age which we hope may disappear in the space of a year or two. It may become necessary, therefore, to do much more at Wundowie, provided there is a Government in office in this State that is willing to go ahead when the time is opportune. The Bill contains only one provision, and it is for the purpose, as I said earlier, of preventing any Government from leasing or selling any portion or the whole of the works without the prior approval of Parliament. I trust the Bill will commend itself to every member of the House.

In view of what happened and is happening at Chandler, I think we should not take the risk of leaving it in the hands of any Government to lease or sell any portion of the works at Wundowie, even though there is no provision in the existing legislation along those lines. In view of the value of this industry, and the likely increasing value in the future, we are justified in making sure that Parliament shall be the only authority in Western Australia to decide finally whether any portion, or all of the works, shall be leased or sold at any time. I move—

That the Bill be now read a second time.

On motion by the Minister for Industrial Development, debate adjourned.

BILL—PUBLIC TRUSTEE ACT AMENDMENT.

Second Reading.

THE ATTORNEY GENERAL (Hon. A. V. R. Abbott—Mt. Lawley) [8.45] in moving the second reading said: When the Public Trustee Act was passed, the Workers' Compensation Act of 1912-1939 was in operation, and the Public Trustee was empowered, under the Public Trustee Act, to invest money that came under the control of the local court, acting in its workers' compensation jurisdiction. As members are aware, last year a new Workers' Compensation Act was passed and the jurisdiction of the local court, and its magistrates, was taken away, and similar jurisdiction was vested in the Workers' Compensation Board under the provisions of the 1949 Act. It is now necessary to make some consequential amendments in the Public Trustee Act so that it can be read in conjunction with the new Workers' Compensation Act. Only one section is dealt with in the Bill, and it is purely a consequential amendment, which is necessary as a result of the Workers' Compensation Act of 1949. I move—

That the Bill be now read a second time.

On motion by Hon. E. Nulsen, debate adjourned.

House adjourned at 8.48 p.m.

Legislative Assembly.

Thursday, 14th September, 1950.

CONTENTS.

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

QUESTIONS.

PROFIT MARGINS.

As to Expenditure on Advertising Soaps.

Mr. STYANTS asked the Attorney General:

(1) Has he seen a recent Press statement that a comedian named Dyer had entered into a contract to advertise soaps at a salary of £33,000 per annum?

(2) As this amount will be added to the costs of production of those commodities, will he have the matter of the margins of profits on soaps further investigated with a view to curtailing wasteful expenditure on the advertising of these goods for sale?

The ATTORNEY GENERAL replied:

(1) Yes.

(2) Yes, the matter will be further investigated. The matter of advertising expenditure has been discussed on numerous occasions by Ministers and Commissioners in conference. It is a well established practice that advertising expenditure is always investigated when reviews are being made of industry and individual traders' activities and applications for

prices. Excess advertising costs are not permitted to be reflected in consumer prices.

TRANSPORT.

As to Taxi Licenses in Metropolitan Area.

Mr. GRAYDEN asked the Minister for Police:

What was the number of taxi licenses current in the metropolitan area, on—

(1) the 30th June, 1947;

(2) the 30th June, 1948;

(3) the 30th June, 1949;

(4) the 30th June, 1950?

The MINISTER replied:

(1) The 30th June, 1947, 294;

(2) the 30th June, 1948, 325;

(3) the 30th June, 1949, 327;

(4) the 30th June, 1950, 397.

ROADS.

As to Trust Account and Northampton-Carnarvon Expenditure.

Hon. F. J. S. WISE asked the Minister for Works:

(1) Will he inquire of the State Treasury and State Statistician and advise the House the percentage of money paid into the Main Roads Trust Account which the statistical divisions in the less populated parts of the State have brought to the fund in Western Australia?

(2) Will he give the segregated figures of the £63,000 spent on the Northampton-Carnarvon-road, as was stated in the House by the Deputy Premier, to show how that sum has been spent in the last three years?

The MINISTER replied:

(1) The population cum area basis adopted by the Commonwealth Government in making allocations of petrol tax funds for roads to the individual States has never at any stage been considered as applicable to individual statistical divisions of Western Australia. The fact that very substantial portions of Western Australia were completely devoid of any settlement whatever was fully appreciated by the Commonwealth Government at all times when road fund allocations came under review. The percentages of the various statistical divisions on the three-fifths population and two-fifths area basis are—

Metropolitan	32.77
South-Western Division, No. 1 Subdivision	11.89
South-Western Division, No. 2 Subdivision	6.62
Northern Agricultural Division	6.70
Eastern Goldfields	11.14
Northern Goldfields	12.51
North-Western Division	5.17
Northern Division	13.20
Total	100.00

(2) Northampton Road Board £23,980
Shark Bay Road Board £11,123
Gascoyne-Minilya Road Board £27,897
£63,000

HOUSING.

(a) As to Rental Homes, Northam.

Hon. A. R. G. HAWKE asked the Honorary Minister for Housing:

(1) Have arrangements yet been finalised to construct rental homes at Northam for two- and three-unit families?

(2) If not, when will the arrangements be finalised?

The HONORARY MINISTER replied:

(1) Contract has been let for 13 additional two-bedroom type homes in Northam and it is anticipated that a further contract will be signed next week with another contractor for five additional homes of similar type. The provision of these homes will assist in the accommodation of two- and three-unit families.

(2) Answered by (1).

(b) As to Contract for Rental Homes, Cunderdin.

Hon. A. R. G. HAWKE asked the Honorary Minister for Housing:

(1) Has a contract yet been let for the building of additional rental homes at Cunderdin?

(2) If so, how many homes are included in the contract?

(3) If no such contract has yet been let, when is one likely to be let?

The HONORARY MINISTER replied:

(1) Yes.

(2) Three homes.

(3) Answered by (1).

(c) As to Orders against Tenants.

Mr. J. HEGNEY (without notice) asked the Honorary Minister for Housing:

Is he aware of the fact that magistrates are now making orders effective against tenants even where the owners have been in possession for only a few years? In the case of a man named James Winchester, the tenant of a house in Belmont for a period of eight years. The magistrate recently made an order effective from the 29th August in favour of the owner who has only one child. On Monday morning last the bailiff attended Winchester's house in Belmont and evicted him from the home. He has an application with the State Housing Commission for a tenancy house.

The Minister for Lands: You are making a speech.

Hon. A. H. Panton: The Speaker will look after that.

Mr. SPEAKER: Order! Is the hon. member prefacing his question with certain remarks?

Mr. J. HEGNEY: I am asking a question without notice.

Mr. SPEAKER: Yes, but are you prefacing your question with certain remarks?

Mr. J. HEGNEY: Yes. I want to know whether the Minister is aware of the fact that magistrates are making these orders effective against tenants. In the case of Winchester, he has five children and the owner has only one child. Is the Minister aware that the applicant, to whom I refer, has had an application with the Housing Commission for some time, but the Commission has not provided him with a house. It has been promised over the past fortnight and he may be able to receive it this week. But, is the Minister aware of the fact that people are being evicted and that the Housing Commission is unable to provide homes for them?

The HONORARY MINISTER replied:

I am not aware of the conditions outlined by the hon. member, but I will have inquiries made into the procedure generally and also into the particular case he mentioned.

PRICES CONTROL.

(a) As to Appointment of Commission and Consumer Representation.

Hon. A. R. G. HAWKE asked the Premier:

Does the Government now favour the setting up of a Prices Commission, upon which consumers would be given a direct and full-time representative to watch and safeguard their interests?

The ACTING PREMIER replied:

No. The proposal was considered in debate by this House recently and the House did not support the suggestion.

(b) As to Reducing Middlemen's Charges.

Hon. A. R. G. HAWKE asked the Attorney General:

(1) Does he consider that charges levied by middlemen in handling goods, especially farm machinery and motor vehicles, between producer and consumer are unreasonably high in relation to the services rendered?

(2) If so, will he have action taken to reduce such charges substantially?

The ATTORNEY GENERAL replied:

(1) and (2) In general, no. If the hon. member will intimate any specific instance I will have the matter investigated.

TRAFFIC.

As to City Congestion and Control.

Mr. NEEDHAM asked the Minister representing the Minister for Transport:

(1) Is he aware that the Premier's policy speech contained a promise to rectify the unsatisfactory system of city traffic control?

(2) What has been done to implement that promise?

(3) Is he aware that the dangerous condition of traffic congestion in the city is being daily intensified?

(4) What is the Government's intention in regard to the appointment of a co-ordinating authority for the control of all transport?

The ACTING PREMIER replied:

(1) Yes.

(2) (a) Arrangements have been completed for abolition of the public toilet in the centre of St. George's-terrace adjacent to Barrack-street.

(b) Negotiations are proceeding with the Perth City Council for removal of the similar traffic obstruction near the intersection of St. George's-terrace and William-street.

(c) Omnibus stands near the Government Gardens have been removed further east pending removal of the adjacent public lavatory and each operator has been allotted additional space to avoid double-banking of buses and improve traffic flow.

(d) Additional omnibus stopping places have been fixed in Wellington-street also to avoid double-banking by buses pending widening of Wellington-street.

(e) Plans are in hand for Wellington-street to be widened as soon as the adjoining railway yards can be transferred away from the city block.

(f) Arrangements have been made to eliminate trams from the Causeway within the next few months.

(g) Stands have been fixed along St. George's-terrace and in St. George's-place and Malcolm-street so that buses which will replace trams on the Victoria Park route may run through the city and avoid congestion by terminating in the city block.

(h) Plans have been approved for implementing temporary circus arrangements at either end of the Causeway to improve traffic flow pending completion of the final Causeway plans.

(i) Progress has been made with the City Council for establishing parking areas on the river front to accommodate vehicles which will be displaced by the abolition of angle-parking in St. George's-terrace.

(j) Angle-parking in St. George's-terrace will be abolished as soon as such new parking areas have been completed.

(k) Additional traffic control is being carried out at the western end of the Causeway to improve traffic flow pending the introduction of the circus arrangements.

(l) The introduction of traffic control lights at intersections is under consideration.

(3) It is not considered that city traffic is dangerous but the steps already taken and being taken will minimise the possibility of danger arising.

(4) A sub-committee of senior officials has been meeting regularly for the last four months with regard to the necessity or otherwise of an over-all authority, but the report has not yet been completed.

LICENSING ACT.

As to Cost of a Referendum.

Mr. GRAHAM asked the Attorney General:

What would be the approximate total cost to the State if a referendum on the liquor question were held this year?

The ATTORNEY GENERAL replied:

Approximately £10,000.

NATIVE HOSPITAL, DERBY.

As to Responsibility for Repairs.

Hon. A. A. M. COVERLEY (without notice) asked the Minister for Native Affairs:

(1) Is he aware that the native hospital at Derby has collapsed?

(2) To whom does the responsibility of rebuilding the hospital belong—the Department of Native Affairs, the Medical Department or the Health Department?

The MINISTER replied:

(1) I am not aware that the hospital at Derby has collapsed. I will make inquiries and inform the hon. member of the result.

(2) Unless special provisions operate in the case of Derby, the responsibility for rebuilding or repairing the hospital lies with the Medical Department.

FREMANTLE HOSPITAL.

As to Shortage of Beds.

Hon. J. B. SLEEMAN (without notice) asked the Minister for Health:

(1) Has she seen the report of the superintendent of the Fremantle Public Hospital, in yesterday's issue of "The West Australian," headed, "Lounges as Make-shift Beds for Hospital"? The superintendent also stated—

> As time goes on the position is becoming worse. Patients are on lounges and the only bed vacant was a cot in the children's ward. In the event of an emergency during the night, there will be no alternative but to send the cases to the Royal Perth Hospital.

(2) If so, what does the department intend to do about it?

The MINISTER replied:

(1) Yes, I saw the announcement in the paper.

(2) The hon. member will see in time that we are taking good notice of these things and everything that can be done, will be done.

ROYAL SHOW.

As to Adjournment of Parliament.

Hon. F. J. S. WISE (without notice) asked the Acting Premier:

Will the Acting Premier, at the next sitting of Cabinet, arrange to have considered a suggestion that this House adjourn over the whole of Royal Show week? That will give to some members the only opportunity, during the currency of the session, to visit their districts; it will give to others also a chance of visiting their districts. Those members who are associated with the Royal Show will also have a better opportunity to carry out their duties in that connection.

The ACTING PREMIER replied:

Yes.

POTATOES.

As to Quality Distributed to Merchants.

Hon. J. B. SLEEMAN (without notice) asked the Minister representing the Honorary Minister for Agriculture:

(1) Is he aware that potatoes in very bad condition are being distributed by the Potato Board?

(2) Is he aware that merchants are told that if they send them back there will be no others available for some time?

(3) Will he see that merchants receive a better deal so that they can supply grocers with potatoes in reasonable condition? I produce a sample for the Minister's inspection.

The MINISTER FOR LANDS replied:

(1) (2) and (3) I am not aware of the position, but I will have full inquiries made into the matter.

PERSONAL EXPLANATION.

Mr. Shearn and Chandler Alunite Works Motion—Ruling.

Mr. SHEARN: I crave the indulgence of the House to make a personal explanation in connection with the division which took place last night. Unfortunately, I missed the call from you, Mr. Speaker, immediately prior to the division being taken on your ruling. I was thereby prevented from concisely defining the attitude of the member for Victoria Park and myself on that particular question. To put

it briefly, we considered your ruling well founded, especially in view of the implied assurance of the Acting Premier.

Hon. A. R. G. Hawke: On a point of order, Mr. Speaker, is any hon. member in order in taking part in a debate which has already closed?

Mr. SPEAKER: No, the hon. member is making a personal explanation.

Hon. A. R. G. Hawke: In effect, he is going over the whole debate, and explaining what he would have said. If he is to be given that right, other members of the House will probably claim the same privilege and we shall have the debate all over again.

Mr. SPEAKER: My ruling is that it is a personal explanation and the hon. member has the indulgence of the House.

Mr. SHEARN: In deference to the member for Northam I will say in short that we were satisfied that your ruling, Mr. Speaker, was well founded.

Hon. A. R. G. Hawke: I object to this sort of thing, Mr. Speaker. There is no necessity for it.

Mr. SPEAKER: As the hon. member has objected to it, there must be no further discussion.

BILL—BUILDINGS (DECLARATION OF STANDARDS).

Introduced by Mr. Graham and read a first time.

BILL—TRANSFER OF LAND ACT AMENDMENT.

Second Reading.

THE ATTORNEY GENERAL (Hon. A. V. R. Abbott—Mount Lawley) [4.50] in moving the second reading said: As members are aware, the Transfer of Land Act is one which relates to titles and dealings in land estate. It is one of the major Acts that govern transactions in land in Western Australia. It is an Act of some maturity, having been passed in 1893, since when there have been 17 amendments to it. The measure is now out of print.

I have been advised that if a successful consolidation is to be effected, it will be necessary for it to be done by legislative authority, and one of the main objects of the Bill is to achieve this. In addition to consolidation, there are a number of amendments that have been recommended by the Commissioner of Titles to facilitate the better administration of the Act. There are also some amendments that deal with principles of law which are governed by the Act at present. I propose to deal only with the amendments which alter major matters of administration, or with an alteration in the principle of the law operating now.

The first important amendment affects persons who are now authorised to bring land under the operation of the Act. Prior to the introduction of the parent Act, land was dealt with under a system that had been based on the old traditional English procedure, which was somewhat cumbersome. The main object of the parent Act was to facilitate the transfer of land, but it did not operate in connection with land that had been granted by the Crown prior to its introduction, unless application was made by the owner, or certain other persons authorised to do so, to bring that land under its operation. Section 20 of the principal Act provides a list of persons who may apply to bring land under its provisions.

It has been judicially decided that a tenant for life, within the meaning of the Settled Land Act, does not come within the provisions of Section 20 of the Transfer of Land Act. It is submitted that such a person should be able to apply, provided the trustees of the settlement consent and the title issues in their names. Similar provisions to the proposed amendment now exist in the Victorian Transfer of Land Act. As members are aware, under the law of the land, a tenant for life has extremely wide powers in connection with land the subject of a settlement which makes him a tenant for life. It is thought that, to simplify transactions dealing with settled land, he should have power to bring it under the Transfer of Land Act.

The next amendment proposes to insert a new section, to be known as Section 20A. It is designed to expedite the task of an applicant who desires to bring land under the Act. The proposed new section will authorise the Commissioner to accept as evidence recitals in documents 20 years old, and will require the applicant to negative the existence of unregistered conveyances or assurances affecting the land only as to his own knowledge or that of his agent.

Hon. F. J. S. Wise: I suppose that would affect old Crown grants, such as pieces of the Peel Estate, and those areas held by the Meares family, to which there is no title?

The ATTORNEY GENERAL: It would not affect those people unless there had been some dealing in the land.

Hon. F. J. S. Wise: Yes, that is what I mean.

The ATTORNEY GENERAL: If there had been some dealings in the land and there was a document reciting certain facts, which was 20 years old, then the recitals could be accepted as prima facie evidence, and all the applicant would be required to do would be to prove to the Commissioner, as far as he was aware, that there were no facts in contradiction of those recitals. As the Leader of the

Opposition will be well aware, after 20 years the recitals are likely to be accurate unless there are some later facts which contradict them.

The next clause I propose to deal with will introduce a new section, to be known as Section 66A which will provide that a separate certificate of title shall not issue for an easement. It has not been the practice to issue a certificate for an easement alone. When an owner acquires an easement appurtenant to his land he surrenders his existing certificate and then applies for a new certificate showing the easement as appurtenant to the land described in his certificate. The new section is required to set out the position beyond doubt.

Section 68 is one of the most important in the Transfer of Land Act. It is a cardinal principle of the Torrens system that a person who becomes the registered proprietor of land under the Act secures an indefeasible title. This indefeasibility is, however, subject to certain statutory exceptions which are set out in that section. One of these exceptions is "the interest of any tenant."

Hon. F. J. S. Wise: Great care would have to be exercised with this amendment against provision for adverse possession, would it not?

The ATTORNEY GENERAL: This does not deal with adverse possession.

Hon. F. J. S. Wise: It is taking out that part of the section which does, is it not?

The ATTORNEY GENERAL: I do not think so.

Hon. F. J. S. Wise: It is in the clause.

The ATTORNEY GENERAL: I do not think that is the intention and I will discuss this in Committee if the hon. member wishes. There seems no doubt that this exception was meant to relieve tenants as such from the obligation of registering their leases or lodging caveats to protect their tenants' rights. The courts, however, have tended to interpret this exception in a much wider manner than was ever expected. On a similar section of the Victorian Transfer of Land Act the Victorian courts held that "the interest of any tenant" includes unregistered purchasers, tenants for life, and other rights quite apart from what are generally understood as tenants' rights.

It is felt that it would be reasonable to allow a lease of up to five years to take priority without registration or lodgment of a caveat. Under this amendment a lease for more than five years, or a lease containing options of purchase, or options of renewal, would need to be registered or protected by a caveat. Otherwise it might be defeated by a subsequent registered interest. At the present moment a purchaser is required to inquire on purchase, irrespective of what is disclosed when a search is made at the Title Office, as to any existing tenancy, because he purchases subject to any existing tenancy although there may be no registered lease or any notification on the title that such tenancy exists.

The principle of the Act is to protect purchasers or other parties who act upon the information disclosed on the register. It is felt that protecting tenants for five years and under without notification by them on the register, is sufficient. If a tenant of over five years wishes to be protected from anyone obtaining a title against him he will have to register his lease or at least lodge a caveat, so the world may know that he is in occupation or has claim to the premises.

The next amendment is one of an administrative nature. At the present moment there is no authority for the Registrar to require the issue of a new duplicate title when the one that exists has become thoroughly dilapidated. I think if a title is in a dilapidated condition provision should be made for a new one to be taken out. In the old days, of course, these title deeds were printed on vellum which lasted for some considerable time. Today, however, vellum is too expensive and paper is used which means that if title deeds are not cared for as they should be, they get torn and become dilapidated. It is thought, therefore, that people should take out new title deeds in such cases.

Mr. Shearn: Do you know what the approximate cost would be?

The ATTORNEY GENERAL: I am not sure, but I think it would be about £1.

The Acting Premier: It would not be necessary to advertise in this case, would it?

The ATTORNEY GENERAL: No. There would be no advertising. The next provision deals with the rare occasions on which an original title deed becomes lost or is destroyed. Members probably know that the original title deed is retained at the Titles Office and a duplicate is issued to the owner. There have been occasions when the original title deed has been lost or destroyed, and this provision gives authority to the Registrar to compile and place on record a new title deed in lieu of the original that was so lost or destroyed. Although there is no obligation on the Registrar to do so, the custom at the present time is to enter a record of an easement that may be created by a transfer or lease. It is thought that this practice should become portion of the duties of the Registrar and, accordingly, provision is made for it.

Section 91 of the principal Act provides that no lease shall be binding on a mortgagee unless he shall have consented to the lease prior to its being registered. On a similar section of the Victorian Act it was held that the consent of a mortgagee to an unregistered lease was not binding

upon him. The reason for the decision was that the section, by implication, meant that a mortgagee's consent was not binding if the lease was unregistered. That decision was one of major importance, because a tenant would feel quite secure if he obtained the consent of the mortgagee, even though he might not register his lease. As members are aware, some leases cannot be registered, and it is not incumbent actually to register any lease.

Hon. F. J. S. Wise: But it must be stamped.

The ATTORNEY GENERAL: That is so. It is felt that this is contrary to what was intended by the section and contrary to normal practice in the commercial world, where the majority of leases are unregistered and mortgagees' consents are commonly accepted and expected to be binding. The amendment to this section will ensure that such consents are binding in the future.

Section 108 empowers a mortgagee or annuitant to sell when the mortgagor or grantor of the charge has made default under the mortgage or charge. The proposed amendment will widen the powers of a mortgagee or annuitant by empowering him, when selling on default, to make such roads, streets and passages and grant and reserve such easements as the circumstances of the case may require or the mortgagee or annuitant may think fit. In other words, the mortgagee or annuitant is empowered to sell the land to the best advantage. In some cases the land might well warrant subdivision that would be of advantage not only to the mortgagee but also to the mortgagor. If the provision in the Bill is approved, this authority will now be given to the mortgagee.

Section 110 of the Act provides that, upon a sale by a mortgagee or annuitant, the estate or interest of the mortgagor or grantor at the time of registration of the mortgage or charge passes to the purchaser free from all liability under subsequent encumbrances, except a lease to which the mortgagee or annuitant has consented in writing. The proposed amendment will keep alive any grant of easement to which a mortgagee or annuitant has consented in writing.

It is submitted that a grant of easement should be in the same position as a lease. A mortgagee or annuitant has the right to consent or to refuse consent to a subsequent grant of easement. If he consents to it, the grant of easement should be preserved in the same way as a lease, to which he has consented, is at present preserved. This merely extends the right of an owner to give an easement that will be binding on the mortgagee if he consents to it.

The Act does not give any right to a subsequent mortgagee to require the transfer to himself of the estate and interest of a prior mortgagee who is entitled to and requires payment of his mortgage debt. The purpose of the proposed amendment is to give a subsequent mortgagee the chance to protect his investment by paying off a prior mortgagee who is entitled to and who insists upon the payment of his mortgage debt. The subsequent mortgagee would then be entitled to a transfer of the prior mortgage.

Hon. F. J. S. Wise: That is a new provision.

The ATTORNEY GENERAL: Yes; it is an additional protection not only to a subsequent mortgagee but also to the owner. If a mortgagee requires payment, it is not always in the interests of either the owner or a subsequent encumbrancer that the land should be sold.

Hon. F. J. S. Wise: The second mortgagee is not recognised.

The ATTORNEY GENERAL: No; the second mortgagee or subsequent encumbrancer has no right, although he might be willing, if he could, to take over a prior mortgage and carry on the owner to a more propitious time. This proposal will give him authority to obtain a transfer of a prior mortgage if the mortgagee is demanding payment and insisting upon realising his security.

The next provision will also introduce a new principle into the Act. At present there is no provision for the creation of restrictive covenants by separate instrument. Section 69 authorises the creation of such a covenant in a transfer, but the position sometimes arises where owners of land desire to create restrictive covenants when no land is being transferred by one party to the other. It is desirable, therefore, to provide that a restrictive covenant may be created by separate instrument and Subclause (1) of Clause 34 gives this power, but safeguards the rights of a mortgagee or annuitant by requiring his consent.

There are cases where the owner of a block of land may desire to build, but his view would be completely blocked if the owner of an allotment in front of him were to erect a certain type of building. At present there is no power for the parties to enter into an engagement that will protect the interests of both, but, under the provision I have indicated, such an engagement will be valid and binding. The Act contains no provision for obtaining the removal of a restrictive covenant. Sometimes a restrictive covenant becomes unnecessary or undesirable. For instance, because of a change in the character of the property or the neighbourhood, all parties interested in the restrictive covenant may desire its removal or modification. The proposed new section provides for the Commissioner to discharge or modify the restrictive covenant when all parties interested request such discharge or modification.

As members know, in some estates there is a restriction against erecting buildings for commercial purposes and the time may come when that will not be at all appropriate. This sort of restriction is found much more in the older countries where residential suburbs have become city property, and there are restrictive covenants existing on the land, which nobody wants. At present there are no means of getting rid of such covenants here, but this provision will enable that to be done.

Hon. F. J. S. Wise: There may easily be quite a lot of land affected.

The ATTORNEY GENERAL: Yes.

Hon. F. J. S. Wise: And you would need agreement between a number of persons.

The ATTORNEY GENERAL: If the hon. member will wait a moment he will find that there is a provision to avoid even that. Sometimes restrictive covenants are attached to very large areas of land which have become subdivided amongst many owners. For instance, a company may have subdivided land into several hundred lots, and on the sale of each lot imposed a condition on the purchaser to build only a brick dwelling-house. For a variety of reasons, some of the persons interested may wish to be freed of the restriction.

Because of the number of persons interested, it would be a practical impossibility to obtain the consent of all to the discharge or modification of the restriction. Subsection (1) of the proposed new section, therefore, empowers any person interested in the land to approach the Supreme Court for an order wholly or partially discharging or modifying the restriction. The court is empowered to make such an order on being satisfied—

(a) that by reason of changes in the character of the property or the neighbourhood or other material reason, the restriction should be deemed to be obsolete or that its continued existence would impede the reasonable user of the land without securing any practical benefits;

(b) that all persons of full age entitled to the benefit of the restriction have agreed to such discharge or modification or by their acts or omissions may reasonably be considered to have waived the benefit of the restriction; or

(c) that the proposed discharge or modification will not substantially injure the persons entitled to the benefit of the restriction.

So that provision deals with the position that immediately came to the mind of the hon. member, that in many cases it would be difficult to get the consent of all interested parties as to make the procedure impracticable.

Hon. F. J. S. Wise: How costly would such a procedure be?

The ATTORNEY GENERAL: That is rather a difficult question. I do not think it would be unduly costly. It would not be a very difficult procedure. The Supreme Court is provided for in this case rather than a judge in chambers because a lot of people who may be absent are affected and publicity should be given to the matter. The next provision affected by the Bill is Section 134. This is another key section of the principal Act and one on which the effective working of the Torrens system depends. It is a principle of the system that a proposing purchaser of land under the system should not be obliged to go behind the register book and that, where he is dealing without fraud with the registered proprietor and becomes registered himself, he should secure an indefeasible title notwithstanding any weaknesses in the vendor's title.

There is a High Court case which has caused grave misgivings as to whether the system is providing that security of title which its authors intended. In that case a purchaser of land took a transfer from a registered proprietor and himself became registered. Simultaneously with the registration of the transfer the vendor had cleared his title by registration of a discharge of an existing mortgage. The purchaser therefore paid his money and registered his transfer on the faith of a clear title. It was later discovered that the discharge of mortgage had been forged by an agent and the court held that the purchaser in those circumstances did not get a clear title.

In other words, if the purchaser had insisted on the discharge of the mortgage being registered, and after it had been registered he had then obtained a transfer, he would have secured a good title, and any loss would have fallen upon the mortgagee; but because, when his transfer was lodged, a discharge of mortgage was lodged at the same time, it was held that he was not dealing at that time with the registered proprietor clear of encumbrances but with the registered proprietor subject to the encumbrances, and he was not protected. It is in the public interest that this uncertainty as to the position of a proposing purchaser should be set at rest, and that people should be given the benefit of that certainty of title to land which they are entitled to expect from a governmental registration system.

It is considered that a purchaser should be able to rely on the state of the register at the time he registers his transfer and should not be concerned to inquire into the validity of other documents lodged by the vendor by which the register is put in that state. If any of these documents are forged and a person is thereby deprived of a registered interest, the system itself —that is, the statutory assurance fund— should bear the loss and not an innocent purchaser who has paid his money on the

faith of a registered title. The object of this amendment is to bring about that result.

Hon. F. J. S. Wise: How many cases have you known?

The ATTORNEY GENERAL: There have not been many. But when they do occur they often cause considerable hardship. Forgeries are not tried when large commercial dealings are concerned because the parties are too well known. But they occur in smaller transactions where persons without much knowledge rely on somebody to look after their interests, and it is in such cases that hardship has occurred in Australia on more than one occasion.

The Act provides that once a caveat has lapsed it shall not be renewed by the same person in respect of the same estate or interest. This seems unnecessarily harsh. The effect of the proposed amendment is to enable a caveator whose caveat has lapsed, to renew his claim, but his interest is made subject to the state of the register book at the time his caveat is renewed. There are many occasions where he may permit his caveat to lapse. He may do that through not receiving notice of a particular transaction that is going through, and yet he cannot renew his caveat as the law now exists. An example would be that a man might have lodged a caveat to protect an equitable mortgage over a number of pieces of land. The owner might transfer the land comprised in one certificate, but if he gives notice, he must give notice respecting the caveat as a whole, or the whole interest.

If the caveat lapses, a subsequent one cannot be lodged again in the same interest. Additional provision is being inserted which will give the Commissioner power to remove a caveat either on his own initiative, or on the application of any person interested where it appears that the estate or interest claimed by the caveator has ceased to exist. Prior to doing so, the Commissioner must give notice to the caveator requiring him to commence proceedings to substantiate his claim. If he does not do so within a reasonable time, the caveat may be removed. There are many caveats on the register book protecting interests which have long ceased to exist—for example, a caveat protecting the interests of a lessee whose lease may have expired years ago.

Hon. F. J. S. Wise: Suppose you could not locate the caveator.

The ATTORNEY GENERAL: That would not be necessary.

Hon. F. J. S. Wise: It would be vital.

The ATTORNEY GENERAL: No, because at the present moment a caveat may protect a lease for a stated number of years.

Hon. F. J. S. Wise: Yes, but you might notify a person at an address at which he has ceased to reside for a long time.

The ATTORNEY GENERAL: That is so, but it may be apparent to the Registrar that the caveat has no force or effect. A lessee might have lodged a caveat to protect his lease, and after the lease expired he would have no further interest in it, but such a person never, or seldom, takes steps to withdraw the caveat. So it remains on the lessor's or owner's title until some transaction is put through which enables the owner to give notice. But until he puts through a transaction, such as a transfer or something else which affects the caveat, he cannot get it off. Therefore it remains indefinitely on the title. Another example is that a person may have lodged a caveat to protect an option of purchase, and the option might have expired many years, but the owner of the land cannot get the caveat removed unless he gets a withdrawal signed by the person who lodged it, unless a dealing is put through in connection with the land. The suggested amendment gives the registered proprietor an opportunity of getting rid of the obsolete caveat.

The principal Act provides that a power of attorney from a registered proprietor may be filed at the Titles Office by lodging the original or duplicate of the power, or an attested copy. An attested copy—that is one that is not signed by the registered proprietor but is certified by two persons as being a true copy of the original—should not be considered sufficient. It is proposed to delete the reference to filing an attested copy, and to require that the power lodged shall be the original, a duplicate, an office copy issued under the Powers of Attorney Act, 1896, or a copy certified by the Registrar of Companies of a power deposited with him under the Companies Act. In any of the above cases, the signature of the person giving the power is either on the power filed in the Titles Office or on a copy filed in the Supreme Court or the Companies Office.

The proposed amendment includes a subclause which authorises the Registrar to presume that a power executed within three months of lodgment is still in force, but also authorises him in any case to require evidence that the power is unrevoked. It is submitted that the Registrar should be authorised to require evidence that a power is still in force even if such power has at some time past been filed in the Supreme Court or the Companies Office. Under the provisions of the existing Act which enables powers of attorney to be filed at the Supreme Court, a power of attorney is deemed to be in force until revocation of it is actually filed in the court, however old it may be. In dealing with such important matters as affect estates in land, it is thought that the Registrar should be reasonably satisfied that the power is still in force. So this provision, if it becomes operative, will enable the Registrar to require such evidence of the existence or non-revocation

of a power that is three months old, as he thinks fit. That proof is usually given by means of a declaration from the person utilising the power, that it is still in force.

The proposed amendment of Section 181 gives power for regulations to be made to cover certain matters not included in the present section. These are, firstly, the medium in which documents shall be written and executed, and the size and quality of paper to be used. As documents registered form a permanent part of the records of the office and may be required many years after registration, it is considered that there should be authority to insist upon such matters as documents being printed, typed or written in ink instead of, say, in pencil, and also upon the use of good-quality paper. Provision is also made to prescribe by regulation the fees to be charged and the contributions to be made to the assurance fund. I think that request by the Commissioner of Titles is a reasonable one.

Hon. F. J. S. Wise: There will be no argument about that.

The ATTORNEY GENERAL: Then I will not deal further with it.

Hon. E. Nulsen: I suppose it is taken from some other Act.

The ATTORNEY GENERAL: Section 184 empowers the Commissioner to remove from the register book rights of an official assignee or trustee in bankruptcy or of an execution creditor notified as encumbrances when convinced that such rights have been satisfied, extinguished or otherwise determined. The present section is not wide enough, as there are other rights which can be notified as encumbrances and for which there is no provision for removal on proof that such rights have been satisfied, extinguished or determined. An example is the rights of beneficiaries under the will of a deceased proprietor notified as an encumbrance on a certificate. The scope of the section is, therefore, enlarged by referring to any right or interest notified as an encumbrance.

Hon. F. J. S. Wise: Might I draw attention to the proposed amendment to Section 185? I think some members might have objection to the Latin words used in line 6 on page 16 of the Bill. No-one likes "mutatis mutandis" or "fiori facias."

The ATTORNEY GENERAL: I will have to give some consideration to the comment of the hon. member. Section 211 deals with limitation of actions and extends the period for bringing actions by persons suffering from disability. Among the disabilities therein enumerated are coverture and absence from Western Australia. Since the passing of the Married Women's Property Act, coverture is no longer a disability, and absence from Western Australia is no longer a disability recognised by the Limitations Act, 1935. The proposed amendment deletes reference to coverture and absence from Western Australia as disabilities. Section 216 speaks of "felony" and "penal servitude," terms which are now inaccurate. The punishment provided by Section 216—or the maximum punishment there provided—is a term of imprisonment not exceeding two years, or penal servitude for a term not exceeding 14 years. It is proposed to repeal that section as being obsolete and insert in lieu a new section making the punishment more commensurate with modern ideas. Under the proposed new section, the maximum punishment would be a penalty of £100 or imprisonment for a maximum term of 12 months, or both. It is considered that any offence for which the punishment as provided by this section would be inadequate would be covered by the Criminal Code.

It is proposed to insert in the Act a new provision providing for the removal from a certificate of title of any easement notified thereon which has not been used for 20 years and which has been abandoned. For these provisions to be invoked, it will be necessary to show both non-user for the specified period and abandonment. For instance, if the land entitled to the benefit of an easement is still vacant, so that the owner has not had occasion to enjoy the benefit of the easement, it would not be deemed abandoned, and would not be removed. It is submitted that if an owner has had the opportunity to enjoy the easement but has not done so for 20 years, it is of no practical use to him, and should be removed on the application of any person interested.

Furthermore, it is proposed to insert a new provision that will empower the Commissioner, when bringing land under the Act, to issue a certificate without notifying thereon as an encumbrance an easement which has not been used and enjoyed for at least 20 years, and which has been abandoned. Those are the principal proposed alterations to the law and administrative methods now operating under the Act. There are a number of other amendments proposed to modernise the legislation or facilitate administration, but they are of a minor nature and can best be dealt with when the Bill is in Committee. I move—

That the Bill be now read a second time.

On motion by Hon. F. J. S. Wise, debate adjourned.

BILL—RESERVE FUNDS (LOCAL AUTHORITIES).

Second Reading.

THE MINISTER FOR LOCAL GOVERNMENT (Hon. V. Doney—Narrogin) [5.50] in moving the second reading said: This Bill, in my judgment, is likely to be welcomed by local authorities largely

because of several other benefits which I anticipate will ensue. It will enable those bodies to own funds substantially above their normal income without jeopardising, in any way, their customary income from rates, etc. The purpose of the Bill is to enable local authorities to set up and maintain reserve funds. There will be two such funds; one for the purpose of financing what are referred to in the Bill as particular and specific undertakings and the second is for financing what are termed general undertakings—those being in the main of the type that are not foreseeable when the authority budgets, earlier in the year, for its customary annual expenditure.

Money in the general fund will be used for projects such as the repairing of bridges or roads and such like, which might have been damaged by storm or fire or any other similar means. It might conceivably be used to meet an account for heavy repairs to road or other heavy plant. The fund might also be used to finance the employment of outside officers brought in to relieve a sick road board secretary, a sick town clerk or any other member of the staff. It is set out in the Bill that this general reserve fund shall be financed by contributions made up of not more than five per cent. of the normal annual income of the authority. It would come from no other source than that although in certain cases it would be allowable that somewhat more than five per cent. might be permitted to be used from the authority's current income.

The particular reserve fund—and that is the name given to it in the Bill—will be more important and will be the richer of the two funds. This particular fund will be financed from the sale of one or more of the authority's trading concerns; or of certain other major assets. That would be the source from which that fund would draw its income and should the fund run short for any essential purpose, contributions of five per cent. only can be taken from the authority's current revenue—much the same as in the case of the other fund. When moneys from either of those sources are placed in the particular reserve fund, the books of the local authority must show precisely for what special project the fund is intended. At a later date when funds are being used they may cover—and the Bill is very particular upon this point—only the cost of the specific purposes for which they were nominated when they were lodged in the fund.

That principle cannot be departed from except under special circumstances. Such a case might be where it is the intention of the local authority to put down an aerodrome and, as has happened before and might easily happen again, the Commonwealth Government might choose that particular piece of land for a landing ground of its own. In that case it would be necessary, obviously, for the local authority, in conference with the Minister, to allot that special fund for some entirely new purpose.

Members might like to know exactly what type of specific project local authorities anticipate financing from this particular reserve fund. I might say that the correspondence from local authorities during the last few months has been heavy and it has shown that it might be their wish to provide funds for, say, the construction of a town hall—a wise and proper anticipation. The correspondence has also shown that local authorities desire to provide funds for the construction of sports grounds and they may desire to provide funds for the setting out of up-to-date camping areas with proper beaches houses and facilities or to make provision for the the payment of gratuities and long service leave.

Possibly members interested in local authority matters can visualise that that particular purpose would be a most popular one with road board secretaries, town clerks and local authorities' staffs generally. It might be—and it is so in a number of cases—that the funds could be used to provide for a general reserve to be used in cases of emergency. Other than that it might easily be for a swimming pool, a hostel for school children, homes for employees and a number of other purposes which can be determined by the authority each in its proper course.

What first gave rise to the idea of a reserve fund for one fixed purpose, or for several fixed purposes, was the sale, during the past six or nine months, of valuable electricity supply assets to the State Electricity Commission. That set of circumstances provided some three or four local authorities in the south-western part of the State with sums that were awkwardly large, to put it mildly. Boards and municipalities probably thought that if they lodged these large sums in current accounts they might be coaxed into more or less frittering them away upon relevantly unimportant projects. As ex-road board members here know, it might quite easily have the effect—and indeed it would almost certainly have the effect—of a substantial lessening of the rating powers of the local authorities if the current accounts happened to show undue inflation at the end of the financial year.

There may be certain members who might wish to object that there is no need for this new statute on the ground that there already exists an Act having much of the same title that in the main deals with the matter of reserve funds. Such legislation certainly exists, but it was purely an emergency measure and it is expressly laid down that its provisions would exist only during the currency of the war. Plainly, of course, the word "war" would refer to the war still in existence between His Majesty, the United States of America

and one or two other nations on the one side, and Germany, Japan and Italy on the other. There might be a difference of opinion as to whether that war is still existent. My legal friend, the Acting Premier, might be able to tell the House with more clarity than I just exactly what would terminate that war, and what are the peace treaties necessary between one group of nations and the other group and between individual nations on the one side and individual nations on the other.

However, for all practical purposes, it may be regarded that that Act no longer exists because the several sums which were held in trust under its provisions at one time have been drawn upon during the past four or five years. The fund was established not for any special expenditure, but merely to gather up the incomes of the several local authorities which they were unable to spend because neither men nor materials were available. There is no need, I think, to go further than that. There are certainly one or two other minor provisions in the Bill but each of them, in turn, has a plain bearing on the principle to which I have been referring. I move—

That the Bill be now read a second time.

On motion by Hon. A. R. G. Hawke, debate adjourned.

House adjourned at 6.4 p.m.

Legislative Council.

Tuesday, 19th September, 1950.

CONTENTS.

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

ADDRESS-IN-REPLY.

Fifteenth Day—Conclusion.

Debate resumed from the 13th September.

THE MINISTER FOR TRANSPORT (Hon. C. H. Simpson—Midland) [4.34]: In terminating the debate on the Address-in-reply, I first desire to thank sincerely members who have expressed their best wishes at my elevation to the position of Leader of this House. I take particular pride and appreciation in my appointment when I consider the calibre of my predecessors during the 60 years that have elapsed since the inception of responsible government. The exigencies of politics retained some of these gentlemen in the position for but a brief time, while others served with distinction for lengthy periods.

It may be of interest to members to mention the names of these past Leaders of the House. They were: Hons. George Shenton, 1890-1892; Stephen Parker, 1892-1894; Edward Wittenoom, 1894-1898; George Randell, 1898-1901; Charles Sommers, 1901; Matthew Moss, 1901; Adam Jameson, 1902; Walter Kingsmill, 1902-1904, and 1905-1906; John Drew, 1904-1905, 1911-1916, 1924-1930, and 1934-1936; James Connolly, 1906-1911; Hal. Colebatch, 1916-1923; John Ewing, 1923; Charles Baxter, 1930-1933; William Kitson, 1936-1946; and Hubert Parker, 1947-1949. Members may be assured that I will do my utmost to emulate the examples set by these gentlemen and to serve the House with all the ability of which I am capable.

I, too, wish to express my sincere regret at the loss members of this House and the State sustained in the decease of the late Hon. Charles Baxter, a past Leader of this House, and a kind friend and wise counsellor. It is with regret also that I refer to the fact that, with the passage of time, Messrs. George Miles and Alex Thomson decided not to stand for re-election. These two gentlemen served their State well and faithfully as members of Parliament for lengthy periods, Mr. Miles representing the North Province in this Chamber from 1916 until this year, and Mr. Thomson being a member of another place from 1914 to 1930, and a member of the Legislative Council from 1931 onwards. These are indeed very fine records.

We miss the presence too, of Mr. Harold Daffen, who was elected to this House in 1947 on the decease of the late John M. Drew, but who was not successful in retaining his seat at the elections this year. The ebb and flow of politics have brought four new members to the House this year and I congratulate them heartily on their election. It is a distinct pleasure to older members to see the names of Baxter and Thomson again on the roll of members of this Chamber, and we hope to receive from them, in due course, service of the nature given by their fathers.