Legislative Council

Tuesday, the 28th August, 1962

CONTENTS

The PRESIDENT (The Hon. L. C. Diver) took the Chair at 4.30 p.m., and read prayers.

QUESTIONS ON NOTICE

LAND SUBDIVISION

Canning Shire Council Circular

1. The Hon. E. M. DAVIES asked the Minister for Local Government:

(1) Is the Minister aware that landowners in the Canning Shire Council area are being informed or ordered in a circular or pamphlet from the shire council to have their land subdivided?

(2) Is the Minister aware that the cost of subdivision, including cost of surveys, cost of road construction, and value of land used for roads, all form part of the substantial contribution made by the landowner who subdivides?

(3) Has the shire council any power or authority to make an order on landowners to subdivide their properties?

The Hon. L. A. LOGAN replied:

(1) No. The council is considering the preparation of town planning schemes in several localities to provide for a better over-all development. Meetings have been arranged by the council so that its plans can be explained to owners. Owners are not ordered to subdivide. A scheme may provide for a pattern of subdivision to be followed when an owner decides to subdivide his holding or may provide for the resumption of land and resubdivision by the council, or a combination of both.

(2) Yes. This is the responsibility of every subdivider in accordance with the provisions of the Local Government Act.

(3) No. A council may, by town planning scheme, provide for subdivision as set out in No. (1). An owner has the right to object to any provision of a town planning scheme and objections are considered by the Minister before giving final approval to a scheme.

DENTAL FACILITIES

Overseas Dentists for Country Districts

2. The Hon. S. T. J. THOMPSON asked the Minister for Mines:

(1) Has the Government investigated the possibility of securing dentists from overseas to overcome the serious position that exists in country districts?

Travelling Clinics

(2) How many travelling clinics are in operation—
(a) visiting schools; and
(b) others?

(3) Is it proposed to increase this number?

(4) If the answer to No. (3) is "Yes," when will any new travelling clinic be operating?

The Hon. A. F. GRIFFITH replied:

(1) The possibility of obtaining dentists from abroad is constantly being explored, and these efforts are continuing.

(2) (a) School Dental Service—

Six mobile clinics are visiting schools.

Three dentists are stationed in north-west clinics but use mobile surgeries to visit other towns in their areas. These men combine work for children with work for the general population.

(b) One.

(3) and (4) Perth Dental Hospital has asked the Public Works Department to draw plans and call tenders for another mobile dental unit—this will make two units. It is very difficult to suggest a

date when the new unit will commence operating, but it is hoped that this will be by the end of this financial year.

IRON ORE (MOUNT GOLDSWORTHY) AGREEMENT BILL

Standing Orders Suspension

THE HON. A. F. GRIFFITH (Suburban —Minister for Mines) [4.39 p.m.]: I move, without notice—

> That so much of the Standing Orders be suspended so as to enable the second reading of the Iron Ore (Mount Goldsworthy) Agreement Bill to be taken on receipt of a message from the Legislative Assembly, and for all remaining stages of the Bill to be taken at any subsequent sitting.

If I may, I will explain to the House, briefly, the necessity for presenting this motion. As members know, in order to suit the convenience of goldfields members, it is our intention not to be in session next week. Therefore it is my desire, if possible, to have this Bill passed by the Legislative Council during the course of this week.

If the message from the Legislative Assembly had been received on Thursday of last week there would not have been any necessity for me to move for a suspension of Standing Orders, but because the message is on its way here now, there would not be sufficient time to pass the Bill through the ordinary processes of receiving the message, and dealing with the first and second readings, etc. For the information of members I confided to the Leader of the Opposition the need to have this Bill passed by Thursday next, and with his knowledge I have moved this motion. I hope the House will agree to it.

THE HON. F. J. S. WISE (North—Leader of the Opposition) [4.42 p.m.]: As the Minister has stated, he kindly advised me of his desires, and we on this side have no objection whatever to the proposal of the Minister to expedite the passage of this Bill by allowing for it to pass through all stages, when it is introduced here.

The Hon. A. F. Griffith: Thank you.

Question put.

The PRESIDENT (The Hon. L. C. Diver): I have counted the House; and there being no dissentient voice, I declare the motion carried.

Question thus passed.

LEAVE OF ABSENCE

On motion by The Hon. F. J. S. Wise, leave of absence for 12 consecutive sittings granted to The Hon. H. C. Strickland (North) on the ground of private business.

BP REFINERY (KWINANA) LIMITED BILL

Report

Report of Committee adopted.

WAR SERVICE LAND SETTLEMENT SCHEME ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 23rd August, on the following motion by The Hon. L. A. Logan (Minister for Local Government):—

> That the Bill be now read a second time.

THE HON. S. T. J. THOMPSON (South) [4.44 p.m.]: The Minister, in the concluding remarks of his explanation of this Bill, said—

> It is considered that the passing of this measure will facilitate the better carrying out of, and giving effect to, the scheme, and the Bill is commended to members.

So far as I can see, the importance of this measure is that it considerably widens the field of those unfortunate war service settlers who find it necessary to endeavour to sell their leases. Whereas up to the present they have had to sell their leases for cash, they will now be able to sell them on terms.

The Bill will enable those settlers to at least salvage something from their past several years' endeavours. I think this is extremely important, and I heartily agree with the measure in this respect. I regret, however, that it is necessary to introduce legislation to ease those men off their properties. The original intention of this scheme was to put the settlers on the land, but it appears that in some instances we have failed. I feel sure that there are quite a number of settlers who will avail themselves of the opportunity to dispose of their leases.

The Hon. A. R. Jones: Do you think they are really farmers if they do that?

The Hon. S. T. J. THOMPSON: I think Mr. Jones interjected in a similar strain during the Address-in-Reply debate. Yes, some are good farmers, but their success varies according to circumstances. Under the scheme as we have it in the project areas—I am not concerned with other war service land settlement areas at all—the project farms are all based on a level. There is no question that some properties are better than others; and, as is always the case, some farmers are better than others. It is not always easy to control circumstances, and there are a few unfortunates under this scheme.

However, we could go on discussing the problems and faults of this scheme for quite a long while. I am pleased to see that the department has recognised the

necessity for making this concession to the settlers, and, with those few remarks, I support the Bill.

THE HON. A. L. LOTON (South) [4.47 p.m.]: It is somewhat difficult for one to really put one's heart into this measure and agree to the proposal set out by the Minister. I think the person who made the comment in the newspaper the other day might have a good deal of meat in his argument when he said that perhaps those who were responsible for the placing of some of the settlers in the project areas were doing this with a view to easing the position—so far as the department was concerned—by enabling settlers to accept a deposit as part of a proposal which would enable them to get off their properties.

In the project areas, as Mr. Syd Thompson has just said, some of the settlers have suffered great disability from the day they were allotted the farms. Even today, the position has not been resolved, because we find that only a few days ago Mr. Adermann made this remark in answer to a question—

> I do accept the position that some additional primary development works are necessary because of regrowth or because of subsidence of land.

I do not know what he is talking about, and I would like the Minister to give the House some information as to what the Minister for Primary Industry (Mr. Adermann) meant when he said that some additional work will be necessary because of subsidence of land. He stated that this has happened in certain areas, and he went on to say—

> The work has been undertaken by the development authorities. The value to the settler not necessarily the cost, is charged. This may not be the whole of the cost.

That has been one of the points upon which some of us have been unable to obtain any satisfaction from State or Commonwealth Ministers since the inception of the scheme; namely: What exactly was the financial responsibility of the settler; and when did it start and when did it end? We have been unable to obtain answers to those questions despite the fact that two Select Committees, honorary committees, conferences with State and Commonwealth Ministers, and other general inquiries have been made. The settlers are still unable to find out what their total indebtedness is under the scheme.

Therefore, the proposal in this Bill will present an easy way out for those who have reached the stage where they can no longer see the light over the hill. If the settler can find someone interested in purchasing his property on terms, this Bill will enable him to enter into negotiations for the sale of such property. In other words, they are going to do what several settlers in the early days would have done, perhaps; that is, get off the land and obtain a position in some other industry.

It is regrettable that this position has arisen, because in reply to a question posed by Mr. Jones, Mr. Syd Thompson stated that every settler who had been placed on a farm was approved by the War Service Land Settlement Board. The settler was qualified, he was accepted by the board, and he was placed on a farm as an approved settler. In some cases, naturally, the settlers did not have as much experience as in others; and in some cases the settlers crossed swords with the administration and the field officers in the early days of the scheme. In many instances where a little guidance would have gone a long way towards making the scheme a complete success that guidance was not forthcoming in the early days. Instead, the settlers were directed to do certain things.

Most of us are aware that many, if not all, of the settlers are returned servicemen; they had fought for their country, and they were entitled to have the opportunity to rehabilitate themselves. It is regrettable that they were pushed from pillar to post by certain persons in the early stages of the scheme. If only the local committee, which was advocated in the early days, had been set up in all project areas I am satisfied that most of the settlers would have made a success of their undertakings. That is all I have to say. I am somewhat disappointed that the introduction of the Bill has been found to be necessary but I think it was inevitable.

THE HON. C. R. ABBEY (Central) [4.52 p.m.]: Like the two previous speakers, I also find it extremely regrettable that this legislation has been introduced. I had formed the conception that the scheme would bring about a prosperous section in our community; and I do not think that any of us would find it hard to accept a situation where every ex-serviceman settler became prosperous. Indeed we would all welcome such a state of affairs.

A situation has developed under which the settlers in the project areas have suffered, as compared with the settlers who were placed on well developed properties. The latter have in most cases become prosperous. A difficult situation must inevitably have arisen in the project areas, because, as every member in this House belonging to the farming community would know, when a property is developed from almost totally new country, two very great problems have to be overcome. Firstly, there is the sucker problem, and, secondly, there is the clover-dominance problem.

Living on the west side of Beverley, I personally went through a period when clover dominance of my pasture was a very

serious problem. I know full well that in the project areas of the war service land settlement scheme this very problem has been, is, and will be in the future, a very serious one. Firstly, the fertility of the ewes is affected, and the breeding programme of the settlers is very severely hampered.

I can well recall that in my own district some 15 years ago the lambing percentage on some farms dropped to as low as 26 per cent. I am not aware at the moment to what extent the settlers in the project areas have been affected, but I would say, without doubt, that with clover-dominant pastures they would face a very serious problem.

It was intended at the inception of the scheme that all farms should be of an economical size, with an economical portion of the land cleared. With the decrease in the value of wool, in particular, it has become very obvious that most of the settlers have insufficient land; therefore many of them are being driven into a corner, even though they are efficient farmers, and they will not be able to meet their commitments. In some cases the settlers feel it is better for them to get off their properties. I decry this state of affairs.

I feel that the Commonwealth Government has been unsympathetic towards the approaches made by this State. It is high time that a reassessment of the situation was made and that a better basis was found, so that the problems which the settlers face can be overcome. None of us would deny that the ex-servicemen settlers are entitled to be given a chance. They have fought for their country, and therefore they and their families should be entitled to a secure future. I am sure that many of them will go to the wall unless the very heavy burden of debt hanging over their heads at the present time is relieved. Under present circumstances it is not possible for many of them to make a success. The heavy burden of debt breaks their hearts, and the scheme has not proved to be as successful as it could have been.

THE HON. F. R. H. LAVERY (West) [4.57 p.m.]: In rising to support this Bill I regret the necessity for its introduction. I do not want to let this occasion go by without supporting the remarks of the last two speakers in relation to settlers in project areas. I know a little about those areas, and I am also aware that when this scheme was drawn up initially—I am not being political when I say this—the late Ben Chifley said that when the servicemen came back from World War II the Government would spend £40,000,000 on developing the land and putting settlers on it, thus ensuring that the settlers would be successfully rehabilitated. That was a different approach to the one made after the first World War when settlers were placed on land and had to develop the land themselves. The money simply was poured down the drain.

The administration of the scheme in this State has involved three Governments—the McLarty-Watts Government, the Hawke Government, and the Brand Government. I realise that the main difficulty experienced by these settlers is the large burden of cost imposed on them. As the previous two speakers said, if an inquiry were to be held into the development of the properties under the scheme in this State, it would be found that as a result of maladministration Western Australia would have to refund to the Commonwealth Government a sum in the vicinity of £2,000,000 to £2,500,000. These are not idle statements I am making. They have been in my mind for a number of years.

Some of the fears felt by the war service land settlers in the project areas in this State would give *The West Australian* sufficient material for more than three instalments of certain articles. The writer of the articles recently published, whitewashed the position very well, but one important fact was not placed before him. In preparing the land and the pastures, particularly in the Jerramungup and Gardner River districts, poison weeds were not removed completely; and it is almost impossible to overcome this problem in many areas.

This and similar matters were not published in *The West Australian* in the articles which appeared over the three days. Some settlers brought numbers of sheep on to their properties, but found that within a few hours hundreds of them died. The question is: Who is to pay for that loss? This happened in the last 15 to 18 months.

The Hon. C. R. Abbey: What did they die of?

The Hon. F. R. H. LAVERY: They died from the poison on the properties, because they had not been prepared properly. When members of the Country Party complain of what is going on in the districts I have mentioned, I can personally say that their complaints have plenty of meat and substance in them. The people in those parts now find themselves in such a position that they have to do something in order, as Mr. Syd Thompson says, to make up a little for the efforts they have put into their farms. They should not be in that position.

There should be a check made of the value of these lands and, if it is necessary, both Governments—Commonwealth and State—should write down a considerable portion of the costs of these properties. That is the only way to treat these men who have given service to their country and who have, as Mr. Loton has said, been recommended by the board as being

capable farming people. Of course there will always be the odd one who will miss out; but none of them should have the capital cost placed on their accounts giving them no opportunity, even in ten years' time, with good seasons, of getting anywhere.

As I said before, I am not being political about this, because three Governments have been involved. However, this Government could, with great credit to itself and as a service to the war service settlers in this State, make a full inquiry through a Royal Commission composed of a judge, and subsequently make great write-offs, thus giving the people and the State itself, as well as the Commonwealth, value for the money that has been not spent, but misspent.

THE HON. A. R. JONES (Midland) [5.2 p.m.]: I was not going to say anything on this measure, but since I made an interjection and it might have been misconstrued, I feel that I must at least explain that interjection. I said—although not in the same words—"Are you sure" or "Can we be sure that they were all farmers at heart?" I meant what I said; and it really behoves us to ensure, as has been suggested by Mr. Wise, that when any projects such as this one are envisaged in regard to agricultural pursuits, at least the right people are chosen for them.

I was one of the committee set up in the early stages to investigate the complaints made, following a Select Committee's report, and I found that things were as reported. Certain recommendations were made; and I feel that the settlers on many of the project areas were put back three or four years because the work had not been properly supervised, and the projects had not been properly organised in the first place. The pastures were not even fully developed. In addition, they were not given sufficient mixture to overcome the clover dominance where in some cases the land had not been sufficiently improved to provide even a pasture.

What makes the situation worse is that a number of the early settlers who went on to improved properties are millionaires in their own right now. Of course when a chap goes on to a project area and some ten years later, despite the fact that he put up with what he did, he has got nowhere because the administration was of such a bad nature that he was up against a brick wall; and when he sees his next-door neighbour riding around in a big motorcar and selling out for a fabulous sum and retiring to the city, the aggravation on his part is accentuated because if he had been given the same opportunity he would have done as well.

In the first place, too many who were supposed to be farmers but who never were farmers and never will be farmers were put on the land. The amendment contained in this Bill will at least give the opportunity to those people who are not farmers and never will be, to get something out of the wreck in compensation for the years they have spent. However, whether they are good farmers or not, they have spent many years on the project, and they were recommended in the first place by the committee and were thus given a farm. That is where some of the trouble has occurred.

Of course there are other reasons. For instance, a man might have been in good health when he went on to the farm, but be not in such good health today; and therefore he wants to sell out. There are some in that position. It is only reasonable that it should be made as easy as possible for them to do this and get the most they can for their properties. There are instances where the family may desire to get out. After all is said and done, we know that to be a successful farmer a man must have an enthusiastic wife. If the two do not work together in a venture of this kind, it cannot succeed. The woman plays just as important a part as does the man; and I feel in regard to some of these places, that good relationship with regard to the actual farm never existed between the husband and wife.

So, for many reasons, there are those who want to get out, and this Bill will make it easier for them to do so. It is a good lesson to us all that no matter what we do with regard to land development in the future, we must make sure that the right people are placed on the land and are given equal opportunities. This was not done with regard to these farms, and that is certainly responsible for a lot of the trouble that has been created. Those responsible for the maladministration should not be given an opportunity to act in any future scheme, but should be placed on Garden Island and made to stay there rather than mess up the country and the lives of so many people to the tune of many thousands of pounds.

THE HON. L. A. LOGAN (Midland—Minister for Local Government) [5.8 p.m.]: I do not intend to give the House a dissertation on the war service land settlement scheme, but I feel I should make one or two observations as the subject has been opened up fairly widely.

I think Mr. Syd Thompson summed it up when he said it was unfortunate that it was necessary for a Bill of this nature to be introduced to allow some of these settlers to sell when, in effect, the intention of the scheme was that they should not sell but should stay on the land on a rental basis for 999 years. That was the intention of the scheme. But, as Mr. Jones said, there are some misfits. Naturally, when 1,050 men are picked to be placed on farms,

there must be one or two misfits somewhere along the line. It cannot be otherwise. Therefore, I think we can disregard some of these fellows who are going off, because they were not the right ones for the farms in the first place. That is no fault of theirs; they were given the opportunity, they tried it, and it just has not worked out their way.

I know there were a lot of mistakes made in the early stages, and unfortunately they were pretty costly ones, but the department and the scheme should not be blamed for everything. I say this because my mind goes back to my report of 1957 when I stated that there were many men who went on to their farms too soon, not because the department wanted it that way but because of political pressure by members of Parliament and the R.S.L.

The Hon. G. Bennetts: Friends and relations.

The Hon. L. A. LOGAN: There was terrific pressure to build up the numbers, and men were put on the farms when they had no right to be because the farms were not ready for them. So do not blame everything on the scheme. I know we have had troubles with poison and also with clover diseases; but do not forget that an assessment scheme was introduced whereby if the farm was not ready for full development, the settler was only charged according to the assessment of the farm.

The Hon. F. R. H. Lavery: They have never found out what their assessments are.

The Hon. L. A. LOGAN: Of course they have. They are told every year.

The Hon. C. R. Abbey: They keep on rising, though.

The Hon. L. A. LOGAN: If the men are running their farms properly and building them up, they must go up every year. If a man is only going to carry on with 500 sheep for ever and anon, there is something wrong with him, but not the farm. The farmer does not go on an assessment until he is carrying 600 sheep, and from then on there is an increase every year until he reaches a full assessment. There is no fairer scheme than that, to my knowledge, for the settler who is put on his farm before it is an economic unit. I venture to say that if the settlers had waited until their farms were economic units, some of them would have been waiting another five years; in fact, many of them would have.

We should make this observation: Since the commencement of this scheme there have been at least three Western Australian Governments, at least four Western Australian Ministers, and at least three different chairmen of the scheme; and there is one new vice-chairman at the moment. Despite all that, a few of the settlers are not satisfied. Is the scheme at fault when there have been three Governments, four Ministers, and three different chairmen? If there are still complaints, is there something wrong with the scheme —or something else?

The Hon. F. R. H. Lavery: There is something wrong with the administration.

The Hon. L. A. LOGAN: Is there, with all those having been in charge? In the Federal House there have been three different Ministers.

The Hon. F. R. H. Lavery: Yes; each covering in turn the others' administration.

The Hon. L. A. LOGAN: I think the honourable member is casting a severe slur on men in responsible positions when he says that, and I do not believe he is entitled to.

Some of the men who have sold their leases have done so at a profit of £10,000 after 10 years' work. Where else can a man today have the opportunity of starting from nothing—and that is the concept of the idea—and at the end of 10 years sell out and, after paying all debts, walk out with £10,000? There are a few who have done this, but not many. And we have this situation with regard to the settlers: One man will sell out at a profit of £10,000, and the chap next door will not be making even a living out of his property. Members should use their own judgment in deciding who is at fault.

The Hon. F. J. S. Wise: What are you really suggesting?

The Hon. L. A. LOGAN: I am not suggesting anything. I leave that to members' own conjecture. Mr. Lavery mentioned a Royal Commission. Mr. Hoar was Chairman of a Select Committee in 1952 or 1953, and I was Chairman of a Royal Commission in 1957. Most of the recommendations I made in 1957 have now been put into effect. Members must not forget that this is a two-way argument. We are still tied to the Federal Government.

The Hon. F. R. H. Lavery: It would be better if the Federal people found out how much maladministration has occurred.

The Hon. L. A. LOGAN: The Federal Government knows because it has had an officer here all the time.

The Hon. F. R. H. Lavery: It has cost this country plenty.

The Hon. L. A. LOGAN: Of course; but who is paying it? It is the taxpayer who is paying.

The Hon. F. R. H. Lavery: That is my complaint.

The Hon. L. A. LOGAN: And the amount which is being paid by the taxpayer for the benefit of a few, is a big sum.

The Hon. H. K. Watson: And that is only a rough estimate!

The Hon. L. A. LOGAN: Yes, that is only a rough estimate. I could give quite a dissertation on war service land settlement if I wanted to, but I do not want to

because this is only a small measure to help those unfortunate ones who cannot carry on; and it is also designed to help those who could carry on but want to get out.

All it means is that instead of having to get sufficient cash for their farms to enable them to pay their just debts before they sell, as happens at the moment, the settlers will be able to sell on a terms basis, and get rid of their properties earlier than would otherwise be the case.

That is all the Bill does, and I am glad that members have accepted the principle of it. They have not accepted the fact that it is a really wise move, inasmuch as it should not be necessary, and with that contention I agree; but because of the circumstances there is really only one way out of it. This subject of war service land settlement, like one or two others, when brought before Parliament always raises a controversy, and members have different points of view, some of which, of course, are quite correct. However, I thank members for their contributions.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (The Hon. G. C. MacKinnon) in the Chair; The Hon. L. A. Logan (Minister for Local Government) in charge of the Bill.

Clause 1 put and passed.

Clause 2: Section 6 amended—

The Hon. F. R. H. LAVERY: I do not want to let this opportunity pass without pointing out that when I opened my remarks I said I was not intending to be political about the matter; and I also went on to say that it was a subject which involved three Governments.

The Hon. L. A. Logan: That is so.

The Hon. F. R. H. LAVERY: I will go further and say that as late as last year a very prominent member of the Country Party who had been making investigations with me into certain aspects of the war service land settlement scheme, did his best to get me to move in this House for a Royal Commission to be appointed; and he told me I would get the support of his party if I did. I leave it at that.

The Hon. L. A. LOGAN: I do not want to be political, either; but the subject of a Royal Commission was never raised in the Country Party rooms, so it would not give anybody the right to approach Mr. Lavery and ask for a Royal Commission to be appointed.

The Hon. S. T. J. THOMPSON: I carefully refrained from going too far when I spoke to the Bill, but I have always taken a keen interest in the war service land settlement scheme, even before I entered politics. The question I am finding the most difficult to answer at the moment is why some outsider, as I will call a person who is now buying these leases, is prepared to pay up to £5,000 or £6,000, or some such figure, for the privilege of continuing to pay the necessary rental for the rest of his life. In other words, such a person is prepared to pay several thousands of pounds for the privilege that is given to the war service land settlers for nothing.

The answer is that over past years the Land Settlement Board has built up such a backlog of debt; and it is not the rent of the properties that is the problem—it is the backlog of interest on the debts incurred for working expenses, stock bills, and general farm expenses. If a man comes along with a certain amount of capital and can pay off that backlog of debt, such as the people who are buying these properties are doing, they are quite happy with the business. There was an instance in the much talked of Rocky Gully when a man from Humphry's Bridge, whom Mr. Loton knows quite well, bought a property. I was talking to him the other day and he considers it is a wonderful property. He has paid so many thousands of pounds for the privilege of paying £500 a year for the rest of his life.

The Hon. L. A. Logan: It is a good investment.

The Hon. S. T. J. THOMPSON: There is a lot to be said on both sides but, as I have just commented, the real problem is the backlog of interest that has been built up over the last 5 or 10 years; it is not the properties that are at fault.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

IRON ORE (MOUNT GOLDSWORTHY) AGREEMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by The Hon. A. F. Griffith (Minister for Mines), read a first time.

Second Reading

THE HON. A. F. GRIFFITH (Suburban —Minister for Mines) [5.22 p.m.]: I move—

> That the Bill be now read a second time.

This Bill is to approve of an agreement entered into by the State Government and a party known as Joint Venturers, to launch what may well develop into a £12,000,000 or more iron ore venture based on the Mt. Goldsworthy deposit.

Prior to the calling of tenders, Commonwealth approval was obtained for the export by a successful tenderer of up to 15,000,000 tons of iron ore from the lens at the deposit, subject to the following conditions:—

(1) The annual rate not to exceed 1,000,000 tons.

(2) The make-up of the ore parcels of which export would be allowed to be a mixture of the two grades of ore in the same proportion as the proportions in which the reserves of 30,000,000 tons referred to later contain ore that was above and below 60 per cent. iron content. That was to ensure that some slightly lower grade ore shown in the drilling operations should also be produced proportionately and included in export, and thus the remaining 15,000,000 tons not to be of lower grade than that exported.

(3) The Commonwealth agreed further, that the successful tenderer carry out an exploration programme of the Mt. Goldsworthy deposit on a basis that is acceptable to the Commonwealth and State Governments.

Tenders, which closed on the 4th September, 1961, were invited by the Government for the mining, transport and shipment of up to 15,000,000 tons of iron ore from the Mt. Goldsworthy deposit, which is situated approximately 62 miles east of Port Hedland and had earlier been diamond drilled by the Mines Department. That drilling had shown the existence of at least 30,000,000 tons of good grade iron ore.

Tender conditions required the development of the deposit, the construction of a loading berth and ancillary harbour facilities at Port Hedland, or at an alternative site, and the provision of transport facilities by road or rail between the site and the harbour.

The tenders received, six in number, were eventually examined and closely considered by a Cabinet subcommittee, comprising the Premier and the Ministers for the North-West, Works, and Mines.

A joint tender, submitted by the Joint Venturers, which organisation is composed of Consolidated Gold Fields (Australia), Cyprus Mines Corporation, and Utah Construction and Mining Company, was accepted, it being regarded that such tender offered the best return to the State in all respects.

The agreement set out in the schedule to this Bill was successfully negotiated, and an undertaking given by the Government to introduce and sponsor a ratifying Bill, with a view to securing its passage through all stages of both Houses prior to the 31st October next.

I realised, when I asked the House to agree to the suspension of Standing Orders, that there is still ample time between now and the 31st October, but I am one of those people who likes to see a job completed, and I am grateful that members agreed that consideration be given to the Bill so that there is a possibility of its completing its passage through this House before the week's adjournment which will take place next week.

The major obligation of the State under the agreement is to provide the necessary titles to the Joint Venturers in regard to the mining deposit, a railway, townships, a causeway from the shore to the island, aerodromes, and harbours; and in these regards, it is significant that under the terms of the agreement, the Joint Venturers take all the pecuniary risks, leaving the State practically free from any financial obligation whatever.

In clause 2 of the agreement, it is provided, firstly that the Joint Venturers would, within one month of execution, be granted a temporary reserve of the Goldsworthy iron ore deposit at a rental of £4 per square mile and over a period of 18 months.

Consequent upon that, the minimum obligations of the Joint Venturers are to carry out an extensive programme of geological exploration of the deposit and fully investigate all other matters such as the railway route, wharf sites, water supplies, townsites at Mt. Goldsworthy and Depuch, market prospects, and so forth, at an estimated cost of £291,000. That is in clause 3 of the agreement.

Having once satisfied themselves that the project is an economic proposition, there is a requirement that the Joint Venturers give the State formal notice of intention to proceed with the remainder of the project, in which case the remaining provisions of the agreement would operate.

There is provision for the Joint Venturers to proceed no further at that stage should investigations prove the proposal to be unsatisfactory. The contractors would then notify the Government, and the agreement would cease to be operative; nor would either party have any claim against the other except there would be an obligation on the Joint Venturers to furnish to the Minister complete factual statements of—

(1) All geological and geophysical work carried out at the mining area.

(2) Testing and sampling work.

(3) All metallurgical and market research.

(4) The surveys and reconnaissances of the railway, road, and port facilities and water resources and sites for towns.

In the event of the Joint Venturers deciding to continue with the project—and I might say it now appears most likely that the Joint Venturers will be in a position to continue with the project—the main obligations are as set out in clause 5, they being:—

(1) To develop the mine and fully equip it with all necessary mining and power plant and gear capable of handling not less than 3,300 tons of iron ore per day.

(2) To lay out and provide a town near the mine, including roads, amenities, school, water, and other necessary services.

(3) To construct such roads as are mutually agreed, and also a 4 ft. 8½ in. railway from the mine to the wharf at Depuch Island, and provide for the running of such railway with sufficient locomotives, freight cars and other stock to haul the tonnage of ore to be produced.

(4) Construct a causeway from the mainland to Depuch Island, a distance of approximately three miles, and a railway and road thereon.

(5) Erect upon the island a wharf, workshops, screening, stockpiling, bulk-handling, loading installations, power house and plant adequate to load ships of not less than 30,000 tons dead weight.

(6) To make available the wharf facilities, causeway and approaches for use by third parties, so long as that shall not interfere with the contractors' operations.

(7) To carry out such dredging to the approaches to and the swinging basin at Depuch Island as the firm may consider necessary to accommodate ships of the tonnage required.

(8) To erect a Depuch townsite, of the extent required, with suitable housing facilities, schools, amenities, water supplies and so forth.

Additional obligations of the Joint Venturers are set out in clause 6. There is the general obligation on the contracting firm to maintain in good order all the foregoing installations, plant, equipment and other works.

Subclause (c) contains the royalty provisions under which the Joint Venturers will be required to pay to the State royalty on all ore shipped—other than beneficiated ore—at the rate of 7½ per cent. of the f.o.b. revenue, with a proviso that such royalty shall not be less than 4s. 6d. per ton—7½ per cent. would be approximately 6s. per ton on present values.

The royalty being based on a percentage figure, it will be appreciated that the amount of such royalty computed will rise and fall as the price of iron ore on the world's market rises and falls. The present price is approximately 6s. a ton.

The royalty on beneficiated ore is to be 1s. 6d. per ton. Beneficiated ore is ore which is not high enough in grade to be direct shipped and needs some treatment, such as pelletising, concentrating, or sintering before shipment. The lower royalty chargeable on that grade of ore has been set because of the Government's desire to encourage the erection of treatment plants for processing our minerals. It is expected that such treatment plants would employ large numbers of men.

As set out in subclause (d) of clause 6, the rent payable to the State on the mineral lease is £1,800 per annum. The term of the agreement is set at 21 years, but may continue thereafter for successive periods of 21 years so long as the Joint Venturers give notice of their desire to continue, there being an obligation to ship ore at a rate of not less than one million tons in any financial year. There are general provisions requiring the contractors to consult with the State and with the particular State authorities concerned.

It is important to mention, at this stage, that the State has preserved rights and areas on Depuch Island to enable it to ensure the use of the port and the island by other producers or parties subsequently desiring to export therefrom. The Joint Venturers are, in effect, being leased such areas only as are necessary for the project, the subject of this agreement, so leaving other areas available for future interested parties.

The extent of the land required on the island for the bulk-handling facilities and the establishment of wharf loading is estimated under the agreement to be 300 acres.

The State has selected as harbour advisers the firm of Rendell, Palmer and Tritton, and there is a requirement that the Joint Venturers must consult with such advisers in connection with the erection of port facilities and general development and utilisation of the island as a deep sea port.

There is a further provision in that, at the end of twenty years, the Joint Venturers must also pay 2s. 6d. per ton for all ore thereafter shipped, with a minimum payment of £75,000 per annum. That payment is entirely independent of the royalty charged.

Great progress has already been made by the Joint Venturers in the investigation work. A considerable staff of experts—mining, surveying and examining—is already employed. Latest advices are to the effect that the ore deposit is standing up well to the mining examination. It is

expected that the time required to bring the whole project into being will be approximately three and a half years.

Although the existing Commonwealth Government permit is limited to an export of one million tons for 15 years, the agreement envisages and provides scope for greater tonnages, subject to Commonwealth permission. The State Government is most anxious to see the industry promoted on a long-term basis, and its value to the State can be gauged from the scope of the agreement.

To explain an agreement of this nature to the House in greater detail would, to some extent, require a study of each clause of the Bill. For my part I do not think it is necessary for me to relate more of the details of the agreement than I have done, at this point of time. I feel sure that members interested in the agreement, and who will speak to it, will bring forward their respective queries, thus giving me an opportunity to enlighten them to the best of my ability on the queries they raise.

I would like to say, however, that I had the pleasure of negotiating this agreement. In many respects it was not easy; but we have arrived at what I think the House will agree is a fair and equitable agreement. There is on the side of the Joint Venturers—and that is a term it has been found convenient to use for the purpose of the companies, not for our purpose—the acceptance of a calculated risk. On the side of the Government and the people of Western Australia there is the profit that is to be obtained from a private enterprise concern taking such a calculated risk.

I am pleased to be able to report that these people have got on with the job. The agreement was executed on the 27th February, 1962, and on the 1st March, 1962, I was notified the work had started—that is, two days later. I am able to report that at the present time there are employed at the mining site something in the order of 50 or 60 men. The companies have established an office in Perth; and they have also established a headquarters in Port Hedland. The number of men employed in Perth is in the order of six or eight, I understand.

In some respects I am sure this agreement must have been a disappointment to the town of Port Hedland; but we must face up to the fact that as a port, Port Hedland is not capable, without a huge expenditure of money, of taking ships of the size demanded by iron ore shipments. The mining and shipment of iron ore must be done, in order to make it economic, in ships of large size. Iron ore is a low-priced commodity; but it is not a scarce commodity in the world. There is any amount of it. But there are certain features which make Australia, and Western Australia particularly, attractive to the markets of Japan; and that is where these people will be seeking their markets.

The diamond drilling by the department was done in the anticipation that if we diamond drilled the deposit and could then approach the Commonwealth with conclusive proof that the tonnage was there, we would have a good case to put up for an export license. It would not be exactly correct to say that the diamond drilling was done by way of a gamble; it was more in the way of hopeful anticipation.

The wisdom of taking that chance paid off eventually when the Commonwealth Government decided to release the embargo. Since then the company has done diamond drilling for itself; and it was important for the company to prove to its own satisfaction that there is sufficient iron ore available for it to take a calculated risk and for it to expend its capital in the hope of making a profit. The Government hopes the company will make a profit; because if the company does make a profit it will be shared by Western Australia.

When producing these notes to the House I said I felt sure the project would go on. The companies have appointed as project manager Mr. Richard Belliveau, who is now domiciled in Perth. He is not in Perth all the time, however, because he spends a good deal of time on the project itself. He is in a position to assure me that everything in respect of Mt. Goldsworthy looks very hopeful. The companies are satisfied that the ore body is there, and they are getting on with the other things that have to be done. It is likely that the Government will receive notice of intention to proceed before the time for so doing has expired.

When scanning through the debates in another place I noticed there was a tendency there to think that this was rather an agreement of hope than of achievement. I suppose it would be fair to say that in the first place it may have been so. All of these ventures have to start with some degree of hope. But in the six months during which the companies have been at work they have turned that hope into a great possible potential of achievement.

The matter of the railway survey has progressed to the extent of the completion of the aerial photography with a view to pinpointing the location of the railroad and to serve as a basis for the development of mining plans. The only plan I am in a position to lay on the Table of the House at present is Plan "A" which indicates the Mt. Goldsworthy mining area. I am not in a position yet to give the House any other plan which, for instance, might indicate the location of the railway line; the section from point A to point B that will be traversed by the causeway;

the exact point where the wharf facilities will be located; or the exact point where the townsite at Depuch will be located.

It is safe to say, however, that the townsite at Goldsworthy will be located on the mining lease. But there are many things I am not in a position to report upon except to say that these matters are well in hand. These things have to be done by mutual negotiation and concurrence between the parties—the parties being the Government on the one hand, and the Joint Venturers on the other. It is satisfactory to report that I have found these people very good to work with. They are very anxious to get on with the job, and, after all, that is all we want to see done.

The marine survey is proceeding. The companies have completed arrangements to begin a marine survey, concurrently concentrating their efforts between the mainland and the island for the purpose of determining the most feasible alignment of the proposed causeway. The survey also includes studies of ebbs and flows of the tide as it may affect the silt deposition due to the presence of the causeway, and this must be avoided by locating suitable openings in the causeway to retain the tidal flows which keep the area free of silt. Nobody knows what effect the construction of the causeway in three miles of water is likely to have on the question of siltation, but this is being closely studied both by the companies' surveyors and the firm the Government has consulted.

The companies' investigations for water —which is another obligation they have accepted—are proceeding satisfactorily. At Mt. Goldsworthy the companies feel confident they have located a source of water suitable for human consumption, and an additional water supply which will give ample water to serve industrial purposes.

I did mention that the number of staff employed at the mining area at the moment is something in the order of 50 or 60; and at the present time the companies are in the process of increasing the staff by the addition of technical people who will proceed with investigations of engineering features incidental to the construction programme. These will include the townsites, the railhead, construction of the causeway, development of areas suitable for harbour installations, accommodation for loading facilities for the area, and facilities for the berthing of ships.

Deep water is a problem; and, as I said before, that is why this was a disappointment to Port Hedland. The only remaining item in respect of the subject of deep water, and one which is not definitely scheduled timewise, is the location and delineation of the ships' channel from a point approximately four miles out from the proposed harbour site to the deep water. That is a matter the company is currently examining. The development of facilites at Mt. Goldsworthy, including quarters for staff and workers, has also been in progress, as well as a water bore and living accommodation for the 50 or 60 people I have mentioned. The personnel of the contractors are engaged in drilling and underground work.

That gives the House a general survey of the progress that has been made to date; and I feel sure members will agree that it is pleasing to have an agreement of this nature, especially as we know that in the six months that have passed since the signing of the agreement the companies concerned have acted so quickly and efficiently with the work at hand.

The fact of my adding to the figure of £12,000,000—as stated in my notes—the words "or more" is indicative of the type of investment this will mean. In agreements of this nature our experience has been that the amount of capital expended is always much greater when the project reaches fruition than was originally estimated. I feel quite sure that in this case the capital requirement of the Joint Venturers will be much in excess of the £12,000,000 or £15,000,000 I have mentioned.

In six months the companies have spent £150,000, principally on diamond drilling, putting adits into the ore body, and proving that the ore body is there. It is essential that the companies prove that the ore body is sufficiently large and that the grade is not only capable of being mined, but acceptable to overseas markets.

I wish the companies the very best of success in their venture. I think members would commend any Government that was able to negotiate this sort of an agreement, because it will relieve the State from practically any pecuniary outlay. The point has been reached where all things are provided by the companies; and whatever benefits may accrue will be shared equally by the Joint Venturers and the State. Not the least benefit to the State will be the matter of employment, together with royalties and benefits generally.

In conclusion I would like to say that the policy of the Government in respect of giving people the opportunity to search for iron ore has paid off; and we now have a much greater amount of interest in respect of iron ore deposits in the north-west than we had previously—and this will be so for a long time. It takes quite a time to prove these deposits; and their proving is very expensive. However, I feel quite certain that so far as Western Australia is concerned we are destined to play an important part for many years in respect of the development of iron ore.

THE HON. F. J. S. WISE (North—Leader of the Opposition) [5.50 p.m.]: I feel sure that this Bill is, to the Minister, the culmination of an objective. He mentioned during the course of his speech the

many difficulties which he faced in negotiating such an agreement as is presented in the schedule to this Bill. The people of the north have been watching very closely all the reports of the negotiations which we have been privileged to see; the local comment; and, of course, in particular the fate of such towns as Port Hedland, which, to a certain degree, are bound up with the development of Mt. Goldsworthy and the point of delivery of the ore at the coast.

The Minister, in the course of his speech, mentioned that the 31st October was the deadline for the passing of this Bill. Of the Bill itself, the agreement, and the principles that are in it, those of us of the north find very much that is likely to be of great benefit to the north-west as a whole. More than one of us believes, after a long-time study of the north and its problems, that it will be through mining and the development of mining that the north will reach its greatest peak in importance to this nation.

This afternoon I consulted the member for Pilbara—one of my colleagues of the north in another place—who, although supporting the agreement, could not see the necessity for it to be ratified at this stage. Since scanning the Bill during the last hour and listening intently to the Minister in the course of his speech, I find there is an angle about which I am very concerned and which I intend now to present to the House and, in particular, to you, Mr. President.

This Bill on page 14, clause 5 (2) deals with certain authority vested in the Joint Venturers; because they covenant and agree "in a proper and workmanlike manner and in accordance with the recognised standards of railways of a similar nature operating under similar conditions to construct"—I emphasise that word—"(which the Joint Venturers are hereby authorised to do) a 4 ft. 8½ in. gauge railway" and so on.

Now, Mr. President, I hope I am assisting to facilitate the passage of this Bill in a proper manner by raising this important point. The Bill has within it the ability to pass—in my view—only if it meets the requirements of the Public Works Act.

The Hon. A. F. Griffith: In respect to the construction of a railway?

The Hon. F. J. S. WISE: Yes, in respect to the construction of a railway; and therefore, the schedule to this Bill which contains the agreement authorising, as it does, the construction of a railway, immediately is in conflict with the requirements and demands of the Public Works Act; and, if members will refer to page 152 of *The Standing Orders of the Legislative Council* they will find the relevant sections of the Public Works Act printed.

I have read the passage within the agreement itself where the authority to construct is specifically stated; but the Public Works Act in the extract which is in our Standing Orders volume is very definite that every railway shall be made only under the authority of a special Act, which shall state as nearly as may be the line of the railway and the two termini thereof; but it shall be lawful to deviate from such line at a distance of one mile on either side thereof, or such other distance as may be provided in any special Act.

In that paragraph the words "every railway" are to be found, as well as the words "special Act" governing the requirement. The next paragraph states this—

> Before the second reading of the Special Act in the Legislative Council and Legislative Assembly respectively, the Minister shall cause a map to be referred to in the special Act, showing the course to be taken by, and the middle line of, the railway, to be laid upon the table of the House.

I repeat, Mr. President, I am actuated by the desire and the need for this thing to be done properly.

The Hon. A. F. Griffith: There is an answer to this.

The Hon. F. J. S. WISE: I hope there is, because so far as I know, no Act authorising the construction of a railway has ever passed without its being a special Act; and where a special railway has been authorised by the Parliament of this State, as part of an agreement to be ratified, that agreement has always been accompanied by a special Act. No agreement authorising the construction of a railway has been presented to Parliament without its being accompanied by a separate Bill to become a special Act—the special Act which the Public Works Act demands.

As recently as the 1961 session of Parliament, special Acts were passed for the construction of the railway deviation to Coogee and Kwinana. This was the case with the Railway Standardisation Agreement Act, No. 26 of 1961, which authorised the expenditure of Commonwealth money, and the measure—the Railways (Standard Gauge) Construction Act, No. 27 of 1961—which authorised the construction of the Kalgoorlie—Fremantle standard gauge railway.

The Hon. A. F. Griffith: The Tallering Peak to Mullewa railway?

The Hon. F. J. S. WISE: I suggest that if the Public Works Act is paramount, every railway should be made only under the authority of the Public Works Act; and after that authority has been given in a special Act—not within a clause of another Act, but in a special Act—it will follow the prior presentation to the Houses of Parliament of a map with certain particular features.

So at this stage, Mr. President, I would ask for your ruling as to whether this Bill, in the light of the contents of the schedule which purports to authorise the construction of a railway, is in order and is not in conflict with the Public Works Act. The relevant sections are to be found on page 152 of our Standing Orders.

The Hon. A. F. Griffith: Wouldn't it be better to allow me to investigate the explanation of this—other members will be speaking on it—rather than hold up the Bill for the President to give a ruling?

The Hon. F. J. S. WISE: If my interpretation of the expressed instruction within the Public Works Act with regard to railways has to be abided by—and I submit it has—I think we should have this Bill temporarily withdrawn and the accompanying Act reintroduced.

The Hon. A. F. Griffith: I assure you, if there is anything wrong with the Bill I will see that it is put right.

The Hon. F. J. S. WISE: I think there is nothing wrong with the Bill provided it is put in order. I submit it is not in order and cannot pass. It cannot pass because it authorises the construction of the railway without the requirements of the Public Works Act being given effect to.

The Hon. A. F. Griffith: If the President rules that the Bill is not in order for that reason, all the effort in preparing and accepting this Bill is going to be void for the time being.

The Hon. F. J. S. WISE: I would suggest, no. I would like the Minister to believe, and wholly believe, that our duty in this House is to try to put this in order if it is not in order.

The Hon. A. F. Griffith: I do agree.

The Hon. F. J. S. WISE: And the best thing to do with it is this: If we need a special Act, along the lines of the special two-clause or three-clause Act which accompanied the Commonwealth agreement of last year—Act No. 27 of 1961—to construct the line from Kalgoorlie—that is only a four-clause Act—

The Hon. A. F. Griffith: But this is a different thing. There is an overriding clause in this agreement which says "notwithstanding any Act." This is not a Government railway.

The Hon. H. K. Watson: And, unfortunately, I do think that is the answer to your question.

The Hon. F. J. S. WISE: Having noted that point, I still say that we cannot by a clause in an agreement included in a Bill of this kind, amend the requirements of the Public Works Act.

To digress a little, we have had, in my brief time in this House of Parliament, two Bills that I can think of which were disallowed and sent back because of their not meeting a requirement. One of them was an attempt to amend or determine the boundaries of an "A"-class reserve mentioned in the schedule to the Iron Ore (Scott River) Agreement Bill—wholly wrong; highly improper.

The Hon. A. F. Griffith: No, no.

The Hon. F. J. S. WISE: Unless it was amended in the Reserves Bill in accordance with the requirements of the Land Act, it—

The Hon. A. F. Griffith: On that occasion you were told that my legal advice was to the effect that the Bill was in order, but to make sure, we would include it in this year's Reserves Bill.

The Hon. F. J. S. WISE: And that is the only way it will be put in order!

The Hon. A. F. Griffith: That is still your opinion.

The Hon. F. J. S. WISE: It is the right opinion. I have a Queen's Counsel's opinion on that subject.

The Hon. A. F. Griffith: If you keep going for a little while longer I will get advice during the tea suspension.

The Hon. F. J. S. WISE: I have asked for your ruling, Sir, because I consider that to be the most expeditious way with which to deal with the matter.

The PRESIDENT (The Hon. L. C. Diver): I will leave the Chair until the ringing of the bells.

Sitting suspended from 6.5 to 7.58 p.m.

President's Ruling

The PRESIDENT (The Hon. L. C. Diver): Mr. Wise has asked for my ruling as to whether this Bill is in order as the agreement appears to authorise the construction of a railway, whereas section 96 of the Public Works Act provides that every railway shall be made only under the authority of a special Act. I have given this matter consideration and have studied the agreement referred to.

In my opinion the provision in the agreement authorising the construction of the railway will, nevertheless, be conditional upon the passing of a special Act in conformity with section 96 of the Public Works Act.

As the agreement is at present drafted, I consider that the construction of the railway could be proceeded with if the Bill became law, and I therefore am of the opinion that the Bill should rest at its present stage until a suitable modification is made to the agreement or a special Bill is introduced authorising the construction of the railway.

Dissent from President's Ruling

The Hon. A. F. GRIFFITH: I move—

That the House dissent from the President's ruling.

Regretfully I find myself having to disagree with your ruling, Sir. I do not like to disagree, at any stage, with a ruling given by the President of this House, by the Chairman of Committees, or by any of his deputies, but I do think that one should put forward to the House one's convictions on matters of this nature.

I say with respect that your ruling baffles me a little, because it states—

> In my opinion the provision in the agreement authorising the construction of the railway will nevertheless be conditional upon the passing of a special Act in conformity with section 96 of the Public Works Act.

In that respect I agree wholeheartedly with you, and the construction of that line will have to be carried out in conformity with section 96 of the Act.

I say again, with respect, that your decision contradicts itself by stating—

> As the agreement is at present drafted I consider that the construction of the railway line could be proceeded with if the Bill becomes law.

The construction of the railway line cannot be proceeded with until mutual agreement has been reached by the parties; and the parties to the agreement are the Government and the contracting companies, who call themselves the Joint Venturers. Might I refer to the clause in the agreement, on page 14, which says—

> . . . in a proper and workmanlike manner and in accordance with the recognised standards of railways of a similar nature operating under similar conditions construct (which the Joint Venturers are hereby authorised to do) a 4 feet 8½ inch gauge railway (with all necessary signalling switch and other gear and all proper and usual works) from the mining area to the mainland end of the causeway referred to in paragraph (4) of this clause and from the Island end of the causeway to the area of the Joint Venturers' wharf on the Island along a route to be mutually agreed between the parties hereto.

I turn now to the Iron Ore (Tallering Peak) Agreement Bill which was passed last year. The drafting in that agreement is a little different from the drafting in the agreement contained in the Bill before us, because the circumstances were different. In the case of Tallering Peak we sought from Parliament the power to do exactly the same as we propose to do on this occasion; that is, ratify the agreement. In the case of Tallering Peak there was an obligation on the company to construct a railway.

The Bill to ratify the Iron Ore (Tallering Peak) Agreement was received from the Legislative Assembly on the 31st October, 1961; but the Bill to ratify the Tallering Peak-Mullewa railway line was received from the Legislative Assembly on the 8th November, 1961, or eight days later. It could have been eight weeks, or eight years, later, to stretch a point, because the agreement in respect of Tallering Peak provided for a railway line, the same as this agreement provides for one in different words. The Tallering Peak agreement states—

> At any time after the notice date the Company may give notice in writing to the State that it desires to commence construction of the railway line referred to in subclause (1) of this clause. Upon receipt of such notice the State shall if the making of the said railway has then already been authorised by the said Parliament and otherwise so soon as authorisation therefor has been given . . . .

That clause envisaged that authorisation would not—and in fact it did not—take place on the same day and at the same time as the Tallering Peak iron ore agreement measure was introduced.

The Hon. A. L. Loton: From what part of the agreement are you quoting?

The Hon. A. F. GRIFFITH: From page 10, clause 6, (3), about two-thirds down the page. The difference between the Tallering Peak railway measure and the Mt. Goldsworthy railway measure is that at the time the Tallering Peak agreement was reached we, as the Government, knew the route within two miles. This project was contracted outside of section 96 of the Public Works Act, which provides for the route to be varied by one mile on either side. At the time we knew the route which the railway line from Mullewa was to take, so we introduced a Bill outlining the arrangement. We laid the plans on the table of the House and asked for the concurrence of Parliament. The Bill was passed. Members should appreciate that there was an intervening period of eight days on that occasion.

In the agreement now before us there will also be an intervening period between the time the agreement is ratified, and the time the railway Bill authorising the construction of the line from Mt. Goldsworthy to Depuch Island is introduced.

No-one knows better than Mr. Wise and Mr. Willesee the difficulty of the terrain encountered in that part of the State. When I introduced the second reading I said I was not able to lay the plan on the Table of the House to indicate where the railway line was to be located, because the route had not been determined and agreement had not been reached between

the Government and the contracting parties. I said that I would give the necessary information when the route was determined.

I ask members to appreciate that these companies hold leases over the mining areas in Mt. Goldsworthy, as well as some temporary reserve areas over which they are prospecting diligently to find iron ore. It might well transpire that the railway line, instead of taking a somewhat direct route from Mt. Goldsworthy to Depuch Island, will deviate to take in another iron ore deposit. It might happen that the Government will not be able for six or nine months to lay on the Table of the House a plan to show the route of the railway line, and to introduce a Bill for ratification of the measure by Parliament.

The clause on page 14 of the Bill, to which I have made reference, does not authorise the construction of a railway; it merely authorises the companies to be the construction engineers. It authorises them to be the construction contractors for the line. The agreement provides that they can construct the railway line when the route has been mutually agreed upon. In the event of disagreement between the parties on this, or any other point, the agreement provides that the parties to the agreement can go before an arbitrator.

Let us assume that we cannot reach agreement on the route and the matter is referred to an arbitrator. The decision of the arbitrator will then be included in a Bill which will subsequently be introduced to Parliament, and Parliament will be asked to ratify it. The decision may be to construct a railway line from Mt. Goldsworthy to Depuch Island along some devious route.

To overcome any objection, if it is thought desirable or necessary to do so I could cause a Bill to be introduced to authorise the construction of the railway line in question, but the route would have to allow for a tremendous tolerance. Let us not forget that this railway line is likely to cross four or five rivers, and great difficulties could arise in its construction. I would be able to introduce a Bill to this House, but I would not be making a sincere approach. The Bill would have to provide that, instead of only deviating two miles on each side of the line, the variation could be any number of miles on each side.

You, Mr. President, said in your ruling that you considered the construction of the railway could be proceeded with. I say with respect that it cannot be proceeded with any more than the railway could be proceeded with when the Tallering Peak agreement was ratified. When that Bill was introduced nobody took any exception; nobody asked for the Bill to authorise the construction of the railway; and nobody took the point—as Mr. Wise did—to ask for your ruling. There is no difference between the two agreements; and the two sets of circumstances are identical. I admit that the wording, because of the circumstances, appears to be different.

In the case of Tallering Peak, the line was to be constructed in conformity with the requirements of the Commissioner of Railways and in accordance with his specifications. It was to be linked with an existing Government railway line. We knew the route the line was to take when we introduced the Bill. As a matter of fact, we knew the approximate route when we negotiated the agreement.

In the case of Mt. Goldsworthy we did not know the route when we negotiated the agreement, and we do not know it at the present time. I venture to suggest we will not know it by the 31st October, 1962. That is the day on which the Government has to seek the concurrence of Parliament, because on page 7 of the Bill, subclause (4) states—

> . . . at the next session of the Parliament of Western Australia introduce and sponsor a Bill to ratify this agreement and endeavour to secure the passing of the Bill as an Act prior to the 31st day of October, 1962.

The same subclause also provides that unless the Joint Venturers should have previously given to the State notice under paragraph (a) of subclause (2) of the next succeeding clause that they do not intend to proceed with the project the State will introduce and sponsor a Bill. I have now quoted the time and date.

The Tallering Peak agreement was no different in its conception because it provided for a notice. It provided that the company, the subject of the agreement, had to carry out certain exploratory work and other work in the mining area, the same being contained in the Mt. Goldsworthy agreement. Both are identical; and if they give notice then it means that a railway is to be constructed as part of the scheme.

In the case of the Mt. Goldsworthy agreement, the Joint Venturers wanted an assurance from the Government that the Government would recognise that the company wanted to construct a railway. Clause 2, on page 14 of the Bill, is worded in that way. However, it is not my intention to move outside the law; nor is it my intention to try to proceed with this agreement without a railway Bill being introduced. During the tea suspension, which is the only opportunity I have had, I studied the points raised by the honourable member; and I suggest to you, Mr. President, with the greatest respect, that what we did in regard to the Tallering Peak agreement we will do in connection with this agreement.

We introduced the Bill in regard to Tallering Peak and then introduced a Bill to ratify the building of a railway, and in the case of Mt. Goldsworthy we will do exactly the same. We bring to members

tonight a Bill which we ask them to consider for ratification. When the route is mutually agreed upon, we will then introduce a Bill to ratify the construction of a railway.

It has been drawn to my notice that on page 2, clause 3, subclause (2), reads as follows:—

> Notwithstanding any other Act or law, the Agreement shall be carried out and take effect subject to its provisions, as though those provisions had been expressly enacted in this Act.

It has been suggested that that subclause gives *carte blanche* to override any other Act, but it does not do anything of the kind. It merely ensures that nothing contained in any other Act will be used for the purpose of stopping this agreement. Therefore I suggest that we can put that argument on one side because it is of no material value.

There is nothing contained in this agreement that has not been provided for in all other agreements. The only difference is that under this agreement the route of the railway is not yet known and it may not be known for some considerable time. The words contained in the Tallering Peak agreement are "as soon as authorisation therefor has been given." That may be the next session or it may be this one.

Finally, I would like to say that the Bill is in order because it authorises the Joint Venturers to be the constructional authority. The Joint Venturers are to be named the railway constructors, when the railway construction Bill is introduced. Should the venture fail, there will be no necessity to introduce a railway Bill—no necessity whatever.

That is the final point on which I ask members to make a deliberation when considering the President's ruling. If the company does not proceed with the venture, there will be no necessity for a railway Bill because there will be no railway constructed.

I give my assurance to the House that when the railway route has been determined as provided for in this agreement mutually between the parties, there will be introduced in this House and in another place for consideration a Bill to authorise the construction of that railway. If members decide that the President is correct in his ruling and this Bill must rest, although I know it is not important, five months' work will go to the dogs because this agreement will not be worth the paper on which it is written. My advice is that I will have to negotiate another completely new agreement, and I cannot see the necessity for that. It is for that reason that, with the greatest respect I disagree with your ruling, Mr. President.

The Hon. A. L. LOTON: It is unsatisfactory that a Bill of this nature should be introduced early in the afternoon with the intention that it be completed in the one day, because there are so many bits and pieces connected with it; and other points have been raised by Mr. Wise. These all need a good deal of research and thought. During the tea suspension I tried to study the situation. My first reaction on reading the Public Works Act was to say that this Bill is out of order. Then the Minister says that it was just not possible to do what was necessary because too much tolerance would be required between the parties concerned.

However, the Public Works Act states, "or such other distance as may be provided in any special Act." In other words, a special Bill dealing with the railway must be introduced. Therefore, as long as we start from Mt. Goldsworthy and go to Depuch Island, and a Bill is introduced along those lines, the provisions of the Public Works Act will have been complied with. I think that is clear enough.

As I said earlier, it is very difficult to collate all these bits and pieces and I am sorry the Minister made no reference to this particular point when he introduced the Bill.

The Hon. A. F. Griffith: It was quite a surprise to me that the matter was raised. I did not expect it.

The Hon. A. L. LOTON: I did not either. And it is difficult to put all the bits and pieces together because we have only the Minister's speech to go on plus the interjections. However, referring to the Tallering Peak Agreement contained in the schedule to the Act, clause 6, subclause (4) states:

> The State shall as soon as conveniently may be introduce a Bill in the said Parliament seeking the approval of the said Parliament to the making of the said railway. Such Bill shall provide that the said railway shall for all purposes be deemed a railway to which Part VI of the Public Works Act, 1902, applies.

The Hon. A. F. Griffith: That is right.

The Hon. A. L. LOTON: I know what that means. However, having looked quickly at the agreement before us, it is very difficult to believe that it contains the same meaning as does the Tallering Peak agreement.

The Hon. A. F. Griffith: But Mr. Wise says that this Bill authorises the construction of the railway.

The Hon. A. L. LOTON: I think it does, too.

The Hon. A. F. Griffith: I do not think it does.

The Hon. A. L. LOTON: It must because it states, "in a proper and workmanlike manner and in accordance with the recognised standards of railways of a similar nature operating under similar conditions . . ."

The Hon. A. F. Griffith: It does not seek to construct the railway.

The Hon. F. J. S. Wise: It authorises the construction.

The Hon. A. F. Griffith: It does not.

The Hon. A. L. LOTON: It approves the construction, in my opinion.

The Hon. A. F. Griffith: So does the Tallering Peak agreement.

The Hon. A. L. LOTON: Yes.

The Hon. A. F. Griffith: But we introduced—

The Hon. A. L. LOTON: We should not argue like this. I am sorry, Mr. President. It is very difficult on a matter of this kind to talk without any notes. It is difficult to couple everything together. My first reaction was that the matter was entirely out of order and that we should have a Bill particularising the route of the railway.

The Hon. A. F. Griffith: And we will have.

The Hon. A. L. LOTON: If we look at what we did with regard to the Tallering Peak Bill we will realise we provided that at a later date a Bill would be introduced, and thereby covered the situation. I cannot be satisfied this Bill does the same thing. The Minister says it does, but I cannot find wording which is similar to that which appears in the Tallering Peak agreement.

The Hon. F. J. S. Wise: It is not in it.

The Hon. A. L. LOTON: I am sorry that the Minister did not give us some information on this point in order that we might be satisfied. Instead, we have had the point raised by an honourable member and have had to gather bits and pieces together in a short space of time. I also regret the Minister did not give us notice on Thursday that he was going to move for the suspension of Standing Orders to enable this Bill to be dealt with in one sitting. If he had done so we could have obtained a copy of the Bill from another place and studied it over the week-end. However, not knowing of any urgency, we did not bother, except for one or two of us.

The Hon. F. J. S. WISE: I support your ruling, Mr. President. Words mean nothing, surely, if the authority is not contained in the schedule of this Bill to confer upon the Joint Venturers the authority to construct a railway, because the words expressly say so. It is no use clouding the issue with extra verbiage. We are concerned with what is contained in this Bill and not what appeared in any other Bill clothed in words of a different kind and, indeed, meaning something different; because there was in the other Bill referred to, a preparation for something to be done, but not in this case.

The words are clear—"in a proper and workmanlike manner and in accordance with the recognised standards of railways of a similar nature operating under conditions construct (which the Joint Venturers are hereby authorised to do) a 4 feet 8½ inch gauge railway." We can stop there or go on in the agreement if we like, but we will stop. The Minister drew attention to the words which appear further on in that same clause, these words being "mutually agreed upon." It is something to be agreed upon, but Parliament does not necessarily have to be advised and the matter does not necessarily have to be the subject of a subsequent measure which the law, in my view, now demands, but is something of a joint agreement between the parties; and, subject only to that mutual agreement on the detail, the authority is vested in them if this Bill is passed.

The Hon. A. F. Griffith: If I told you that we had a railway Bill, notice of which was going to be given in a week's time, would that alter your opinion?

The Hon. F. J. S. WISE : We are not arguing about anything hypothetical. We are arguing about something which the law at present demands. When at very short notice I observed the shortcoming of this Bill and drew the attention of the House to it, I hoped that the Minister would take the logical approach to it and hold it off for the time being; and then, if it could not be amended, have another Bill prepared.

The Hon. A. F. Griffith: I wanted space to breathe, but you insisted on getting a ruling. I could not do anything else.

The Hon. F. J. S. WISE: It is either right or wrong; it is either in conformity with the Public Works Act or it is not; and in my view the Public Works Act in this connection is adamant. It is all very well when it suits us, or the Parliamentary Draftsman, because we wish to refer to something else in another way and absolve ourselves from responsibilities of other laws, to simply make a passing reference to the Bill being dealt with in Parliament; but I am afraid we are deviating a long way from the principle of the parliamentary institution if we continue in that fashion.

I continue to make my point that section 96 of the Public Works Act, and all the other sections of that Act which must be read in association with section 96, are absolutely inviolate so far as railways are concerned.

The Hon. A. F. Griffith: Where they are Government railways.

The Hon. F. J. S. WISE: Every railway; and if the Minister looks at the definitions in the Public Works Act he will find that all railways are included. So we find in this case that what you are suggesting, Sir, is that the Bill should rest until a suitable modification is made to the agreement, or a special Bill is introduced; and with respect to the views

which the Minister must naturally hold strongly in defence of the Bill he has presented to Parliament—

The Hon. A. F. Griffith: No, not at all.

The Hon. F. J. S. WISE: The Minister must take that attitude.

The Hon. A. F. Griffith: No; that is not my attitude.

The Hon. F. J. S. WISE: I feel sure the Minister's attitude will be that he will wish to do as the law provides shall be done; and that is what you are suggesting, Sir. As Mr. Loton has pointed out, the restriction placed on a deviation, in the Public Works Act, is as wide as can be reasonably anticipated in any law. It states—

> It shall be lawful to deviate from such line at a distance of one mile on either side thereof, or such other distance as may be provided in any special Act.

The Hon. A. L. Loton: As long as they start and finish—

The Hon. F. J. S. WISE: As long as they start and finish they can go *via* one or more deposits en route without in any way conflicting with the requirements of the Public Works Act, by introducing a special Act to meet the requirements of the law. I hope that sweet reasonableness will prevail, and we will endeavour to do the thing properly and uphold your ruling, Sir.

The Hon. E. M. HEENAN: I have had a look at the agreement and I draw the attention of the House to the provisions of clause 5 thereof.

The Hon. A. F. Griffith: On what page?

The Hon. E. M. HEENAN: Page 13. Clause 5 provides—

> The Joint Venturers covenant and agree with the State that they will with all convenient despatch commence to and thereafter continuously proceed with . . . .

etc. etc. They covenant and agree to do a number of things. The first is that they are to carry out certain mining operations. Then they are to construct and erect on the mining area a power-house and workshop adequate for their operations; they are to lay out on the mining area a site for a town; and, in relation thereto, provide adequate and suitable housing, school, roads, amenities, water power, and other services as shall be reasonable having regard to the locality. The next important thing they are to do is this: in a proper and workmanlike manner, and in accordance with the recognised standards of railways of a similar nature operating under similar conditions, construct a railway line, etc. etc.

I interpret that, and I think every other member will interpret it, as meaning simply this: That once this agreement is ratified the Joint Venturers covenant and agree to do certain things; and the one we are concerned with is the construction of a railway. Certainly there are provisions that the route and so on has to be mutually agreed upon, but as I see it there is the agreement, and I think the clear interpretation is that it provides for the construction of a railway. Certainly the terms are to be mutually agreed upon, but then we come to the extract from the Public Works Act which lays down a certain procedure which has to be adopted when railways are to be constructed; and it seems to me that Parliament in its wisdom in 1902 put that there to ensure certain things. To my mind it provides pretty clearly in regard to railways because it says every railway shall be made under the authority of a special Act.

The Hon. A. F. Griffith: I agree with you absolutely.

The Hon. E. M. HEENAN: Those are pretty strong words; but in the agreement it says that the Joint Venturers shall go ahead straight away and construct a railway. I assume that that means they could start on it immediately after the 31st October.

The Hon. A. F. Griffith: Without knowing the route?

The Hon. E. M. HEENAN: The agreement gives them that authority.

The Hon. A. F. Griffith: Oh, really!

The Hon. E. M. HEENAN: It is not likely, I agree.

The Hon. A. F. Griffith: Oh, really! Without knowing the route they will construct a railway.

The Hon. E. M. HEENAN: It seems a pity to me that the normal procedure has not been adopted.

The Hon. A. F. Griffith: The normal procedure will be adopted. We will introduce a Bill to authorise the railway as soon as we know the route. It is no different from the Tallering Peak agreement.

The Hon. E. M. HEENAN: What will the position be if we pass this Bill tonight and then disagree on the railway Bill?

The Hon. A. F. Griffith: What would have been the position if you had disagreed on the Tallering railway Bill?

The Hon. E. M. HEENAN: On the one hand the agreement makes it mandatory for the companies to proceed with the construction of this railway.

The Hon. A. F. Griffith: And so did the Tallering Bill.

The Hon. E. M. HEENAN: And we have an Act on our statute book which says that a railway can be constructed only under the authority of a special Act. The Minister tells us that he will introduce that Bill in a week's time.

The Hon. A. F. Griffith: No, I did not say that.

The Hon. E. M. HEENAN: Or in six months' time, or at some future time before the railway is started.

The Hon. A. F. Griffith: Before the railway is started—before construction is commenced.

The Hon. E. M. HEENAN: I must admit I am a little confused over the procedure to be followed.

The Hon. G. C. MacKINNON: Mr. Wise stated very forcibly that the Public Works Act is dominant, and I am inclined to agree with him. This agreement is for certain things to be done and for certain things not to be done in certain eventualities. It could quite easily have said, "We will build a railway, provide a road and do a lot of other things." Under the agreement the Joint Venturers have to do certain things, with the proviso that if the companies do not proceed with the project none of those things will be done. However, the Public Works Act clearly states that every railway shall be made only under the authority of a special Act, and so on. Once the signatories to this agreement decide on the project the normal law will prevail in regard to the railway, and a special Bill will have to be introduced; because—

The Hon. A. F. Griffith: Of course it will be.

The Hon. G. C. MacKINNON: —as Mr. Wise said the Public Works Act is dominant and a special Bill will have to be introduced, provided the companies decide to proceed.

If we operated under a Constitution which necessitated that every "t" had to be crossed and every "i" had to be dotted, would every aspect and every facet of it have to be covered by enabling legislation, or could we reach an agreement on the understanding that the fundamental principles were agreed to; and the details of the various other aspects would be decided and covered under the necessary legislation as laid down by the Constitution?

In principle we agree that a railway is to be built and it seems to me it has been suggested that if we nominated a starting point and finishing point, and drew a straight line from one to the other, and the railway was constructed anywhere in an area 50 miles on either side of that line, we would be meeting the necessary requirements.

I do not believe that any institution of this nature should find itself compelled to introduce a Bill so absurd; and I believe that this agreement, written as it is, still demands that when the route has been agreed on, and it has been decided that the agreement will take full effect, an enabling Bill must, and will, be brought down. If Mr. Wise's argument is correct and if the ruling is correct, I maintain anyone could take the Joint Venturers to court and win, if the enabling Act had not been so presented to Parliament. If that is the case the Minister is perfectly right, as I believe he is.

The Hon. H. K. WATSON: We have heard a variety of views on this question, and I propose to add one more angle to the debate. I intend to approach the question on the assumption that the Bill does authorise a railway; and as it authorises it "notwithstanding any other Act or law", as is stated in clause 2 of the Bill, I submit the Bill is quite valid.

I submit that with considerable regret, because I find myself in substantial agreement with the general principles expressed by Mr. Wise. But as a matter of constitutional law I submit that even though the Bill authorises a railway, then notwithstanding the provisions of what is set forth in section 96 of the Public Works Act, the Bill is nevertheless valid. My reason for that is the two judgments of the courts to which we were referred last session when we were debating the legislation dealing with the metropolitan region tax; and Mr. Wise, myself, and others felt that that Bill was unconstitutional.

You may remember, Mr. President, on that occasion we were regaled with counsel's opinion, which discussed two constitutional decisions on matters relevant to the point we are discussing at the moment. The first case was that of Cooper v. Commissioner of Income Tax for the State of Queensland. That was reported in 4 C.L.R. 1304. That would be in 1904 or thereabouts. That particular decision was to the effect that where there was a provision such as we find in section 96 of the Public Works Act, Parliament had to observe that provision, and any Act which infringed or contravened it was out of order.

It will be noticed that this particular provision of the Public Works Act was made in 1902, when the current feeling, not only in this State, but in all States, was that Parliament had to observe not only earlier Acts but at least its own Constitution.

We then come to the later case of McCawley v. the King in 1920 which is reported in the 1920 Appeal Cases, 691. It will be found there that, the High Court in effect reversed the decision in Cooper's case: and then, on appeal to the Privy Council, that reversal was upheld.

The effect of the Privy Council's judgment in McCawley's case which was presented to us last session, and explained by counsel, was that even if this provision which is in the Public Works Act had also been in the Constitution Act it would have in no wise invalidated this Bill which is apparently in conflict with it; the theory

being that any provision of the Constitution—and any provision in any previous Act—can willy-nilly be overridden by a simple Act of Parliament at any time.

The Hon. A. L. Loton: You do not agree with that.

The Hon. H. K. WATSON: I do not agree with it, but I accept it for the time being. In reply to the interjection I would say that for my part—and I explained this during my recent election campaign—the sooner Parliament takes some steps to see that the present position—the one which I am supporting at the moment as a matter of cold hard logic and law—is altered, so that when we have a Constitution, and when we have such a provision as this, we shall at least observe it the better.

The Hon. F. J. S. Wise: It may be law, but it is illogical.

The Hon. H. K. WATSON: I am inclined to agree. To my mind it is unethical; because I would pose the question: What do we have a Consitution for? With the preposition in its proper place, at the end of the sentence. What do we have section 96 of the Public Works Act for, if it is not to be observed?

The Hon. F. J. S. Wise: Why is it highlighted in Standing Orders?

The Hon. H. K. WATSON: I must confess we are faced with the position that all the things and provisions we have for our guidance are not worth twopence. In the near future I would suggest that Parliament in some way or another enter into the question of seeing that that position is corrected.

However, my attitude for the time being is quite clear on this matter. Even if this Bill authorised the construction of the railway, it is in my opinion quite valid; and it definitely overrides section 96 of the Public Works Act. For those reasons, and with very great personal regret, both as a citizen and as a member of this House, I must respectfully disagree with your ruling, Mr. President.

The Hon. J. G. HISLOP: I regard the whole of this present attitude of loosening what we considered at one time a tight Constitution, very bad legislation. I for one would have hoped, for instance, that we could regard this passage of the Bill as being of no value whatever. I think possibly it is of no value. I feel it is merely a statement to the companies that they will at some time or other be able to build a railway; because I believe that once they started the idea of designing the railway they would find the Public Works Department would want to know something about what was being done. If we could look at it as meaning a jumble of words, it might be easy to vote for its passage and let it go.

But there are some words later on in this passage which make one wonder what is meant by the whole passage in relation to existing legislation, because it says "so long as the same shall not interfere with their operations they will at all reasonable times transport passengers." So it has to be, eventually, a private railway which these people will build. I can foresee a considerable amount of confusion when this line is designed; because if it is a private railway, and if we are faced with this legislation, and if we are regarded as no longer having a Constitution, can we interfere at all, from a Public Works point of view, with what these people lay down as the route they intend to take?

There was a time in Parliament when one felt that one was at least guided by some Acts which were regarded as sacrosanct. But in the last two or three years we have found a tendency creeping into Parliament—to wit, that we have no Constitution; that no existing law is sacrosanct; that one Act can alter two previous existing Acts, and make it difficult for one to find them. There has been a tendency to issue legislation with a much looser meaning than in the past.

I am still a bit puzzled, as was Mr. Watson, as to the meaning of the words "notwithstanding any other Act or law." I am puzzled as to whether it is possible they can override Standing Orders which say that we cannot do certain things. If those words mean anything then this legislation is valid. If the Constitution means anything it is invalid. But I protest against this sort of thing. Whilst I can see no alternative to passing this legislation, and therefore respectfully disagreeing with your ruling, Mr. President, in much the same way as Mr. Watson regretted having done so, I do feel that with him, the time has arrived when we should call a halt to this sort of thing.

If I remember rightly I raised a similar objection on the Scott River case. I also objected on other occasions when a clause in the Bill completely altered the provisions of an existing Act. Unless we do take steps at this stage to put a stop to this sort of legislation, I am afraid we will get ourselves into a frightful muddle with our legislation and our thinking in this Parliament. There will be great interest in the future to see what happens with the building of this railway; because I frankly believe that once this Bill is passed it will be a private railway, and then nothing in the Public Works Act will have a bearing, unless some very definite legislation is passed overriding the provisions of the agreement. So, regretfully, I vote against your ruling, Sir, but I trust that in future some arrangement will be made to see that we do not have a recurrence of this type of thing.

The Hon. A. R. JONES: I have listened intently to what has been said because when I cast my vote in a few minutes' time I want to feel that I am well informed. I

now feel that I am well informed, but whether properly informed I do not know. Reference was made by the Minister to something which I cannot find in the Bill; and this Bill is the one we should be discussing, not other Bills.

The Hon. A. F. Griffith: What is the reference; perhaps I could help?

The Hon. A. R. JONES: The only thing I am asked to reason and debate—if I agree to join the debate—is whether this Bill is a proper one and one which we should proceed with. All I can see in it is that it directs that a thing shall be done. No matter how one might try to cloud the issue, I cannot see anything else.

I listened intently to both Mr. Watson and Dr. Hislop who said that they disagree with the Bill, but intend to oppose the President's ruling on the matter. I cannot see their viewpoint. If this is a House of review as it is supposed to be, then let it be a House of review. Let us review this legislation which we have before us. Unless the Minister can be very convincing in his reply I am going to support you, Mr. President, when the vote is taken on your ruling. I was not in the Chamber when you announced your ruling; I was in another place at the time. However, I believe you said that the Bill should be set aside and that if an amendment could be made, this could be put through Parliament on the first day of sitting after today.

The Hon. A. F. GRIFFITH: I would like to make one or two comments in reply. First of all, I would like you to accept my assurance that I am not disagreeing with your ruling, Mr. President, just for the fun of it or because I think I ought to. I am doing so because I have the strict conviction that your approach is not correct and mine is. I would say to Mr. Wise that I venture to suggest that had you ruled in my favour he would have disagreed with you with the same degree of conviction.

The argument raised by Mr. Heenan was most interesting. He, in his usual fair approach to this matter, found himself at the crossroads and did not know what the situation was. He is a trained legal man, and I think that is a pretty fair assessment of the situation. When I said to him, "Construct a railway from what point to what point," he was not able to answer me because there is no authority in this Bill to construct it on any other course than the course mutually agreed upon between the parties.

It has been presupposed that there will not be any other Bill following this one. I feel that perhaps there need not be, because I am inclined to agree with Dr. Hislop that this railway could finish up being a private railway. It is certainly not a public work; and it has to be a public work to come within the meaning of the Public Works Act. I have had an opportunity to look at the Public Works Act, and the definition "public work" reads as follows:—

> Every work which His Majesty, or the Governor, or the Government of Western Australia, or any Minister of the Crown, or any local authority is authorised to undertake under this or any other Act.

This railway line is going to be constructed for the use of the Joint Venturers, and certain conditions will apply. It will remain their property unless they commit a breach of the agreement. It is necessary for me to use comparisons and say what Mr. Watson and Dr. Hislop have said. What did we do last time? Did we contract out of something previously? Did we authorise an Act which overrode something else? It is also necessary to refer to another agreement and what we did on a previous occasion. I point again to the Tallering agreement and the words in that agreement. As Mr. Heenan said, in the Mt. Goldsworthy agreement there are undertakings and covenants to construct roads, a wharf, and a railway.

The Hon. F. R. H. Lavery: And carry passengers.

The Hon. A. F. GRIFFITH: Yes, carry passengers, as long as it does not interfere with normal operations. That was provided for in the Tallering agreement. I do not want to bore the House, but I repeat that in the case of the Tallering agreement we were able to produce to Parliament a Bill eight days later because we knew where the railway was to go. However, in this case we do not know where the railway is to go at this stage. But when we ascertain where it is to go the approach will be exactly the same as it was with regard to the Tallering agreement.

The Hon. A. R. Jones: You said just now there was a possibility that a Bill would not be necessary.

The Hon. A. F. GRIFFITH: That is right. If the company does not notify the Government that it is going on with the project there will be no necessity for a railway Bill.

The Hon. A. R. Jones: Or a railway.

The Hon. A. F. GRIFFITH: I thank the honourable member for a most helpful interjection. Under the Tallering agreement if the company does not give the Government notice—and it has not done so yet—there will be no need for the railway which is provided for in the Tallering Peak-Mullewa Railway Act.

If I knew the route of the railway line and was able to produce a Bill next week, or if I had said in my second reading speech—and Mr. Loton asked why I did not raise the matter—that a Bill would

be introduced in another place in a fortnight's time to ratify the agreement for the building of the railway, I venture to suggest this question would never have been raised. I am saying now that when the route of the railway has been determined a Bill will be produced to Parliament to ask for its authority, even though I believe this is not necessary. I repeat, and give a categorical assurance to the House, that such will be the case.

The true facts of the matter are that in order to assist the smooth running of this agreement there has been appointed a Government officers' committee; and the Under-Secretary for Mines is its chairman. Also serving on this committee are representatives of various Government departments. The job of the committee is to attend to the matters pertaining to the Mt. Goldsworthy agreement. Of course the Public Works Department will come into it all along the line in connection with the construction not only of the railway but also of the harbour. The Town Planning Board is also involved, as we have to lay out a townsite. It is also necessary to give the Joint Venturers land for the houses they will have to build.

I would say to you, Mr. President, with the greatest respect, that it is a pity when you are asked for a ruling on a matter like this you cannot hear debate first. I know that is not within the Standing Orders, but I believe if you had had the opportunity to listen to argument you may have been satisfied to accept the situation that the position in this case is no different from what it was in the case of the Tallering agreement and the alumina refinery agreement. In the former case we first produced the Bill to ratify the agreement and then a Bill to authorise the construction of the railway line. We have done this two or three times before; but when we come to this one members cavil. It is said that the Bill is out of order; that there is something wrong with it, because it is presupposed this Bill is the authority to build the railway line.

The Hon. A. R. Jones: We might have been wrong on two previous occasions.

The Hon. A. F. GRIFFITH: That may be so, but I do not think we were. I repeat that in the case of the other two agreements I have mentioned, not once, to the best of my knowledge and memory, was I stopped during the course of my introductory speeches and asked where the Bill was to ratify the railway. That was the position in regard to both the alumina refinery agreement and the Tallering agreement. However, in the case of the Tallering agreement we produced the Bill for the railway eight days later.

I do not know how long it will be before we can produce the Bill in regard to the railway mentioned in this agreement merely to create a set of circumstances acceptable to you, Sir. Surely you would not expect me to be so insincere as to bring a Bill here to allow, under section 96 of the Public Works Act, for a deviation 50 miles wide?

Under this agreement the company has a 21-year lease; and it continues to be entitled to successive periods of 21 years, provided it carries out its obligation of shipping at least 1,000,000 tons of iron ore per year. The purpose of this clause is to ensure that in the event of the Joint Venturers not complying with the terms of the agreement, we will be able to say that the railway now belongs to the State. But I hope this company will ship the required iron ore and continue to do so for a long time as this will provide work for our people.

I would ask, Sir, if it is possible, that you reconsider your decision in the light of the explanation given to you, especially as the Bill to authorise the construction of the railway will be presented to Parliament when the route has been determined. When the route has been mutually agreed upon—as stated in the agreement —the matter can be presented to Parliament, with the plan and the schedule to the Bill.

I say with respect, Sir, that surely it is not too late for you to reconsider the situation in the light of the explanation given you, and in the light of the knowledge you have now, but did not have before.

The Hon. A. R. JONES: As a matter of interest—

The PRESIDENT (The Hon. L. C. Diver): The honourable member has already spoken.

Point of Order

The Hon. A. R. JONES: On a point of order, Sir, I am seeking information, if I may.

The PRESIDENT (The Hon. L. C. Diver): Yes, the honourable member may speak.

The Hon. A. R. JONES: Would it be possible to postpone the taking of a vote on this matter, and for the House to proceed with other business for a short period? Because even though explanations have been given, I cannot with certainty feel that I would be doing the right thing whichever side of the House I voted with. I would like to feel that I am doing the right thing before I record my vote.

The PRESIDENT (The Hon. L. C. Diver): I am not aware of any provision in Standing Orders where I can at this stage withdraw any determination. I have already given a ruling. It is in the hands of the House; and the House must now decide whether I am right or wrong.

Debate Resumed on Dissent from President's Ruling

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

Ayes—12.

Hon. C. R. Abbey	Hon. H. R. Robinson
Hon. A. F. Griffith	Hon. S. T. J. Thompson
Hon. J. G. Hislop	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. J. Murray *(Teller.)*

Noes—12.

Hon. G. Bennetts	Hon. R. H. C. Stubbs
Hon. E. M. Davies	Hon. J. D. Teahan
Hon. J. J. Garrigan	Hon. R. Thompson
Hon. E. M. Heenan	Hon. W. F. Willesee
Hon. F. R. H. Lavery	Hon. F. J. S. Wise
Hon. A. L. Loton	Hon. W. R. Hall *(Teller.)*

The PRESIDENT (The Hon. L. C. Diver): The voting being equal, I give my casting vote with the Noes for the reasons already given.

Motion (dissent from President's ruling) thus negatived.

Debate adjourned, on motion by The Hon. L. A. Logan (Minister for Local Government).

BUSINESS NAMES BILL

Second Reading

Debate resumed, from the 23rd August, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

> That the Bill be now read a second time.

THE HON. W. F. WILLESEE (North) [9.21 p.m.]: This is a Bill which has been rewritten, replacing the previous Acts which have been replaced on this occasion by a 28-page measure. It is an endeavour to bring uniformity to the Business Names Acts of Australia and is more or less in keeping with the situation which is developing in connection with the uniformity of the Companies Acts.

Already in New South Wales and Victoria a similar Act has been adopted and we have this measure before us now for consideration. We were given an assurance by the Minister when introducing the Bill that the changes proposed will be easily adopted and will be of benefit to commerce in the State. We have also been told that the business community will accept the Bill as being of value. Under such circumstances there would seem to be no point whatever in refusing to pass the Bill, because if it is of importance in connection with the conduct of commerce in this State then it is of benefit to business.

There is an aspect of this measure which has not arisen in previous Acts of a similar nature. I refer to the appointment of a resident agent within the State. The Minister considered this to be important when he introduced the Bill. He said—

> Because there is nothing to prevent somebody from registering a business name in Western Australia and carrying on business under that name (yet maintaining no resident agent), we find that a resident of the State seeking to claim against such business but finding all connected with it reside outside of the State, is deprived of any ready means of redress.
>
> The Bill provides for the appointment of an agent who is resident within the State. The appointment of such an agent should facilitate the control of undesirable business practices. One of the disabilities previously referred to comes about through the operations of itinerant vendors in the country and it is a little surprising that the need for such remedial legislation has not been acknowledged in the past,

The actual appointment of an agent would not appear to me to have any great bearing on this particular problem. *Slater's Mercantile Law in Australia* gives the definition of an agent as—

> a person "who is employed to do anything in the place of another."

It goes on to say—

> In mercantile law the word "agency" is used to signify the peculiar kind of employment necessary to bring the principal into legal relationship with third parties. The agent is the effective cause in the formation of the contractual bond, but when that bond has been established the agent disappears from the scene and the principal takes his place.

I feel that the appointment of a resident agent in these cases would need to confer a benefit much greater than has been explained to us in the introduction of the Bill. There does not appear to me to be any great advantage in having a resident agent if we cannot have some benefit by way of law—in serving the instruments of law—through such items as the collection of debts or the impounding of property.

There is the probability that if a person were out of the State, and he had a resident agent within it, there would be some simple process of law involvement in that instance; but merely to have a resident agent for the sake of having him under this Act does not seem to me to be in keeping with the importance of the matter referred to by the Minister when introducing this Bill.

Subclause (6) of clause 7, on page 9 reads as follows:—

> A business name shall not be registered under this Act if the statement referred to in subsection (1) of this

section is lodged with the Registrar on a date preceding by more than two months the date shown in the statement as the proposed date of commencement of carrying on business.

Subclause (7) reads as follows:—

The Registrar may refuse to register a business name, if he is not satisfied that the particulars set out in the statement lodged under subsection (1) of this section are correct.

I do not see in the Bill any opportunity for an applicant for a business name to have any redress. There might be a refusal to register a business name. There might be a very important reason why a company, a partnership, or a sole proprietor desired a particular name for a particular purpose. It would perhaps be pertinent for the Minister to have a look at the Bill from that angle; that rather than there being a complete refusal of registration, there might be some opportunity for a further hearing.

I do not intend to oppose the Bill, but I would like consideration to be given to the two points I have mentioned; namely, that of the greater scope of appointment of a resident agent, and whether there is any redress for an applicant who has been refused a business name.

The Hon. A. F. Griffith: Are you going to suggest any amendments?

The Hon. W. F. WILLESEE: I do not propose to suggest any amendments, but I would like some explanations in connection with the Bil.

THE HON. H. K. WATSON (Metropolitan) [9.29 p.m.]: There is one point on which I would like some information from the Minister before this Bill goes through. It is in connection with the invitation to the public to make deposits or loans.

The House may remember that last session, when we passed the Companies Bill—which is to commence, I understand, on the same date as this Bill—we as a Parliament inserted in it a series of very stringent provisions regarding borrowing money from the public. If a company wanted to borrow money from the public by way of deposits or loans, it was required to issue a prospectus, and have it registered and approved by the registrar before issuing it, and so on, the whole idea being to protect the public from themselves. I then raised the point as to what use it would be to put all these restrictive provisions on companies if we were going to give individuals or partnerships an open go to appeal to the public to lend money to them or make deposits with them.

I was given to understand that this Bill, when it was brought down, would contain provisions somewhat similar to those in the Companies Act so far as they related to a firm or to individuals carrying on business and obtaining moneys from the public. But the only such provision in the Bill, so far as I can see, is in clause 26, the full import of which is not quite clear to me in the short time I have had to study it. The substance of the clause seems to be—

. . . . no person shall use or make reference to that business name in any—

(a) invitation to the public; or

(b) advertisement inviting the public to deposit money with or lend money to that person or firm or use or make reference to a business name in connection with any deposit or loan.

It does seem obscure to me.

The Hon. A. F. Griffith: I am told there is a drafting error in this clause which I have to correct.

The Hon. H. K. WATSON: What the Minister seeks to correct concerns the words, "invitation to the public; or advertisement inviting the public to deposit." That still does not clear up the point that is troubling me.

I want to know whether Bill Jones can, without publishing his balance sheet or statement of financial affairs, or without going through anything which a public company has to go through, simply advertise to the public: I accept money on deposit at 8 per cent., 10 per cent., or 12½ per cent. as the case may be. If he can, I see no reason why he should; because I see no reason why an individual, or individuals, should be given any license or opportunity which is denied a public company in respect of raising funds from the general public.

When the Minister is replying to the debate, I would like him to explain why clause 26 is as brief as it appears to be.

The Hon. A. F. Griffith: Can I do it when we come to the clause in Committee?

The Hon. H. K. WATSON: Yes.

THE HON. J. G. HISLOP (Metropolitan) [9.34 p.m.]: I hope the people who run businesses have a better understanding of this measure than I have.

The Hon. F. J. S. Wise: They will know all the loopholes.

The Hon. J. G. HISLOP: From the amount of verbiage in the Bill, it is very difficult to understand it in parts. Let me see whether someone can tell me what some of its provisions mean. If we look at clause 4 on page 3 we find that—

"business name" means a name, style, title or designation under which a business is carried on.

That is quite clear. That means that something put up in the front of the building gives the business name. But in clause 5 we find—

(1) A person shall not either alone or in association with other persons,

carry on business in the State under a business name unless—

(a) the business name consists of the name of that person and the name of each other person, if any, in association with whom that person is so carrying on business without any addition.

That is a completely different definition to the one in clause 4.

The Hon. F. R. H. Lavery: A completely scrambled egg.

The Hon. J. G. HISLOP: A little further on in the Bill we find that the business name must be advertised and made clear to the public, because clause 20 provides—

Where a business name is registered under this Act—

(b) the business name shall at all times be displayed in a conspicuous position on the outside of every place at which business is carried on under that name.

Does that mean that the names of all the persons connected with the business—there may be half a dozen of them—have to be exhibited at the front of the building or somewhere in the building?

There are obviously provisions of three sorts. There is a business name definition; then there is the business name which consists of the name of other persons; and then it has to be exhibited. I am glad I am not in business; I would not know what to do. I do not suppose anybody else would be able to understand this Bill, either.

The Hon. A. F. Griffith: But you are in business.

The Hon. H. K. Watson: You are not supposed to understand it. It has been drawn up by the Attorneys-General of six States and all you have to do is accept it.

The Hon. W. F. Willesee: Put yourself in the position of a patient!

The Hon. J. G. HISLOP: If we look at clause 26, which Mr. Watson has been querying, we find that where a person is, or the members of a firm are, carrying on business in the State under a business name registered or required to be registered under this Act, no person shall use or make reference to that business name in any way. That rather suggests that business people who are entitled to make a loan cannot make any reference to the name of the business.

The Hon. A. F. Griffith: Is that clause 26?

The Hon. J. G. HISLOP: Yes. We can read it any way we like. Either somebody outside the business should not use the name, or a person in the business cannot use the name; and then permission is given, apparently, to invite people to deposit money. I think the whole wording of the measure is puzzling; and it is duplicated in many cases.

I consider the question of business names is so mixed up in the Bill that nobody is clear what it means. I would like some sorting out of this before I agree to it, despite the fact that it is presented to us with such a galaxy of names at the foot of the opening page, which would rather suggest that if I do not agree with the Bill I have no commonsense; but there it is.

THE HON. R. C. MATTISKE (Metropolitan) [9.38 p.m.]: I agree with Dr. Hislop when he raises objections to clause 20, because I think it will be quite impracticable in actual operation. We can take the instance of two persons in partnership carrying on under a business name a transport business in a comparatively small way. It can well be imagined how they might operate one or more transport vehicles on which they cannot display the requirements of clause 20; and they may conduct their little bit of office work from the home of one of the partners in the venture.

I think that for practical purposes the clause would be quite unworkable; and I would like to hear the Minister, when he replies to the debate, give some further information on this clause, and also on clause 26 in respect of the points that have already been raised by Mr. Watson and Dr. Hislop.

THE HON. A. F. GRIFFITH (Suburban —Minister for Justice) [9.40 p.m.]: I think the best course for me to follow would be to ask the House to agree to the second reading, and then I can make the explanations on each clause as it is brought forward in Committee. I take it there is no opposition to the Bill in principle, and I will regard the comments about the Attorneys-General in the light in which I think they were intended to be regarded.

The Hon. L. A. Logan: You are not an Attorney-General; you are a Minister for Justice.

The Hon. A. F. GRIFFITH: That is so. I am merely a Minister for Justice, and there are times at these conferences when, as a mere Minister for Justice, I have quite a battle among these legally minded and knowledgeable people. However, this is a genuine attempt, on an Australia-wide basis, to consolidate and amend the law regarding business names in the same way that the Companies Act was approached. I must say that these conferences serve a good purpose in many respects.

If there are any explanations needed, as the clauses are put in Committee I shall endeavour to give whatever information I can. I think that is the best course to

adopt; and when the time comes I shall ask the House to agree to have the Committee stage taken at the next sitting.

Question put and passed.

Bill read a second time.

FIREARMS AND GUNS ACT AMENDMENT BILL

Second Reading

Order of the Day read for the resumption of the debate, from the 23rd August, on the following motion by The Hon. L. A. Logan (Minister for Local Government):—

That the Bill be now read a second time.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

CEMETERIES ACT AMENDMENT BILL

Second Reading

THE HON. L. A. LOGAN (Midland—Minister for Local Government) [9.45 p.m.]: I move—

That the Bill be now read a second time.

I wish to remind members that the Cemeteries Act was passed in 1897, and although it was consolidated in 1957 there has been no actual overhaul of the Act since its inception. When the Act was first passed, the population of this State was small, communications were difficult, and there was not the same need for control of burials as there is at the present time. Moreover, experience has shown that the control of cemeteries under the old Act has not always been satisfactory, and this has particular application to burials in cemeteries which have not been proclaimed as public cemeteries.

As the Act stands at the present time, a person cannot be buried within 10 miles of a public cemetery unless the burial is in a public cemetery, or the approval of the Governor is obtained. However, he can be taken to a distance 10 miles from a public cemetery and be buried anywhere at all, even under a handy salmon gum. This is not considered satisfactory, and therefore the amending Bill proposes to tighten up controls in that particular as well as in others.

Dealing with the amendments, the first is simply to clarify the provisions of section 3; and it recognises the fact that Queen Victoria is no longer the reigning monarch. The second amendment defines what is a dead body. The reason for this amendment is that cases have occurred in connection with stillborn infants where the hospital authorities have considered that the child could be regarded as not being entitled to be regarded as a human being; but there has always been some doubt on this point, and therefore the amendment makes it certain so that everybody will be able to comply with the law.

The third amendment enables alienated land to be proclaimed as a public cemetery with the consent of the owner of the land. This is intended to assist cemeteries which are operated by churches, and are principally for the adherents of a particular church, but in which, at times, other persons might also be buried. Many of these church cemeteries at present require the special approval of the Governor for every burial; whereas if they were declared public cemeteries this would no longer be necessary.

The fourth amendment is the one dealing with the question of where a person may be buried, and this will now provide that a person may not be buried within 50 miles of a public cemetery except with the consent of the Governor. Provision has been made for districts outside the South-West Land Division where, because of seasonal conditions, the prerequisite of obtaining the Governor's approval could cause trouble; and provision is made that in these areas approval from a justice of the peace must be obtained prior to the burial taking place, and subsequently the Governor's approval must be secured. It is considered that in order to give proper control of the burial of dead bodies, this amendment is necessary.

It also provides that if a person dies within 50 miles of a public cemetery he must be buried in a public cemetery. This could prevent persons being taken away from areas where there are public cemeteries and buried outside of those places. Burials outside of public cemeteries give rise to problems of identification, and it is considered very desirable that there should be adequate control of all burials.

The fifth amendment really only divides the existing section 7 into two halves and makes the section clearer.

The sixth amendment is simply one to clarify and refers to two sections instead of the one section referred to in the Act as it now stands.

The seventh amendment authorises the Governor to permit burials outside of public cemeteries where he is satisfied that these should be permitted. It is really only a minor amendment of the existing section.

The eighth amendment is simply to correct a minor error in the Act as it stands in that the word "trustee" should read "trustees", and the opportunity has been taken to correct this.

The ninth amendment gives the trustees power to raise money on overdraft rather than to mortgage the property, and it is considered that this is desirable, particularly when a cemetery is being commenced. The approval of the Governor is made a prerequisite so that there is no danger in granting this power.

The tenth amendment specifically authorises the trustees of a cemetery to provide a suitable office either within or without the cemetery. Although the power to provide an office in the cemetery may have been one implied under the existing legislation, the new amendment will make it clear and will also permit the office to be outside the cemetery if this is considered desirable.

The eleventh amendment is aimed at coalescing the provisions of the existing sections 13 and 15A and actually makes no change in the principle involved.

The twelfth amendment simply adds additional by-law-making powers in connection with the maintenence of graves and agreements for their maintenence, and also for the control of any crematorium used by the trustees in connection with the cemetery, as well as dealing with the disposal of ashes from bodies cremated in the crematorium.

The thirteenth amendment is simply one to increase the penalties which may be included in any by-law as the old provision of £5 for a maximum penalty is considered to be far too small for present-day conditions, particularly in cases of vandalism. The fourteenth amendment is consequential and provides for the deletion of section 15A because of the incorporation of its provisions in section 13.

The fifteenth amendment is to alter the name of the Workers' Homes Board, as mentioned in the existing Act, to the name of the State Housing Commission.

The sixteenth amendment provides power for the trustees in setting apart portions of a cemetery for exclusive right of burial and to permit not only burial of bodies in the graves concerned, but also the disposal of the ashes of cremated bodies and is regared as necessary because of the trend towards cremation.

The seventeenth amendment is to coalesce the provisions of sections 19 and 38 and eliminate unnecessary duplication of verbiage.

The eighteenth amendment deals with the auditing of accounts of cemetery boards and is intended to recognise the fact that where cemeteries are conducted by shire councils, the audits are no longer in the hands of the Auditor-General but are carried out by inspectors of the Local Government Department.

This amendment also makes it unnecessary for a copy of the annual statement of each cemetery board to be laid before Parliament, gazettal being deemed quite sufficient. It is not considered necessary that these statements should be laid before Parliament; and, in fact, that provision in the Act has not been observed for many years.

The nineteenth amendment is to recognise the fact that under section 34B the obligation of the trustees under section 31 to submit a copy of a statement, together with statutory declarations to the Minister, may be cancelled and therefore it is simply a consequential alteration.

The twentieth amendment is a machinery one. The twenty-first amendment is to recognise the change in the designation of what were formerly road boards and municipal councils, and the twenty-second amendment is to repeal two clauses which have been incorporated in earlier provisions.

The twenty-third amendment is simply consequential, and the twenty-fourth amendment seeks to repeal section 38 because of the incorporation of its provisions in section 19.

The twenty-fifth amendment is to deal with cases where, although the relatives of a person are known, the person concerned cannot be located and a justice of the peace may order a free burial in such a case.

The twenty-sixth amendment seeks to incorporate a general penalty clause to cover breaches of the Act which are not provided with a penalty elsewhere. This is considered desirable.

The twenty-seventh amendment deals with exhumations and supplies an omission in the existing legislation in that it will now permit of exhumations for the purpose of cremation or for other reasons which the Governor deems adequate. It is considered desirable to make these new provisions.

The final amendment is again to recognise the fact that Queen Victoria has been dead for many years and the reference to "Her Late Majesty" is quite inappropiate.

An examination of the alterations suggested will indicate that there is nothing of a very contentious nature in them, and the provisions should be acceptable to members of this Chamber.

Debate adjourned, on motion by The Hon. W. F. Willesee.

LOCAL GOVERNMENT ACT AMENDMENT BILL

Second Reading

THE HON. L. A. LOGAN (Midland—Minister for Local Government) [9.55 p.m.]: I move—

That the Bill be now read a second time.

The notes which I have in my hand may seem rather copious to some members in view of the contents of the Bill, but the

measure does contain 30 amendments, and I consider it is just as well to give a full explanation of them, because this will make it easier for members to understand what is sought. I therefore hope that the House will bear with me while I am outlining the provisions contained in this Bill.

Most of the clauses deal with anomalies which have been revealed in the first year of operation of the Local Government Act, but there are also one or two provisions which seek to extend the powers of local authorities, these being included to meet requests from councils or from the associations of councils.

For example, one is the power to subsidise a dentist or veterinary surgeon, or to give a guarantee for a medical officer, dentist, or veterinary surgeon. It is considered to be very desirable for local authorities to be able to use this power in country districts to attract and hold qualified men in their respective districts.

There is nothing very contentious in the Bill and there should be no objection to the provisions. The first amendment is to section 35, and provides that in future the right at present conferred by subsection (3) of the section cannot be used in every district, but only in districts to which the subsection has been applied by the Governor. The subsection in question permits the agent of a person who does not reside on the land to be a member of the council as if he were the owner of the land.

It has been found that as the subsection stands at present a person living in the metropolitan area could, himself, become a member for one ward and his agent could become a member for another ward simply because the owner does not live on the other piece of land involved. This is a position which must be avoided at any cost and therefore the amendment will be applied chiefly to the north-west where it is necessary that station managers, for instance, should be permitted to be members of a local council because, if they are not so permitted, the council would find it extremely difficult to function.

The second amendment seeks to remove a disqualification on a councillor who arranges with his council for it to carry out private works for him under the authority of section 520 (2) of the Local Government Act. This is thought desirable so that a councillor could take advantage of the services of the council in carrying out private road construction, etc., on the same terms and conditions as are applicable to other residents of the district without becoming disqualified.

The third amendment recognises the fact that because of the requirement that as near as practicable to one-third of the members for each ward and also for the whole district should retire each year and that this does effect some slight change from the provisions of the Road Districts Act, cases may arise under which the retirements are not in accordance with the present requirements. Moreover, under the Local Government Act, when additional members are appointed it is possible that the same trouble could be experienced and the retirements may, by mischance, be out of line with the requirements of the Act. As the returning officer, the shire clerk could, no doubt, make a decision and enforce that on his councillors, but it might put him in an invidious position and therefore the amendment proposed is to permit the Governor to order a variation in the term or the time of retirement in order to bring these into line with the requirements of the Act.

The fourth amendment is in connection with absent voting and it proposes that the present right of any elector of the Legislative Assembly to witness an absent vote while above the 26th parallel of south latitude should be extended to any other district to which the Governor has directed that the paragraph shall apply.

Cases have come under notice where there is no authorised witness in an outlying section, a case quoted being the Abrolhos Islands—this applies with more force in the Cue district where this question was raised—and it is therefore felt that at the request of a council the Governor should extend this power to other districts where this is merited. It is considered that as the vote itself is a property franchise the authorised witnesses should be persons who are of some standing in the community, and therefore it is not suggested that any elector should be entitled to act as an authorised witness in every case but only in the special cases.

The fifth amendment also deals with absent voting, and the effect is to alter the present requirement that absent votes shall all be counted after the poll has closed, so that the opening of the votes may take place during the course of the poll, provided that there is one scrutineer present for each candidate. This safeguard is considered sufficient protection, and the amendment will speed up the work of counting the absent votes as the checking against the roll, and comparison of signatures, etc. can then be carried out during slack moments throughout the day rather than all having to wait until the poll has closed.

The sixth amendment is one under which the Minister is required to submit a by-law for the approval of the Governor if he considers that the by-law is necessary and desirable. Cases may occur in which a local authority insists on endeavouring to make a by-law which is contrary to Government policy, and may even be contrary to the expressed wishes of Parliament. As the Act stands at present, the Minister must submit the by-law for the Governor's consideration and may, of course, recommend the Governor not

to approve. This, however, is considered a rather futile way of dealing with undesirable by-laws, and the proposal is therefore that the Minister will not submit unless the by-law is deemed necessary and desirable.

The seventh amendment relates to model by-laws, and section 258 requires at present that the cost of publishing the adoption of model by-laws in the *Government Gazette* should be borne by the council concerned. Last year the Act was amended to remove the obligation of a council to pay for the publication of by-laws of its own, and therefore it is considered reasonable that the notification of adoption of a model by-law should also be published without charge.

The eighth amendment is simply to correct a misspelt word in section 271. The next amendment is to clarify the position in regard to a road which has been declared under the Act to be revested in the Crown. The amendment proposes to then state that the land comprising the road is removed from the operation of the Transfer of Land Act. This amendment is necessary, because certain roads are held under certificate of title and when revested in the Crown the title still operates. It is felt, therefore, that it would be far better to cancel the title and have the land removed from the operation of the Transfer of Land Act so that it would simply be Crown land set apart for roads,

A further amendment is in connection with the provision, alteration or closing of roads and proposes that the Governor's approval of the exercise of such a power by a council shall be notified by the Minister for Lands by notice in the *Government Gazette*. Another amendment deals with the disposal of roads after they have been closed. The road having been closed, it is now proposed that it should be removed from the operation of the Transfer of Land Act in every case so that it may then be disposed of by the Crown.

Provision is made to deal with an anomaly under which at present even where there is an impermeable concrete floor for a house it is required that subfloor ventilation must be provided. The amendment will make this unnecessary where the floor is impermeable concrete.

Another amendment deals with the control of chimneys. Section 402 forbids a person to construct or to use a chimney shaft of a mill, manufactory, or other similar building in such a way as to cause a nuisance to persons dwelling in the neighbourhood. It has been pointed out that refuse destructors and incinerators may cause trouble also and therefore the amendment is to include in the section a reference to refuse destructors and incinerators.

The Bill also seeks to clarify a doubt concerning the use of railway property under lease to oil companies and similar organisations. All railway land is exempted from rating under the Railways Act and land which is leased should be ratable. The doubt is therefore to be resolved by the amendment, which declares that any railway land which is leased is ratable unless it is leased under section 64 of the Railways Act; that is, for refreshment rooms and things of that description, or is leased to Co-operative Bulk Handling Ltd. It is considered reasonable that oil companies leasing land from the railways for a depot should pay rates just the same as if they were on private land.

The next amendment is to rectify an anomalous position in that land held under perpetual lease is ratable only on annual value, an omission which was never intended. The amendment is to provide that land under perpetual lease is to be valued as if it were in fee simple. This was the position under the Road Districts Act and the particular provision was omitted in the drafting of the Local Government Act.

Another amendment, which is in the same clause of the Bill, provides for the right to rate a timber cutting permit on the basis of a valuation of 5s. per acre for the area concerned. This was the position under the Road Districts Act and the Local Government Act purported to rate the timber cutting permit as a lease; but, in fact, there is no rental from which a lease value could be calculated. It is therefore proposed to reinsert the old provision of 5s. per acre. The next two amendments are included in the same clause and are simply to remove anomalies in section 533.

A further amendment in the Bill deals with a method of arriving at a valuation for voting purposes in respect of private railways and tramways such as the Midland Railway Company or tramlines owned by a timber milling concern. These are ratable under the section, and under the repealed legislation the valuation was set out on the basis of annual values, so that voting rights could be determined. The Local Government Act, however, instead of providing for a valuation on annual values, fixes the contribution of the timber milling concern at one-half of 1 per cent. per annum of the capital value. In order, therefore, that the owner should be entitled to a vote somewhat in proportion to the value of his property, it is provided in the amendment that the actual amount payable for rates is to be multiplied by 20 and the result treated as the annual value, voting rights then being granted accordingly.

The next amendment deals with the same matter in connection with a concessionnaire operating an electricity supply for a town or district. Here again the repealed legislation provided for an equivalent of annual values, whereas the Local

Government Act has made no provision, and therefore it is now proposed that the amount payable for rates should be multiplied by 20 to give an annual value on which voting rights would be based.

Another amendment seeks to clarify a doubtful provision where under section 545 a council alters its rate book after the year has commenced, because a reduction in the valuation has taken place under section 534 as a result of a reassessment made by the Taxation Department. Under the amendment the council must amend its rate book as from the 1st July immediately preceding the date of alteration.

There is also an amendment which will permit a town or city council to differentiate in rating if it wishes to do so. At present this power is confined to shire councils and the provision confining it to shires was based on objections to the principles of differentiation raised by representatives of town and city councils when the power was sought to be conferred upon them in the Local Government Bill of 1949. The councils have now suffered a change of heart, or have seen the wisdom of the proposal which was then made, and a majority of them now wish to have the power to differentiate in rating. The power to differentiate is hedged round with safeguards as set forth in section 548 (4), and therefore the new power may be entrusted to town and city councils without any trepidation.

Another provision deals with the minimum to be charged for a rate. I think Mr. Simpson and Mr. Baxter will be happy about this one, because they were caught up in its machinations a short while ago. It has been found that under the existing provision a council must have the same minimum rate in every part of its district; and whereas a minimum rate of as much as £5 is quite reasonable in a thriving townsite, there are some districts which contain almost deserted townsites in which there are only one or two pieces of land still ratable, and where there are few or no amenities provided by the local authority. The amendment, therefore, will permit a council to differentiate in the minimum which it imposes in various parts of its district.

The Bill also contains an amendment to facilitate appeals against valuations, and it will permit an appellant to withdraw his appeal rather than be forced to have the matter dealt with by a court. In a number of cases it has been found that when the Taxation Department has been advised of the appeal it has immediately checked its records and carried out inspections and agreed that an error has been made. The appellant has accepted the new valuation and is quite prepared to withdraw the appeal, but there is no express authority in the Act which would justify a withdrawal. The amendment will give a definite authority to withdraw the appeal.

There is a further amendment in the measure which deals with the question of exemptions to pensioners in respect of rates. The present provision is that any person who is in receipt of an age pension, an invalid pension, a widow's pension, or a service pension, or who is the wife of a service pensioner and is also a service pensioner, may claim to be exempt from liability for the payment of rates. The rates are then deferred and are not payable until the sale of the property or the death of the pensioner.

Cases have been found in which the pensioner has not sold the property but has transferred it without any consideration, and in the strict reading of the present Act the rates are still not payable. The amendment will therefore make the rates payable on the transfer of the land and will also provide that the exemption will cease to operate if the person ceases to be exempt from liability.

This provision is to deal with cases where, for instance, a pensioner who is quite entitled to exemption, marries a person who is not a pensioner and whose income is sufficient to remove both persons from the right to obtain a pension. The amendment, therefore, will mean that the exemption will automatically expire when the person ceases to be a pensioner.

Provision has also been made to deal with cases where the pensioner is not the absolute owner of the land, but only holds a life interest. In this case exemption will not be possible, because to confer an exemption is simply to deprive the remainderman of some of his interest in the property, in that the property is passed to him subject to a charge for rates, and that remainderman may also be a pensioner so should not be called upon to pay rates which were properly due from a life tenant. That sounds involved; but an ex-member of Parliament, Mr. Jeffery, got caught up with this, and we had a job trying to sort the matter out for him.

The next amendment will permit a person who holds a single debenture issued by a local authority to raise money by loan to make the debenture not negotiable by crossing it and making it payable only to himself or to his order. This will mean that if a debenture is stolen or is lost and falls into the wrong hands, it cannot be used to secure payment from the local authority when the payment is really due to another person.

The next amendment is to the power given by section 614 under which, where a council has raised loans on the understanding that these loans will confer benefits only on part of the district or will confer benefits in varying degrees on parts of those districts, it will be possible in certain circumstances for the Governor to order an extension of the area concerned or the cancellation of the right to differentiate in rating in respect of those loans.

Cases have occurred where various parts of the district are charged with differential rating in respect of loans, and the differential rating in some cases has almost coincided in each particular ward or prescribed area; whilst in other cases the amenity provided has subsequently been made use of by persons who have moved into what was previously an undeveloped area, and therefore differentiation is no longer justifiable.

Under the Road Districts Act the Governor had power to extend the range of differential rating or to absolve a council from its liability to rate only a portion of the district for a loan; and in a number of cases councils, or road boards, as they were then known, sought the application of the power held by the Governor. The Local Government Act, however, makes no provision for any variation in its rating differentiation in loans, even where it is quite obvious that it is no longer just. The amendment will therefore permit the Governor to vary the rating differentiation where this is justified.

The next amendment deals with the question of proof in legal proceedings and provides for the acceptance of a certificate on a document and a certificate of service as being sufficient without requiring a statutory declaration. As the existing provisions are set forth there are cases in which there would need to be two statutory declarations based on the one document, and it is considered that certificates by the clerk of the council should be quite sufficient.

The next amendment is to section 660, which sets forth the conditions under which actions may be taken against a municipality or its members or officers in respect of a tort. The provisions in the section are almost identical with those contained in the Road Districts Act as it existed before 1954. In 1954 the Road Districts Act was amended by the Limitation Act which repealed the provision of the Road Districts Act relative to claims against a council and made provision in the Limitation Act.

In drafting the Local Government Bill the opportunity was taken to reinsert the provisions of the Road Districts Act as it was considered that these were desirable to protect local authorities against claims in respect of torts. It has been objected, however, that in giving adequate protection to the local authorities, the rights of the person claiming to be injured have been, if not disregarded, at least not given the same degree of consideration.

The provision at present requires that to justify any action against a local authority for a tort, the person concerned must give to the council within 21 days after the cause of action arose, a notice in writing of the particulars of the cause of action and must quote the name of any person injured, together with any particulars of damage to property claimed to have been sustained.

As it has been pointed out that cases may arise where the person injured is unable, by reason of the injury, to give a notice within 21 days, it would be unreasonable to deprive such a person of his right to claim. The amendment is therefore to ensure that a person will still be entitled to claim if it can be shown that his failure to give notice did not prejudice the council in its defence.

The next amendment is to the form of nomination for election as a member of a council. Because of the form in the ninth schedule, some confusion arose this year as to whether a person was entitled to nominate himself or must in every case be nominated by some other person. The intention is that he nominates himself, and it is when for some reason he is not available to nominate himself that he is nominated by another person to whom he has given a written authority so to nominate him. It is therefore proposed to amend the form so that it is quite clear that a person nominates himself.

The final amendment is simply to insert an item which was omitted from the fifteenth schedule. It will be observed on studying the schedule that provision has beeen made in part IV for trespass fees in respect of certain enclosed land and then unenclosed land, but the great majority of enclosed land finds no place in the schedule.

It is therefore proposed by the amendment to insert the fees which may be claimed for trespass on enclosed land other than the special types set out in the first column of fees in the schedule. In addition to these fees, of course, a person is entitled to claim any special damages by virtue of the provisions of section 485 of the Local Government Act. This Bill is mainly a Committee Bill.

Debate adjourned until Tuesday, the 11th September, on motion by The Hon. E. M. Davies.

House adjourned at 10.15 p.m.

Legislative Assembly

Tuesday, the 28th August, 1962

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