at which the board wants to have the option to consider whether it ought to look at financial resources. That is all.

Hon. A. A. LEWIS: Here we are dealing with builders and architects. As a matter of philosophy in the future will butchers, bakers, and candlestick makers be examined as to their financial competence? Is that the Government's aim in the future? Obviously the Hon. Peter Dowding is the Minister in charge of this. It seems to me trade competence is relevant for the registration of a builder, architect, or engineer. The board is there to assess trade competence, not to make judgments on financial competence.

Hon. PETER DOWDING: In some areas this is in existence already; for instance, insurance and finance brokers.

Hon. A. A. Lewis: They are not trades.

Hon. PETER DOWDING: I am just saying that, in some areas, the responsibility exists already to look at the financial stability of the proposed enterprise. As far as I am aware—and I am not responsible, except through apprenticeship systems, for people achieving their trade certificates—it will not apply. However, the concept of a builder being registered as opposed to simply being a tradesman results in the builder acquiring certain rights under the Builders' Registration Act. The board considers it appropriate that it ought to license people who have the competence to do these things and it ought not to license people who, in the board's opinion, do not have the resources to do what they intend to do. The board ought to have the power to examine them, although not in every case as I have stated repeatedly.

Hon. A. A. Lewis: Your answer, as I understand it is, "No". In respect of anyone who becomes a master in his trade and goes to the registration board, you do not intend to put him through this thing which applies to builders, architects, and engineers. Is that correct?

Hon. PETER DOWDING: We are not putting builders, architects, or engineers through anything. We are seeking to give the Builders' Registration Board the power to have regard for matters which other boards have regard for in some circumstances.

Hon. D. J. WORDSWORTH: It worries me that suddenly we find that a board, which is registering people in respect of trade competence, has to handle the financial side of the applicants.

Hon. Peter Dowding: It also looks at character.

Hon. D. J. WORDSWORTH: It worries me that the board has to consider the financial aspects, because when a person applies, one does not know which side of the business he will go into.

Hon. Peter Dowding: That is right.

Hon. D. J. WORDSWORTH: The board could be registering him to build the Merlin Hotel or a State house. The same man is applying to the board. The man could be turned down on the basis of lack of finance and then he has to go to a magistrate and his affairs would be made public. That can happen not only when the person applies initially, but also at any time that he is operating as a builder, because the Minister said that the board will be able to cancel the registration when it becomes apparent that the person cannot meet his financial commitments. Therefore, I assume that, at any other time, the board can decide it should look at a person's financial situation. That worries me.

We do not want people who are investing in the construction of a house to lose their money, but I doubt that this is the right way to handle the matter. The Minister referred to $2 companies. I would not like to delve into his personal business, because I would not be surprised if he were a lawyer in a $2 company.

Hon. Peter Dowding: I was not a lawyer in a $2 company.

Hon. D. J. WORDSWORTH: I am surprised, because most of the companies on the Terrace are $2 companies. It is quite a normal way to register a company name and build up a business. It worries me that this board is suddenly being given the responsibility to guarantee every builders' financial position. The Bill gives it that task.

Hon. I. G. PRATT: The Minister has talked of track records. He tells us that all he wants to do is give the board the option to look at these people. Can he tell us in which financial area a board will be examining these people? Obviously they are just applying for builders' registration, so, to use his words, they do not have a track record in respect of building. In what areas of finance will the board examine them to decide whether it will give them a licence?

Clause put and passed.

Clause 4: Section 10 amended—

Hon. I. G. PRATT: It is clear that the Minister has not done his homework on this matter. He is not able to answer the detailed questions to which this Chamber has a right to receive answers. He has not availed himself of the offer I made that he report progress and come back to the matter. He is determined to press on with the Bill without providing adequate answers and without consulting the industry. The result of it should hang around his neck and I do not think he will find it very comfortable.

This clause refers to the ordinary builder and to the builder the Minister intends to catch, although he seems to have thrown a number of nets to catch only one fish. However, this is the one which will pick up the person the Minister intends to deal with. Again we return to the wording that the board "may" require the applicant to submit this information.

If the board is genuine about this—I understand it is—it would have to look at all applicants. If the board does not do that, what will happen in respect of the builder at whom the board does not look, but who causes problems? I say that, because that is one of the matters which will hang around the Minister's neck.

The first time a builder who is registered gets into financial trouble and costs somebody money, the wording of the Bill that the Minister has brought into the Chamber will nail the responsibility firmly to his head. It is of no use to ask the Minister to tell us the reason for this, because he has already refused to do so.

I say again that the wording of this Bill is not good. Indeed, it is just the opposite, and the Minister should be ashamed to bring it into the Chamber. I cannot understand why the Minister will not follow the option we suggested; that is, to take away the Bill, deal with it properly, and introduce it in a form acceptable to the Opposition, to his own members, to the Premier who no doubt will be taking an interest in it, to the people he is trying to protect, and to the builders whose reputations are under question.

Hon. NEIL OLIVER: I have examined the Victorian legislation and I have seen how things work in Ontario and in England. I do not know how the Minister can put forward this proposition. I appreciate his intentions, but I do not know how he expects the board to interpret this provision. How is the board to work out whether a builder should be registered? How is it to assess his ability? Is it to make a decision on four houses or 100 houses? Will it have to consider his fixed assets, his land holdings, and his liabilities? Obviously if a major company is wanting to establish in Western Australia, it will have to be assessed somehow. Does the Minister think the board will have the ability to assess this? Is the Minister proposing further amendments to or within the Act? Is the Minister contemplating amendments to the composition of the board so that it includes people with the ability to assess a person, a company, a corporation, or a partnership?

Hon. PETER DOWDING: Firstly, the Hon. Ian Pratt is entitled to the poetic licence of the Chamber. I must accept that he will avail himself of it; but to suggest that I have not made a genuine attempt to answer the matters raised by the Opposition must be bordering on a nonsense. I have sought to explain repeatedly how this Bill will operate, my interpretation of it, and what my understanding is of the board's view of it. If he regards that effort as inappropriate, I point out that this is a relatively short piece of legislation, and although we have been debating it for some time, I am prepared to pursue it until and unless we feel it is appropriate to report progress. But the fact is that I have made a very genuine effort to explain to the Opposition the way in which this Bill will operate.

Apart from the Hon. Ian Pratt, the Hon. Neil Oliver and the Hon. Tom Knight have raised real issues of concern to them which I have sought to answer, and I will continue to seek to answer those concerns until the members are satisfied or otherwise. But the Opposition should not suggest that it is not getting the information, because this is a very detailed discussion about clauses that are not terribly complex.

I thank the Hon. Neil Oliver for his comment that this is an excellent Bill, because I believe it is important that the board should have this power. Under proposed new subsection 10 (2a), the board has an obligation to examine corporate structures. Among its own members it may not have someone with the capacity to do that, and it therefore "may" seek advice and comment from staff or from some professional person. That avenue is open to it and will continue to be open to it. It is important that it should not be mandatory every time someone applies for registration that the board has to look at financial resources, because if that were the case it would be a completely different ball game. The board might go on checking forever with everyone who sought a licence, and in the end no-one would be registered.

Under the Act, the direction to the board is not that it "shall" do this but that it "may" do this if it wishes. What it comes to is this: We know what occurs from time to time and we know the board at present does not have the power to refuse entry to someone wanting to be a registered builder. What are the words that clearly define the ambit of the board's power? The view of the Government is that we should cast those words in a way that gives the board a discretion. That is critical, because it is a board of the industry. We accept that the board, as it interprets these other very wide clauses dealing with character and the other matters I have already mentioned, is given a wide discretion.

The Hon. Tom Knight would appreciate that it is not easy to spell out exactly what proposed subsection 10(2a) means and how it should operate, yet the board manages to do so reasonably well. The board interprets how the industry operates, how supervision should be controlled, and how things must operate to be effective, and the board does this without all this being spelled out. Unlike, I think, the real estate agents licensing legislation, which provides that an agent must spend so much time in his office and must be available to take part in the supervision of the office and in the branch offices for not less than four-fifths of five-eighths of whatever, here the board is given discretion because it is an industry board which the previous Government considered and this Government considers to be operating effectively.

Hon. Tom Knight interjected.

The DEPUTY CHAIRMAN (Hon. Lyla Elliott): Order!

Hon. PETER DOWDING: But the point is that the board is required to exercise its discretion in respect of satisfactory supervision, good character, and adequate experience. The broadest definitions imaginable are involved. I do not believe to be realistic the concern expressed tonight about the board not being able to handle another broad expression.

If this provision throws up problems, I give the Hon. Tom Knight an assurance that I will not stand on high dudgeon and say that I will not look at it. Industry representatives come through my door every day with problems, and I listen to them. If it is found that an amendment is necessary, we will take care of it.

It is a very difficult problem to define the exact words to give the board the discretion to do what we want it to do and what it wants to do. These are the words we have come up with, and I think they fit the bill. We have faith in the board and its ability to exercise discretion. If a problem arises, we will look at it.

I do not think I can advance much further than that. A reasonable interpretation of these words indicates that the Bill will work and achieve the objective we are aiming for. The Bill does not pose the problems that have been discussed tonight.

Hon. TOM KNIGHT: This clause covers section 10 of the Act, but the point really is that it covers bankruptcies and everything else. Engineers and architects are taken care of under the previous clause. Section 13 applies only to people who obtain registration by fraudulent means or on other grounds and therefore that person applying for registration—

Hon. Peter Dowding: No.

Hon. TOM KNIGHT: It does.

Hon. Peter Dowding: No.

Hon. TOM KNIGHT: It says "not being a company or a corporate body". A company or a corporate body cannot be registered. It must be an individual, and the company is represented by that individual. I am glad that the Minister said—

Hon. Peter Dowding: A corporation can fall under section 10(2), can it not?

Hon. TOM KNIGHT: It does not come under section 13, as I mentioned earlier.

Hon. Peter Dowding: No.

Hon. TOM KNIGHT: I appreciate the fact that the Minister said if it does not work he will not hang onto it. I believe it will not work, for the reasons I gave previously; however, I go along on the basis that I will remind the Minister to make sure it does not happen. I appreciate the fact that the Minister takes notice of that point.

I made another point that has not been raised in the Chamber and it is a point of which I am aware through my experience in building. A few years ago there was no such thing as a rise and fall clause in contracts. Wages and prices rose, and builders would tender for hundreds of thousands of dollars worth of work on which they could make a good profit, but during that period construction workers' wages and costs of material increased.

That meant a builder could lose money through no fault of his own. In most cases we find a rise and fall clause in a contract, but it should not be taken into consideration when one looks at a builder's financial capacity and his rates at the time. In the circumstance of the fellow going bankrupt through no fault of his own, that should really be taken into consideration. I will not raise that point.

Hon. Peter Dowding: Can we raise that when discussing a later clause?

Hon. I. G. PRATT: I have not suggested at any stage that the Minister has not been trying to answer me. I have suggested that he has not done his homework properly because he is unable to give us the answers. The suggestion that I am using poetic licence to say that the Minister has not given us answers when I have asked a question and he has not responded, is a very strange definition of poetic licence. I know we can not discuss clause 3 because that has been passed, but I can ask the same question under clause 4. The Minister sat in his seat and did not rise to answer on that occasion, so I will ask the question again. If the Minister wishes to call that poetic licence, perhaps we could hear some poetic words from him in reply.

Clause 4 deals with the ordinary builder. This is obviously where the Minister intends to pick up the bad builder who is having a second try, but it also picks up other new builders. I refer to the Minister's words I previously quoted. He should look at the track record of builders. Many builders have not been in the building industry before, and the board is given the discretion to look at their capacity. If they have not been building I want to know what track record the Minister is talking about and what areas of financial involvement the Board will look at when the person has not been operating in the building industry before.

Hon. PETER DOWDING: I said in my second reading speech, "in circumstances where a builder who has recently failed seeks to recommence operations under a new corporate structure such as the $2 company then the board will be entitled at the

time of an application to consider the financial resources of that builder". It is not the track record that is examined under proposed subsection (2); it is the track record that triggers the board in questioning whether it will bring in this provision. It is the track record of the person who is coming in that alerts the board to the fact that this is one case where we should look into the applicant's financial resources. It is not the track record that is examined so much as the financial resources. The track record triggers the inquiry, and it is applied to a person who had failed anyway.

Sections 9 and 10 set out the two directions under which people can apply. Section 9 applies if a person has certain qualifications; he will get in that way. Section 10 applies if a person has other qualifications, but the end result is the same. What we are talking about in the member's amendment is simply this: Where there is a track record of which the board has some knowledge it triggers the board's decision. "Will we or will we not inquire into the ability of this person to perform? We will have a look at the track record, and if we think it is a case we should look at we say to the applicant, 'How will you finance all this?' " The applicant may say, "I will build cottages and I have a little bit of capital, and more capital in the bank and this is how I will operate." The board says, "That is fine", or it says, "Hang on a minute. You have done this before. You have started up and gone down and started up and gone down. We want something more concrete from you before we will let you go again." That is not examining the track record in terms of assessing future financial capabilities. It is examining the track record to see if the board should make a close decision about financial resources. That is the question that the board will address its mind to.

Even the Hon. Ian Pratt must concede that this is a problem in the industry. The industry sees it as a problem and it is a problem. How do we get around it? We could say, "This won't work and that won't work, nor will anything else work." I said to the Hon. Neil Oliver a few minutes ago that these words give the board a certain discretion. We know that these discretions have operated well in the past, and we think it is appropriate that an industry board should have the discretion to operate this way in the future.

Hon. I. G. PRATT: The Minister seems to miss the point.

Hon. Mark Nevill: You haven't made any yet.

Hon. I. G. PRATT: We are waiting with bated breath for some constructive contribution from the Hon. Mark Nevill, and I assume we will be waiting until he leaves this place. He is the master of interjections but he does not much like making speeches.

Hon. G. E. Masters: Here comes the next speaker.

The DEPUTY CHAIRMAN (Hon. Lyla Elliott): Order!

Hon. I. G. PRATT: It appears that the heavies are coming. I am shaking in my boots.

Hon. Garry Kelly: We recognised it, too.

Hon. I. G. PRATT: The Minister seems to miss the point. What I am actually asking him to tell us is how the board will become aware of the track record which will alert it in the case of other than that a failed builder. There are a few failed "something elses" around the place too, by the sound of it.

Hon. PETER DOWDING: Can I give the member the short answer to that question? Look at the matters that the board must look at before it can grant a licence under section 10(1)(b). It must go through a process of collecting all that information; and during that process it is very likely that enough will come out to alert it if there was a need.

Hon. I. G. Pratt: What about the fact that a person might have gone utterly bankrupt in a car salesyard six years ago?

Hon. PETER DOWDING: It may not reveal that, and it may not be relevant, but it will bring some things up and it will provide another opportunity to alert people to risks. Risks is what this is all about.

Hon. I. G. PRATT: I think the Minister has got to the crux of the matter—it will give an opportunity. In other words, it is not giving any security; it is giving a chance.

Hon. Peter Dowding: It is giving some security by that.

Hon. I. G. PRATT: I do not think it is, if it is giving an opportunity. We are making laws in this place and we should be definitive about what we are doing.

Hon. Peter Dowding: We don't want to be definitive. That would mean that every time we made a move there would be a massive bureaucracy piling down the road, every time someone wants to do it.

Hon. I. G. PRATT: That is exactly what I suggest. This is the wrong way to handle the matter. We are trying to put financial control into a trade registration and that will mean all the troubles in the world. People will walk through this like water through a sieve.

Hon. Peter Dowding: We will pick some up at the beginning, some in the middle, and some at the end.

Hon. I. G. PRATT: The Bill will pick up the builder who has gone bad and is trying to come back.

Hon. Peter Dowding: That is good enough.

Hon. I. G. PRATT: But there is no guarantee, and there are dim prospects, of its picking up people coming into the industry from some other area, who have their qualifications and have the same sort of financial instability the Minister is talking about.

This is not good legislation; it does not do the job effectively; and it does not do what is intended. The Minister has an obligation to do something about it.

Hon. PETER DOWDING: I think it is worth putting on record that I do not pretend, and I do not think anyone has pretended, that this Bill will solve all the problems in the building industry, but it gives an extra power to the board. It is a useful power; it will give the board the power to act where at the moment it perceives the need to act, but it cannot do so because the power does not exist.

If that results in the protection of the trade, the consumer, and the industry at large, I think we should applaud it, and should not complain that it is not perfect.

Hon. Tom Knight: We have brought forward points you were not aware of.

Hon. PETER DOWDING: Members have, and we will be looking closely at the operation of this legislation. I would welcome the opportunity for members to observe how it has operated in six months time. I am not sold on the immutability of the legislation. Let us see how it works out down the track.

Clause put and passed.

Clause 5: Section 11 repealed—

Hon. NEIL OLIVER: What is the reason for the requirement for the written information on the rejection of registration?

Hon. PETER DOWDING: There used to be two sorts of appeals: One by way of rehearing and one by way of appeal against the board's decision. The appellant was in a situation of having to argue with the reasons given by the board, on a piece of paper, as to what was wrong; and the magistrate did not know whether it was right or wrong so he dismissed the appeal. That is not nicely put legally, but that is roughly what it meant.

An appeal by way of a rehearing means that the whole issue is open again and the magistrate makes the decision. The appellant is in a better position, he does not have to fight to prove the board is wrong; all he has to do is to persuade the magistrate of his point of view. It is a different onus and it is of benefit to the appellant. It has simply been taken down to the appeal provisions of section 14 of the Act. In not starting off with the board's decision, an appellant has a better chance to persuade the magistrate.

Hon. NEIL OLIVER: With due respect to the Minister and the judiciary in Western Australia, will a magistrate adjudicate on the financial capacity of an individual to build two, 10, or 100 buildings?

Hon. Peter Dowding: Magistrates do that all the time.

Clause put and passed.

Clauses 6 to 9 put and passed.

Title put and passed.

Bill reported without amendment.

As to Report: President's Ruling

THE PRESIDENT (Hon. Clive Griffiths): Under Standing Order No. 272, I suggest to the Minister that the report must be made an Order of the Day for the next sitting of the House.

House adjourned at 11.59 p.m.

QUESTIONS ON NOTICE

STRATA TITLES

Legislation: Anomalies

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

(1) Is the Government aware that certain situations and anomalies of long standing in regard to strata titles such as—

(a) sales by persons who are not the registered proprietors or their agents;

(b) sales which do not allow for a mortgage over the property to be taken over by the purchaser;

(c) the fact that part III of the Sale of Land Act does not yet apply to strata title units in spite of the Law Reform Commission's recommendation;

and other situations and anomalies still await a solution?

(2) Is the Government prepared in view of delays in bringing in comprehensive legislation to act independently in relation to some of these particular situations and anomalies?

Hon. J. M. BERINSON replied:

(1) and (2) It is anticipated that legislation on strata titles will be introduced in the Budget session this year. All relevant matters affecting strata titles will be considered at that stage.

PORT

Fishing Boat Harbour: Jurien Bay

970. Hon. TOM McNEIL, to the Leader of the House representing the Minister for Fisheries and Wildlife:

(1) Would the Minister advise me of the commencement date for the construction of the Jurien Bay fishing boat harbour?

(2) What is the estimated cost of the harbour?

(3) How many fishing boats will be accommodated?

(4) When is it anticipated the project will be completed?

Hon. D. K. DANS replied:

(1) to (4) The matters raised in this question do not come within the responsibilities of my portfolio.

ROAD

Scenic Crescent

971. Hon. P. G. PENDAL, to the Minister for Planning representing the Minister for Transport:

I refer to the answer to Question 820 given on 3 April 1984 and ask—

Since the Main Roads Department has held this prime piece of foreshore land in South Perth for many years, without paying local government rates, will the Minister consider, now that the land is to be sold for around $1 million, allowing part of the sale proceeds to be handed over to the South Perth City Council to assist in the redevelopment of the foreshore?

Hon. PETER DOWDING replied:

No. Any funds that become available need to be spent in accordance with the Main Roads Act for undertaking works associated with developing the State's road system.

BOATS

Fishing: Lancelin

972. Hon. TOM McNEIL, to the Leader of the House representing the Minister for Fisheries and Wildlife:

How many fishing boats are currently operating from Lancelin?

Hon. D. K. DANS replied:

Approximately 70.

TOWN PLANNING

Gosnells: Delay

973. Hon. P. G. PENDAL, to the Minister for Planning:

(1) Is the Minister aware of proposed zoning changes planned by the Gosnells City Council and advertised in March 1983 relating to, amongst other things, a service industry zoning for Dalziell Street, Maddington?

(2) Is he aware that this whole zoning process is being held up because of the inability of the MRPA and the Town Planning Board to agree on boundaries for public open space in a neighbouring area?

(3) If so, would he step in and expedite the process which is inconveniencing people because of the failure of the two bodies to agree on the public open space issue?

Hon. PETER DOWDING replied:

(1) Yes.

(2) No.

(3) Not applicable.

JETTY

Lancelin

974. Hon. TOM McNEIL, to the Leader of the House representing the Minister for Works:

Would the Minister advise what plans are in hand for the construction of a new jetty at Lancelin?

Hon. D. K. DANS replied:

A site for a jetty at Lancelin has been selected and detailed investigations are currently in hand.

Site works are not currently programmed to commence before 1986-87 financial year.

HOUSING

Federal Study

975. Hon. P. G. PENDAL, to the Minister for Planning representing the Minister for Housing:

(1) Has the Minister seen the advertisement in *The West Australian* of Saturday 28 April, 1984 relating to the "Study Into Homelessness and Inadequate Houses" being sponsored by the Federal Department of Housing and Construction?

(2) Why is it necessary for a Federal department which does not have a primary constitutional responsibility for public housing to conduct an inquiry which is the subject of the State Housing Commission's area of responsibility?

(3) Will the Minister contact his Federal counterpart and ask why it is necessary to duplicate in the Federal sphere work presumably being done competently in the State sphere?

Hon. PETER DOWDING replied:

(1) Yes.

(2) and (3) The study has been initiated by the Federal Minister for Housing with a view to gaining greater information regarding housing problems throughout Australia and I commend that Minister for his initiative in this matter.

MINING

Mineral Claim No. 38/7872

976. Hon. MARK NEVILL, to the Minister for Planning representing the Minister for Minerals and Energy:

(1) Was application for Mineral Claim 38/7872 ever granted?

(2) Was application for Mineral Claim 38/7872 granted subject to payment of rent?

(3) Were any rents for Mineral Claim 38/7872 ever paid?

Hon. PETER DOWDING replied:

(1) No.

(2) No.

(3) Rent for 1980 was paid upon application.

LOTTERIES

Instant: Receipts and Distributions

977. Hon. TOM McNEIL, to the Minister for Planning representing the Minister for Sport and Recreation:

(1) What was the total amount of funds derived from Sports Instant Lotteries from—

(a) inception to February 1983;

(b) March 1983 to March 1984?

(2) How was the money disbursed to—

(a) sport;

(b) arts;

(c) administration;

(d) other?

Hon. PETER DOWDING replied:

(1) (a) 1.5 million;

(b) 4.6 million.

(2) (a) to (d) By the receipt of applications from State associations and individual groups and is disbursed in accordance with approved guidelines.

STATE FORESTS: PINE

Manjimup: Property Purchases

978. Hon. W. N. STRETCH, to the Leader of the House representing the Minister for Forests:

(1) Will the Minister inform the House of the current number of properties in the Manjimup Shire that have been—

(a) purchased; and

(b) leased;

by the Forests Department for the purpose of establishing pine plantations?

(2) What is the current area of land that has been—

(a) purchased; and

(b) leased;

in the Manjimup Shire for the above purpose?

Hon. D. K. DANS replied:

(1) (a) 2;

(b) nil.

(2) (a) 177 hectares;

(b) nil.

MINING

Tenements: Pegging

979. Hon. MARK NEVILL, to the Minister for Planning representing the Minister for Minerals and Energy:

(1) Is ground held under mining tenement available for pegging before the tenement is relinquished?

(2) If "No", which section or sections in the Mining Act 1978-1983 establishes this principle?

Hon. PETER DOWDING replied:

(1) The holder of a prospecting licence or an exploration licence has the right during the currency of his licence to peg and apply for a mining lease or leases—sections 49 and 67.

(2) Ground held as a mining tenement is not available for pegging by another party—sections 18, 23 and 27.

980. *This question was postponed.*

MINING

Tenements: Leonora

981. Hon. MARK NEVILL, to the Minister for Planning representing the Minister for Minerals and Energy:

(1) Which mining tenement applications on the Leonora 1:250 000 sheet were refused renewal because of unpaid rents during 1982 and 1983?

(2) Who were the applicants, and what rents were outstanding?

(3) Which mining tenement renewal applications were withdrawn before the Minister made a decision on renewal?

(4) What was—

(a) the amount of rent owing when the application was withdrawn;

(b) the date on which the application was withdrawn?

(5) What was the name of the applicant and the date of application of the subsequent holder of all or part of the area for which an application was refused?

Hon. PETER DOWDING replied:

(1) to (5) The information requested by the member would require an enormous amount of research by officers of the Mines Department over a large area of land comprising the Leonora 1:250 000 sheet which is covered by 24 1:50 000 public plans.

During 1982 and 1983 a large number of applications for mining tenements under the Mining Act 1904 were refused for non-payment of rent.

If the member would be more specific further consideration can be given to his request.

APPRENTICES

Government Departments and Instrumentalities: Number

982. Hon. P. G. PENDAL, to the Minister for Employment and Training:

(1) What number of apprentices are employed by the State Government and its departments and agencies?

(2) What was the number as at—

(a) 31 December 1983;

(b) 31 December 1982;

(c) 31 December 1981;

(d) 31 December 1980; and

(e) 31 December 1979?

Hon. PETER DOWDING replied:

(1) and (2) The information requested by the member will take some time to collate and will be forwarded to him by letter in due course.

EDUCATION: HIGH SCHOOL

Wagin District: Repairs and Renovations

983. Hon. W. N. STRETCH, to the Minister for Planning representing the Minister for Education:

(1) When were repairs and renovations last carried out on Wagin District High School?

(2) As some work is needed urgently on building etc., when is it anticipated that repairs and renovations will be undertaken?

Hon. PETER DOWDING replied:

(1) and (2) This question should be referred to the Minister for Works:

STATE FINANCE

Financial Institutions Duty: Real Estate Transactions

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

(1) How much FID has been collected by Treasury from real estate deals that have attracted the tax since 1 January 1984?

(2) Has FID added to the costs of homebuyers?

Hon. J. M. BERINSON replied:

(1) and (2) FID is not collected in a way which enables the requested information to be collated.

QUESTIONS WITHOUT NOTICE

TOWN PLANNING

Mandurah

230. Hon. C. J. BELL, to the Minister for Planning:

Has the Minister refused to meet a deputation sponsored by the Mandurah Shire Council with regard to a town planning matter?

Hon. PETER DOWDING, replied:

Since coming into office I have adopted an open-door policy; that is, I do not recall an occasion on which I have refused to meet with any group unless, quite clearly, I had nothing to offer them. I do not have an open calendar and I have no present recollection of a specific request having come forward; but, to the best of my knowledge, at this stage the answer is, "No".

MINISTER FOR PLANNING

Mandurah Visit

231. Hon. C. J. BELL, to the Minister for Planning:

What is the purpose of the Minister's proposed visit to Mandurah on 29 May?

Hon. P. H. Lockyer: To go prawning!

Hon. PETER DOWDING replied:

My calendar extends to 23 May. I do not recall, but I will find out for the member and let him know whether I am to visit Mandurah on 29 May and, if so, and if it is a formal visit, and if he should have that information, I will inform him of the purpose.