

well remember having taken representatives of good enterprises in this State along with me to the Department of Industrial Development, asking for only one tithe of what the trade mission that went overseas has promised the various industries there. The answer I received was "Nothing doing; there is no money." Yet the mission went overseas and did some kite-flying in England and the U.S.A. It offered land, interest-free loans, and everything that opened and shut.

Had the Government been sincere in its policy of encouraging the purchase of goods produced in Western Australia, the first thing it would have done would have been to repeal the unfair trading legislation. If it did that, it would find capital coming into this State from the U.S.A. and Great Britain. But as long as that legislation is enforced, will any investor dare to come to this State in view of the treatment that was meted out to the Cockburn Cement Co.? That company established itself here and brought in many thousands of pounds to set up a business, but before long it was charged with being a monopoly. Let us see what happened; the case went before the courts, and the company was completely absolved.

The Treasurer and his colleagues have done more harm to this State than anyone in the past. Until such time as the unfair trading legislation is taken off the statute book the possibility of attracting industry to this State is, I regret to say, very remote. I venture the opinion that business houses overseas, which have the necessary capital and are prepared to make investments in this State, are looking to the opportunity of having a Liberal and free Government in this State.

Mr. Kelly: You are hoping.

Mr. WILD: The Minister should not forget his friends in the D.L.P. When they have wormed into him he will know what is happening. It is possible with a change of Government that there will be a chance of getting the capital for development which is required by this State and there will not be the need to send missions overseas, offering everything but the kitchen sink, to attract industries.

Mr. Hawke: The hon. member for Dale may not be here in the next Parliament.

Mr. WILD: Parliaments and hon. members come and go, I know. My colleague, the Deputy Leader of the Opposition, has put up very strong reasons why the vote we are considering should be reduced by £1. I repeat for the fourth time this afternoon that no Government has done more to harm the State than has the Government of the Treasurer and his colleagues opposite, by bringing into force the unfair trading legislation which they consider to be such a marvellous piece of legislation.

Progress reported.

LEGAL PRACTITIONERS ACT AMENDMENT BILL

(No. 2).

Returned from the Council with an amendment.

House adjourned at 6.4 p.m.

Legislative Council

Tuesday, the 21st October, 1958.

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

QUESTIONS ON NOTICE.

LOCAL GOVERNMENT BILL, 1957.

Tabling of Rewrite of Clause 42.

1. The Hon. R. C. MATTISKE asked the Minister for Railways:

Will the Minister lay on the Table of the House the rewrite of Clause 42 of the Local Government Bill as submitted by

the Chief Secretary to the Conference of Managers during the last session of Parliament, in view of the fact that copies were not made available to each of the members of that conference?

The Hon. H. C. STRICKLAND replied:
Yes—tabled herewith.

WATER SUPPLIES.

Construction of Wubin Dam.

2. The Hon. L. A. LOGAN asked the Minister for Railways:

When is it anticipated that work will be commenced on the construction of the Wubin dam?

The Hon. H. C. STRICKLAND replied:

This work was listed for consideration in the 1958-59 works programme, but funds could not be made available.

It will be listed for consideration in the 1959-60 programme.

RAILWAYS.

Staff Movements in the Geraldton Area.

3. The Hon. L. A. LOGAN asked the Minister for Railways:

Further to my question on the 8th August, 1957—

(a) Since the 8th August, 1957—

(i) How many railway employees including those designated as casuals have been transferred from the Geraldton, Northampton, Ajana and Yuna areas?

(ii) How many have resigned?

(iii) How many have had their positions terminated?

(b) Since the 1st January, 1957, how many railway employees have been transferred to the Geraldton area?

The Hon. H. C. STRICKLAND replied:

(a) (i) 27.

(ii) 40.

(iii) 13.

(b) 35.

SAWN KARRI.

South Australian and Victorian Price Lists.

4. The Hon. J. MURRAY asked the Minister for Railways:

In view of the reply given by the Minister on the 15th October, that current wholesale South Australian and Victorian price lists for sawn karri are available, will the Minister now table those lists for the benefit of members?

The Hon. H. C. STRICKLAND replied:
Yes. Price lists are tabled herewith.

LEAVE OF ABSENCE.

On motion by the Hon. G. E. Jeffery, leave of absence for 12 consecutive sittings granted to the Hon. G. Fraser (West) on the ground of ill-health.

LOCAL GOVERNMENT BILL.

Standing Orders Suspension.

THE HON. H. C. STRICKLAND (Minister for Railways—North) [4.36]: I move—

That there be and hereby are suspended so much of the Standing Orders as may be necessary to enable the Instruction on the Local Government Bill, notice of which Instruction appears on Addendum No. 1 to the Notice Paper, to be carried into full and complete effect.

I feel that hon. members are well acquainted with what the motion means. It is a necessary move to enable us to consider the Bill from the third reading stage, which is where we ceased to consider it last session.

Question put and passed.

ELECTORAL ACT AMENDMENT BILL

(No. 3).

Application of Standing Order No. 242.

The PRESIDENT: Before proceeding with the Orders of the Day, I will give the ruling requested by the Hon. A. F. Griffith in connection with the Electoral Act Amendment Bill (No. 3). The hon. A. F. Griffith has asked whether this Bill requires the concurrence of an absolute majority of the whole number of members of either House.

In my opinion, no absolute majority is required for the following reasons:—

(a) Compulsory voting for the Legislative Assembly was introduced as an amendment to the Electoral Act in 1936, and no absolute majority was required for that Bill in either House.

(b) By providing that persons already enrolled for the Legislative Council shall vote, does not effect a "change in the Constitution" of the Legislative Council within the meaning of the proviso to Section 73 of the Constitution Act.

Dissent from President's Ruling.

The Hon. A. F. GRIFFITH: It is with regret that I find I am obliged to disagree with your ruling, Sir. I move—

That the House dissent from the President's ruling.

I am extremely sorry that I find it necessary to disagree with your ruling, Sir, on this point, but by the same token, I do so with the greatest of respect; and in putting forth my views to the Council, I ask hon. members to consider the matter in the light in which I submit it. I say to hon. members that this procedure is establishing a precedent in connection with constitutional measures, which, at some later period, we may find has been mistakenly established.

In the very short time that I have had available in which to look at the wording of your ruling, Mr. President, I find that it falls into two categories—(a) and (b). I propose to deal with the two sections, one after the other. In the first place, you, Mr. President, say that compulsory voting for the Legislative Assembly was introduced as an amendment to the Electoral Act in 1936, and that no absolute majority was required for that legislation in either House.

I have done a considerable amount of research through old Hansards. First of all, I had a look at the debates which took place, and the legislation which was introduced in 1936 by which voting for the Legislative Assembly was changed from compulsory enrolment and voluntary election, to compulsory enrolment and compulsory election. According to records of Hansard, at no stage of the proceedings surrounding that alteration was any question raised along the lines I have raised, because there was no opposition to the Bill. The legislation passed through both Houses of Parliament on the voices, and no division was called for. I am of the opinion that it passed through, or slipped through, perhaps unnoticed, otherwise somebody would have raised the issue that a constitutional majority was necessary.

It is interesting to note, Sir, that the Bill upon which you have given a ruling will bring about a state of affairs which is almost directly opposite to that which the legislation of 1936 brought about—although voluntary enrolment for the Legislative Council exists the Bill will make the voting compulsory. I contend that that is a change in the Constitution. I asked you, Mr. President, if, under Standing Order No. 242, any Bill received from the Legislative Assembly which brought about any change in the Constitution of the Council or the Assembly should be proceeded with unless the Clerk of the Assembly certified that its second and third readings had been passed with the concurrence of an absolute majority of the members of the Legislative Assembly.

In the first place it is a matter of the interpretation placed upon the words "any change in the Constitution of." The second part of your ruling states that "by providing that persons already enrolled for the Legislative Council shall vote, does not effect a 'change in the Constitution' of the Legislative Council within the meaning of the proviso to Section 73 of the Constitution Act." But I contend that it does effect a change, and if hon. members look at Section 73, which is on page 117 of our Standing Orders, they will see that it reads as follows:—

The Legislature of the Colony shall have full power and authority, from time to time by any Act, to repeal or alter any of the provisions of this Act. Provided always, that it shall

not be lawful to present to the Governor for Her Majesty's assent any Bill by which any change in the Constitution of the Legislative Council or of the Legislative Assembly shall be affected . . .

If it was contended that some definite fundamental change had to be made, the word "affected" would not be used; it would be "effected." The word "affected" has a totally different application and interpretation. The word "effected" means the result or consequence of an action or of cause or agent; the word "affected" means to produce an effect or change upon, or to influence. This Bill with which we are dealing will influence the situation, because it will alter the method by which hon. members of the Legislative Council will be elected. Therefore, I contend that the Bill definitely comes within the scope of the words "any Bill by which any change in the Constitution of the Legislative Council shall be affected."

To my mind the interpretation of the words "Constitution of the Legislative Council," is not limited to the number of hon. members in the Legislative Council, but refers to the whole of the document which is the Constitution of the Legislative Council. I suggest, with respect, that if the situation had been the reverse, and a Bill which provided that voting for the Legislative Assembly shall not be compulsory had been presented to the Legislative Assembly, the Government would have stated that the measure required an absolute majority, because it effected a change of the Constitution and, therefore, required a constitutional majority.

The Bill upon which you have ruled, Sir, provides that only those who are enrolled and do not vote shall suffer a penalty. Because of that you say that it effects no change in the Constitution. Let us suppose that the Bill made it an offence for a qualified person to vote. What then would be the position? Would it be suggested that that would not be a change, or that no constitutional majority in another place was required? The Bill has two possibilities. Persons who otherwise would not vote will be obliged to do so, and they will not enrol—and some people will not enrol, because they object to compulsion. Secondly, the method by which hon. members of the Legislative Council are elected will be affected, and there will be another Bill by which we will be asked to amend the Constitution Act.

When one applies the Bill to the principal Act, one sees that the alteration necessary to bring about the desired effect is very small. All it does is to strike out one or two words from Section 156 of the Electoral Act, and instead of expressly stating that voting for the Legislative Assembly shall be compulsory, and that voting for the Legislative Council shall not be compulsory, it will state that voting for both shall be compulsory.

Surely that introduces a change into the method of voting for members of the Legislative Council! If that is not a change I do not know what is!

A little further research I have done in this matter enables me to inform hon. members—and probably they are just as well aware of this as I am—that a Bill called a Bill for an Act to amend the Electoral Act, 1907-1953, contained Clauses Nos. 17 and 18 which read as follows:—

17. The principal Act is amended by deleting the words, "for Assembly" in the heading to Division (7) of Part IV. immediately preceding section one hundred and fifty-six, and in line twenty-three of section three.

18. Section one hundred and fifty-six of the principal Act is amended—

- (a) by deleting the words, "for the Assembly" in lines one and two of subsection (1); and
- (b) by adding before the word, "district" in line three of subsection (1) and again in line four of subsection (2), the words, "province or."

Those words are identical with the words that are in the Bill upon which you, Sir, gave a ruling a few minutes ago. That Bill was presented to the Legislative Council only after it was agreed to by a majority of the Legislative Assembly. For the information of hon. members I will read the certificate. It is as follows:—

This Public Bill originated in the Legislative Assembly and the purposes for appropriation of the revenue were first recommended to the House by Message of the Governor during the present session, and passed its second and third readings in the Assembly with the concurrence of an absolute majority of the whole number of members of the Assembly and having been this day passed is now ready for presentation to the Legislative Council for its concurrence.

The same Government saw fit to send to the Legislative Council a Bill which contained identical principles to those in the clauses I have read. That document was passed by the Legislative Assembly only after it was agreed to by a constitutional majority. That was last year. As a matter of fact, it was negatived in this House on the second reading on the 20th October, 1957.

With great respect, I say that that is identically consistent with the Bill upon which you, Sir, have given your ruling. It is also interesting for us to have a look at other Bills that have been presented to the Legislative Council after being passed by an absolute majority. I refer in particular to the Electoral Districts Act of 1957 which made no specific change, so far as I can see, to the Constitution,

but nevertheless a Bill to amend it was presented to us with an absolute majority of members of the Legislative Assembly. Provided in the Bill also is a provision that the Bill can be amended only after it has been passed by an absolute majority of members of both Houses.

With great respect, Sir, I consider that your ruling is not a correct one. Whilst you are prepared to accept the 1936 Bill as a precedent for establishing the present ruling, I contend it is surely not a good thing, because if it can be proved, as I think I have proved, that that was wrong, then what you, Sir, are asking us to do is to accept a ruling from you on this Bill on the basis that the 1936 ruling was correct.

I say that the 1936 ruling was wrong; and it will be wrong of the Legislative Council to allow this Bill to proceed in its present form, because in accordance with the Constitution and our rules, it has not been presented to the Legislative Council as a result of an absolute majority of members of the Legislative Assembly. Who knows what would happen, if we, who are responsible people in this Chamber, were prepared to allow amendments of this nature to go through without proper constitutional majorities from another place, or this place? It would be a bad precedent to establish. I ask hon. members, in the interests of what I think is the correct thing to do in this case, and with respect to you, Sir, to disagree with your ruling.

The PRESIDENT: I would refer hon. members to Standing Order No. 405 of this House which states—

If any objection be taken to the ruling or decision of the President, such objection shall be taken at once, and in writing, and Motion made, which, if seconded, shall be proposed to the Council, and Debate thereon forthwith adjourned to the next sitting day, unless the matter requires immediate determination.

It is for members to decide whether the matter requires immediate determination.

The Hon. F. J. S. WISE: Speaking to the point you have now raised, Mr. President, I would say it is not sufficiently applicable to that under discussion to warrant a decision being made on the lines of the Standing Order you quoted. I think the motion before the House is one that should be debated at once, and, irrespective of when the objection was taken, it is one on which a decision should be made.

As pointed out by the hon. Mr. Griffith, your ruling, Sir, is based upon two conclusions. But in supporting your ruling I suggest there are other arguments strongly in favour of it, and against the case presented by the hon. Mr Griffith.

The PRESIDENT: I think I asked the House to decide whether it considered the motion an urgent one. The question is whether we should continue this discussion or not. It would seem that all members are in favour of continuing the discussion. The hon. member may now continue.

The Hon. F. J. S. WISE: Thank you, Mr. President. I suggest to the hon. Mr. Griffith that there is no argument at all in support of his objection to your ruling. In the first two or three observations he made he said there could have been no record in Hansard, or anywhere else, of objections in 1936. He further said that at no stage of the proceedings was any question raised, because there was no opposition to the Bill.

Opposition to that Bill, like opposition to this measure, will doubtless come at the proper time. There will be no record in Hansard, or in the Votes and Proceedings, of hundreds of cases where prior consultation has taken place between hon. members and the clerks; between hon. members and Mr. Speaker; and between hon. members and Mr. President. In such cases many hon. members of this Chamber, after such consultation, have gone away satisfied that the questions they were considering as a matter of importance, and of constitutional law and ruling, were, in fact matters that had no force, and no application.

So it was in the case of the 1936 measure. That was a Bill introduced by the then Deputy Leader of the Country Party. Of course there is no reference at any stage of the proceedings in Hansard, or in the Votes and Proceedings, to an absolute majority being required. The hon. Mr. Griffith suggests that that Bill slipped through unnoticed. Those are his words. But I suggest there is no substance in that contention. That Bill was completely noticed by everybody in the Assembly at that time; and I think that had the question been raised, it would have been recorded and many people would have been engaged in argument as to the validity of such a Bill being passed without an absolute majority. However, the question was not raised in the Legislative Assembly or the Legislative Council.

Indeed, reference to the 1936 Hansard on this point will show that on the 16th September, 1936, Mr. Patrick introduced a Bill; and that Bill was not introduced lightly by the then Opposition. I take it it had the support of the then Leader of the Opposition who was yourself, Sir. It would have been scrutinised in anticipation of objections being raised; not whether it suited a majority of the Assembly, but whether on the constitutional point the introduction of the Bill without a constitutional majority was valid. That Bill provided for compulsory voting, and on the 14th October, of that

year, the then Minister for Justice (the Hon. F. C. L. Smith) supported the Bill, the second reading was put and passed, and it reached this Chamber on the 28th October, 1936.

No absolute majority was asked for; no absolute majority at any stage was mentioned and, in the Council at that time, several people spoke to that Bill. They included Messrs. Baxter, Nicholson, Mann, Bolton, Fraser, Alex. Thomson, H. V. Piesse, J. J. Holmes and J. Cornell. All spoke, and at one stage the hon. Mr. Cornell was in the Chair as Acting President; and the Bill through its final stages was dealt with by the then President, Sir John Kirwan.

I point out, Mr. President, in speaking to the first point raised by you in support of your decision, that Parliament at all times is master of its own decision and destiny, and that precedent cannot always be taken as being absolutely correct. I think it is wise to point out that most parliamentary decisions on points of order or on rulings are based on precedent and procedure, but they may be wrong in certain cases, just as legal opinion differs and must be wrong at times, because of the different viewpoints held by legal men, however prominent in their profession.

In many instances the High Court is divided on matters of points of law on subjects where all sorts of authorities are quoted by different people in the presentation of cases. Therefore, that alone cannot stand as the final argument or decision. However, let us look at this matter a little further. If we base it on the case of precedent alone, the one point raised by the hon. Mr. Griffith may be a supporting argument, but alone it is quite insufficient.

It is necessary at this moment to explain the Bill. It does not affect or alter the franchise in any way; it merely compels those folk with an entitlement to vote, to vote. This Bill does not introduce any new class of elector. The persons qualified to be enrolled are enrolled and those persons so qualified must vote. It does not in any way alter the standard of the franchise; it does not affect any qualification; it does not affect any point at all which impinges on Section 73 of the Constitution Act or the two provisos in it.

This Bill will, if it becomes law, enforce people enrolled to conform to certain principles associated with their enrolment. I think, as the hon. Mr. Griffith dealt with your suggestions with great respect, I will, Sir, deal with this argument with respect and with respect to him. I say this: I think the hon. Mr. Griffith is more concerned with the composition of the Council than with its Constitution: two very widely different things. The Constitution of the Council is the matter which governs its control, and it is in no way circumscribed by matters affecting electoral law.

The Bill will indicate to people who have an entitlement to enrolment—which this Bill does not alter—that they have a responsibility in voting. The hon. Mr. Griffith contends that will alter the Constitution of this Parliament. I say it even may not, but it certainly will not alter the Constitution of the Council. I think it may—and only may—alter its composition. It is an entirely different matter and not relative at all to the difference of opinion on your ruling, Sir. It will not effect any change in the law as to persons entitled to vote or the method of voting.

The Hon. A. F. Griffith: Did you say effect or affect?

The Hon. F. J. S. WISE: Effect. It will not, otherwise, in any way effect any change in the Constitution of this House or of the other House. In examining the reference made by the hon. Mr. Griffith on Bills amending the Constitution of either House, I would refer to Standing Order No. 242 on page 48, which reads as follows:—

If any Bill received from the Assembly be a Bill by which any change in the Constitution of the Council or Assembly is proposed to be made, the Council shall not proceed with such Bill unless the Clerk of the Assembly shall have certified on the Bill that its second and third readings have been passed with the concurrence of an absolute majority of the whole number of the Members of the Assembly.

There is no doubt in my mind, and I am sure in the minds of most legal authorities, that this Bill does not in any way effect any change in the Constitution of the Council. If we turn to Section 73 of the Constitution, there is nothing conclusive that these provisos have any particular reference to such a matter as this. These provisos will be found in Section 42 of the Constitution Act, because that governs the point in Part III of that Act that Section 73 is relating to something which has already occurred. Section 42, Part III, which deals with elections of the Legislative Council, is wholly relevant and therefore entirely disregards and discards reference to subsequent happenings. Section 73 applies, therefore, within the provisos, to the matters already effected at the time of its passing.

The Hon. H. K. Watson: Can we have the benefit of your views on Section 38?

The Hon. F. J. S. WISE: Yes. I suggest that Section 38 which deals with elections, has no reference whatever to the manner of conduct of the elections, as affecting the Constitution.

The Hon. A. F. Griffith: "The mode of the election and all other matters."

The Hon. F. J. S. WISE: I repeat that there is some confusion in thinking with regard to the use of the two words; the "Constitution" of this Council and the "composition" of it. I acknowledge that

if this Bill is passed, and it could be, there may—I say "may" and not "shall"—be the prospects of a change in the composition of this Council; and I am afraid that this is not the way to deal with a Bill which may effect a change in the composition of this Council. The way to deal with such a Bill is, after debate and consideration, to vote for or against it, and not to defeat it by raising objection to the President's ruling on the validity of the Bill.

The difference really is whether we are to consider this Bill based on precedent and the manner in which a similar measure was dealt with years ago—

The Hon. H. K. Watson: What about last year?

The Hon. F. J. S. WISE: Last year is a case where, again, precedent could be right or wrong—

The Hon. H. C. Strickland: The question was not raised then.

The Hon. F. J. S. WISE: The question of endorsement was raised last year when we received an identical Bill, or one with similar provisions, which did not seek to alter the Constitution. The measure last year was much the same as the 1936 Act—which provided for compulsory voting for males in Western Australia—and as the 1899 Act which granted women's suffrage in much the same manner as it was granted in South Australia, which was the first State to give women the franchise. That would alter the rights and entitlements of persons qualified to vote, but this Bill has no reference whatever to a principle of that kind and therefore it is not limiting the franchise to any class of person. A measure providing only for the compulsory voting of persons entitled to vote, does not, I suggest, in any way effect any change in the law as regards persons entitled to vote, and if it does not do that it does not affect the Constitution of this House, so there are ample and valid reasons, Mr. President, why your ruling should be agreed to; why this Bill should receive consideration on its merits, as a normal Bill not requiring an absolute majority of either House.

The Hon. H. C. STRICKLAND: I hope that this Chamber will not disagree with your ruling in connection with this matter, Mr. President. As has been stated by the hon. Mr. Griffith and the hon. Mr. Wise, the question is purely one of Constitution. The objection raised is that the Bill has come from another place, not having received there a constitutional majority, and the law provides that such a majority is required where the Constitution of either House is affected. The question has been raised on previous occasions, and for the benefit of members I will read out the rulings given in those cases, as it is a matter of definition of the word "Constitution." Generally "constitution" is considered by those who have judged these

cases broadly to mean "composition" and this Bill will not alter the composition of this House.

The Hon. A. F. Griffith: "Composition" could mean many things.

The Hon. H. C. STRICKLAND: The composition of the—

The Hon. H. K. Watson: The hon. Mr. Wise's argument is entirely different.

The Hon. H. C. STRICKLAND: The hon. Mr. Wise said that the hon. Mr. Griffith's aim is entirely different. He said the hon. Mr. Griffith was afraid to alter the composition and not the Constitution. For the benefit of members, I have here some information from the Solicitor-General, who agrees that this Bill is not unconstitutional. He agrees with the ruling that you, Mr. President, have given, and he bases his reasons on a definition of "Constitution" among other things. The meaning of the word "Constitution" and of sections such as Section 73 of the Constitution Act, has been considered in various cases, and that is the point raised in regard to the proviso by the hon. Mr. Griffith—the proviso to Section 73 of the Constitution Act.

In the case of *Taylor v. the Attorney General of Queensland*, (1917, 23 C.L.R., 457), the following meanings were given to the word "constitution":—

At page 468, "the composition," "form" or "nature" of the House (Barton J.) . . .

At page 474, a change in constitution "includes a change from a unicameral to a bi-cameral system or the reverse," (Isaacs J.) . . .

At page 477, the "nature," "composition" or "makeup" of the House, (per Gavan Duffy and Rich, JJ.) . . .

The interpretation is of the Constitution of the House and the last instance I have quoted is Gavan Duffy and Rich, JJ.

The Hon. A. F. Griffith: Will the Minister read us the whole document?

The Hon. H. C. STRICKLAND: I have only excerpts here. In *Macaulay v. the King*, (1918, 26 C.L.R. 9), Isaacs and Rich, JJ., said—

We speak of the Constitution of England or of a colony or of a court or of the Legislature, meaning the rules by which its action as a recognised entity is regulated.

In *McDonald v. Cain* (1953, V.L.R. 411), Gavan Duffy J. said—

I am by no means satisfied that even an alteration in the qualification of members is an alteration in the Constitution within the meaning of the proviso—

referring to the proviso to Section 73, on which the hon. Mr. Griffith mainly bases his case. He was by no means

satisfied that several alterations to the mode of election had to do with the Constitution of the House. Continuing—

However, O'Brien J., at page 441, considered that the expression, "Constitution of the Assembly" included such matters as the number of persons to compose the Assembly, the definition of electoral districts, their number, the number of members each district shall return, the qualifications of electors and of members.

The Hon. J. M. A. Cunningham: But not voting of hon. members.

The Hon. H. C. STRICKLAND: That has nothing to do with this Bill. This is purely a matter of dealing with those who are eligible to vote in order that they may record their votes.

The Hon. H. K. Watson: Will you read that final quote again?

The Hon. H. C. STRICKLAND: Yes. It is as follows:—

However, O'Brien J., at page 441, considered that the expression "Constitution of the Assembly" included such matters as the number of persons to compose the Assembly, the definition of electoral districts, their number, the number of members each district shall return, the qualifications of electors and of members.

It has nothing to do with the method of voting, whether it be postal, the first candidate past the post, preferential, or anything else.

The Hon. H. K. Watson: But it did include the qualifications of electors.

The Hon. H. C. Strickland: Yes, that is the Constitution of the Assembly.

The Hon. G. C. MacKinnon: Yet the previous one did not consider that the qualifications of members represented a constitutional matter. He said, "I am by no means satisfied."

The Hon. H. C. STRICKLAND: Yes. Gavan Duffy J. said—

I am by no means satisfied that even an alteration in the qualification of members is an alteration in the Constitution within the meaning of the proviso—

The Solicitor-General, however, has this to say—

Whatever may be the correct meaning of the expression "change in the Constitution," it is to be noted that the expression occurs only as a proviso to Section 73. The role of a proviso is merely to qualify, limit or provide an exception to, the general enactment in the section to which it is a proviso. Section 73 commences that the Legislature shall have full power and authority from time to time by any Act to repeal or alter any of the provisions of "this Act." The proviso therefore probably applies only

in relation to the repeal or alteration of any of the provisions of the Constitution Act, 1889, or its amendments. Originally the Act contained electoral provisions, but these were duly repealed and therefore there is now nothing repugnant to, or inconsistent with, the Constitution Act in a law providing for compulsory voting.

The objection to your ruling is not on a solid basis in the face of the many judgments that have been given in the several States of Australia when a question similar to this has arisen. It appears your ruling would be in line with all of those judgments.

The Hon. E. M. HEENAN: The Minister, in his speech, has left very little to be said in support of your ruling, Mr. President. The opinion by the Solicitor-General that he has just read, together with the quotations that have been made by eminent judges over the years should leave little doubt in anyone's mind that your ruling in this instance is eminently correct. However, I think, even without the guidance of the Solicitor-General and the apt illustrations by extremely eminent judges which have been quoted, we should be in a position to decide a question which, in my opinion, is not far removed from being elementary.

All we need to do is to study Section 73 carefully. As the Minister has already pointed out, the first part of that section reads as follows:—

The Legislature of the Colony shall have full power and authority, from time to time, by any Act, to repeal or alter any of the provisions of this Act.

And then it goes on—

Provided always, that it shall not be lawful to present to the Governor for Her Majesty's assent any Bill by which any change in the Constitution of the Legislative Council or of the Legislative Assembly shall be affected—

We have to have an absolute majority if we are going to affect any change in the Constitution of the Legislative Council. However, anything else that affects electoral laws, penalties, mode of voting and so forth, has nothing to do with the Constitution of the Legislative Council. The phrase—"by which any change" in the Constitution of the Legislative Council shall be affected, is simple enough. We can substitute for the word "affected" the words "made," or "achieved." These words are synonymous with "affected" and make the same sense.

The Constitution Acts Amendment Act sets up the legal basis of the Legislative Council. It provides that there shall be 30 members and that they shall possess certain qualifications. For example, a person has to be 30 years of age before he is eligible to become an hon. member

of the Legislative Council. It also provides certain qualifications for enrolment, but says nothing about voting.

The Hon. A. F. Griffith: Why does it not provide certain qualifications for voting?

The Hon. E. M. HEENAN: That is provided for under a different measure. By interjection, the hon. Mr. Watson drew our attention to Section 38 of the Constitution Act, which provides—

The electoral laws existing at the date of the coming into operation of Part III of this Act shall, except as otherwise provided in this Act, be in force and apply to the election of members to serve in the Legislative Council for electoral divisions in the same manner as such laws shall then be in force in respect of election to the Legislative Assembly for electoral districts.

There were separate electoral laws when this Constitution was enacted. Surely it is not going to be said that any alteration in the penalties, or in the mode of voting will affect, alter or change the Constitution. If this Bill were to provide that there should be an increase in the number of members, then a change in the Constitution would be affected. If it provided that those members could be elected when they were 21 years of age, instead of 30 years as at present, a change in the Constitution would also be affected.

The Hon. H. K. Watson: How about an alteration in the franchise?

The Hon. E. M. HEENAN: That is an academic question. I agree with the remarks of Mr. Justice Gavan Duffy in this respect. I do not think a change in the franchise requires a constitutional majority. In my opinion, a Bill to change the franchise would come under the first part of Section 73 of the Act, and would not come within the proviso. It is only an academic question, however.

The Hon. H. K. Watson: Except that this House and another place have from time immemorial regarded it as altering the Constitution.

The Hon. E. M. HEENAN: That does not make a right a wrong. The eminent judge, Mr. Gavan Duffy, held the view that a change in the franchise would not affect a change in the Constitution. I think in simple language the Constitution can be said to be the list of sections which set up this Legislative Council.

The main sections relating to the Constitution provide that there shall be 30 members, and that certain people shall be eligible to enrol. Surely it is within the province of Parliament, through an ordinary Bill, to alter the electoral Act which is a separate matter altogether. I agree with the remarks made by the hon. Mr. Wise and the leader of the House. I do not think this question is open to doubt at all. In conclusion, I congratulate you,

Mr. President, on your wise ruling in connection with the plain straight-forward question which has arisen for interpretation.

The Hon. F. J. S. WISE: Under Standing Order No. 305 I claim the right to explain something raised by the hon. Mr. Griffith after I had spoken. He used a Bill which was introduced in this Chamber last year as an argument in support of his contention that your ruling, Mr. President, should be disagreed with. I have before me a copy of the Bill and find that it contains 18 clauses, only two of which are in the Bill now under discussion. It was passed by the Legislative Assembly and required an absolute majority, as the hon. member stated; but not for the purpose that he outlined.

The Bill is endorsed as follows:—

This public Bill originated in the Legislative Assembly, and the purposes for appropriation of the revenue were first recommended to the House by Message of the Governor during the present session, and passed its second and third reading in the Assembly with the concurrence of an absolute majority of the whole number of members of the Assembly, and having been this day passed is now ready for presentation to the Legislative Council for its concurrence.

Many matters in the Bill of last year, but not in the Bill before us, directly referred to the prerequisite of a Message. However, Clauses 17 and 18—

The Hon. H. K. Watson: That has nothing to do with an absolute majority.

The Hon. F. J. S. WISE: Clauses 17 and 18 of the Bill introduced last year required neither an absolute majority nor a Message. For that reason I submit the argument of the hon. Mr. Griffith is not relevant. It is not a similar Bill to the one before us. The latter contains two clauses which formed the components of the Bill introduced last year.

The Hon. L. A. LOGAN: I have endeavoured to seek an interpretation of the word "affected" appearing in Section 73 of the Constitution Act. On that interpretation will hinge my approach to the matter we are dealing with. My approach to the motion to disagree with your ruling, Mr. President, will not be based on the merits or demerits of the Bill. It was thought by the hon. Mr. Wise that the hon. Mr. Griffith raised this point to defeat the Bill.

At the moment we have to decide on a principle. In my opinion the wording in the Bill does not come into the picture at all. Whatever way I vote on the question before us will have nothing to do with the contents of the Bill. The main point is on the interpretation as to whether the Constitution will, in any way, be altered

at all. The Oxford dictionary shows the meaning of the word "affected" as follows:—

The Hon. E. M. Heenan: Should you not deal with the interpretation of the word "change"?

The Hon. L. A. LOGAN: The relevant portion is "any change which may be affected." The two words must be brought together. The definition of "affected" reads—

Artificial, assumed or displayed; or pretended; full of affectation; artificial.

Then it goes on to interpret the word "affected" as follows:—

Disposed, inclined—

The PRESIDENT: Will the hon. member resume his seat. I would point out that the word appearing in line 8 is "affected," but that is a typographical error, because in Section 73 of the Act, as it was passed originally, the word appears as "effected." When the provision was transferred to the Standing Orders, the wording was changed. I am satisfied of that.

The Hon. L. A. LOGAN: Whatever might have been the wording in the Act originally, I can only deal with what is before us. If I am to decide on your ruling, Mr. President, I have to do so on the wording as it is printed. I cannot rely on what someone has told us. The wording might have been printed wrongly back in 1892.

Hon. H. K. Watson: What you have before you is a reprint of the Act.

The Hon. L. A. LOGAN: That might be so. I have to deal with the wording which appears before me. I have listened to both sides of the argument, and I am inclined to think that the argument of the hon. Mr. Griffith has much merit. It is unfortunate that we have to make up our minds now without sufficient time to give this matter further serious thought. None of us likes to agree or disagree with your ruling on the spur of the moment. I am certain there are many more aspects which should be gone into, in order to give hon. members a better opportunity of making a sound approach to the matter, and that cannot be done in the few minutes available to us now.

The argument raised by the hon. Mr. Wise in regard to the approach of the hon. Mr. Griffith in respect of constitution and composition was broken down by the Minister for Railways. So this becomes a pretty difficult question to decide. After having listened to both sides of the argument, and after making it quite clear that what I have to say has nothing to do with the merits or the demerits of the Bill, I intend to support the hon. Mr. Griffith.

The Hon. H. K. Watson: At this moment I am considerably more confused than when the debate commenced. As I see it,

the position is this: We have a precedent in a Bill, as late as last year, where, by common consent in another place and in this House, it was accepted, acknowledged and not disputed that it was one which effected a change in the Constitution, and therefore required a certificate showing that it had been passed by an absolute majority of the Legislative Assembly.

The Hon. A. L. Loton: Was it for those reasons, or other reasons?

The Hon. H. K. WATSON: I suggest for those reasons, because no hon. member has pointed out, nor have I been able to ascertain for myself any other provisions, in that Bill which required an absolute majority, or which in any way altered the Constitution of the Legislative Council. If any hon. member knows of any other reasons I shall be very interested to hear them. In his remarks, the hon. Mr. Wise did not point out any such reasons. On the second occasion when the hon. Mr. Wise spoke, he went off at a tangent on this point. I do not for one moment say that he was endeavouring to confuse the House, but I do submit that he confused himself. The fact that the Bill was supported by a Message had nothing to do with the fact that it was certified as having been passed by an absolute majority in another place.

It cannot be denied that 20 years ago, a Bill of a like nature to the one before us, was passed by both Houses without a certificate. As against that, I find myself in agreement on the point made by the hon. Mr. Heenan, in a different respect, and it is this: Parliament does not interpret the law by misunderstanding it. During the course of this debate a further interesting question has arisen, and that is: If this particular question is not a change of the Constitution—and does not require an absolute majority—it could well be, as the hon. Mr. Heenan claimed, that a Bill to change the franchise of this House does not require an absolute majority.

As I say, the position to me is very confusing, and I just leave this thought with the House: A month or so ago, the House of Commons found itself in a position not dissimilar to the one in which we find ourselves at this moment, on a question as to the appropriate wording and the full effect of the Rights and Privileges Act of the United Kingdom. The House of Commons decided, after a pretty substantial debate on the question, to refer the matter to the Privy Council for decision. The actual routine was a petition to the Queen for submission of the question to the Privy Council whereupon the Privy Council, consisting of seven law lords, gave an advisory opinion.

Now, it seems to me, as the issue involved on this particular Bill is not necessarily localised to the matters raised in the Bill, it may not be inappropriate if

the House thought fit to refer the matter to the Chief Justice or the other justices of this State for an advisory opinion. I just raise that suggestion in passing. In this way, we would obtain an impartial, dispassionate, and judicial ruling on the question. Human nature being what it is, it would be difficult for hon. members, if the matter is decided in the House, to entirely exclude from their minds any political implications. If a question like this, or any incidental question, were submitted for the judicial interpretation of the justices of the Supreme Court of Western Australia, then their opinion would unquestionably be accepted by everyone as being a proper interpretation of the law. After all, it is for the Supreme Court to interpret the law and this is a matter of interpretation of the law. We have a Constitution Act, but there is a difference of opinion between us, as to what the Act means. In all such matters as this, it is a question for the court to determine and interpret the law, so I just leave those thoughts with the House.

In the meantime, to reserve my own liberty of action if on any future Bill a similar point is raised, I support the motion moved by the hon. Mr. Griffith.

The Hon. A. F. GRIFFITH (in reply): There are one or two matters to which I briefly want to refer. I must, first of all, inform hon. members that I have not endeavoured in the slightest way to debate the merit or demerits of the Bill—not in the slightest way—nor is it my intention to do so, because I think the Bill is so stupid, anyway. If it ever comes to that, the House will deal with it in perhaps another way. It is a question of principle to which I apply myself this afternoon. If the Legislative Council, with respect to you, Sir, finds, by dividing, that you are correct in the ruling you have given us, then the Legislative Council shall lay down a precedent to which future hon. members of the Legislative Council will refer, as you have done, Sir, in referring to the 1936 Act. They will say, "The Hon. Sir Charles Latham, as President of the Legislative Council, ruled this way on this occasion." Therefore, I think it is important that we view the matter very seriously.

The Hon. E. M. Heenan: What do you think of the Solicitor-General's opinion?

The Hon. A. F. GRIFFITH: Let me say this: The Solicitor-General's opinion leaves me in just as much doubt as did some of the comments of the Minister for the North-West. The Minister said, contrary to the view of the hon. Mr. Wise, that the matter is purely one of Constitution, and I contend that it is, but the hon. Mr. Wise, on the other hand, says it has nothing to do with the Constitution at all.

The Hon. R. F. Hutchison: You are spinning words.

The Hon. A. F. GRIFFITH: The hon. member does not know anything of this matter, except the political implication attached to it, and I know she would be interested in that.

The Hon. F. J. S. Wise: Don't get your shirt off!

The Hon. A. F. GRIFFITH: The Constitution of a body is the legal document that concerns its incorporation, and it is measured in these terms: The annual subscription will be five guineas per year. If some legislation were introduced which laid down that the annual subscription should not be five guineas a year, that would be a change in the Constitution. In this particular case, the Constitution Act provides that a person with a certain property qualification shall be entitled to vote, and the Constitution Bill which follows this one, will provide for an amendment to Section 15 of the Constitution Act and it will take out the words, if it is successful, which have reference to property rights for franchise and will place—

The Hon. E. M. Heenan: He is entitled to be elected as an elector.

The Hon. A. F. GRIFFITH: The hon. member knows more about the constitutional measure I am suggesting will follow this Bill, and it is still in another place.

The Hon. E. M. Heenan: What has it to do with the President's ruling? You said there was some provision about voting and you pointed it out to the House. Where does it say anything about it in the Constitution?

The Hon. A. F. GRIFFITH: It does not, and I know that only too well. Section 156 of the Electoral Act will provide that it will be compulsory to vote for the Legislative Council, in which case it will be compulsory for the people on the roll for the Legislative Council to vote. Perhaps I could ask hon. members this question, and with that conclude the debate. What will happen if this Bill becomes law, and the Constitutional Bill does not become law? What sort of a conflict would there be then? The Electoral Act provides for compulsory voting and the Constitution Act provides something entirely different. It would not be operative.

The Hon. H. C. Strickland: You are discussing the Bill now.

The Hon. A. F. GRIFFITH: That is the position. There was no reason at all why this measure could not have come up from the Legislative Assembly with a constitutional majority, no reason at all. The Government has the members down there to do it.

The Hon. H. C. Strickland: The Speaker ruled that a constitutional majority was not required.

The Hon. A. F. GRIFFITH: Only after it was challenged—and it was challenged in another place—and on that point it is

pure conjecture for the hon. Mr. Wise to say that whilst nothing is written in Hansard of 1936, there was probably some mention of the Bill outside the House. There might or might not have been; I do not know. But the fact—

The Hon. R. F. Hutchison: You know all right!

The Hon. A. F. GRIFFITH: —is that no mention was made of any objection to it in Hansard. So, I ask hon. members to agree to my motion because I think it would be far safer for the future of this State that measures of this nature should require a constitutional majority of the members of both Houses.

The Hon. H. C. Strickland: You should alter the appropriate Act.

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

Ayes—15

Hon. C. R. Abbey	Hon. J. Murray
Hon. J. Cunningham	Hon. H. L. Roche
Hon. L. C. Diver	Hon. C. H. Simpson
Hon. A. F. Griffith	Hon. J. M. Thomson
Hon. W. R. Hall	Hon. H. K. Watson
Hon. J. G. Hislop	Hon. F. D. Willmott
Hon. L. A. Logan	Hon. R. C. Mattiske
Hon. G. C. MacKinnon	(Teller.)

Noes—11

Hon. G. Bennetts	Hon. H. C. Strickland
Hon. E. M. Davies	Hon. J. D. Teahan
Hon. J. J. Garrigan	Hon. W. F. Willesee
Hon. E. M. Heenan	Hon. F. J. S. Wise
Hon. R. F. Hutchison	Hon. G. E. Jeffery
Hon. A. L. Loton	(Teller.)

Pair.

Aye.	No.
Hon. A. R. Jones	Hon. G. Fraser

Majority for—4.

Question thus passed.

Council's Message to Assembly.

THE HON. H. C. STRICKLAND (Minister for Railways—North) [6.0]: I move—

That the Legislative Assembly be informed that this House considers that the Electoral Act Amendment Bill (No. 3) requires to be passed with the concurrence of an absolute majority of the whole number of members; and as the certificate on the Bill received from the Legislative Assembly does not indicate that this provision has been complied with, the Legislative Council is unable, in accordance with Standing Order No. 242, to proceed with the Bill.

Question put and passed.

BILLS (2)—FIRST READING.

- 1, Electoral Act Amendment Bill (No. 2).
- 2, Constitution Acts Amendment Bill (No. 2).

Received from the Assembly; the Hon. H. C. Strickland (Minister for Railways) in charge.

BILLS (4)—THIRD READING.

- 1, Western Australian Aged Sailors and Soldiers' Relief Fund Act Amendment.
- 2, Tuberculosis (Commonwealth and State Arrangement).
- 3, Weights and Measures Act Amendment.
Passed.
- 4, Cattle Trespass, Fencing, and Impounding Act Amendment.
Transmitted to the Assembly.

**INDUSTRIAL ARBITRATION ACT
AMENDMENT BILL (No. 2).***Second Reading.*

Debate resumed from the 15th October.

THE HON. G. E. JEFFERY (Suburban—in reply) [6.10]: I must say I am amazed at the reception accorded the Bill, particularly by those hon. members who have a close association with the building trades. I refer particularly to the hon. Mr. Mattiske. All I can say is that he was jumping so much at political shadows that if he was a racehorse he would need blinkers. I can well imagine that if we had a parliamentary picnic race-meeting at Point Walter and he nominated a horse, his nomination could well be Liberal by Conservative out of Touch.

The PRESIDENT: What has this to do with the Bill?

The Hon. G. E. JEFFERY: I am—

The PRESIDENT: The Bill has nothing to do with race-horses.

The Hon. G. E. JEFFERY: I am commenting on the hon. member's remarks.

The PRESIDENT: I think the hon. member had better get to the point.

The Hon. G. E. JEFFERY: I shall deal with the exact words used by the hon. Mr. Mattiske when he spoke of the Bill being a pernicious measure by the Government to bring the workers within its industrial and political dragnet. In another stage of his speech, in speaking against the Bill, he made reference to the debate on the Builders' Registration Act Amendment Bill in 1953. He pointed to the efforts of the unions at that time to allow an unregistered builder to undertake building contracts to the value of £4,000. All I can say is that it is difficult to reconcile the two statements, because everyone knows that a man who sets up in business for himself, immediately leaves the confines of the industrial trade union to which he formerly belonged.

It is hard to reconcile the Government's efforts to get these people into the industrial and political dragnet of the Labour Party; and, at the same time, admit that when the Builders' Registration Act

Amendment Bill was before Parliament, the Labour members, or the Government, were in favour of allowing them to leave the union, and thereby lose party membership. I suggest that the implication there just does not exist. The hon. member agrees that in 1938, Mr. Justice Wolff gave a determination, which I intend to read, because he admits, as I claim, that this situation did exist. To be fair to all, I intend to read the entire judgment and subsequently to make a few comments on it. His Honour had this to say—

The building trades are especially subject to the inroads of the entrepreneur, of the jobbing labourer, and jobbing operative who goes around cutting prices, really working in the relationship of servant but under cover of pseudo contractual arrangement. This state of affairs was deplored by the unions and by almost all the employers. There is a general desire to "do something" about it. The general consensus of opinion was that it was bad for the trade. My colleagues and I have formed the opinion that something must be done to deal with this position. This system of working undermines fair standards and leads to skimpy work. Instances were quoted of men working all sorts of irregular hours and on Sundays and holidays. Examples of poor workmanship were also cited. In an endeavour to make the most possible in money in the least time the artisan does not put his best into the task. I approach the question of preference to unionists and "piecework," or pseudo contract problem, as being linked together. If it could be so arranged that preference were given to members of the unions, and that no person who took on this class of jobbing work could be a member of the union, then we would be going a long way towards controlling what is a glaring evil. The domestic rules of the union could provide, as is done in other places for expulsion of a member who was a so-called employer or master operative one day and a journeyman operative another day. In addition, a penalty could be provided for this particular type of individual. The unions in these references asked for the outright restriction of piecework by providing that it could not be done without the sanction of the court as to the terms and conditions on which the work was to be performed. But is this the point?

Point of Order.

The Hon. J. G. Hislop: Is it allowable Mr. President to produce new material in closing the debate?

The President: The hon. member can make quotations from information which has been used in the House, but he must not indulge in tedious repetition.

Debate Resumed.

The Hon. G. E. JEFFERY: I am reading the judgment of Mr. Justice Wolff which, I believe, the hon. Mr. Mattiske read during the debate. I think I am also entitled to read it. To be fair to all I shall, as I said, read the learned judge's comments, and I shall then add my conclusions to what he had to say. His Honour continued—

The question is—what is "piecework"? The only meaning piecework can have in the claims as couched is work done by the task or by the specific job by a worker working for another party who is a master in the strict sense, that is to say, there must be the relationship of master and servant. Even if I were disposed to grant the unions' claims in their entirety, the unions would still find that the trouble which they seek to rectify would go on unchecked. On the other hand, the employers, desire to meet the position by providing that no member of the applicant unions is to be a master or jobbing operative. I am treating the employers' answer in accordance with what I consider is their intention, although there is room for some argument on the phraseology used in the issues. The unions are fearful that if the employers' answer be adopted the effect might be to cause serious diminution in their membership. After consideration and bearing in mind the extent to which this jobbing work is done by operatives, I think there is a good deal to be said for the unions' fears. How then can the position best be met? In my opinion, by conceding the principle of preference to unionists thus ensuring that there can be some discipline exercised by the unions over operatives in the trade. I have however, decided on this principle more or less as an experiment, and it will be noticed that I have qualified it by providing that, if the unions or the majority of their members in any particular case take part in a strike, or a cessation of work, then the benefit of the clause will automatically cease. This, in my view, is necessary in order to ensure that the clause cannot be used as a weapon of oppression. Furthermore, I have given liberty to apply to either party at the expiration of six months from the date of the award, at half-yearly intervals. This will enable matters relating to the effect of the working of the clause to be put before the court, and any variations shown to be necessary in the light of experience can be made in the exigencies of the circumstances. It will be necessary for the proper working of the clause for the unions to put their domestic affairs in order. I desire to be assured, or the court will desire to be assured that the unions are giving a fair right of entry to

competent operatives. Unless this guarantee is given and maintained, and the right of entry appears at all times to be unfettered so far as men with the necessary skill and character are concerned, the unions will not continue to enjoy the benefit of the clause.

Allowing that the hon. Mr. Mattiske and Mr. Justice Wolff were agreed that the problem existed in 1938—and as a result the learned judge gave that decision—hon. members will notice that the judge in his reference to this type of work, points out that it is impossible for the worker to provide a fair standard of workmanship because of the system; and he says that it leads to skimpy work.

I also concede to the hon. Mr. Mattiske that Mr. Justice Wolff, on that occasion, contended that the court had the necessary power to determine anything of this nature. At a later stage, I intend to read a section of Mr. Justice Neville's judgement, which is of more recent date. His Honour disagreed with Mr. Justice Wolff's opinion, and pointed out the position in which the craft unions found themselves as a result of the earlier decision.

Sitting suspended from 6.15 to 7.30 p.m.

The Hon. G. E. JEFFERY: I had just finished reading the judgment of Mr. Justice Wolff. Subcontract work in the building industry has been going on ever since the building trade has existed and, as far as I know, there has never been any objection to it from the building trades—that is the genuine subcontractor. Anyone who knows anything about the building trade will agree that subcontractors, such as plumbers and the like, have been part of the building trade ever since it has existed. A builder will take on a contract to build a block of flats, or a cottage, and the plumbing work is done by a subcontractor, who is generally a master plumber.

The same applies in many instances to big jobs. There are master painters, tile-fixers and so on. That work is generally done by subcontractors; and I think hon. members opposing this measure will agree that those subcontractors are an integral part of the trade and, as such, have never been objected to by the building trades unions. In times of prosperity in the building trade a lot of men become subcontractors; we witnessed that in the boom period immediately after the last war. And there is no objection by the union to those men.

But, at the present time, with the diminution in the amount of building, some people have been driven by economic necessity to do things which they would not normally do and, unfortunately, there are some people who will take advantage of the position and use it for their own ends. So today we have what is known as pseudo subcontracting. Much

has been said about the young man who wishes to enter the building trade. I think most, if not all, of the master builders around Perth have come up the hard way in the building trade. In the first place most of them were journeymen and, over the years, because they had been practising and gaining knowledge in one of the trades, they reached their present position. I would say that the feeling which exists between the master builders and the building trades unions in Western Australia could not be bettered.

Most of the master builders have a big stake in the industry and the acquisition of plant, and so on, takes a lot of money. They have their own money tied up in their businesses, and that money is affected by the quality of the work they perform. In most instances master builders will, if possible, employ the same subcontractors to perform the various types of subcontracting work they want done, such as the mortar work, bricklaying, plastering and so on. But the man who plays the game by the industrial laws of the State has not much chance in competition with the man who can get away with such things as the non-payment of holiday pay and so forth. It is quite evident that some of these master builders who have recently become bankrupt can to a certain extent blame their bankruptcy on the fact that they have had to pay proper award rates of pay, and have had to honour industrial awards and, as a result, have had no chance of competing with the man who does not pay those charges and who has no stake in the industry.

The Hon. G. C. MacKinnon: That is only guesswork.

The Hon. G. E. JEFFERY: It is not guesswork. If the hon. member cares to peruse copies of the "Western Australian Industrial Gazette," and if he takes notice of the bankruptcy notices in the paper, or calls on any trades union, he will know of the struggle some of them have had to obtain proper wages for some of their members, many of whom have been left lamenting. We know of the practice that has been adopted in the building trade so that subcontractors cannot get their fingers burnt—they ask for payment for their work as the building progresses. With the tightening up of the building trade it becomes more evident than ever that that sort of thing has to be done, and as recently as Thursday, the 20th December, 1956, in speaking to the minutes of the building trades award, Mr. Justice Neville had certain things to say. Later on I will read an extract from that judgment, which was previously read by the hon. Mr. Thomson. Mr. Justice Neville is the present President of the Arbitration Court, and I shall also read some small extracts from comments made by Mr. Christian, who is the employers' representative on the court.

But before doing so I would like to draw attention to the fact that this debate has been going on for some time, and that much play has been made of the attitude of the Master Builders' Association. I have never been in contact with the association but I would like to correct one error made by the hon. Mr. Thomson; I think he was a little astray. When reading a letter he received he said, or I took it that he said, that it was the point of view of the Master Builders' Association. But on reading the same letter myself later I find that is not so. I think in fairness to the party who wrote the letter I should read it again, because I think the hon. Mr. Thomson has misconstrued what was said. This is what was said—

This association rejects your correspondent's allegations that the employers hope the Bill will fail. Mr. Menagh quotes one builder, but this association has interviewed a number of reputable Perth builders who are wholeheartedly behind the measure.

In fairness to the writer of the letter I should say that it does not purport to be the opinion of the master builders as a registered body. I suggest, not having heard any expressed opinion from the Master Builders' Association of Perth, that they would have a lot in common with the opinion of the unions, and that they would be in agreement with the Bill. I place that construction on their silence in this matter because I think, in this instance, it means assent.

The Hon. J. M. Thomson: They have not even discussed it.

The Hon. H. K. Watson: I understand they are strongly opposed to the Bill.

The Hon. G. E. JEFFERY: If they have not discussed it as a body, and as the measure was in another place prior to coming here, and its contents must have been known, it indicates to me that the master builders are not against it. I must crave the indulgence of the House to read one letter to show that at least one member of a masters builders' association had different thoughts on this matter. This letter was addressed to Mr. T. W. Henley, secretary of the Carpenters and Joiners' Union, and its reads—

At a meeting of this Guild last night, attention was drawn to the recent alarming increases in the quantity of work being done over week-ends and I was instructed to bring the matter to your notice in the hope that suitable action may be taken to prevent this. Your co-operation would be appreciated.

The Hon. R. C. Mattiske: That is dealing with week-end work and not subcontracting.

The Hon. G. E. JEFFERY: Exactly. I suggest to the hon. Mr. Mattiske—and he would know this because of his close association with the building trade—that the type of man who works on Sundays is not one of those who is a genuine subcontractor.

The Hon. R. C. Mattiske: And one against whom the union has not taken proceedings.

The Hon. G. E. JEFFERY: The union has proceeded against those men on many occasions. As a matter of fact, to carry the argument further, and to point out the difficulties, I would like to read the answer that the secretary of the union sent to the hon. Mr. Mattiske who has made great play, and who is now making play, on what the union should do in regard to this matter. The hon. Mr. Mattiske's letter was written on the 29th July, 1958, and on the 30th July, 1958, Mr. Henley replied as follows:—

Your correspondence of 29th July referring to the quantity of week-end work being carried on, is acknowledged. The building trades unions have been very concerned about week-end work over a long period.

The Hon. R. C. Mattiske: But have taken no action about it.

The Hon. G. E. JEFFERY: The letter goes on—

In so far as the Carpenters Union is concerned, members who have been proved to have breached the award have been fined by the Union Disputes and Appeals Committee.

I suggest that the union has taken some action and I will deal with that when I have completed the letter. To continue—

The problem, however, is not easy to solve. First of all we must prove that a week-end worker is being paid for the job, and is not working self-help. No action can be taken unless this proof is forthcoming. Secondly, the employer must carry out his part of the contract by immediately expelling the worker who carried on week-end work whilst still in his employment.

Thirdly, the real problem is that most builders of housing jobs, many who are members of your guild, employ subcontractors over whom nobody has any control. Subcontractors are not eligible to become, or remain, members of the unions. There are over 1,000 building trades workers employed as subcontractors on their own account.

Many week-end jobs which have been investigated by union secretaries, are being carried on by self-help builders who are erecting their homes,

employing subcontractors to do such work as they cannot perform themselves.

However, we appreciate the fact that this is a problem which must be faced up to. In the next week or so, we are having a conference with the Bunbury builders on this very matter. I shall forward your letter on to the Building Trades Association, with a recommendation that a conference be convened with your guild and possibly the master builders.

Following that, on the 12th August, 1958, a letter was written to the secretary, W.A. Builders Guild, by Mr. R. W. Clohessy, secretary of the Building Trades Association, and it reads as follows:—

The Carpenters and Joiners Union has taken the liberty to pass on to my Association a copy of your letter of the 29th ultimo.

The Association is equally concerned about the matter, and feels that there should be a round table conference convened to discuss ways and means of combating unauthorised weekend work. We therefore recommend that you should convene a conference with the other Master Employer Organisations and with members of my Association. Would you kindly advise the venue and time of the proposed conference.

An approach was made on that occasion by the Builder's Guild to the Carpenter's Union that a round table conference be held on this question of subcontract work. That, to my mind, proves that the question is one that is too big for any one organisation, and when I have read Mr. Justice Neville's judgment I think hon. members will agree, because he says that the problem is too big for the unions to police. I think every hon. member is aware of that fact.

Earlier the hon. Mr. Mattiske read Mr. Justice Wolff's 1938 judgment, and he said that he had power to deal with it. That is so. I shall now read an extract from the judgment of Mr. Justice Neville in regard to the same feature. It reads—

This question of piecework has been a difficulty in this award for very many years. In 1938 Mr. Justice Wolff, who was then Chairman of an Industrial Board which made an inquiry into the industry and found that piecework and pseudo contract work lead to many abuses in the industry and this clause was then inserted in the hope that such evils would in future be prevented, or at least mitigated. I think that the clause has had the effect of at least mitigating to some extent the evils that were then prevalent, although of course in a period of full employment it was impossible for the unions to

discipline the workers who breached the clause. Evidence was brought before us to show that at least in the Carpenters' Union serious efforts were made to carry out the intention of the Court in this regard.

The hon. Mr. Mattiske claimed that they were dodging the issue. To continue—

It is true, too, that the policy of the Government in this State in bringing into effect the self-help scheme for building to some extent aggravated these difficulties, but it is true on the other hand that although the self-help scheme did have the effect of aggravating the difficulties in this industry in that regard, such evils may have been outweighed by the fact that it enabled people to obtain houses, who otherwise would not have been able to get them, and that may have been a greater benefit to the community in general, than the evils entailed in this industry by that scheme.

I think that shows quite clearly that the problem of 1938 exists today, and despite all comment to the contrary the judge of the court says that in a period of full employment it is virtually impossible for the union to police pseudo subcontract work. He goes on to say—

For my part, I would leave the existing clause much as it is. It is true that it cannot be altogether effective; only legislation can provide a real remedy for this evil in this industry but I would not continue to place the whole onus on the unions for the policing of this clause, and I would therefore make the clause read:—

No employer shall employ a worker, nor shall any worker accept employment under this Award at piece work or labour only rates, or for rates for labour and material unless the rates for such work shall have been fixed by the Court.

That will mean that not only will the worker commit a breach if he works at piece work rates, but the employer who employs that worker will commit a similar breach, as in effect he probably would even under the old award as he would be an accomplice to the breach by the worker, but it is as well to make the breach express. That will not mean of course that subcontract work is prohibited because this Court has no power to provide in any way for subcontract work where it is real subcontract work and not piece work under the guise of subcontract work. It is always a difficult question of fact to decide whether any particular work is contract work or work by a worker

under contract of service, but those difficulties are inherent in the subject and as I have said can only be solved by legislation.

Mr. Christian, following, said—

Regarding the Preference Clause, Piecework Clause and Terms of Service Clause, these clauses were inserted into the Award in 1938 and 1948 for one purpose, and one purpose only, and that was to stop pseudo-contractual and week-end work.

So I think the President of the Arbitration Court has an appreciation of the difficulty inherent in the position that existed in 1938. He admits that today the problem still exists, and further says it can only be solved by legislation. The position of the building trade in this respect is that its members have no right of appeal against the decision of the Arbitration Court unless the penal conditions are invoked.

The hon. Mr. Mattiske made some reference to the position that would exist in country areas if this Bill became law. The position in the country would not vary one bit. If a farmer agreed to build a new home or have additions or alterations carried out to the existing dwelling, the protection of the Arbitration Court would apply only to the parties bound by its building trades award. That would be the builder and his employees—the industrial union and the master. The only recourse to satisfaction between the farmer and the man who does the building work on his property is at common law.

The Hon. L. C. Diver: Suppose he engaged a contractor to do the work.

The Hon. G. E. JEFFERY: It would apply if he is a contractor under the meaning of the Arbitration Act, and he is covered. If he is a handy man, however, his only recourse is at common law. The same thing applies to the self-help builder in the metropolitan area. He is not recognised by the Arbitration Court. So these things do not have any great bearing.

The other matter worth mentioning was a reference by the hon. Mr. Thomson to the effect that it would be dangerous to place this in the hands of the Arbitration Court. Personally I think the Arbitration Court is the only tribunal that should have this power. The workers in this State have been brought up to support the Arbitration Court. I realise that while I was a worker I did not agree with many of the decisions of that court, but I would point out that the record of the builders in Western Australia shows that there has been very little strife, and that an exceedingly good feeling exists between master builders and the workers of this State. If we cannot trust these things to the Arbitration Court—which is an impartial tribunal, with a representative of the

workers and the employers on it—then to whom can we entrust them? Both parties are well represented before the Arbitration Court. The trade unions have skilled advocates, as have the employers. If we do not believe in a system of arbitration then in what are we to believe? We would resort to the law of the jungle.

The Hon. J. M. Thomson: I did not advocate that.

The Hon. G. E. JEFFERY: No, but the hon. member said it was dangerous to place this power in the hands of the Arbitration Court. I am merely pointing out that if we do not give the Arbitration Court this power we would revert to the law of the jungle, where action would be taken without recourse to any impartially constituted body. Both the employers and the workers have the highest regard for the judges of the Arbitration Court and I would emphasise the fact that the record of the workers of this State is much better than those of the Eastern States. This is mainly due to the confidence that both parties have in the Arbitration Court.

I would now like to refer to the young man in industry. My experience is that the average young man in industry prefers times of expansion when he can see long periods of work in front of him. He enters the trade by performing small jobs; he gains knowledge by building odd sleep-outs, single rooms and perhaps carrying out alterations. He continues in this manner until he is able to tackle the building of a cottage. After that, with a bit of luck he gradually continues to gain more knowledge and more work and his industry improves. At the present moment the opposite is the case. Many men who were contractors would now be seeking wages and trying to re-enter the trade as day-labour workers.

I think the Bill has much to commend it, and I am sure we can depend on the confidence and good sense that would prevail in the Arbitration Court. The employers are well satisfied with their advocates, and the workers are well satisfied with theirs. In the case of disputation, both sides would be given a full hearing in the court. I would also like to point out at this stage that the award rate paid by contractors is the minimum legal rate applicable. Arbitration will become a shallow thing indeed if we have on the one hand awards being made by the Arbitration Court and, at the same time, parliamentary laws condoning flagrant breaches of that award.

Award rates are the minimum rates and any reputable contractor who is highly regarded in the industry would support this measure, rather than have the pernicious system that exists today, where men who have no skill and no pride in their work can leave it at any moment. I have the figures of 10 leading contractors who between 1955 and 1958 built 1,216 houses and

94 flats in the aggregate. Out of those 1,216 houses built by the 10 large contractors there was something like 1 per cent. of trouble where the builder was obliged to return to rectify some work that had been done. The reason that he returned is that the average building contractor, who has a pride in his work, has too much to lose by doing shoddy work.

The Hon. J. Murray: He still went back and did it.

The Hon. G. E. JEFFERY: Yes, and there were only small faults. He rectified the trouble because his good name was at stake, and it was necessary for him to do a satisfactory job.

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

Ayes—11

Hon. G. Bennetts	Hon. F. R. H. Lavery
Hon. E. M. Davies	Hon. H. C. Strickland
Hon. W. R. Hall	Hon. W. F. Willesee
Hon. E. M. Heenan	Hon. F. J. S. Wise
Hon. R. F. Hutchison	Hon. J. D. Teahan
Hon. G. E. Jeffery	(Teller.)

Noes—13

Hon. A. F. Griffith	Hon. H. L. Roche
Hon. J. G. Hishop	Hon. C. H. Simpson
Hon. A. R. Jones	Hon. J. M. Thomson
Hon. L. A. Logan	Hon. H. K. Watson
Hon. L. A. Loton	Hon. F. D. Willmott
Hon. G. C. MacKinnon	Hon. J. Murray
Hon. R. C. Mattiske	(Teller.)

Pairs.

Ayes.	Noes.
Hon. G. Fraser	Hon. J. Cunningham
Hon. J. J. Garrigan	Hon. L. C. Diver

Majority against—2.

Question thus negatived.

Bill defeated.

LONG SERVICE LEAVE BILL.

Second Reading.

Debate resumed from the 15th October.

THE HON. H. C. STRICKLAND (Minister for Railways—North—in reply) [8.0]: This Bill, to give long service leave to those employees who are not covered by awards or long service leave provision agreements registered with the court, has been debated by the hon. Mr. Watson in reply to my introduction.

He covered most of the points in the Bill, but said that originally a similar measure was before this Chamber last year and was agreed to, but was not returned from another place. He claimed that deprived many thousands of people from enjoying long service leave. I do not think that could be justly claimed. It may have set back some by perhaps one year, but differences of opinion arise over what a Bill should contain and what it should not contain, particularly when that Bill refers to employees and their conditions.

I merely want to clear up the fact that it was no fault of the Government that the legislation did not become law last

year, because the Government's idea was based on 10 years' service and the majority opinion of this Chamber was based on 20 years' service. However, that was not altogether the main trouble with the legislation last year, or why it did not finally come back for further reconsideration in this Chamber.

The main problem was that the Bill was so amended in this Chamber that it took away privileges which many employees had awarded to them by the Arbitration Court in this State. The Bill could have taken away those privileges and conditions. For that reason, anybody who represents the employees, would consider that the employees should be given the benefits of privileges granted by the Arbitration Court. Therefore the Bill was unacceptable.

I explained the position to this House when the message from the Assembly was returned here in November last year. I explained that there would be no conference; that this Chamber would need to delete that aspect from the Bill or otherwise it must be lost. We were all aware that negotiations were proceeding between the employers and employees throughout the Commonwealth—or in the Eastern States—at that time to endeavour to arrive at an agreement in relation to long service leave for most employees. These negotiations have not yet been completed, and one of the clauses which is holding them up is that dealing with offsetting, which is not a provision in this Bill and one which I hope will never be introduced into the legislation.

It is a fact that an offsetting clause has been inserted into the long service leave conditions recently in the Arbitration Court, but as I explained in my second reading speech, it is the intention of the trade union movement to make application in an endeavour to have that clause removed from the conditions as agreed to in the Arbitration Court. Actually, it was not a decision of the court; it was an agreement between certain employers, and certain employees' representatives. It was a consent agreement and not an order of the court. However, application will be made to the court to have that condition reconsidered.

There are quite a number of amendments on the notice paper and one does include such a provision. However, that will be debated in the appropriate Committee stage. I am pleased to see that on this occasion the opponents to the Bill have not asked the Chamber to include that iniquitous clause again whereby, I consider, this legislation failed to be put on the statute book last year. Briefly, that clause empowered any person in authority to approach the Arbitration Court to have any awards which might be in existence or under its jurisdiction

where there was less than 20 years' qualification, adjusted to a 20-year period; and the court "shall" adjust it—not "may". That was the iniquitous provision whereby those workers in Western Australia who are affected by this legislation have had to wait another 12 months before becoming entitled to long service leave.

Hon. members will be well aware that I discussed the matter on many occasions and was most emphatic that the Government, and the trade union movement generally, could not accept legislation containing a provision of that type. On the one hand, opponents to this legislation want to say that "the judge shall do, or the Arbitration Court shall do" what any person asks, and on the other hand they want to alter the Industrial Arbitration Act so that the basic wage "may" be adjusted. When we have attempted to include legislation that the court "shall" adjust the basic wage quarterly in accordance with the statistician's findings, the Chamber has never agreed to it. I mention that, because there are times when certain words are acceptable and other times when they are not acceptable to those who generally oppose any substantial relief for the employees of this State.

The Hon. H. K. Watson: Can you enlighten me on this point: A municipality has a by-law relating to long service leave and the Arbitration Court grants an award in respect to municipal employees. Which prevails out of those two?

The Hon. H. C. STRICKLAND: That question should be placed on the notice paper in order that time might be given to consider it. I am not in a position at the moment to answer the hon. member's lengthy question. I merely want to point out that the hon. Mr. Watson claimed there are some thousands of people who have been delayed in getting long service leave. He said that the Bill last year covered all employees. I say the Bill before us last year would not have covered all employees. This Bill will cover all employees if the House agrees to it, and we will see how the hon. Mr. Watson progresses with his amendments on the notice paper.

I say again that it is indeed pleasing to know that although the opponents to this legislation generally are apparently intent in putting so much of the so-called Code into the long service leave—

The Hon. H. K. Watson: Who has opposed this legislation?

The Hon. H. C. STRICKLAND: I am pleased to say that the most objectionable clause—that is, to take away from the workers something which the court has given them—has not been included in the proposed amendments.

Question put and passed.

Bill read a second time.

In Committee.

The Hon. W. R. Hall in the Chair; the Hon. H. C. Strickland (Minister for Railways) in charge of the Bill.

Clauses 1 and 2—put and passed.

Clause 3—Arrangement:

The Hon. H. K. WATSON: I would ask the Minister to postpone this clause, the reason being that it details the various names of the parts into which the Bill is divided. Later on, I have some amendments to alter the headings of the parts. If these amendments are agreed to, consequential amendments will be necessary to this clause.

The Hon. H. C. Strickland: I have no objection to this clause being postponed.

On motion by the Hon. H. K. Watson, further consideration of the clause postponed.

Clause 4—Interpretations:

The Hon. H. C. STRICKLAND: This clause covers some insurance workers, many of whom have recently been covered by a Commonwealth award. Most of these employees are already covered, but some are working for small insurance companies which are not covered, because they were not cited as parties to the award. We have some correspondence here from Mr. Woodgate, local agent for the Life Officers' Association of Australasia, Western Australian Branch.

The Hon. H. K. Watson: Is he not secretary of the Life Officers' Association?

The Hon. H. C. STRICKLAND: This says he is Western Australian agent for the Life Officers' Association of Australasia, Western Australian Branch. It says that the association has recently agreed with the Industrial Life Insurance Agents' Union on long service leave provisions to apply to life assurance agents and that a consent award has now been approved by the Commonwealth Arbitration Commission. In view of this it is suggested that the definition of "employee" in Clause 4 be amended so as to cover some who would otherwise be omitted. I move an amendment—

Page 4, lines 3 and 4.—Delete the words "and solely" and insert in lieu the words "or mainly."

The Hon. H. K. WATSON: I am not clear as to the reason for the amendment. To my mind the fact that a person was an employee of a small insurance company would not exclude him from the provision. In so far as the employees come under the Federal award they are outside the Bill, but apart from that they come within the terms of the Bill. If an employee is not wholly and solely engaged in an occupation, can he be partly engaged in something else, or what is the position?

The Hon. H. C. STRICKLAND: Certain companies are named in the award and some of the employees would not be covered, apparently. In order to obtain more information I ask leave to withdraw the amendment for the time being.

Amendment, by leave, withdrawn.

The Hon. H. K. WATSON: I move an amendment—

Page 4, line 25—Insert after the word "service" the following:—

at any establishment where more than six persons are for payment or reward received as boarders or lodgers or both.

This would bring the provision in the Bill into line with the definition of "domestic servant" in the Industrial Arbitration Act; and would cover any domestic servant employed at a boarding-house, hotel or other establishment where there are more than six boarders or lodgers.

The Hon. G. Bennetts: What about a private house?

The Hon. H. K. WATSON: The amendment would exclude a domestic in a private house where such employees are sometimes more in the nature of a companion than actually a servant. The Bill provides that an employer shall keep all sorts of records—which the housewife would have to keep—and also lays down that an inspector may inspect the premises at any hour of the day or night.

The Hon. G. BENNETTS: Some domestic servants have obligations which compel them to remain in service, although at times their position might almost be that of slaves. In 1910 and 1911, before we were married, my wife was in domestic service and was paid 15s. per week. She worked a shift of 12 hours per day and had to ask in order to get a night off. She was allowed only one night off per week, although she did the washing, cooking, and everything else.

The Hon. H. K. Watson: I worked for 12s. 6d. per week in those days.

The Hon. G. BENNETTS: I think any domestic is entitled to long-service leave, just as is any other worker.

The Hon. H. C. STRICKLAND: I see no reason why all workers should not be covered. During the debate on the second reading the hon. Mr. Watson said that last year's legislation covered all workers, but he does not intend that all should be covered now. Why should not a domestic servant in any establishment where there was only one boarder be covered? The hon. Mr. Watson said that inspectors would be able to disturb private households at any hour of the day or night, but he knows that the powers of inspectors are set out clearly in Clause 31 of the Bill. That means the usual working hours.

The Hon. H. K. Watson: By day or night.

The Hon. H. C. STRICKLAND: Yes, the usual working hours, by day or night. Surely an inspector is entitled to have an on-the-spot investigation if he suspects the working conditions are not up to standard.

The Hon. H. K. Watson: An inquisition.

The Hon. H. C. STRICKLAND: If a domestic is working at any hour of the night, surely the rest of the household would be asleep! It could be an "at home," but the domestic would still be working. Another point raised was that the housewife would have to keep books. Surely the average woman who employs a domestic would employ her to wait upon more than one member of a household! The hon. member has not raised any substantial objection to the clause. A person who has worked for over 20 years in any household must have proved satisfactory and she would be entitled to long service leave in the same way as any other worker.

I believe every employer of labour keeps an account of the wages he pays because he has to deduct the wages paid from his income and, further, the person he employs is entitled to receive a taxation certificate otherwise the employer is liable to a heavy penalty under the income tax laws. In any event, should we discover that the clause is not working satisfactorily in the future—I am sure it will—it can always be amended.

The Hon. H. K. WATSON: The object of this Bill is to include an employee who is entitled to long service leave, but who works in a commercial or industrial establishment. However, a home is entirely different from an industrial establishment and that fact is recognised by the Industrial Arbitration Act. This amendment would confine the operation of the provision to commerce and industry. In answering the hon. Mr. Bennetts briefly, I would point out that in 1911 or thereabouts, I, too, was working for 12s. 6d. a week and I am none the worse for it.

The Hon. G. BENNETTS: I know a domestic who, in 1958, works 18 hours a day and, in addition, she chops the wood in her spare time. That person resides in my district. Domestic servants should be covered by this Bill because they, as well as any other worker, are entitled to long service leave.

The Hon. L. A. LOGAN: I appreciate that, under this clause, a domestic is not covered in the same way as a worker under an industrial award. However, I suppose one could count on the fingers of one hand the number of domestic servants who have been employed for 20 years in Western Australia. Therefore, we should not quibble about granting them long service leave unless we are to create a precedent for some action that may be taken

in the future. If I agree to this clause I hope it will not be held against me should something occur in the future of which I do not approve. The hon. Mr. Watson has some right on his side in that a domestic is not working in an industrial establishment.

The Hon. R. F. HUTCHISON: I agree with what the hon. Mr. Logan has said, namely, that there would be very few domestic servants in this State who have been in employment for over 20 years. If there are any, they certainly deserve some reward, in the shape of long service leave, for their past labours. I have always advocated that a domestic should be a graduate, as it were, of a school of domestic science and that her hours of labour should be regulated. Therefore, long service leave is not the first and only step that should be taken for the advancement and the welfare of domestic servants.

Domestic servants have always been overworked and have never been liberally treated. It is one of the hardest labours in our society that anyone could perform. Therefore, I am surprised at the hon. Mr. Watson quibbling over anyone being granted long service leave after having been employed in domestic service for over 20 years. That is not being fair. In this State domestic servants have not been treated fairly in the past. Their status should be raised and their remuneration should be commensurate with other workers in the community. It was not until husbands began to perform household tasks that the worth of the domestic was recognised.

The Hon. H. C. STRICKLAND: The mover of the amendment has raised the point that he desires to have this legislation conform with the provisions of the Industrial Arbitration Act. The title of the Bill should be sufficient to convince him. Its aim is to cover employees who do not come within the provisions of the Industrial Arbitration Act and those not covered by awards.

The Hon. H. K. Watson: Some of these workers are covered, by the way.

The Hon. H. C. STRICKLAND: But domestic servants are not. In my opinion the domestic who has worked over a hot stove and has done the family washing for over 20 years is entitled to her long service leave.

Amendment put and negatived.

The Hon. H. K. WATSON: I move an amendment—

Page 4—Delete all words from and including the word "or" in line 35 down to and including the word "employee" in line 38.

This amendment cannot be intelligently discussed without referring to Subclause (2) which appears on page 7 of the Bill. My proposal to strike out that subclause

is tied up with this amendment. With your permission, Sir, I will discuss the main issue of this amendment.

The CHAIRMAN: You have permission.

The Hon. H. K. WATSON: In Subclause (2) the Bill proposes to include as a worker a person who is, in fact, a taxi-driver working on his own account. I propose to move that that subclause be struck out. It provides that a taxi-driver or a cartage contractor, although working on his own account, shall, nevertheless, be deemed to be a worker if he happens to be hiring the taxicab or the truck from some other person.

There is no reason why such a person should be deemed to be an employee. Cases have occurred where a master and servant have prepared a document to make it appear that the servant was working for himself, when in fact he was working for the master, but all such cases are covered by the industrial award. Any person who is in substance and in fact an employee, rather than one who is self-employed, can apply to the Arbitration Court and be brought under the Transport Workers' Award. Any employee in rare cases of that nature can be declared to be a worker under the ordinary process of arbitration, and there is no necessity for the provision we are dealing with. I ask the Committee, therefore, to vote for this amendment as a preliminary to deleting Subclause (2).

The Hon. H. C. STRICKLAND: I ask the Committee not to agree to the amendment. Not a great many of such workers are covered by the provisions of this clause, and the object is to cover those persons who are not covered by the industrial award. In instances where persons are covered by a specific award, they work in the relevant industry; but if they are not working in the industry they cannot be covered by the award. This provision is intended to cover not only taxi-drivers, but also carriers and road hauliers.

The Hon. H. K. Watson: They can all be covered by the Transport Workers' Award.

The Hon. H. C. STRICKLAND: They cannot all be covered, and it is intended to cover all workers.

Amendment put and a division called for.

The CHAIRMAN: Before tellers tell, I give my vote with the noes.

Division taken with the following result:—

Ayes—12

Hon. C. R. Abbey	Hon. J. Murray
Hon. A. F. Griffith	Hon. H. L. Roche
Hon. A. R. Jones	Hon. J. M. Thomson
Hon. L. A. Logan	Hon. H. K. Watson
Hon. G. C. MacKinnon	Hon. F. D. Willmott
Hon. R. C. Mattiske	Hon. C. H. Simpson

(Teller.)

Noes—12

Hon. G. Bennetts	Hon. F. R. H. Lavery
Hon. E. M. Davies	Hon. A. L. Loton
Hon. W. R. Hall	Hon. H. C. Strickland
Hon. E. M. Heenan	Hon. W. F. Willsee
Hon. R. F. Hutchison	Hon. F. J. S. Wise
Hon. G. E. Jeffery	Hon. J. D. Teahan

(Teller.)

Pairs.

Ayes.	Noes.
Hon. J. G. Hislop	Hon. J. J. Garrigan
Hon. J. Cunningham	Hon. G. Fraser

The CHAIRMAN: The voting being equal, the amendment passes in the negative.

Amendment thus negatived.

The Hon. H. K. WATSON: The next amendment on the notice paper relates to domestic service. In view of the vote on a previous amendment I do not desire to proceed with it. I now move an amendment—

Page 7—Delete Subclause (2).

The Hon. H. C. STRICKLAND: In view of the fate of the earlier amendment this subclause should be retained. The amendment which was consequential was not agreed to, therefore I suggest this amendment should be opposed.

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

Ayes—13

Hon. C. R. Abbey	Hon. H. L. Roche
Hon. L. C. Diver	Hon. C. H. Simpson
Hon. A. F. Griffith	Hon. J. M. Thomson
Hon. L. A. Logan	Hon. H. K. Watson
Hon. G. C. MacKinnon	Hon. F. D. Willmott
Hon. R. C. Mattiske	Hon. A. R. Jones
Hon. J. Murray	

(Teller.)

Noes—11

Hon. G. Bennetts	Hon. A. L. Loton
Hon. E. M. Davies	Hon. H. C. Strickland
Hon. E. M. Heenan	Hon. J. D. Teahan
Hon. R. F. Hutchison	Hon. F. J. S. Wise
Hon. G. E. Jeffery	Hon. W. F. Willsee
Hon. F. R. H. Lavery	

(Teller.)

Pairs.

Ayes.	Noes.
Hon. J. G. Hislop	Hon. J. J. Garrigan
Hon. J. Cunningham	Hon. G. Fraser

Majority for—2.

Amendment thus passed.

The Hon. H. K. WATSON: I move an amendment—

Page 9, lines 3 and 4—Delete the words "or such greater sum as is prescribed by the regulations."

The object is to ensure that the amount is fixed by the board and not by regulation. This provision is designed to cover a worker who is lodging with his employer. When the employee goes on leave he gets not only his weekly wages but also an extra amount in lieu of board. I would like to put forward this view: This clause provides that the employee gets the amount fixed by the board or 30s. a week, but under the Income Tax Act an employee is taxed, over and above his salary, at the rate fixed by the award or £1 a week. I pity the employee who

at present is taxed at £1 a week, putting in his return at the end of the year and making the return read something like this—

During my 13 weeks long service leave, I received 30s., but please, Mr. Commissioner, will you only tax me on 20s. for the remaining 39 weeks of the year.

It could well be that including this amount of 30s., instead of 20s., the man could be given the benefit of £6 10s. during his 13 weeks long service leave and make him liable for tax during the rest of his life.

This clause rouses my professional instincts and I pass my thoughts on to the Minister, for what they are worth. But be that as it may, the amount, whether it is £1 or 30s., should be fixed by the law, and not left to regulations.

The Hon. H. C. STRICKLAND: While the hon. Mr. Watson submits a hypothetical case, he strangely enough leaves the 30s. in the Act, so one can take it for granted that there are very few of these one pounders a week. Perhaps the natives.

The Hon. H. K. Watson: Anyone not covered by an award.

The Hon. H. C. STRICKLAND: The hon. member is prepared to leave this amount in the Act.

The Hon. H. K. Watson: It is for you to take it out.

The Hon. H. C. STRICKLAND: The hon. member would not dream of moving anything like that. It is good we have a sense of humour. The Bill provides that 30s. shall be fixed for board, and 10s. for lodging, making a total of 40s., "or such other rates as may be prescribed by regulation." Surely that is fair enough. Should we have another dose of Federal inflation which we have experienced in the last few years, it might well be that this Act will need to be brought along every session to be amended to conform. But that point apart, how about the person who today is receiving much more than 30s. a week? Is that employee to be cut down to 30s. by this Act and so reverse the position? The employee would then say, "Please Mr. Commissioner for Taxation, I have been allowed £4 a week—or £5 a week—except for this one period when after 20 years I am having three months long service leave and my allowance is only 30s. Therefore, please credit me with the balance."

The Hon. H. K. Watson: You have missed the position.

The Hon. H. C. STRICKLAND: That is the position.

The Hon. H. K. Watson: He does not receive the money at other times.

The Hon. H. C. STRICKLAND: That is the position, and I would suggest to the Committee that if it was not the hon. member would not agree to leave the amount in the Bill. I suggest to the Committee that increases in costs, whether they be slow or rapid, have occurred. And they are unpreventable. That has been proved by our own experience. There is always a rise in costs and if this Bill has not the power to regulate the number of cases that it will cover, then there will be many anomalies.

I would point out to the Committee that this House or another place has power to disallow those regulations if they are considered to be unfair, unjust, or out of order, so that there is really more protection in the Bill as it stands than there would be—that is for both employer and employee—if the amendment is agreed to and merely a fixed sum remains.

The Hon. H. K. WATSON: This House has almost invariably worked on the principle that if an amount is to be fixed, it should be in the Act. We can always amend the Act. On the other issue, I must correct the Minister. He talks about a man receiving £3 or £4, but the man does not receive anything for board or lodging. He receives the board.

The Hon. H. C. Strickland: It is taken off his wages.

The Hon. H. K. WATSON: No; it is in addition to his wages. He gets a salary and, as the Bill provides, he gets the board. So the Minister should at least understand the elementary facts before he starts criticising my argument. But, on the other issue, I believe the Act should declare what the amount is to be.

The Hon. H. C. STRICKLAND: I am quite clear on whether so much a week is received, plus keep. I have worked for many years for 5s. and keep—3s. in fact. I do not know what the keep was valued at, but it was not too much.

The Hon. F. D. Willmott: You don't seem to have done too badly on it.

The Hon. H. C. STRICKLAND: Nevertheless, it is laid down in the Commonwealth Pastoral Award, and all farmers know that there is a shearing rate with keep and a shearing rate without keep; there is a shed hand rate with keep, and without keep, and so on. It varies in many directions.

The Hon. A. L. LOTON: Does the hon. Mr. Watson think this amendment is going to achieve anything, if we have to bring down legislation every time we want to alter the amount, instead of doing so by regulation?

The Hon. H. K. WATSON: I am opposed to Government by regulation. This legislation should not require alteration for

quite a while, and if and when it does an amendment could be brought down. That is my answer.

The Hon. L. A. LOGAN: I just want to point out that in regard to regulations, I moved for the disallowance of regulations two months ago and the motion is still on the bottom of the notice paper, and the regulations are still law. Both Houses sit for five months of the year and I consider this is the place to discuss amendments, and I am one of those who do not like Government by regulation, if it can be avoided. But in certain cases that is not possible. In this case, however, there is nothing that could not be done in this House. Government by regulation is not so easy.

The Hon. H. C. STRICKLAND: The fact of whether amendment is by regulation or Bill, would not make any difference to the position on the notice paper. The situation would be just the same.

The Hon. G. C. MacKINNON: Because the Bill has to be brought down while we are sitting and regulations can be brought down while we are not sitting, such amendments could be in effect before we in Parliament could do anything about them.

The Hon. H. C. STRICKLAND: I am sorry that I am contradicted all the time, but we are talking about the position of items on the notice paper and, for the benefit of the hon. Mr. MacKinnon, I would point out that the fact is that there would be no difference as regards the position of an item on the notice paper whether an amendment was to be made by legislation or by regulation.

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

Ayes—14

Hon. C. R. Abbey	Hon. J. Murray
Hon. L. C. Diver	Hon. H. L. Roche
Hon. A. F. Griffith	Hon. C. H. Simpson
Hon. L. A. Logan	Hon. J. M. Thomson
Hon. L. A. Loton	Hon. H. K. Watson
Hon. G. C. MacKinnon	Hon. F. D. Willmott
Hon. R. C. Mattiske	Hon. A. R. Jones

(Teller.)

Noes—10

Hon. G. Bennetts	Hon. F. R. H. Lavery
Hon. E. M. Davies	Hon. H. C. Strickland
Hon. E. M. Heenan	Hon. J. D. Teahan
Hon. R. F. Hutchison	Hon. F. J. S. Wise
Hon. G. E. Jeffery	Hon. W. F. Willesee

(Teller.)

Pairs.

Ayes.	Noes.
Hon. J. Cunningham	Hon. G. Fraser
Hon. J. G. Hislop	Hon. J. J. Garrigan

Majority for—4.

Amendment thus passed.

The Hon. H. K. WATSON: I move an amendment—

Page 9, lines 5 and 6—Delete the words "or such greater sum as is prescribed by the regulations."

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

Clause 5—put and passed.

Clause 6—What constitutes continuous employment:

On motions by the Hon. H. K. Watson the following amendments were put and passed:—

Page 12, line 21—Delete the word "service" and substitute the word "employment."

Page 12, line 22—Delete the word "service" and substitute the word "employment."

Page 12, line 23—Delete the word "service" and substitute the word "employment."

Page 12, line 25—Delete the word "subclause" and substitute the word "subsection."

Clause, as amended, put and passed.

Clause 7—Employment before commencement of this Act:

The Hon. H. K. WATSON: I move an amendment—

Page 13—Add after subclause (2) a new subclause to stand as subclause (3) as follows:—

(3) The entitlement to leave hereunder shall be in substitution for and satisfaction of any long service leave to which the employee may be entitled in respect of employment of the employee by the employer.

There is nothing drastic in this amendment; it is really a rounding off provision. It is designed to cover an instance of this sort: An employer may have a long service leave scheme in operation providing for 13 weeks' holiday after 25 years' service. If the Bill becomes law, the employee would be entitled to three months' long service leave after 20 years, and at the end of the next five years it could well be held that, in accordance with his contract of service under the old long service leave arrangement, he would be entitled to further long service leave. The amendment simply seeks to prevent the occurrence of any anomaly such as that. I understand that a similar clause is included in the Industrial Arbitration Court award.

The Hon. H. C. STRICKLAND: I am glad to hear the explanation of the amendment, because what the hon. member had in his mind was not clearly understood.

The Hon. H. K. Watson: The idea is to ensure that an employee who at present is entitled to long service leave at the end of 25 years will not come again, five years after the expiration of 20 years.

The Hon. H. C. STRICKLAND: The idea is that he cannot have it both ways.

The Hon. H. K. Watson: Yes.

The Hon. H. C. STRICKLAND: If that is the purpose of the amendment, I cannot see anything wrong with it. No one would expect to be paid twice.

Amendment put and passed.

The Hon. H. K. WATSON: I move an amendment—

Page 13—Add after new subclause (3) a new subclause to stand as subclause (4) as follows:—

(4) An employer shall be entitled to offset any payment in respect of leave hereunder against any payment by him to any long service leave scheme, superannuation scheme, pension scheme, retiring allowance scheme, provident fund, or the like or under any combination thereof operative at the coming into operation of this Act. Such offset may be effected by the employer claiming and obtaining repayment of the appropriate amount from any such scheme or fund against the employee's benefits thereunder, or in such other manner as may be expedient. The terms and conditions of any such scheme or fund are hereby varied and modified accordingly.

This clause will give the employer the right to "set off" against long service leave, any contribution of a large amount which he may have made to a benefit or superannuation fund. I dealt with this matter fairly lengthily in my second reading speech and I will not go over everything which I then said, but I want to make one or two points.

The principle of offsetting is fair, just and equitable. If the principle of offsetting is not adopted, then we may well find that an employer, to give himself what he considers justice, and no more than justice, may be compelled to contemplate closing down the whole scheme. In that event the employee's last position will be considerably worse than his first; and he would be worse off than if this clause were not in the Bill.

The Hon. H. C. STRICKLAND: I hope the Committee will not agree to this offsetting provision. We consider it most unfair and a breach of faith in connection with those who may be working under an agreement of the type suggested by the hon. Mr. Watson. What struck me in the hon. member's speech is that there may be employers who would desire to pull out of the agreement. Whether they desire it or not, the agreement will be broken if this amendment is carried, because the amendment will terminate the agreement. This can be used as an offset, no matter what each has paid in. It can be used as an offset against the long service leave

which becomes due after 20 years, yet the parties would have been working under an agreement all the time.

The Hon. H. K. Watson: Yes, for long service leave.

The Hon. H. C. STRICKLAND: We do not accept offsetting, for that reason. We say that employers who have been paying into a superannuation fund, would be able to use the money they had paid into the fund, to pay the employee during the period of long service leave. This would be a complete breach of faith. The employer has entered into an agreement, with his employees, on the basis that if they both make certain contributions, the employee will be entitled to certain payments when he retires. Then, along comes this long service legislation and the employer wants to be allowed to break the agreement and use, for long service leave purposes, the moneys he has paid into the superannuation fund; the money they have both paid in.

The Hon. H. K. Watson: No; the money the employer has paid in. Do not mislead the Committee.

The Hon. H. C. STRICKLAND: That is the interpretation of the amendment. It is considered that this goes beyond the code.

The Hon. H. K. Watson: You look for things that are not there. I get cross when when you do that.

The Hon. H. C. STRICKLAND: The department gets cross, too. The departmental officers say that long service leave is different from superannuation and retiring schemes.

Hon. H. K. Watson: That is ridiculous.

The Hon. H. C. STRICKLAND: We, as a party, say we cannot be a party to using this Parliament as a means of enabling employers to break agreements with workers. That is the interpretation given to me by the department; and the departmental officers are experts in these matters. For this reason, I suggest that the Bill be left as it is in this respect, and that the amendment be not agreed to.

The Hon. J. MURRAY: I wish to speak in defence of the amendment. The Government acts on the best authority—the Crown Law officers—but one has to look further than just the legal aspect in connection with these matters. I have seen what has gone on in industry over a period. Usually the employer has paid up to four-fifths of the contributions to the superannuation or other retiring schemes in order to establish some sort of a retiring allowance for his employees.

If this offset clause is not accepted the employer will be the person who will suffer—the employer who, over the years, has gone out of his way to make conditions for his employees comparable to what

the Government is now trying to get at this very late stage. He is the employer who has had his feet on the ground. The Government, which says that it protects the workers, could have had these long service leave provisions 12 months ago.

The Hon. E. M. Davies: And you know why the Bill was not passed.

The Hon. J. MURRAY: Because the protectors of the workers, as they call themselves, refused to accept it. In these funds the employers have paid up to nine-tenths of the contributions over the years—they have paid that out of the goodness of their hearts. So do not let the Government stick its toes in on this matter. It might lose the whole substance for the shadow.

The Hon. H. C. Strickland: We are used to losing things here.

The Hon. L. A. LOGAN: I would like the hon. Mr. Watson to give me some guidance on this matter. I take it that if an employer had paid an employee a specific sum of money, say £250 or £300 last year, as part of an agreement and as a reward for services rendered, that would then be offset against long service leave. But had the same employer, instead of paying the money to the employee, paid it into a trust fund for the benefit of the employee, he could not offset that against the new provision.

The Hon. H. K. Watson: That is so.

The Hon. L. A. LOGAN: Then there is something wrong with the legislation. Why should he not be able to use that £250 or £300?

The Hon. H. K. WATSON: I refer hon. members to the top of page 13—Subclause (2). The average provident fund has been created as a reward for long service.

The Hon. F. R. H. Lavery: And how many get it?

The Hon. H. K. WATSON: A great number.

The Hon. F. R. H. Lavery: And a great number do not.

The Hon. H. K. WATSON: I have been associated with the practical operation of several funds where thousands and not hundreds of pounds have been paid to various employees. Those funds were instituted when long service leave was never contemplated; and there is no doubt that if a fund were being created tomorrow morning the employer would insert a provision in the rules governing that fund that any payments due or accruing under the scheme would be offset against long service leave, because the two things are tied up together.

In passing this legislation we are imposing a heavy liability on many employees, some of whom will be pretty hard

put to meet it. There is a limit to which they can go. Some employers are putting into funds no more than the amount for which they are obligated under the agreement, and I think there will be plenty of them who will not avail themselves of the provision. But not every employer is in a happy position today and, after all, there is the last straw that can break the camel's back. We must leave it to the discretion of the employer as to whether he finds it necessary to offset or not. For that reason I hope the Committee will accept the amendment, especially as the principle of offsetting has been adopted by the Arbitration Court.

The Hon. F. R. H. LAVERY: I interjected just now because I know a little about this matter. I know of a big firm of printers, and its employees have always been well treated in regard to sick leave. If a linotype operator was away for six extra days on sick leave, he would be paid for it. But when it was suggested about three years ago that long service leave would be introduced, one employee who was away sick for three days was told, on his return to work, that he would not be paid for those three days, because the firm had to do something to make provision for the long service leave scheme. I agree with the hon. Mr. Watson that some firms may find things difficult; but what about those firms which have gone out of business in recent times? I refer to one firm which is connected with the wool industry.

The Hon. L. A. Logan: This will probably send a lot more out of business.

The Hon. F. R. H. LAVERY: It may and it may not. There is one firm in my district which has been connected with the wool industry for 50 years, and it has just gone out of business. A lot of men could not get their holiday or sick pay.

The firm by which I was employed for 14½ years had a provident fund, under two sections, "A" and "B." Under the "A" section employees had 5 per cent. of their wages deducted, and in the "B" section the firm paid into the fund an amount equivalent to 5 per cent. of the employees' wages. Then, because of large profits made during the war years the firm paid a bonus during those years, and I had £615 standing to my credit in what was known as the "C" fund. But when I was elected to Parliament I was not allowed to collect it because I was told I had not served with the company until I was 65 years of age.

The Hon. J. M. Thomson: Did you contribute anything to that fund?

The Hon. F. R. H. LAVERY: That was a bonus paid by the firm for profits made during the war years. As hon. members are probably aware, the same firm had

surplus funds of £9,000,000 in England which it claimed was money surrendered by employees who had not worked for a sufficient period to enable them to collect the money. Sir Stafford Cripps had legislation passed which made that company initiate a pensions scheme so that the £9,000,000 could be used for the benefit of its employees.

The Hon. J. M. Thomson: But the "C" fund about which you spoke was the company's own money.

The Hon. F. R. H. LAVERY: I am talking of the C.O.R. and it was part of the condition of employment that an employee join the provident fund.

The Hon. J. MURRAY: On a point of order, Mr. Chairman, I would like to say that the hon. member has referred to decisions made outside the scope of this Chamber when dealing with legislation in the United Kingdom. I do not doubt the hon. member's statement with regard to Sir Stafford Cripps but I would ask that the documents be laid on the Table for the information of hon. members.

The Hon. F. R. H. LAVERY: The hon. member is merely being facetious, Mr. Chairman. He knows very well it is not possible for me to produce these documents and lay them on the Table because the legislation was passed in the British Parliament.

The CHAIRMAN: There is no point of order and the hon. member may proceed.

The Hon. F. R. H. LAVERY: Thank you, Mr. Chairman. As I have said, the company puts aside 5 per cent. and the employee puts aside 5 per cent. of his wages. This money that was put aside was to be paid as a bonus for services rendered, but none of us received any payments unless we stayed in employment until the age of 65. I would like to know who gets what remains when the employees do not complete their required number of years.

The Hon. H. K. WATSON: My experience is that even if anyone leaves before the contracted time all the contributions he, at least, has made have been handed to him.

The Hon. H. C. STRICKLAND: The hon. Mr. Watson drew our attention to Subclause (2) of Clause 7 on page 13. It does not have direct connection with the amendment before the Chair. It refers solely to leave or payment in lieu. If a man has had three or four weeks' leave in the past ten years that would be taken as an offset provided it was not under some special agreement. Those under special agreements would continue so. Mention has been made of superannuation funds, pension funds and retiring allowances, but these are all part and parcel of his contract of engagement, and

are not given through the graciousness of the employers. They are merely inducements to attract the best type of employees.

The Hon. H. K. Watson: And to reward long service.

The Hon. H. C. STRICKLAND: Their main purpose is to ensure permanency. Some firms will not employ men unless they join those schemes. Even though in some cases the remuneration might not be as high as in others, employees prefer working where these schemes exist because of the benefits they derive.

The Hon. J. Murray: They would be paid both ways.

The Hon. H. C. STRICKLAND: No. Where they contribute it is offset against salaries and wages they receive, not wholly but to some extent. I know that some employees are good and that others are not so good. In the case where contracts have been entered into we say that the amendment before the Chair would constitute a breach of faith with employees and would deprive them of offset conditions and the benefits due to them.

The Hon. H. K. WATSON: The Minister says it is a breach of contract. Nothing is further from the truth, because the contract invariably contains a provision that the employer can, at his option, cease all payments when he wants to. He can terminate the scheme tomorrow morning if he so desires. The Arbitration Court did not think it a breach of contract when it embodied this provision in the long service leave conditions of the various awards.

The Hon. H. C. STRICKLAND: The Arbitration Court did not insert it. It was a consent agreement in the award given from the court.

The Hon. H. K. Watson: If it was a consent agreement, there is nothing to argue about.

The Hon. H. C. STRICKLAND: The court did not insert it. The employees' organisations accepted it, because they knew that they would get nothing if they did not. Despite the hon. Mr. Watson's arguments these employees have the right now to terminate these things if they desire, and the Bill will enable them to do so.

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

Ayes—14

Hon. C. R. Abbey	Hon. E. C. Mattiske
Hon. L. C. Diver	Hon. H. L. Roche
Hon. A. F. Griffith	Hon. C. H. Simpson
Hon. A. R. Jones	Hon. J. M. Thomson
Hon. L. A. Logan	Hon. H. K. Watson
Hon. L. A. Loton	Hon. F. D. Willmott
Hon. G. C. MacKinnon	Hon. J. Murray

(Teller.)

Noes—10

Hon. G. Bennetts	Hon. H. C. Strickland
Hon. E. M. Davies	Hon. J. D. Teahan
Hon. E. M. Heenan	Hon. W. F. Willesee
Hon. R. F. Hutchison	Hon. F. J. S. Wise
Hon. G. E. Jeffery	Hon. F. R. H. Lavery (Teller.)

Pairs.

Ayes.

Noes.

Hon. J. Cunningham	Hon. G. Fraser
Hon. J. G. Hislop	Hon. J. J. Garrigan

Majority for—4.

Amendment thus passed; the clause, as amended, agreed to.

Sitting suspended from 10 to 10.25 p.m.

Clause 8—Entitlement to long service service leave benefits:

The Hon. H. K. WATSON: I move an amendment—

Page 14, lines 11 and 12—Delete the words "subsection (2) of this section" and substitute the words "paragraph (a) of this subsection."

Amendment put and passed.

The Hon. H. K. WATSON: I move an amendment—

Page 14 line 13—Delete the word "subsection" and substitute the word "paragraph."

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

Clause 9—agreed to.

Clause 10—Taking leave in advance:

The Hon. H. K. WATSON: I move an amendment—

Page 17, line 2—Delete the words "the preceding paragraph" and substitute the words "subsection (1) of this section."

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

Clauses 11 and 12—agreed to.

Clause 13—Constitution of Board of Reference:

The Hon. H. K. WATSON: I move an amendment—

Page 17, line 24—Delete the passage "(A.L.P.)."

I think the amendment is self-explanatory. Everyone knows what the "West Australian Trade Unions Industrial Council" means.

The Hon. H. C. STRICKLAND: The title of the organisation concerned is the "West Australian Trade Unions Industrial Council of the Australian Labour Party," because that is the designation of the body concerned. I know that the hon. member has a great dislike of the letters concerned.

The Hon. H. K. Watson: Yes, when they appear in an Act of Parliament, no matter to what political party such letters refer.

The Hon. H. C. STRICKLAND: I am sure I can produce plenty of examples of such letters appearing in industrial Acts and awards. I would not let my political bias take me to such extremes as to object to the portion of the name of an organisation being included.

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

Clause 14—Functions of the Board of Reference:

The Hon. H. K. WATSON: I would like to suggest that this clause be postponed if the Minister is agreeable, and accordingly I move—

That consideration of this clause be postponed.

The Hon. H. C. STRICKLAND: I am quite agreeable that the consideration of this clause should be postponed.

Motion put and passed, the clause postponed.

Clauses 15 and 16—put and passed.

Clause 17—Certificate of determination of question or dispute:

The Hon. H. K. WATSON: I move—

That consideration of this clause be postponed.

The Hon. H. C. STRICKLAND: I do not understand the hon. member's reason for postponing this clause, but if he desires it, I am quite agreeable.

Motion put and passed, the clause postponed.

Clauses 18 and 19—put and passed.

Clause 20—Determination of Court:

The Hon. H. K. WATSON: By voting against this clause and voting for the amendments that I propose to move subsequently, the Committee will confirm the principle that an employer or an employee affected by this legislation shall not be deprived of any of his legal rights. Why there are four or five pages in the Bill dealing with the interpretation and the enforcement of the measure is not clear to me, because in the Factories and Shops Act, for instance, only two sections are devoted for such a purpose. One simply provides that all proceedings shall be heard and determined by police or resident magistrates under and subject to the provisions of the Justices Act, and the other section provides that such proceedings shall not operate to relieve any employer from any civil liability.

If similar provisions were incorporated in this legislation a man could approach the ordinary court, but appeal to the Supreme Court if he so desired. The Bill proposes to create a board of reference and to divide the administration of the legislation firstly, into determinations, and

secondly into enforcements instead of these being dealt with together. It provides for the splitting of the process of law and then confining a man's right of appeal virtually to the board of reference and, in some cases, to the Arbitration Court.

If these special provisions are to be incorporated in this measure, they should not be a substitute for a person's civil rights, but should be an addition to them. That is the purpose of my proposed amendments. Therefore, I ask the Committee to vote against the clause.

The Hon. H. C. STRICKLAND: The reasons put forward by the hon. Mr. Watson for voting against this clause are not clear. He claims that any dispute on long service leave that might occur should be heard not only by the Arbitration Court, but should be referred even to the Privy Council if necessary. That might not mean much to an ordinary individual, but it would mean quite a lot to a big concern with a number of employees such as the B.H.P.

This clause merely provides that the Arbitration Court's decision shall be final. Has the hon. member no faith in arbitration? The wage earner has no appeal to any other court after being heard in the Arbitration Court. The hon. member desires a worker to go as far as the Privy Council to appeal in any dispute over the granting of his long service leave.

The Hon. G. C. MacKinnon: The proposed amendment will not prevent him from going to the Arbitration Court.

The Hon. H. C. STRICKLAND: The hon. Mr. Watson wants a dispute to be heard before any court. Under the amendment, a worker may have to go as far as the Privy Council to gain three months' long service leave after 20 years' service. It would probably pay an employer to conduct an appeal case over a dispute concerning the long service leave of many workers, but what hope would an individual worker have of taking an appeal to the Privy Council? A worker who is on a wage of, say, £100 a month would be entitled to £300 for three months' long service leave, and if there was an argument over £10 or £15 of that amount, it is proposed, under the amendment, that if agreement cannot be reached, an appeal shall go to the Supreme Court or even the Privy Council. How many workers would have £300 due to them for three months' long service leave? This may involve quibbling over a few pounds.

The Hon. G. C. MacKinnon: Many of the arguments put forward by the Minister in support of his case could be applied equally in support of the argument against it. It is hard to imagine anyone taking an appeal to the Privy Council over an amount of, say, £50. It would

be reasonable to suppose that the parties to a large case such as this would be a powerful union and a large employer.

We believe in the rule of law and this House should not deprive either side of rights and privileges provided by the law. Only recently we saw the instance of short-circuiting the law by ministerial edict; that was the holding up of the uniform building regulations. In this case there is an attempt to short-circuit the normal legal channels available to every citizen who is able to raise the necessary money.

The Hon. H. K. WATSON: A worker covered by an industrial award can enforce his contract of service in any court. There is no reason why any other party should not have the same right. The Minister has questioned the number of persons earning £100 a month who would be entitled to long service leave, and who would be involved in a legal fight in respect of such leave. He might have in mind only the employees earning a smaller wage, but I would point out that this Bill brings in even the executives of large companies. An argument could arise between the executive and his employer as to the normal rights of the former under his contract of service. To my knowledge such a case arose in the last two years when the secretary of a large institution was at loggerheads with his employers. He was about to issue a writ for breach of contract.

If this provision is agreed to he could file in the Supreme Court the writ and pleadings for breach of contract, but in considering the claim the court would have to consider the entitlement of the applicant to long service leave. The court would say, "We can decide most of the case, but we have no power to decide on the question of long service leave. Although we know all the facts, which are part and parcel of the case, we will have to send this portion to the board of reference or to the Arbitration Court for determination." Under this Bill such a position would arise.

The Hon. J. MURRAY: I wish to inquire from the Minister about employees earning £100 in the milling industry. I am aware that people receiving that amount are defined as employees in the Bill. In the milling industry many fallers are in the category of earning £100 a month during the time they are actively working. Where does the private employer who has contracts with such fallers stand?

The Hon. H. C. STRICKLAND: Any decision of the board of reference is restricted. It can only inquire into long service leave. It is empowered to take evidence and its decision is subject to appeal to the Arbitration Court or Conciliation Commissioner. I would refer to

the wording of the clause which is sought to be deleted. The Industrial Arbitration Act is looked upon as the law governing employers and employees in this State who are registered with the court. Imagine the position of a person who is earning £100 a month, and to whom £300 becomes due under long service leave. Those people would be covered by no arbitration award.

The Hon. H. K. WATSON: This provision will cover the large executives.

The Hon. H. C. STRICKLAND: Not many of them. The hon. member has taken the benefits away by deleting the offset provision. The provision with which we are now dealing relates to disputes which may arise, and surely the position of a small wage-earner should be taken into account. Decisions and variations made by the Arbitration Court are accepted as final and no appeal is permitted by employer or employee. When a lock-out by employers or a strike by employees takes place, and the provisions of the Arbitration Act are invoked, any penalties inflicted are final. I cannot see the reason for the difference between £5 or £10, and £50, referred to as being the amount subject to appeal to higher courts than the Arbitration Court. A decision would be made by the employer immediately and if the amount is £5 or £10 the employee would say, "I cannot employ a solicitor on this matter. I will drop the case."

The Hon. L. A. LOGAN: The constitution of the board of reference is one member from the employers, one from the unions, and one who shall be the chairman appointed by the Arbitration Court. If an appeal is made against a decision of that board it will go before the Arbitration Court or the Conciliation Commissioner, and it appears to be an appeal from Caesar to Caesar. Some other appeal court should be available to all the parties concerned. If the Minister wants this clause to be passed it might be better for him to alter the constitution of the board of reference.

The Hon. H. C. STRICKLAND: The reason for constituting a board of reference is that many trivial arguments will arise in respect of long service leave. It is the desire that appeals against such decisions should be made to the Arbitration Court and for the decision of that court to be final. The board of reference is really a miniature Arbitration Court because it consists of one member appointed by the employers, one by the employees and one by the court. With most new legislation anomalies are bound to arise and that is why it is desired to have a board of reference. If any case is not determined to the satisfaction of either party the dissatisfied party will have the right of appeal to the Arbitration Court. That should be final. He, disagreeing with the findings of the reference board, is given the right of appeal; but I say

it is so trivial that that is the idea of this reference board and of finally determining these small disputes at the Arbitration Court.

Clause put and negatived.

Part VI.—Heading:

The Hon. H. K. WATSON: Most of these amendments are consequential, giving effect to the principle that has just been determined by the deletion of Clause 20. I move an amendment—

Page 22, line 7—Delete the words "by the Board of Reference" and substitute the word "Thereunder."

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

Clause 21—Provisions for enforcement:

On motions by the Hon. H. K. Watson, the following amendments were put and passed:—

Page 22, line 10—Delete the words "by the Board of Reference."

Page 22, lines 17 and 18—Delete the words "by the Board of Reference."

Page 22, lines 23 and 24—Delete the words "and then only."

The Hon. H. K. WATSON: I move an amendment—

Page 22, lines 31 and 32—Delete the words "by the Board of Reference" and substitute the words "or at its discretion suspend such order for such time as it thinks fit".

The Hon. H. C. Strickland: I would like the hon. Mr. Watson to explain the latter part of this amendment.

The Hon. H. K. WATSON: The object of this amendment is to cover the possibility of cross claims. For instance, there may be a case before the court where an employer is suing the employee for, say, £1,000. The employee may have a counter claim for £500 for long service leave. This amendment would cover a case like that. The court would give judgment for the employer for the £1,000 but it would offset the £500 the employee claimed against the judgment. That is the short explanation of it.

Amendment put and passed.

The Hon. H. K. WATSON: I move an amendment—

Page 22, line 33—Add after the word "accordingly" the following passage:—

and for the purpose of any appeal referred to in section twenty-seven of this Act the person found liable as aforesaid shall be deemed to have been convicted of a breach of this Act and any amount for which he is so liable shall be deemed a penalty.

The Hon. H. C. STRICKLAND: This seems to me to be an attempt, to declare a payment a penalty. The hon. Mr. Watson is seeking to make an order for payment of a debt, equivalent to a fine for a breach of the Act. That would bring about the position I previously warned the Committee about. There would be appeals to supreme courts all over the place. It is confusing the issue.

The Hon. H. K. Watson: It is to bring it in accordance with the position under the Industrial Arbitration Act.

The Hon. H. C. STRICKLAND: It is not in accordance with the position under the Arbitration Act.

The Hon. H. K. Watson: Have you had a look at Section 99 of the Industrial Arbitration Act?

The Hon. H. C. STRICKLAND: No, but I am trying to get a clear picture of what the hon. member wants to put into this Bill. Is it fair and reasonable that if one litigates unsuccessfully and claims an amendment which is a debt, it will be considered a penalty? The one that is likely to be going in for litigation is, of course, the employee against the employer. I did not agree that the hon. member was giving us a very clear explanation on another point. I could not possibly agree with it. There may be odd cases—for instance the hon. member mentioned executives—but I feel they have previously lost their rights, anyway. But in this case, if a wage earner successfully gets a verdict or a claim, payment of that claim is to be considered a penalty. I do not think that is reasonable; and that is my understanding of it.

The Hon. E. M. HEENAN: I agree with the Minister that this seems to be going too far. The position will be, under the hon. Mr. Watson's amendment, that the Act stipulates a penalty for failure to do something or not do something. There will be an appeal, and the court will dismiss the appeal and say that the man has to be paid £500. Surely in addition to that, a person who has failed to pay the amount should pay the nominal penalty.

The Hon. H. K. WATSON: I would, first of all, refer the Minister to Section 99 (5), of the Industrial Arbitration Act. The total sum ordered to be paid under this subsection must be treated as a penalty and that has been decided by the court. If a provision such as I have inserted, or propose to insert, is not included, it will be found that the principle here will differ from the principle to which the Minister in another place agreed. This provision is needed to ensure that an appeal from a lower court is on the same basis. If it is not included, we could have some extraordinary anomalies. An appeal cannot be

made unless the fine is more than £20. An employer may be sued for an amount of £1, or £5, and he may be fined £25. There is no doubt about that man's right to go to a higher court. Another employer may be sued for £1,000 or £2,000, but the magistrate might impose a penalty of only £1, and because the penalty is only £1, although the amount at issue is £2,000, the employer cannot take his appeal to a higher court. This principle has been overcome in the Arbitration Act by Section 99 (5).

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

Clauses 22 to 24—put and passed.

Clause 25—Appeals from decision of Industrial Magistrate:

The Hon. H. K. WATSON: I ask the Committee to vote against the clause because the principle contained in it belongs more properly to Part VII.

Clause put and negatived.

Clause 26—put and passed.

Part VII—Heading:

The Hon. H. K. WATSON: I move an amendment—

Page 24, lines 18 and 19—Delete the word "Exclusiveness of Jurisdictions and Powers Conferred by this Act" and substitute the following:—

Appeals and other Proceedings under this Act.

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

Clause 27—Exclusive jurisdiction:

The Hon. H. K. WATSON: I move an amendment—

Page 24—Delete subclause (1) and substitute the following:—

- (1) Any person claiming to be entitled to a benefit under this Act or any person against whom such a claim is made may in addition to any other right or remedy he may have, apply to the Court for the determination of his rights and liabilities under this Act and the Court may make such declarations and orders as it thinks fit in respect to those rights and liabilities.

This amendment, in conjunction with the next one on the notice paper, is designed to set forth the various bases of appeal.

Amendment put and passed.

The Hon. H. K. WATSON: I move an amendment—

Page 24—Add a new subclause after subclause (1) to stand as subclause (2) as follows:—

(2) (a) The Court may remit to the Conciliation Commissioner any question or matter properly before it and the provisions of Sections 108B and 108C of the Industrial Arbitration Act, 1912, shall apply as if repeated mutatis mutandis in this section.

(b) There shall be an appeal from a decision of an Industrial Magistrate to the Court and from the Court to the Court of Criminal Appeal and the provisions of Section 103A and of the proviso to Section 108 of the Industrial Arbitration Act, 1912, shall apply respectively to such appeals as if repeated mutatis mutandis in this section.

This further deals with the legal position regarding appeals.

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

Clause 28—put and passed.

Clause 29—Prohibition of employment during long service leave:

The Hon. H. K. WATSON: I move an amendment—

Page 26—Delete subclause (3).

I do not know that I am happy with the clause. I cannot help feeling that if an employee wanted to work during his long service leave, he should not be denied the right to do so.

The Hon. H. C. Strickland: Explain your amendment.

The Hon. H. K. WATSON: If a man has ceased to be an employee, then the subclause is inoperative ab initio. It seems superfluous; as a matter of fact the whole clause seems superfluous.

The Hon. H. C. STRICKLAND: The hon. member skidded neatly around the meaning of Subclause (3). Under this subclause, if the employee leaves his employment when he gets his long service leave on the termination of 20 years' service, he is entitled to accept a job the next day. If Subclause (3) is struck out, then Subclauses (1) and (2) would apply; and if the employee accepted a job the next day, his previous employer could claim to have the money refunded to him.

The Hon. H. K. Watson: The man would not then be an employee.

The Hon. H. C. STRICKLAND: We know that, but Subclause (3) enables any person to take another job if his employment ceases when he takes his leave. The Code says that, too.

The Hon. H. K. Watson: No, the Code does not.

The Hon. H. C. STRICKLAND: I appeal to the Committee not to agree to the amendment. It is dynamite as far as any employee is concerned. A man could work for 20 years, and if he ceased employment on the day of the expiration of the 20 years, he would be entitled to three months' pay. He would not be on leave, but he would have his money. We say he is entitled to commence work the next day, but the hon. member says he is not.

The Hon. H. K. Watson: I say this is unnecessary.

The Hon. H. C. STRICKLAND: The chap might have hire purchase commitments, and might want to start work the next day.

The Hon. H. K. WATSON: The Minister misses my point. If a man finishes duty tonight and collects his last week's pay and his three months' long service leave money, and says goodbye to his employer, he is finished with the job and no-one has any control over him the following day. In view of the Minister's concern over the workers, I am prepared not only to say that Subclause (3) should not apply, but also that the other two subclauses should be deleted. Will the Minister go that far with me?

The Hon. H. C. Strickland: No.

The Hon. H. K. WATSON: He says that the removal of Subclause (3) would be dynamite. Presumably if Subclauses (1) and (2) are to remain they will be dynamite plus.

The Hon. E. M. Heenan: Subclause (3) only makes the position abundantly clear.

The Hon. H. K. WATSON: Yes, but it seems to me to be unnecessary. It has been my experience that workers who have gone on long service leave under some Federal awards have been itching to do work after the first month.

The Hon. H. C. STRICKLAND: The whole basis of long service leave is recuperation; it is not granted as a bonus. A man is employed on one job and surely, while he is on long service leave, he should not be on the labour market competing with others less fortunate whose long service leave is far too long, and without pay.

The Hon. H. K. Watson: If the Minister raises his voice loud enough to call for a division he may have a chance of defeating the amendment.

Amendment put and negatived.

Clause put and passed.

Clauses 30 to 33 put and passed.

Clause 34—Offences generally. "This Act" includes regulations:

The Hon. H. K. WATSON: I move an amendment—

Page 28, lines 26 and 27—Delete the words "by the Board of Reference and".

This is consequential on amendments made to previous clauses.

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

Clauses 35 to 38 put and passed.

Clause 39—Representation of parties in proceedings under this Act.

The Hon. H. K. WATSON: I move an amendment—

Page 29, line 21—Insert after the word "by" first appearing the words "his solicitor or by".

This is to permit any person in legal proceedings to be represented by his solicitor. Under the Arbitration Act on many occasions a party is entitled to be represented by his solicitor, and I think the same should apply in this instance.

The Hon. H. C. STRICKLAND: I feel that in a Bill of this nature, which will affect only small sums of money, a solicitor is not always necessary; and if an employee wanted to start litigation, and solicitors could be engaged it could mean that many small claims would not be proceeded with because of the costs involved. I do not think it is necessary for the words to be inserted.

The Hon. H. K. WATSON: It is necessary that any man should have the right although he may not exercise it. It is noticed, in tonight's issue of the "Daily News" that a Victorian citizen conducted his own case against a certain legal gentleman. The amendment would give a man the right to be represented by his agent, no matter who he may be.

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

Clause 40—Regulations making power:

The Hon. H. K. WATSON: I move an amendment—

Page 29, lines 35 and 36—Delete the words "those prescribed by section thirty-five of this Act" and substitute the words "in amount the sum of Twenty-five pounds."

A few moments ago the Minister referred to a provision as dynamite, but if there is any clause that is dynamite, it is this one. Section 35 provides for a penalty of up to £100 for the first offence and of up to £200 for the second offence. Usually

a penalty is in the vicinity of £25 and therefore we should remove the power to subscribe penalties of up to £200.

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

Clause 41—put and passed.

Postponed Clause 3—Arrangement:

The Hon. H. K. WATSON: The Committee has altered the heading of Part VI. I would like your ruling, Mr. Chairman, as to whether a similar alteration would represent a clerical alteration.

The CHAIRMAN: Yes, that would be a clerical alteration.

The Hon. H. K. WATSON: Then the same would apply to Division I, Pt. VI.

The CHAIRMAN: They would all be clerical alterations.

Clause put and passed.

Postponed Clause 14—Functions of the Board of Reference:

The Hon. H. K. WATSON: I move an amendment—

Page 20, lines 3 to 6—Delete the words "on the Court, as the case may be, the Conciliation Commissioner, or an Industrial Magistrate".

This amendment is consequential on the amendments that have been made to Clauses 20 and 21.

Amendment put and passed.

The Hon. H. K. WATSON: I move an amendment—

Page 20—Delete all words from and including the word "which" in line 10 down to and including the word "Magistrate" in line 12.

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

Postponed Clause 17—Certificate of determination of question or dispute:

The Hon. H. K. WATSON: I move an amendment—

Page 21, lines 11 and 12—Delete the words "unless on appeal brought to the Court under Part V of this Act the Court determine otherwise" and substitute the following:—

subject to the provisions of this Act.

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

Title—put and passed.

Bill reported with amendments.

House adjourned at 11.50 p.m.