Legislative Council

Thursday, 18 April 1985

THE PRESIDENT (Hon. Clive Griffiths) took the Chair at 2.30 p.m., and read prayers.

ACTS AMENDMENT (ENVIRONMENTAL LEGISLATION) BILL

In Committee

The Deputy Chairman of Committees (Hon. P. H. Lockyer) in the Chair; Hon. J. M. Berinson (Attorney General) in charge of the Bill.

Clause 1: Short title—

Hon. A. A. LEWIS: I ask the Attorney whether he has managed to get the answers to the questions I asked last night. In addition, has he had any information as to whether the Minister will take any notice of the advisory committee and whether it will meet, because there is no requirement to do so unless the Minister orders it?

Hon. J. M. BERINSON: I thank the honourable member for providing his questions for consideration overnight and also for some elaboration he has been able to provide in the meantime.

The Minister advises me that clean air is now controlled by a council and scientific advisory committee comprising in all 25 persons. In the interests of efficiency in government it is proposed in this Bill to condense this to one committee of seven members. This new committee will be fully representative and its advice will be taken in most part by the Minister. As soon as the Bill is passed the committee will be appointed; it will also be called together and organised to meet regularly.

The Minister further advises that after being in operation for some 20 years his department is able to use its experience to ensure that effective control remains. The break-up in staff between occupational health and environment may need some adjustment in the course of time, and if necessary that adjustment will be made. In each State of Australia control of noise and air pollution is the responsibility of the environmental authority. While this is not in itself a conclusive reason for doing so in this State, it is pointed out that when the Act came into force in 1964 we had no Environmental Protection Authority and the formation of that authority did not come until some eight years later.

In relation to earlier discussion as to the relative merits of leaving the monitoring of these matters with the Health Department or the environment authority, the Minister points out that in almost no case is there a hazard to health because of polluted air. On the other hand, there is often considerable damage to the environment, market gardens, vineyards, and paint work through pollutants in the air.

For those and other reasons which have been alluded to, control is thought properly to lie with the Environmental Protection Authority.

Clause put and passed.

Clauses 2 to 58 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon. J. M. Berinson (Attorney General), and passed.

COMMERCIAL TENANCY (RETAIL SHOPS) AGREEMENTS BILL

Second Reading

Debate resumed from 16 April.

HON. V. J. FERRY (South-West) [2.40 p.m.]: This Bill is of considerable importance to a number of people, none less than the landlords of commercial premises and certainly the tenants of those premises.

Many pieces of legislation come before this Parliament and I guess this one is of special significance to the people to whom I have just referred and certainly it will have ongoing repercussions throughout the commercial world in that context. This subject was a burning issue in the community a few years ago and as a result the Government instituted an inquiry headed by Mr Nigel Clark, and his report is the basis of this legislation.

It is interesting also to note in passing that the Bill before the House has been taken from the experience in Queensland which does have commercial tenancy legislation. Some members might have little regard for Queensland in some respects, but we are glad to home in on its experience in this area of activity. I understand that similar legislation is under consideration in Victoria and South Australia.

It is perhaps unfortunate that this Bill received a little less debate in another place than it might have otherwise received because the Government put time constraints on the debate. Due to the importance of the matters contained in the Bill it is a shame that more time was not allowed for the debate in the Legislative Assembly. Having said that, I would imagine that members in this House

will think that the debate on this Bill will take up a great deal of the time of this House this afternoon. It deserves a thorough debate, but it is not my intention to be long in my presentation. However, I will have more to say in the Committee stage because I have some concerns about the Bill.

The Bill certainly affects what we loosely refer to as small business. The definition of small business can vary according to one's point of view. The intention of this legislation is to deal with most businesses with the exception of major retail firms and there is probably good reason for that. Nevertheless, it concerns a lot of people.

Members must bear in mind that some three or four years ago many businesses were in trouble with leasing arrangements and the viability of their businesses and this was caused by a number of factors. Firstly, there was an increase in inflation, which caused a problem in respect of the viability of businesses. The labour market at that time was another contributing factor, as was the high interest rate during that period. Those factors were the ingredients which caused this legislation to be prepared and to come before the Parliament.

I am not sure of the number of shopping centres throughout Western Australia but my informed guess would be that there is in excess of 200 commercial shopping centres and that means there are many business premises which cater for all kinds of business undertakings.

When we talk about commercial tenancies the management of shopping centres comes to mind. Some shopping centres are managed by people who have a legal background and other centres are managed by people who do not have the benefit of that type of training. In my opinion one does not need to have a legal background to be a good manager. I believe very strongly that managers are a special breed of person—some are highly qualified and others are excellent managers by virtue of their natural ability and included in that natural ability must be a great degree of tolerance and commonsense.

It is one thing to go by the book—I suppose any person could go by the book if he were diligent enough to read the lines—however, managers require a great deal of flexibility and understanding in respect of the large number of problems which arise in shopping centres. Many problems arise because of the mismanagement of some of those people associated with the centre. I do not say that unkindly, but no matter what the circumstances there will always be some managers who are better than others. Those shopping centres which are blessed with a manager who has the ability to solve problems are well placed. Others, of course, may not be so fortunate.

I know it could be said that there are good tenants and others who are not so easy to manage and I acknowledge that because they are human beings. Of course, we have the other side of the coin where there may be goodwill on the part of the tenants and, therefore, some problems can be solved amicably. However, there will always be some people who find it hard to relate to others and who find it hard to relate to the rules under which their lease operates.

This Bill has been brought to the Parliament in an endeavour to improve the situation for both landlords and tenants. One thing that crosses my mind is that when this legislation is passed we will have the situation of "them and us". I hope that does not happen. I hope also that when the legislation is passed it will become a vehicle whereby people may be helped in respect of commercial undertakings rather than it being used as an excuse for a confrontation. I hope it is used in a helpful way by most people, but not all people will see it that way. I am sure that is the intention of the Government. It was the intention of the Clark report to resolve these problems and it set guidelines for a better understanding and a better working situation.

I have read this Bill so many times that I would not care to count them and one thing that comes to mind is that provision has not been made for agreements to be in writing; this is of paramount importance. Verbal agreements are fine as long as everything is running smoothly.

I note that the Minister has placed some amendments on the Notice Paper and they will certainly improve the legislation. It is passing strange to me that it has taken so long to come forward.

Hon. Peter Dowding: Were you talking about the issue of oral contracts as against written contracts?

Hon. V. J. FERRY: I believe agreements should be in writing wherever possible rather than oral contracts. It obviates misunderstanding and provides a better working business relationship.

Referring to the amendment the Minister has placed on the Notice Paper, I believe it improves the legislation immeasurably in some areas. It is a little perplexing to understand why these amendments were not included in the original draft of the Bill and also why they were not included when the Bill was considered in another place. It was considered in great detail in another place and despite the time constraint eventually placed on the debate, the amendments could have been made

in the Committee stage before the Bill reached this House. When we reach the Committee stage I will comment on this aspect further.

I agree with the amendments in principle and give notice accordingly.

I would appreciate the Minister's comments on the effect of the Property Law Act 1969, especially section 35 which deals with the creation of interest in land and refers to leases. This Bill deals with leases and I wonder what effect that Act will have on the operation of the Bill we are considering. In similar vein I refer to the Credit Act 1984 and especially to section 31 which deals with contracts to be made in writing. I would appreciate the Minister's views with regard to that particular Act and its effect on the Bill we are now discussing.

The Law Society of Western Australia has considered this Bill in great detail and certainly it has made some very pertinent comments. I think it has helped the legislation and I suggest that some of the proposed amendments which we shall consider were made as a result of the Law Society's suggestions. They are worthy of consideration for that reason, if nothing else.

One particular feature of the Bill I believe will meet with general agreement and accord is the provision dealing with the disclosure statement. It is very necessary for people to know exactly where they stand and the disclosure statement has my full support. One of the problems involved, which is common with so many Bills, is that the form of the disclosure statement will be prescribed by regulation. We have a difficulty as legislators, that of not knowing what will be prescribed in those regulations. I have no doubt that those who depend on this Bill when it becomes an Act will watch with great interest to see the regulations which follow from the Act.

As I mentioned earlier, I could refer to many facets of the Bill which would be more appropriately dealt with in the Committee stage clause by clause. With that knowledge I give the Bill my support at the second reading stage and look forward to the Committee discussion.

HON. TOM KNIGHT (South) [2.55 p.m.]: I compliment the Government on having the courage to introduce a Bill such as this.

Several years ago I was a member of a committee investigating and looking at similar circumstances affecting small shop owners and businessmen whose businesses were established in shopping complexes. I believe they were exploited to the degree of helping proprietors of shopping centres to attract the larger supermarket chains and retail outlets. As the goodwill and benefits derived from those complexes fluctuated it was always the small business people who suffered. For instance, if the shopping complex was not doing very well the large supermarkets often demanded a lower rental agreement. When the developer of the complex complied with those requests, because he had commitments to meet himself, invariably the small business owners had to pay increased rents to meet the changed circumstances in the complex.

Many and varied suggestions were put forward to the committee, and the people interviewed by the committee had many ideas on how the situation could be best overcome. I think it would have taken a Philadelphia lawyer to work out the best way to please all the people involved all the time. We are all aware that such situations are impossible. It was suggested that the planning and siting of these large complexes were major factors in how successfully the complex operated. Because of the existing situation many small business people found themselves exploited by the developer for the benefit of the larger retail outlets.

A suggestion was made that, when the planning stages were in progress and permission was given to construct the complex in a particular area, consideration should be given to the developer being allowed to strata title the smaller retail outlets to enable proprietors to buy them. In other words instead of their having to pay rent for ever and a day at fluctuating rates, in accordance with the success or failure of the supermarket, these small business people would pay an amount similar to the rent they would have paid and this would be going towards their purchase of the unit rather than the rental of it.

It would be just as much in the interests of the small business owners to make sure that the complex ran successfully, because as owners of strata title units in the complex they would be building an asset. If they decided to move from the complex they would have something to sell instead of having a leasehold property. They could not be exploited with regard to rates, taxes and fluctuating rentals, because they would be masters of their own destiny.

At the time we believed it would be a good idea that, when approval was given for a shopping complex site, the outer perimeter of the supermarket chain or retail outlet could be surrounded by strata titled smaller shops which people would own and they would work in conjunction with the shopping centre complex. In other words, they would save themselves much heartache and they would be involved in controlling the destiny of the complex.

That idea did not eventuate and the Government of the day did not implement anything.

I compliment the Government on its courageous move to introduce this Bill. As the previous speaker said, nothing is perfect, but if we do not start somewhere we will not achieve anything. Until this stage, the only people who were the losers were the owners of small shops. As it has introduced the legislation, the Government will recognise its responsibility to listen to suggestions which are made. Clearly amendments will need to be made to the legislation in the future.

I support what the Government is seeking to do. Mistakes have been made in the compilation of the Bill, but we have to start somewhere. The legislation will certainly have my blessing. It will operate in the interests of small business people; it is a start, and ultimately it will benefit small businessmen.

HON. P. H. WELLS (North Metropolitan) [3.02 p.m.]: I am familiar with a case in which a small shopkeeper spent a sum of money to buy his way into a shop. The lease on the shop had an option of renewal for a two-year period. The shop was in a state of some disrepair and, in order to improve his business, the shopkeeper decided to invest approximately $20 000 to improve his premises. Before doing so, he approached the landlord and said, "I am considering improving the shop. I want to be sure that I have some security. I have an option to renew the lease for a two-year period. Is it fair to say that there will be no problem about that?" In his discussions with the landlord, no indication was given that the lease would not be renewed. Certainly the shopkeeper was not discouraged from making a large investment in the premises.

The shopkeeper proceeded with that investment and improved his shop. No sooner had he spent his $20 000 than he, along with a number of other tenants, received a letter indicating that, because of changes in the area, the shop would be reclaimed in the near future and from that stage on the shopkeepers would be on a monthly tenancy basis.

The shopkeeper was horrified and quickly got in touch with his landlord to find out whether the letter was dinkum. The shopkeeper reminded the landlord of the option to renew his lease, which they had discussed earlier. The lease provided also for a minimum period of notice to vacate the premises of three or six months.

The landlord said, "You would not hold us to that, would you?" The shopkeeper said, "Yes, I would". He had just invested a sizeable sum to improve the shop and it appeared that his investment was rather shaky.

The landlord, on hearing that the shopkeeper would hold him to the terms of the lease, gave him notice and from that time on he was on a monthly tenancy basis.

If I discussed that matter with the Government I assume it would say that that was a bad landlord and that this Bill would stop landlords lording it over small shopkeepers. However, although that illustration may be considered to be somewhat insignificant, it had a big effect on the small businessman involved. The landlord was the Government. It was the Government which did not exercise the six months' notice clause in the lease but informed the shopkeeper that he was on a monthly tenancy basis.

I gather that, because the Government is, in some cases, the landlord of premises, it has not been altogether clean in its dealings and, because of the nature of a development, it may have wanted to reclaim premises and, therefore, may have found it necessary to put that sort of pressure on the small business people involved.

The Government claims that it is the developer or the landlord who exerts pressure on small businessmen. The Government has accused those people of that. However, I am pointing out that the Government is not totally clean in this respect and examples may be given in which, despite the fact that it claims other landlords have done these things, it has done them itself.

It appears that the Bill indicates goodwill will no longer be taken into account and it will not be possible to ask for key money. Some of the practices this Bill seeks to stop are normal procedures which have been adopted by companies for years in many other areas.

The Government is not totally correct in some of the statements which have been made against landlords. I have had a number of experiences in which landlords have been involved in questionable practices. However, by the same token, in many cases people renting shops do not investigate what is involved in their leases and then blame their landlords for everything that goes wrong. Many tenants do not read the leases they sign and are not aware of their contents. When asked to meet the requirements of the lease, such a tenant goes into hysterics and claims he has been taken for a ride when in fact the lease sets out certain requirements which must be met.

I agree with the provision referred to in the Minister's second reading speech that some way should be found in which people are made aware of the responsibilities they are undertaking. In

many cases which have been drawn to my attention, problems have arisen not because the landlord is lording it over a tenant, but rather because a tenant did not read the lease he or she signed. Surely if one is entering into a business operation, one should examine what one is signing. Surely there is a responsibility on individuals who are going into business to make an effort to look at what they are signing and to be aware of it.

It would be worthwhile if we could find some way in which people could be assisted to make themselves aware of what they are doing. However, there is no magic way to achieve that.

A number of shopping centres in my electorate were going broke at one stage and I carried out an exercise. I telephoned a number of accountants and professional people and asked them how many people approached them for advice and information before they entered into business.

I could find only one accountant who had been asked to evaluate a business proposal. Many people feel they are competent in this area and they do not properly evaluate businesses before they get involved in them. That creates problems.

I welcome the indication that mediation will be an important aspect of the legislation. However, I am not certain whether the best means to achieve that sort of mediation is by setting up a registrar. It appears to me that, in that case, one is mediating from a position of strength. In other words, the person involved has a vested interest, and I wonder whether it is possible to bring together two people to enable them to listen to each other and reach agreement. However, it is commendable that an effort is being made to seek to allow people to resolve disputes among themselves.

It should provide a mechanism by which they can do that. Despite the fact that I have some uncertainty about the manner in which the Bill proposes to do it, because it seems to be tied up with the registrar and people who may become legalistic, really all they are interested in is getting a legal opinion rather than allowing people to reach a mutual agreement. Certainly the suggestion is that the mediator and the registrar be appointed to sort out the legal situation. I do not think that is mediation. Mediation is to allow people to resolve a dispute among themselves, certainly with the help of a third or fourth person.

I have no objection to the requirement of disclosure. I gather in some cases people might assign leases in circumstances where the information has not been disclosed. I have not been involved in cases like that, but certainly when I have assigned leases information has been readily provided. If it is not contained within the lease agreement with the company involved in the matter, information is usually quickly provided. However, the requirement that it be disclosed—I would think most reputable businesses do not seek to hide these types of matters—will not cause concern.

I want to raise a matter with the Minister in connection with the method of resolving disputes. I think this matter is in regard to clause 11 (3). Where that provision talks about a review of the rent payable for the lease and where there is a dispute, each party involved, if they do not agree, can appoint a person who is licensed under the Land Valuers Licensing Act of 1978. Each party appoints a person who has some experience and who may be able to represent them. I gather the idea is that clause 11 (3) provides that if those two people cannot resolve the matter one will proceed to the next stage and appoint a person with whom both parties agree, and that person will have to be licensed under the Land Valuers Licensing Act. If agreement still cannot be reached a second person may be appointed, and if that course fails, one approaches the registrar. In discussions with people involved in leasing and valuations I see a practice has developed. I struck a wrong chord with the Minister. *Hansard* cannot record the facial expression of the Minister. The Minister quivered at that statement as if it were a dischord. The term "licensed valuers" as required under this Act, does not mean that the person involved would necessarily have had experience with city rentals, for instance, because a licensed valuer covers a range of areas. The person who is appointed may not be a person who has the type of experience that is required to make the right type of decision in the field with which the Bill deals.

The current situation requires that when that stage of arbitration has been reached, a person is appointed by the president for the time being of the Australian Institute of Valuers. That is a provision whereby the president ensures that the person so appointed has had experience in the relevant field. Perhaps one is discussing commercial rentals and sundry lines and that person should have experience in that area. The Australian Institute of Valuers has examined this clause in detail. It put forward the proposition to overcome that situation, and I ask the Minister to consider it in the light of my suggestion that an anomaly exists in subclause (3). The Institute of Valuers suggested amendments as follows—

> The question shall be resolved by a person who is licensed under the Land Valuers Licensing Act 1978 and by whom each of the parties agrees to be bound or where the par-

ties do not agree to be so bound then one such person appointed . . .

This is where the major difference lies. To continue—

by the President for the time being of the Australian Institute of Valuers (Inc.) Western Australian Division.

Hon. Peter Dowding: What are you reading from, an amendment?

Hon. P. H. WELLS: I am suggesting the Government includes an amendment. The situation exists where two licensed valuers are appointed, one by each party. If they agree, there is no problem, but if they do not agree both parties must appoint an arbitrator. The reason that both of them may not agree is that perhaps some people are licensed valuers. To give an illustration—I sought more detail about the definition of a licensed valuer—and the Australian Institute of Valuers in a letter to me pointed out the following—

To highlight this point a licensed valuer can be a person:

(a) A past practising concerned valuer without educational qualifications.

(b) A citizen well versed in real estate valuations in one locality only.

(c) An educationally qualified person who is not a member of the Institute and practising in a limited field of the profession.

(d) An overseas qualified valuer lacking any local knowledge of the law and community trends.

(e) An interstate valuer without Institute acceptable qualifications.

(f) An unacceptable person to the Institute.

The suggestion that existing clauses be inserted was made because the members of the Australian Institute of Valuers wanted a provision to ensure that the final appointee has experience in the area intended. In this case we are talking about commercial rentals. It is suggested that the Government should consider amending the clause to cover this situation, because if an appointment is made by both persons the situation could arise that they do not agree. The next stage of the Bill provides that both parties appoint one. When the stage is reached where both disagree, the situation is similar to two lawyers disagreeing. There is only one way in which the matter can be fully arbitrated, and that is before a magistrate who decides which aspect of the law he believes to be correct, and the case can be argued from that point. It seems reasonable, with the present situation allowing this final stage, for that person to be appointed by the Australian Institute of Valuers to ensure that when this issue arises the person so appointed has experience in the field we are talking about.

I spoke to Mr Johnson, the immediate past president of the WA Division of the Australian Institute of Valuers. He believed this course to be important. He wrote to me today in the following terms—

Further to our telephone conversation today, we would appreciate you bringing to the Government's notice the need to correct a small point in the proposed Commercial Tenancy (Retail Shops) Agreements Act, 1985 which we feel is of significant importance to the public. Clause 11 Part 3 sets out the appropriate method in the case of disagreement between the lessor and lessee. We sincerely recommend that the Clause should be altered from line 15 as per our previous correspondence dated 11th April, 1985.

By way of explanation may we outline that in the past leases have contained a wide variety of clauses on the matter of settling rental disputes, and it is our experience that in some cases a licensed valuer as distinct from a licensed valuer who is a member of the Institute has proved insufficiently qualified to determine the fair rent.

The PRESIDENT: Order! There is too much audible conversation. It is getting to the stage where I have the impression that nobody is listening to the member who is supposed to be addressing the Chair.

Hon. D. K. Dans: I wonder why.

The PRESIDENT: The Leader of the House knows that the member is free to make his speech and he is free to make it uninterrupted by rude, audible conversation. I ask members to comply with the Standing Orders.

Hon. P. H. WELLS: The letter continues:

. . . it is our experience that in some cases a licensed valuer as distinct from a licensed valuer who is a member of the Institute has proved insufficiently qualified to determine the fair rent.

It is the role of the Institute to ensure that all members maintain a high standard of professional expertise and this is assured by an ongoing professional development programme which requires of members a minimal annual attendance to maintain competence.

These facilities are not available to non-members and therefore the public cannot be assured that the valuer is suitable.

I take up the point raised in the letter about a person being suitably qualified to determine fair rents in areas under dispute. What happens in the case of a city arcade in Perth for example, which is valued by a valuer from the Eastern States? That valuer would have no experience in Perth city rentals and would not have access to the Institute of Valuers to gain advice. It could well mean, in that way, that that will not achieve what the Bill intends to achieve, which is that a fair and just decision be arrived at. The Government should be considering the work to be done in those cases and should provide competent people. Surely that is what it is seeking to achieve.

The Government will run into a great deal of trouble under this clause because a dispute will begin from the time that two licenced lawyers may not agree on a value and a decision would need to be arrived at. The danger is that dissatisfaction will arise over the intention of the Bill to solve problems and this will therefore create problems. Despite the fact that the Minister grinds on and says that I should not try to suggest amendments in this House because I am not a lawyer, I will continue to do so. If he thinks about this for a moment as it relates to the small businessman, I suggest that he should provide a competent person with loads of experience in that field.

We did not have the opportunity to discuss the Bill before it was introduced in order to arrive at a decision. I want the Minister to consider this matter and not to pass it off because it is important. I suggest that if he does not accept this approach it could mean that he will leave a gaping hole in this legislation and it will be the undoing of many of the solutions which he hopes to introduce.

It is envisaged in the Bill that all disputes be subject to conciliation. If that fails the registrar will consider the dispute. If that fails the matter will then be considered by the Commercial Tribunal. The Commercial Registrar's position has been set up under the Commercial Tribunal Act. There appears to be an anomaly in that Act now that we have come to deal with this Bill. This clause says that licenced valuers should be involved in the determination of fair rents. It therefore seems reasonable that when disputes go before the tribunal, licenced valuers are used to put a fair case before the tribunal. Am I correct in understanding that, Minister? Am I correct in understanding that after a dispute has been through the mediation process, it goes to the registrar, and then on to the Commercial Tribunal, where suitably qualified valuers are needed to present the case? Clause 11(3) seems to raise an anomaly in the Commercial Tribunal Act. It is provided, under clause 15(3) of the tribunal Act that a person, not being a certified legal practitioner within the meaning of the Legal Practitioners Act 1933, who receives any fee or any reward for representing any party before proceedings to the tribunal, commits an offence and is liable for a fine not exceeding $500.

What that means is that the only person who can make a claim for a fee before a tribunal is a legal practitioner.

Hon. Peter Dowding: Mr Wells, it does not say that at all. It says that a licenced valuer should appear to give evidence, not for the purpose of representation.

Hon. P. H. WELLS: But surely in this case the person will be representing—

Hon. Peter Dowding: The licenced valuer will be giving factual evidence.

Hon. P. H. WELLS: Am I correct then in saying that the tribunal is a court of law and the only people who can administer the case before the court of law are lawyers?

Hon. Peter Dowding: Not administer the case, Mr Wells. If someone is going to appear and represent and charge a fee, he should be a lawyer. If they are to appear as witnesses and give evidence, a valuer would be called to give that evidence of valuation. He is entitled, then, to charge a fee. In fact, the valuer cannot give evidence from behind the Bar table just as I am not supposed to be making my speech now.

Hon. P. H. WELLS: So clause 11(3) establishes a set-up in which there are licenced valuers.

Hon. Peter Dowding: No it does not.

Hon. G. C. MacKinnon: Why don't you raise these matters in the Committee stage?

Hon. P. H. WELLS: I intended to give the Minister notice so that he can think about them. Clause 11(3) provides for licenced valuers to handle cases. However, under the tribunal legislation, only lawyers are allowed to appear. It appears to me from that, that there is an anomaly in the Act. However, perhaps they are matters that I should raise in the Committee stage.

The PRESIDENT: Order! I have already told honourable members that I will not tolerate audible conversation while the House is sitting. Continued defiance of that ruling will meet with some harsh repercussions.

Hon. P. H. WELLS: I raised the reference to the Commercial Tribunal not because that Bill is before us or because we will be discussing it in the Committee stage but because it raises certain anomalies in the Bill with which we are now dealing.

Therefore, this Bill has to be considered in terms of how it sits with that particular Bill. In principle, there is some need to provide some better system than at present of resolving disputes that exist between landlords and lessees. I do not altogether believe that this Bill will be the answer to that problem.

HON. TOM McNEIL (Upper West) [3.30 p.m.]: I begin by congratulating the Government for bringing forward this legislation. As members in this House will be aware, for approximately the last six years I have argued that something along these lines had to be done. I recall that when debating whether the Government should intervene in shopping centre leases, for once Hon. Joe Berinson and I were united in voice that the Government of that day had done absolutely nothing to protect the multitude of small businesses which were going to the wall as a result of tenancy agreements which were barbaric.

I also recall that in 1981 the National Party in the other place moved for a Select Committee to investigate this problem. I have made these remarks in this place at another time, but for the record I will make them again. In order to avoid such a Select Committee being set up, the Government of the day appointed a Liberal backbench committee to investigate the matter. It took two months to reach its finding. For 11 months Charlie Court and June Craig denied both Houses of Parliament the opportunity to read that report. It was not until a report happened to fall off the back of a truck as it was going around a corner one day that we finally saw that the report had come up with 12 recommendations and that eight of those recommendations would have come down on the side of the landlord. I know of only one specific recommendation on which the Government acted. Even then, it did not follow through on the recommendations of the committee. The committee had recommended that the gross leasable area be reduced from 9 350 square metres to 3 000 square metres. I can be corrected by any members in this House who were on that committee at the time, but I believe that Mrs Craig in her wisdom—

Hon. P. G. Pendal: It was a square committee.

Hon. TOM McNEIL: I agree. I hope *Hansard* will note laughter. Mrs Craig decided that the GLA should be 5 000 square metres. None of the recommendations was taken up. I had requested a moratorium so that the shopkeeper could sort himself out a little, but those 12 recommendations in the report were completely useless, in that they were not taken up and would have been ineffective anyway.

It has taken since 1981 to get something done to afford protection for the shopkeeper. As has been pointed out to me by another backbencher, that would also afford some protection for the landlord. I will not disagree with that. Obviously there are good and bad tenants just as there are good and bad landlords. I will not hold up the House by reiterating some of the disgusting leases that people had to sign in order to retain their businesses, their goodwill, or a percentage of their turnovers. I could go on and on about the situation that has been held over the heads of shopkeepers for the last six or seven years.

I make one comment about the contribution of Hon. Peter Wells. I also know of some shopkeepers who have suffered quite badly from the treatment of landlords. I will outline a case to demonstrate to the Government an area for which provision should be made in this Bill. I do not know whether the Government has made such provision, because I have not as yet gone through the Bill itself. Such incidents as the one I am about to relate are prevalent in today's society. Let us consider the situation in which a shopkeeper sells out to another proprietor and the proprietor may have, for example, two years of a lease and three years of an option. There is a bunch of sharks in our society today who look through such a shop and say, "That is not a bad business. It needs a bit of work done on the building, so we will buy it and then put the thumbs into the people who are currently occupying it. We will get them to do it up for us."

The late Tom Hartrey was involved in the case on behalf of the occupier. There was lengthy litigation between the people who then bought the building and the poor person leasing the shop who said, "I bought the business just like this. I am trying to make a living out of it but a shark came in and bought the building." There was then an argument as to what was defined as a floor, what was considered to be structure, and what was considered to be something the tennant had to look after, as opposed to what the landlord had to look after. The final court decision was that the shopkeeper had to pay $12 000 to bring the shop up to the standard that met with the approval of the owner and the approval of the Health Department. The shopkeeper had to pay that money in order to safeguard the last three years of his lease option. I do not know whether there should be only a local government regulation on this. There should be regulations to prevent the innocent from taking on what was an ongoing business and then finding out that some shrewdie suddenly saw the prospect of going into a business and fleecing that innocent shopkeeper. Local government should

bring in some sort of by-law that the selling of a business should be done only with the compliance of the Health Department or the like to ensure that the building was structurally sound and that the business premises were in a creditable condition.

I am not sure whether such provision is made in this Bill. I make the very honest plea that it should be. I congratulate the Government on bringing forward this legislation. It has my utmost support. I look forward to debating several aspects of it in the Committee stage.

HON. G. C. MacKINNON (South-West) [3.38 p.m.]: There is no doubt that this will finish up being a bad law, because it is based on bad cases and bad cases make bad laws.

Hon. Peter Dowding: Hard cases make bad laws.

Hon. G. C. MacKINNON: I will guarantee that if the Minister looks through *Hansard* he will find that in five times out of six the expression used has been that bad cases make bad laws, but let us correct it. I do not know what has happened to the attitude towards good, honest capitalists like Mr Dowding and Mr Berinson. I would even include myself. They no longer get a reasonable go in this society. They are almost universally branded as being crooks. They are not allowed to make an honest shilling. If it were not for landlords who build shops, premises, and retail outlets, most small businessmen would not get a go because most of them start with only enough capital to run their businesses. They certainly do not have enough capital to buy land, build premises, and do all the other things appertaining to their businesses before they start running them. Therefore, they look to rented premises.

We could go from one end of the world to the other to look at the sorts of controls that have been put on building and rents and we would discover that almost always such controls have deleterious effects. One of the first actions I was a party to in this House was that to get rid of rent controls. That was in 1956 and the argument was led by Keith Watson. It opens up all sorts of advantages when the controls are taken off. Certainly this legislation is not aimed at rent control, but at controls put on landlords in general because of some hard cases.

Quite a few of us have had occasions to have leases written for us, and have signed them for all sorts of reasons.

I take it all members of this Chamber are not landless peasants; a few own some premises and have over the years bought houses, shops and all sorts of things. If one cannot read a lease oneself it does not cost all that much to have it read for one. I know lawyers have a bad reputation for charging too much, but that is simply not true, because one can have all sorts of things done by lawyers for quite nominal charges. They will certainly read a simple lease and say whether it is okay for virtually no charge at all.

I am speaking from recent experience in that matter—two or three weeks. The lawyer I asked to read mine is not one I use every week for expensive litigation, yet he did me that service for a very modest fee. I suppose I could have done it myself, but I wanted to be safe. That is a personal matter.

Because people are so anxious they enter into all sorts of deals and then complain about them. I know there are bad landlords and there are bad tenants. I have been in the retail business. People talk of sales staff in a retail shop being there for the express purpose of skinning the customer. My experience is that it is generally the other way round; the customer is looking for all sorts of bargains, and very frequently it is the customer's over-anxiety to secure a bargain for himself which leads him to enter into foolish deals.

That applies in the motor car trade and in land deals as well. The land may be under water or badly drained. If one wants first-class land or a first-class motor car, of course one pays the top price. If one wants a first-class shop one pays the top price. If a landlord has to maintain his building and keep it in good repair he must be able to write a lease agreement which is good enough for him to make a profit on it.

My inquiries in New York about the position in Harlem disclosed a disgracefully bad condition because of rent control. If one owns a building in Harlem—or indeed in many places in New York—one literally lets it fall down, because the only way to obtain a rent review is to wait until the building falls down and one can rebuild it. Is this legislation going to lead to that sort of situation?

Hon. Peter Dowding: No.

Hon. G. C. MacKINNON: I hope the Minister is right. If it is not, why not set up a tribunal so that landlords and tenants can take their worries to a tribunal and not set up all the other regulations and restrictions?

The Bill contains restrictions. There is some confusion about turnover. One person was saying it was not possible to charge for goodwill. Of course one can charge for goodwill. In many businesses what else is there to sell but goodwill? One just cannot charge rent for it.

I would like to know whether clause 4, which provides that the lease be signed before the relevant day, would apply to a three-year lease, for instance. If one entered into a lease a year ago,

this would not apply. I wonder whether the Minister would tell me whether that lease comes under this Bill? There must be a time when it does.

Sitting suspended from 3.45 to 4.00 p.m.

Hon. G. C. MacKINNON: It is not my desire to prolong the debate unnecessarily. However, I point out that, for each and every one of the hard cases referred to by Mr McNeil or anyone else, there would be a hard case on the other side of the spectrum; therefore, the reverse position could apply. Perhaps we should have legislation for landlords.

When one begins this method of regulating, one begins to travel down a never-ending path. Why could we not have had a Bill consisting of the first five clauses, with perhaps one or two general directions, along with part III? We could then include clauses 16 to 20 and 22 to 31, setting up a registrar and tribunal to which people could appeal. If we establish many more tribunals we will be able to scrub the whole legal aid system, because nobody will be using the courts.

This constant attack on anyone who is prepared to take a risk, spend some money, erect a building, and start a business worries me. This is an attempt to regulate landlords. Retailers have been dealt with already by means of consumer protection regulations.

Everyone seems to want protection under an Act. It makes one wonder how people got by during the last 1 000 years. They seem to have managed rather well, especially over the last 150 years in this country.

As everyone else was heaping praise upon a socialist Government for introducing socialist legislation, I thought I ought to put in a kind word for those in the community who have actually succeeded to some extent and have reached the stage where they are prepared to invest some money to build a shopping centre or premises which may be let to enable a less fortunate person to commence a business and make a life for himself.

HON. PETER DOWDING (North—Minister for Employment and Training) [4.04 p.m.]: I thank members for their almost universal support of the legislation. Once again Hon. Graham MacKinnon seems to have taken a very jaundiced view of a piece of legislation which drives a most careful road between over-regulation and appropriately recognising the different negotiating positions of the parties to commercial shopping centre leases. I do not think Hon. Graham MacKinnon could say that the view is taken by Government members that there is something inherently wrong with people who are prepared to invest capital, or even to be entrepreneurial with their capital, which I assume is what he means by the word "capitalist". Certainly his reference to me was entirely inappropriate. I have none of the vestiges of capitalism which are so prevalent across the board of Opposition members in this House. I no longer have shop properties of my own. I do not have any of the vestiges of wealth, like Hon. Gordon Masters with his shops and farm.

Hon. G. E. Masters: You do not have any property at all? Do you have any shops or houses?

Hon. PETER DOWDING: I do not have any shops at all, nor do I have the large accumulation of wealth that we find among some members opposite.

Hon. G. E. Masters: To whom did you give it?

Hon. PETER DOWDING: Given that, nevertheless, I do have an understanding of the entrepreneurial activities which are necessary in the community, and I assure Hon. Graham MacKinnon that his suggestion that this legislation does not recognise that is entirely wide of the mark. The fact is that there is a need for some control which is recognised almost universally.

Hon. G. E. Masters interjected.

Hon. PETER DOWDING: What is Mr Masters' problem?

The PRESIDENT: Order! The Leader of the Opposition is disobeying the comment I made earlier today that this sort of constant, audible conversation is not allowed. I fail to comprehend why, in such a loud voice, the Leader of the Opposition would carry on a conversation with other members about the Minister's personal affairs while the Minister is replying to the debate. If the Leader of the Opposition wants to discuss other things which have nothing to do with the Bill, I suggest he do it quietly or in one of the places specially set aside in the building for that purpose; for example, the party room.

Hon. PETER DOWDING: The essential point of this legislation is that there is a very great difference between the bargaining power of a small shopkeeper—a small business person—and the owner of a large shopping centre who may, by reason of planning controls, have a monopoly in a whole suburb. I know Mr MacKinnon is not interested in the small businessman in that situation, but the Government is.

Hon. G. E. Masters: Of course, he is. He is more interested than you are.

Hon. PETER DOWDING: Hon. Tom Knight is interested in the small businessman. He indicated quite clearly how strongly he felt about the position, and I support that entirely; but Mr

MacKinnon is not interested in the small business person who is faced with negotiating with a large, possibly international, organisation which may have a monopoly shopping centre as a result of planning controls. To suggest that such people are in an equal bargaining position is ludicrous. They are not.

The small shopkeeper does not have the fire power to bargain with that sort of organisation, and that is the difference which has arisen among shopkeepers over the last 1 000 years. Indeed, the difference which has arisen among shopkeepers over the last 150 years is that one of the new aspects of our society is the move towards very large shopping centres owned by one organisation which, because of planning controls. is able to have a monopoly on shopping centre sites in an area.

Hon. D. J. Wordsworth: There is a proliferation of new shopping centres.

Hon. PETER DOWDING: Precisely; that is the problem. In many areas they provide the only way in which a small shopkeeper can set up a shop. Whereas in the past a whole variety of avenues had been available where shopkeepers could negotiate with landlords to find suitable premises, that day is fast disappearing in many places throughout Western Australia.

Hon. G. C. MacKinnon: The Bill does not deal only with that; it deals with the whole gamut.

Hon. PETER DOWDING: Of course, but the point I am making is that the change in the historical pattern justified intervention by the Government. A small business person in that situation must have his or her position recognised. Mr MacKinnon does not apparently feel that their position justifies the legislation. However, the Government does, and I believe there is widespread support for that proposition.

I turn now to comments made by Hon. Vic Ferry at the beginning of the debate when he raised two issues for response in my second reading reply, and they related to the relationship between the provisions of the Property Law Act and the Credit Act. The Property Law Act really repeats the provisions of the Statute of Frauds, which I think dates back to 1677, and relates to the enforceability of leases which are not in writing—parol agreements.

The position in the Commercial Tenancy (Retail Shops) Agreements Bill is that we have sought to give effect to the realities of the day; that is, that some of the agreements that are being caught by this legislation are in fact parol and not in writing.

I understand that there is a preference to drive people into written agreements. The difficulty is that if we ignore the parol agreements, we run the risk of the landlord seeking to bypass the Act by insisting on a parol and not a written agreement. The difficulty is to define a law which will require adequate protection for the party who is forced to enter into a parol agreement rather than a written agreement.

The middle path that is chosen by this legislation is to accept both parol and written agreements as falling within the ambit of the legislation. The issue of proof of that is another matter, and one would hope that with the necessity for disclosure statements and the like there will be an increasing awareness among people entering into these tenancies of the desirability for the lease and all the provisions attaching to that lease to be in writing.

The Credit Act contains a recognition that all credit transactions must be in writing. That carries through the provisions of, I think, the Hire-Purchase Act relating to the enforceability of contracts for the lending of money. I do not believe they are the same in this case. We are seeking to protect the tenant from the landlord who declines to enter into a written agreement, or alternatively enters into a written agreement but adds parol conditions which need to be covered by the Statute.

Mr Wells raised some matters which I think are probably more appropriately dealt with in Committee, and I trust he will not think me rude in not dealing with them now. I am sure no matter what I say he will still raise them again at the Committee stage, so I will answer his queries then.

I thank honourable members opposite to the extent they gave indications of support for the legislation. I make it clear that the Government is moving in an area where past Governments have recognised, as we recognise now, the great difficulty of drawing reasonable lines between protection and over-regulation.

The Minister responsible for the legislation in the other place has made it quite clear, and I repeat his assurances, that we will be keeping this legislation under close review. We will be interested to examine its workings and we hope that those members opposite who have an interest in this matter will maintain a watch on what is happening and inform the Government if they see a need for change. Although we believe the legislation is right as it stands, we consider that there will undoubtedly be some teething pains and a need for review. The whole Act is subject to review

in due course, and this is entirely consistent with our general philosophy on that issue.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (Hon. P. H. Lockyer) in the Chair; Hon. Peter Dowding (Minister for Employment and Training) in charge of the Bill.

Clauses 1 and 2 put and passed.

Clause 3: Interpretation—

Hon. P. H. WELLS: My remarks relate to the tribunal, which means the Commercial Tribunal of Western Australia established under the Commercial Tribunal Act of 1984. The Minister indicated earlier that, despite the fact the clause says that the only person who can put a case to the tribunal and be paid is a lawyer, a valuer would be considered an expert witness and could therefore claim payment.

Let us consider the situation where a valuer happens to be the person who knows all about the case and who could go to the tribunal on the issue in question but would have to be accompanied by a lawyer. Is this not just imposing further costs on the small shopkeeper involved? Would it not be better to amend the Bill to allow in such cases as this the valuer to be included alongside the lawyer?

It seems to be building onto the system that one must employ a lawyer so that he can represent the case the valuer puts to him. It would seem to be better to provide that it be the valuer in the first place.

Hon. PETER DOWDING: Firstly, a lawyer does not have to be employed. One may engage a lawyer to represent one if that is one's wish under that legislation.

Secondly, the honourable member should understand the difference between representation and evidence. Representation is arguing a case; evidence is evidence of value. If one calls a valuer one calls the valuer to give evidence, and the evidence would be evidence to enable a registrar to determine a dispute. No amount of argument is able to give the registrar any evidence of value. If one calls a valuer one calls him as a witness to give evidence of a fact or of his professional opinion, but he cannot give the evidence of that fact or of that professional opinion other than as a witness. They are performing different tasks.

In any event, it is not really the subject of this clause because there is no reference in the legislation to the procedure to be followed. I am at some loss to go further than this, other than to say that the honourable member is confusing the functions for which they are being called to give evidence. Perhaps the Deputy Chairman will allow me to refer to a clause with which we will deal in due course.

Also contained in this Bill is a proposed mechanism for arbitration. An arbitrator may be a valuer in which case the arbitrator does not perform the functions of an expert witness, nor does he perform the functions of a lawyer in arguing the case. He performs the function of an arbitrator who uses his or her expertise to make a decision about a case. In other words, instead of having a judge or a registrar, a professional expert is appointed who will make his or her own decision and perhaps even will hear representations from a lawyer.

The Commercial Arbitration Bill provides for lawyers to represent people appearing before arbitrators. If the valuer is performing the role of arbitrator, a lawyer may appear before him, but a valuer would not appear before him except as a witness.

I think the honourable member will see from those comments that separate functions are to be performed, at times perhaps by the same person or by a person with similar qualifications, and not the one person in fact. The lawyer argues the case, if the client wishes to be represented in that way, and it is the professional witness who gives evidence of opinion or fact. The valuer, or the person who acts as arbitrator, who may be an expert, and he may be a valuer, will listen to representations made to him or her and will make a decision on those facts, because that is what the party agreed.

Hon. P. H. WELLS: I thank the Minister for that explanation. I point out that I am raising the matter under this definition because it refers to the tribunal. We find a reference to the tribunal later in the Bill. It appears that the Government has failed to make clear to the Australian Institute of Valuers—I would assume that is the major group to be used—the Minister's comments, because it made representation to make certain that its members were not disadvantaged and were able to recoup something for their services. In a letter to me it said, "It is obvious that valuers have been involved in tribunals and the payment of their time must be covered". The Australian Institute of Valuers, after studying this legislation, felt there may well be a disadvantage, if what the Minister says is correct—that its members will not be handling the cases. I gather that if a lawyer did not handle a case the person would have to handle it himself.

The DEPUTY CHAIRMAN (Hon. P. H. Lockyer): Order! There is far too much audible conversation in the Chamber and I am having great difficulty even hearing Hon. P. H. Wells.

Hon. P. H. WELLS: I was trying to tone down my voice for the sake of the Minister because I thought it was hurting—

The DEPUTY CHAIRMAN: It is not Hon. P. H. Wells who should tone down his voice. Order, please!

Hon. P. H. WELLS: I hope that the Minister is saying there will be no disadvantage to the small business person, but such a person would have to get two people to do the same job. I have raised the issue, but I am not terribly convinced. It appears to me that that is another method by which the Minister is looking after his profession. I have always noticed that lawyers stick together. They all want to make money. We find legislation is always so imprecise so that they can continue to make money. I have some feeling that all this clause really does is ensure that the Minister looks after his own friends in the legal profession and not the small businessmen.

Hon. PETER DOWDING: Despite the jocular nature of that comment, I really must put on record that it is absolute nonsense. It is nonsense for two reasons. The first reason is that it is a longstanding principle that valuers have the function of preparing valuations for which they are paid a fee. If they sit as arbitrators they are paid a fee for doing so, but it is not their function to appear as representatives of people. That is the function of lawyers. The role of a lawyer is to appear as a representative. If a fee is to be charged for appearing and being a representative under the proposed Commercial Tribunal Act, that fee can be charged by a lawyer. If one wants someone to appear for one for no fee, there is no reason that a person cannot appear as "the next friend" to assist someone.

The second reason is that it must be obvious to Hon. P. H. Wells that people who utilise the services of lawyers are trying to find ways around legislation which is becoming ever more complex. This legislation is not one such example. It is very simple.

There is a role for valuers in the legislation. They participated in the debate on this legislation on the retail advisory committee. They were present and participated on that committee. I do not know what letter the honourable member has, but they did participate in the debate. Their role is not disadvantaged. Their role exists. It does not happen to arise under this clause, but even if it did, they are not disadvantaged in any way by this legislation. In fact, the Bill acknowledges that disputes will arise at which their services will be imperative.

Hon. P. H. WELLS: I thought I had concluded my comments, but the Minister's last reference to the licensed valuer involved in this legislation concerns me. I point out to the Minister that this Bill will affect the Commercial Tribunal Act which is referred to in clause 3 under the definition of "Tribunal". These people feel there is a disadvantage. In some places this Bill provides for licensed valuers to be appointed. I gather they would get their case together. Surely, they do not just put the facts together and hope to sort it out; they must represent their clients. I gather that is what is clearly said in sections of the Bill, but when we come to the appropriate part of the Bill I will deal with that matter.

I am not convinced, as the Minister is convinced, that the small shopkeeper is being protected by the system. Because there are two different actions he will find himself caught up with the red tape and two people will be doing the one job.

Hon. V. J. FERRY: I want to refer to the interpretation definition of "landlord" on page 3. I am pleased to see that an amendment in that regard was made in another place to protect the person who holds the lease. My interpretation of this definition is that it does not give a person holding a stall on a day-to-day basis on commercial premises the right to have a lease on those terms.

Is it there to ensure that it is only a temporary arrangement and that they do not have a right under this legislation? The definition says in part, "But not include a person who assigns his interest as tenant under the lease". It indicates to me that this does not include a person who is granted permission to hold a one-day stall in a shopping centre, whether it be a P & C association or some other organisation. They do not have the right to think they have a permanent lease under this Bill; it is a temporary expediency.

Hon. PETER DOWDING: No. Where a lease is assigned for the purposes of the Bill it would have to be shown that the person was carrying on a business for a retail store activity and the like. It would not apply in the example given by Mr Ferry.

Hon. V. J. FERRY: I refer now to the definition of "lease" on page 3 of the Bill. I raised this in the second reading debate and referred to a lease being in writing or a verbal agreement. I can see the problem with having a verbal agreement as compared with a written one, but I hope, as the

Minister said during the second reading debate if I interpret his words correctly, that with the passing of this legislation there will be a better understanding of what is required in the commercial world and more written agreements will be used so that there is less likelihood of misunderstanding or litigation arising from verbal commitments.

I am not particularly happy to have a legal situation in which a verbal undertaking is appropriate and accepted. I can see there would be cases where a verbal agreement is absolutely necessary. I prefer and hope all agreements will be in writing for the clarity of the situation and the smooth running of lease agreements.

Hon. G. C. MacKINNON: Something the Minister said in reference to a definition of "landlord" rang a slight bell. I understand that if a man who is renting premises sells the business and transfers the lease, which is the cleanest and tidiest way to do it, and the subsequent buyer of the business and holder of the lease defaults on the rent the original landlord can go to the first signatory to the lease.

Hon. PETER DOWDING: There is no change to the legal obligations by that definition.

Clause put and passed.

Clauses 4 and 5 put and passed.

Clause 6: Disclosure—

Hon. V. J. FERRY: This clause covers disclosure statements and it will be a tremendous improvement to current commercial practice. I understand there will be an obligation for a disclosure statement to be made so that the tenant knows exactly what is the total proposition. The only thing that really bothers me, and I alluded to this earlier, is that the prescribed form is not yet known. The people who are interested in this document will be looking to see what it contains when it is eventually promulgated.

The disclosure provision has my full support because unless the full facts are known by all parties there can be no reasonable hope for a successful contract.

I refer now to subclause (3) which says that a notice of termination under subclause (1) shall not be given if a period of 28 days has expired after the lease was entered into. One wonders how the date of entering the lease will be determined. I should have thought the date would commence from the time the lease was executed. That would seem to be the appropriate day for the calculation of 28 days, but the clause refers to the lease being entered into. I would like the Minister to explain the operation of this clause.

Hon. PETER DOWDING: The lease is entered into on the date on which the agreement is made. That is perhaps the date on which it is signed or on which agreement is concluded.

Hon. V. J. FERRY: It is complicated for a layman—

Hon. Peter Dowding: There may be nothing to sign.

Hon. V. J. FERRY: There must be some notification. One would have thought a lease would have a date of execution.

The clause seems to be a little loose for a layman. Obviously, a person with legal training would have no bother in interpreting the clause. However, people who enter into agreements are usually laymen like myself and this clause would cause concern and confusion in their minds.

Clause put and passed.

Clause 7: Rent based on turnover—

Hon. PETER DOWDING: I move an amendment—

> Page 7, line 35—To delete "28" and substitute the following:
>
> "42".

Hon. V. J. FERRY: I support the amendment; it is very sensible. It has been pointed out in other places that 28 days is much too short a period at the end of each calendar year for businesses to put their affairs in order and to have their accountants or whoever prepares their statements to complete the necessary work. An extra 14 days would allow that period to be increased to 42 days as has been suggested by the Minister in his amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 8 and 9 put and passed.

Clause 10: Consent to assignment for sublease—

Hon. V. J. FERRY: This is a very important clause. The 42-day period is consistent with the amendment which has just been agreed to. The Law Society of Western Australia agrees with these amendments.

Clause put and passed.

Clause 11: Rent review—

Hon. P. H. WELLS: The Minister may remember that, during my second reading speech, I made some suggestions in relation to clause 11(3). It allows for the position that, if two licensed valuers do not agree on a value, the course open for them is to try to find one valuer agreeable to them both to handle the dispute. I gather they must be representing their clients rather than presenting

facts. At about line 15 of subclause (3) the provision talks about the situation of the parties first appointing one valuer each. It states that a person selected by them must be a licensed valuer and then goes on to say that if they do not agree they should then agree on the appointment of another valuer. They should go through that process twice and if then there is no agreement they would approach the registrar.

I suggest that once a dispute has reached that stage it is necessary to appoint a person who will produce expert knowledge in the area about which we are speaking; that is, in relation to the valuation of retail leases. However, a valuer may be a licensed valuer but he may not be a licensed valuer experienced in that field. I think the Government should amend the clause to provide that the valuer appointed should be a member of the Western Australian Institute of Valuers. That would ensure that the valuer would not only have experience but would also have available to him a backup from the institute and from other valuers who are members of the institute. I ask the Minister to consider my amendment which I have circulated.

Hon. PETER DOWDING: While I have seen the member's written proposal, I did not understand what he was talking about. I invite him to have a look at that written proposal. The written proposal provides for a procedure that where the value arrived at by a valuer is not agreed upon, the party shall then appoint two licensed valuers. If they cannot agree then the proposal is that they should go to the registrar for settlement of the dispute. However, that is not possible except by leave.

The Bill proposes that the procedure through which the parties go is to appoint a licensed valuer to whose decision they both agree to be bound.

Hon. P. H. Wells: Two valuers.

Hon. PETER DOWDING: No, one. He is appointed and the parties are bound to agree to his decision. If they do not agree to be bound by that decision then two valuers are appointed. That is what is to happen.

The only way that there can be any sort of ongoing appeal against that sort of decision is if two valuers do not agree or if the registrar gives leave. That is perfectly sensible. If the parties agree to the two valuers they essentially agree to be bound. If something goes wrong and one of the parties feels disadvantaged by the decision of the two valuers, that is it, unless leave is granted by the registrar, the recommendation from the land valuers would be simply that they either agree to appoint someone by whom they will be bound or they ask the president of the institute to appoint somebody by whom they will be bound.

I can understand that the institute believes that is the proper role of the chairman of the institute and that is a clause which is included in some leases. However, the Government felt it was inappropriate to give the chairman of the institute that status under this legislation and an alternative has been given.

Nothing the honourable member has said detracts from the procedure of the Bill. I do not wish to detract from the land valuers' suggestion. I do not see why this Statute should give the land valuer's president that power. I am not suggesting it is, but it may be a person with whom neither of the parties want to deal and they may not wish for that appointment to be made. However, if they agree to appoint that person there will be nothing to stop them. The Bill does not reflect on the status of the land valuers and we on the Government side of the Chamber reject the suggested change.

Hon. V. J. FERRY: What would be the situation if one of the parties failed to appoint a valuer or had no intention of appointing a valuer?

Hon. Peter Dowding: The other party would go to the registrar.

Hon. V. J. FERRY: Certainly the other party could go to the registrar, but the registrar should have the power to appoint a valuer who will make a determination. Having done that a second opinion could be obtained.

Hon. Peter Dowding: He can still get that. Under section 16 or section 17 of the Bill he can go to the registrar.

Hon. V. J. FERRY: I realise that the power is in the Bill, but it would be preferable to have it spelt out to make it obligatory for the registrar to appoint a valuer before action takes place. He may not do that.

Hon. Peter Dowding: That is right.

Hon. V. J. FERRY: It would be appropriate when dealing with valuers and valuations to have a second opinion because it would help the registrar in his determination.

Hon. PETER DOWDING: It is a long-time standing procedure that where parties agree to have a non-judicial officer determine a dispute they may do so. The Commercial Arbitration Act has provided that power for many years and it is a long-standing tradition, but it applies only where the parties agree. If that is not the case it has to be determined by a judicial officer, in this case a registrar, or by a referee to the tribunal which is outlined in clause 22 of this Bill.

Mr Ferry is right in saying that the registrar or tribunal may wish to have formal evidence of the valuation. In such a case they would call for it or the parties would present it to them. However, they could not impose on the parties to the lease a valuer as an arbitrator of a dispute without their agreement. That is the distinction between the procedure Mr Ferry has queried and the procedure in the Bill.

Hon. V. J. FERRY: This Bill certainly opens a minefield and there is no question about that. It is without doubt exploratory legislation. I know that this legislation is operative in Queensland and that other States are looking at it. This clause will present some difficulties when the legislation is passed and the Opposition will watch with interest to ascertain the outcome of it.

Hon. P. H. WELLS: I apologise to the Minister in regard to my explanation because I did give the reverse situation. The Minister mentioned that it is inherent in a number of Bills that the valuers must be chosen from the institute. My argument is that a licensed valuer may not necessarily have the experience to undertake the requirements outlined in this Bill. The Commercial Tribunal would have a group of expert witnesses who could be called upon. If the Government did not want to have the president of the institute appoint the valuer, surely a mechanism is available whereby it could call upon a pool of competent people set up by the Commercial Tribunal.

Hon. Peter Dowding: There is nothing to stop it from doing this.

Clause put and passed.

Clause 12 put and passed.

Clause 13: Right to at least 5 years' tenancy—

Hon. PETER DOWDING: I move an amendment—

> Page 15, line 3—To insert after "tenant" the following:
>
> " notice of which has been given by the landlord, in writing, to the tenant "

Hon. V. J. FERRY: The Minister has not given an explanation in regard to this amendment. However, the amendment pleases me.

The DEPUTY CHAIRMAN (Hon. P. H. Lockyer): Order! I am finding it increasingly difficult to compete with those members who are holding a meeting in the corner of the Chamber. I ask them to cease and to move so that I cannot hear them.

Hon. V. J. FERRY: It pleases me that notice in writing must be given by the landlord to the tenant. I have mentioned during this debate my concern about notice not being given in writing. If notice is given in writing to the tenant surely it will set out clearly what the problem is and appropriate action can be taken. It will ensure that there is no ambiguity.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 14: Compensation by landlord—

Hon. PETER DOWDING: I move an amendment—

> Page 17, line 10—To insert before "then" the following:
>
> " and after being given by the tenant notice in writing requiring him to rectify the matter does not do so within such time as is reasonably practicable ".

Hon. V. J. FERRY: This amendment meets with my wholehearted approval, but, as I mentioned earlier, I cannot understand why it was not included in the Bill originally or amended in another place. I am glad that the Minister has taken the opportunity to insert these amendments during the passage of the Bill in this Chamber. This is another example of the value of a two-House system. I say that advisedly because the amendments we have dealt with today are extremely necessary.

The inclusion of this proposed amendment in relation to a tenant giving notice in writing to a landlord to correct something clarifies the situation as to what is required. Furthermore, the landlord is given a reasonable time—to use the words of the amendment, "as is reasonably practicable"—to take action, whatever that action may be. This is a most desirable insertion into the Bill, because the landlord, for a number of reasons, may not be in a position to take the appropriate action immediately, or even within a few days. The landlord may be inaccessible in one way or another—he may be in hospital or overseas—and he would need time to attend to the matter. Similarly, if the work involves some structural alteration for which he has to obtain quotes, he would need time to do that. The proposed amendment is a sensible and practical one and it certainly meets with my approval.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 15 to 22 put and passed.

Clause 23: Constitution of Tribunal—

Hon. P. H. WELLS: Could the Minister refresh my memory with regard to the set-up required here in terms of the Commercial Tribunal Act? I vaguely remember that that Act contains a pro-

vision for an expert panel, as well as a panel representing landlords and tenants. However in the present case I ask whether this is so. I wish to know whether the provision for appointing licensed valuers to a panel is covered by the Act, or whether it should be covered here.

Hon. PETER DOWDING: The power to appoint experts exists under section 6 of the Commercial Tribunal Act. The Minister has the power to appoint to panels persons whose expertise would, in the opinion of the Minister, be of assistance to the tribunal. The Commercial Tribunal Act set up the tribunal and its structure, and the enabling Acts, such as this we are dealing with today, set up the transfer of jurisdiction to the tribunal. Subclauses 23(a) and (b) are therefore necessary to provide for the setting up of representative persons to deal with the leases, but the valuers and their expertise can be covered under the Commercial Tribunal Act by the setting up of the panel, and would be. In fact, there would be a panel of valuers in any event, because the valuers are licensed and the licensing is conducted by the tribunal.

Hon. P. H. WELLS: In view of that, and in view of the claim by the Australian Institute of Valuers that its members have experience in the commercial retail field, would this be an area of expertise from which the Government would consider choosing representatives for such a panel?

Hon. PETER DOWDING: Yes, the valuers are experts who can be on that panel. The choice of panel members for the tribunal is a matter for the Minister under the Commercial Tribunal Act in respect of consumers, and in respect of representatives of the interested parties where there is a licensing issue. A third type of panel is a panel of experts. The commercial tenancy legislation provides that, in addition, there will be a panel of landlords and tenants, as well as the other panels that are dealt with under the Commercial Tribunal Act. In addition to that, the Commercial Tribunal Act has a panel of valuers because it licenses valuers. The Act provides for a panel of experts, a panel which can encompass all sorts of expertise, from lawyers to valuers. The tribunal can have access to a wide range of panels, and there is no question that valuers will be appointed to those panels when necessary.

Clause put and passed.

Clauses 24 to 28 put and passed.

Clause 29: Annual reports—

Hon. P. H. WELLS: I agree that there is a need for an annual report, but it concerns me that we do not have some guidelines in terms of reporting so that there are some consistencies and standards. Also it appears that if a consumer report attacks a person, he has no recourse to protection. For example, the Consumer Affairs Act often singles out people in a way that does not seem to be just. If a matter is taken to a court, a person can answer a charge, but if the annual report under this legislation is along the lines of some consumer reports, I do not believe that justice would be achieved. If a person is taken to court, he has the opportunity to answer in court. However, if this annual reporting is along the lines of some consumer affairs reports, I am worried because of the effect.

This is a matter on which I would like to see a standing committee established so that recommendations can be made about the reporting of Government instrumentalities. The reports could be made in a better format.

Hon. JOHN WILLIAMS: It is not my role to reply on behalf of the Minister, but I suggest to the honourable member that perhaps he should read the reports which have already been published by the Standing Committee on Government Agencies.

Hon. P. H. Wells: I have read them.

Hon. JOHN WILLIAMS: In that case, Hon. Peter Wells would know that within a matter of days a report will be presented in this Chamber, and that report will be entitled "Accountability". The accountability recommendations to this Chamber from the standing committee will encompass every objection raised by the member.

There is no doubt that the standard of reporting by Government agencies is inadequate and, in some cases, to use an even stronger term, pathetic. I know that Hon. Kay Hallahan and Hon. Norman Moore will support that view because they are co-members with me and Hon. Colin Bell and know that that is being done. We have already written two reports to the House telling it what we propose to do. It is unfortunate that due to a technical reason, the report on accountability is not in this Chamber this afternoon.

Hon. D. J. Wordsworth: It might get here too late.

Hon. JOHN WILLIAMS: It will not get here too late because the latest information I have makes me even angrier that today will not be the last day of sitting for the House in this session. I will speak about that at a later stage.

I make no criticism of the Minister at the Table, nor of the Minister occupying the front bench, the Attorney General, but not only do organisations fail to make annual reports in a proper manner, but they also fail to present the reports of their organisations. They keep them in some convenient

drawer for perhaps 10 to 12 months before they come to us. I assure Hon. Peter Wells that a yardstick has been prepared by the standing committee of this House which will make annual reports meaningful documents not only to this Parliament, but also to the public. After all, these Government agencies are accountable to this Parliament through the Minister. Members in their wisdom appointed that committee to ensure that this would be looked after. As Hon. Peter Wells said he wished someone would assure him it was being done, I felt I should do so.

Clause put and passed.

Clauses 30 and 31 put and passed.

Title—

Hon. V. J. FERRY: I want to record briefly my feelings on this Bill. I believe it is difficult legislation for the people involved in commercial tenancy operations. I guess we will have amendments coming to this Parliament in the light of experience in the very near future. There are some very dfficult areas in the legislation.

Hon. PETER DOWDING: I note the comments. Some explanatory material will shortly be made available through the Small Business Development Corporation. I hope that members will participate in disseminating it.

Title put and passed.

Report

Bill reported, with amendments, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon. Peter Dowding (Minister for Employment and Training), and returned to the Assembly with amendments.

INDUSTRIAL RELATIONS AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon. Peter Dowding (Minister for Industrial Relations), read a first time.

Second Reading

HON. PETER DOWDING (North—Minister for Industrial Relations) [5.15 p.m.]: I move—

That the Bill be now read a second time.

This amending legislation provides for improvements in the operations of the Industrial Relations Act insofar as it applies to employment within the public sector. The Industrial Relations Act which was extensively amended late last year and operated with effect from 1 March 1985, now incorporates within the Western Australian Industrial Relations Commission, the former Public Service Promotions Appeal Board and the Government Employees' Promotions Appeal Board as one board.

In addition, the amended provisions widen the concept of promotion such that it now applies right across the public sector and includes public servants, salaried employees, and wages employees within the same system.

Accordingly, public sector employees have the right to apply for positions across departments, authorities, and instrumentalities, and can lodge promotion appeals against the failure to be selected for any position, for which they are qualified.

This requires that every vacant position, with certain specified exceptions, be published in a form that invites applications on a public sector-wide basis. This raised a number of immediate problems particularly in respect of "base grade" positions and transfers. The requirement to publish and make available for application and appeal every vacant position, including base grade positions, has created administrative difficulty.

An examination of the situation has also revealed failings in the previous legislation. This, however, was not brought into clear relief until the proclamation of the latest amendments.

The amendment provides for a mechanism for the continued operation of the legislation under present arrangements. This will allow for a working party with representatives of both unions and employers from the public sector to be formed to establish a permanent solution through the proper processes of consultation. The amendment empowers the Minister, in the meantime, to decide in the appropriate circumstances which positions should not be published or be subject to promotional appeal as required in the principal Act. The Minister, in the exercise of his discretion, will be advised by the working party comprised of public sector unions and employers.

In order to provide for the effective operation of the Government redeployment office, an amendment is also necessary to prevent any right of appeal against transfers in redeployment situations. It is also necessary that scope be provided to allow non-appealable transfers where other special circumstances exist.

In turning to the specific amendment, clause 3 seeks to amend section 80X of the principal Act to permit the Minister to declare that the division of the Act shall not apply to the offices specified in the notice.

The notice will, of course, be published in the *Government Gazette*. Subsection (6) provides that section 42 of the Interpretation Act will apply to notices made under subsection (5). The reference to section 42 of the Interpretation Act 1984 provides for all regulations to be laid before both Houses of Parliament. The disallowance provisions of section 42 will permit each House to review such notices.

I commend the Bill to the House.

HON. G. E. MASTERS (West—Leader of the Opposition) [5.19 p.m.]: The Opposition is prepared to proceed with the Industrial Relations Amendment Bill. The easiest way to address the problem would simply be for me to stand up and say, "I told you so" and then sit down. However, the Bill has more in it than would be covered by simply expressing that view. I recall, as I am sure does the Leader of the House, that the Government in September last year brought before this House a very large number of amendments to the principal Act. When we were discussing that amending Bill I made particular reference to what I thought would be a problem. That problem is now addressed by the Government in the legislation before the House today. I said at the time that I thought that the Government's proposal simply to throw open the door for anyone, even down to the office boy, to appeal against an appointment would cause some serious problems. I questioned not only that, but also how staff dealing with appeals would cope with the large number of people who would appeal simply because they had the opportunity, and nothing would be lost by their appealing.

The Minister's second reading speech suggested that there have been many problems in this area. On Wednesday, 19 September in this House I said the following, and I quote from *Hansard* page 1391—

> The Promotions Appeal Board proposes to permit appeals by all Government employees, as I understand it. I am sure that the consequences of this will be massive additional costs to the public purse. It would be quite horrific if everyone were able to appeal. I understand that some senior Government officers are very worried indeed about this proposal. I ask the Minister for an indication of the extra staff that will be required. Surely to goodness, knowing what will happen, knowing the demands placed on the staff, he must have carried out an exercise to determine the number of additional staff needed under this new arrangement.

In the Minister's second reading speech he said that there have been some administrative problems as a result of the Government's amendments. He said that the requirement to publish and make available for application and appeal every vacant position, including base grades, had created administrative difficulties.

That is exactly what I said would happen, and it has happened. The Government has been forced to bring an amendment to this House which will try to address the problem. The Minister should have paid more attention to the Opposition at the time or at least listened to the advice of the senior departmental heads who said they could envisage serious problems. These problems have occurred and today we see the result of the Government's choosing not to take heed of some of the fair comment made by the Opposition in this House.

The Bill before the House proposes that the Minister will be able to decide whether certain vacancies which occur in the public sector will be advertised. When those positions have been filled the Minister will be able to decide that there shall be no appeal. Firstly, he can decide that a position will not be advertised and secondly, that no appeal may be made. That is a reasonable proposition under the circumstances, but I would have thought that the Government would have considered the proposition that people in the junior grades should not appeal. I guess that is the intention.

Hon. Peter Dowding: Base grades.

Hon. G. E. MASTERS: That is not what the Bill states.

Hon. Peter Dowding: There may be wider areas.

Hon. G. E. MASTERS: There may be and no doubt the Minister will explain it to me. Nevertheless this problem has been created by the Minister's not considering the matter properly, no doubt as a result of pressure from the unions which insisted that everyone should have the right of appeal. The Government has acted as it normally does when it is in a spot; that is, it has said it will set up a committee comprising representatives of Government employers, unions and others involved in this matter. The result should be what I hope it will be; that the base grades will not be able to appeal but the senior positions will.

However, the Bill does not make that provision. The Minister and the Government should seriously consider rethinking this Bill. We will pass the Bill tonight because I think it is necessary to do so; but the Government should reconsider the terms of the Bill which will become law to make sure that the base grades cannot appeal but

the senior positions will always have that right. The senior positions should always be advertised.

A further possibility is that a Minister could decide to give a senior vacancy to one of the Government's mates; for one reason or another it seems to be the Government's practice to give jobs to its friends. Having decided that the friend will be given the senior position it would suit the Government better, firstly, not to advertise the position and, secondly, once that person had been appointed to decide that there shall be no appeal. This Bill will allow that to happen and I give fair warning to the Government that if we see any indication of that type of activity where jobs are given to the boys we shall raise the matter in Parliament at every opportunity.

I am sure the Public Service is already upset at what the Government is doing. If this Bill is used in the way I have described, it will be even more upset. I suspect there is still that possibility. In the last couple of years the Government has continued to increase the number of friendly appointments—jobs for the boys—to the detriment of the Public Service. I would be interested to have an assurance from the Minister on this point and an explanation as to why the Government is bringing this matter forward in this way at this time.

HON. PETER DOWDING (North—Minister for Industrial Relations) [5.26 p.m.]: There is no sinister event or intention behind the introduction of this legislation. There is, as is described in the second reading speech, a need to address an administrative problem which has arisen and of which we are aware.

As Mr Masters said, he identified this problem in the debate on the Industrial Relations Amendment Bill. We believed it could be resolved, but it is clear that more work needs to be done before it can be resolved. It will be resolved in consultation with the Civil Service Association, the unions involved, and the Government bodies and instrumentalities which make up Government employers.

. The reference to any other reason for the legislation is quite wrong and I not only reject the proposition of Hon. Gordon Masters that my Government would use a position in that way, but also say it is certainly not our intention to avail ourselves of any opportunity this amendment might present. Indeed, we shall be working as closely as possible with the unions, including the CSA, in order to achieve a more fundamental and effective solution to this problem.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (Hon. John Williams) in the Chair; Hon. Peter Dowding (Minister for Industrial Relations) in charge of the Bill.

Clause 1: Short title—

Hon. G. E. MASTERS: I welcome the Minister's comments and his assurance, now recorded in *Hansard*, that in fact my suspicions are incorrect and the Government will not misuse the opportunity provided in the Bill for certain appointments to be made which are not in the best interests of the Public Service.

I draw to the Minister's attention the Act and the amendments made last year which allow the appointment to a vacant office of a person who is not an employee of the Government; in other words under the law as it now stands, the Government is permitted to appoint to the Public Service or Government service a person who is not a public servant or Government employee, and it can get someone in from outside.

Mr Berinson seems a little perturbed about that.

Hon. J. M. Berinson: I did not say anything.

Hon. G. E. MASTERS: The Attorney's expression worried me and I want to make sure he understands this point because he may be handling industrial relations next year.

Hon. J. M. Berinson: I do not think I could look forward to a promotion of that nature.

Hon. G. E. MASTERS: No-one who gets the Industrial Relations portfolio regards it as a promotion.

At the moment the law permits the Government of the day to appoint a person to a Government position even though he or she may not be employed by the Government.

If one has any doubt, it appears on page 84 of the amending Act and it is incorporated in the parent Act. Subclause (4) says—

> Nothing in or prescribed under the section prevents—
>
> (b) the appointment to a vacant office of a person who is not an employee.

That is a Government employee. But in every case there is an opportunity for people who are distressed by an appointment to appeal and they have the opportunity of winning that appeal.

There is also a need for that position to be advertised. This Bill will allow the Government of the day to make an appointment to a Government position without advertising and with no opportunity to appeal. That is a serious matter, and I am sure the Government advisers fully under-

stand that is the position. However, the Minister has recorded in *Hansard* that the intention is not to fill senior positions by using this provision as an opportunity to create jobs for the boys. If it did it would be in serious trouble from the unions and from the Public Service itself. Nevertheless it is there and it can be used at any time. This is a very dangerous proposition to put in an Act of Parliament.

Clause put and passed.

Clauses 2 and 3 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon. Peter Dowding (Minister for Industrial Relations), and passed.

ACTS AMENDMENT (BETTING CONTROL) BILL

Returned

Bill returned from the Assembly without amendment.

CONSTITUTIONAL CONVENTION

Appointment of Delegates—Request for Council's Participation: Assembly's Message

Message from the Assembly received and read requesting the Council's participation in the Australian Constitutional Convention.

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [5.33 p.m.]: I move—

> WHEREAS the Legislative Assembly of the Parliament of Western Australia has resolved to continue to participate in the Australian Constitutional Convention and has by further resolution outlined a basis for such continued participation and invited the Legislative Council to continue its participation in the Convention on that basis: NOW, THEREFORE, the Legislative Council resolves to continue its participation in the Australian Constitutional Convention on the basis outlined by the Legislative Assembly and further resolves:
>
> 1. That as from the date of this resolution the following members shall be the members appointed by the Legislative Council to represent the Parliament at the Convention, namely—
>
> The Hon. D. K. Dans.
>
> The Hon. J. M. Berinson
>
> The Hon. I. G. Medcalf
>
> The Hon. P. G. Pendal
>
> 2. That the Legislative Assembly be informed of this resolution.

Question put and passed, and a message accordingly returned to the Assembly.

RESERVES AND LAND REVESTMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon. J. M. Berinson (Attorney General), read a first time.

Second Reading

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [5.36 p.m.]: I move—

That the Bill be now read a second time.

This Bill is similar in intent to many other measures brought before the House each year to obtain the approval of Parliament to vary Class "A" reserves and in this case to close certain pedestrian accessways situated in various suburbs.

Class "A" Reserve No. 21406 situated at North Beach in the electoral district of Karrinyup and the electoral province of North Metropolitan is vested in the City of Stirling for the purpose of "public recreation". The reserve forms part of an area known as Star Swamp which has been the subject of a number of proposals for preservation of this important wetland and surrounds. Cabinet recently approved the reservation of a 93 hectare area which includes Reserve No. 21406.

In order to put into effect Cabinet's proposal, it will be necessary to formally cancel Reserve No. 21406 before the subject land can be included in the proposed reserve which will be set apart for the purpose of "conservation of flora and fauna and recreation". This clause seeks that approval.

Millstream Chichester National Park Class "A" Reserve No. 38333, situated 50 kilometres south of Roebourne in the electoral district of Pilbara and the electoral province of North, is set apart for "national park" and vested under the Conservation and Land Management Act in the National Parks and Nature Conservation Authority.

The reserve completely surrounds De Witt Location 188, a freehold enclave of 16.1874 hectares. Although location 188 has no significant features,

in 1983 the then National Parks Authority, while pursuing a policy of purchasing enclave blocks within national parks, acquired the land for inclusion in the park. This clause seeks to formalise the proposal.

Class "A" Reserve No. 37617 situated in the Shire of Wanneroo, the electoral district of Moore and the electoral province of Upper West, is vested in the Shire of Wanneroo for the purpose of "protection and preservation of Orchestra Shell cave". The cave within the reserve has been declared a protected area under the Aboriginal Heritage Act.

The Shire of Wanneroo has requested excision of a small area for stormwater drainage and the WA Museum has agreed to the excision provided the Aboriginal site is not affected.

The Museum has also pointed out that the Aboriginal site has always been known as Orchestra Shell cave and in the interests of standardisation, has requested the reserve purpose be changed to "protection and preservation of Orchestra Shell cave". This clause seeks approval for the excision and the minor change to the description of the reserve purpose.

The latter part of this Bill seeks approval of the closure and revestment in the Crown of eight pedestrian accessways situated in various suburbs.

These accessways were created from private freehold land subdivisions under section 20A of the Town Planning and Development Act. As a condition of subdivision they were vested in Her Majesty but the passage of time has indicated that, in these particular instances—and I stress "particular"—these accessways have been found to be either not required for their purpose or have otherwise caused problems in that they have seriously detracted from the social amenity and environment of the neighbourhood by misuse.

Reports of damage to property, wanton vandalism, intrusion into family privacy, and antisocial behaviour have been submitted by adjoining residents to local authorities as supporting reasons for seeking closure of a number of these accessways.

In all cases the closure applications have been submitted by the relevant local government authority which passed resolutions for closure after giving adequate publicity to the intention and hearing objections or receiving petitions, both for and against, in some cases.

The need for this legislative measure arises from legal doubt being expressed by officers from the Crown Law Department that existing legislation under the Local Government Act is not available to effect closure of these types of accessways and there is no other statutory provision enabling their closure.

Ultimately, amendments to existing Statutes such as the Town Planning and Development Act and part XII of the Local Government Act will be required to establish permanent legislative powers to deal with closures of this nature but, as a means of resolving these particular eight cases where closure is considered to be an immediate requirement, this measure has been introduced.

This is seen only as a short-term solution to the lack of specific legislative authority for closure of pedestrian accessways and, as previously stated, amendments to other existing Statutes will be required to provide permanent powers. This whole question is presently being examined by an interdepartmental working party.

It is proposed that machinery already established in part VIIA of the Land Act be used to enable disposal of the unwanted accessways to adjoining holders at valuations assessed by the Valuer General in a manner similar to that for public roads which are closed when of no further use.

Reasonable time will be allowed for payment for land incorporated into an adjoining owner's title.

I commend the Bill to the House.

Debate adjourned, on motion by Hon. N. F. Moore.

ACTS AMENDMENT (STRATA TITLES) BILL

Assembly's Amendment

Amendment made by the Assembly now considered.

In Committee

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

The CHAIRMAN: The amendment made by the Assembly is as follows—

Clause 7.

Page 3, line 29—To delete "(1)" and substitute the following—

"(3)".

Hon. J. M. BERINSON: I move—

That the amendment made by the Assembly be agreed to.

As is obvious, this amendment is of a minor drafting nature and, I believe, requires no debate.

Hon. I. G. MEDCALF: I have examined the amendment very carefully. It is simply a formal

amendment the necessity for which has resulted from a grammatical mistake, and we have no objection to it.

Question put and passed; the Assembly's amendment agreed to.

Report, etc.

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

DAMPIER PORT AUTHORITY BILL

Second Reading

Debate resumed from 17 April.

HON. D. J. WORDSWORTH (South) [5.45 p.m.]: The first question that comes to mind with the introduction of this Bill which seeks to set up a port authority at Dampier is how a port which handles the biggest tonnage in Australia has managed to do that in the past without the need for such legislation.

Three resource companies operate through Dampier port. They are Hamersley Iron Pty. Ltd., Dampier Salt Ltd., and the Woodside-North-West Shelf natural gas joint venture. The agreements with those companies allow for a port authority to be set up, but up until now obviously the need has not arisen. Each company has built and manages its own bulk loading facilities and the need for general cargo wharves has not arisen. Some of the construction equipment was off-loaded at private company jetties and much came by road.

Hamersley Iron, Dampier Salt, and Woodside up until now have not had extensive processing plant requirements. However, the next stage of liquefying natural gas may require more extensive facilities in the form of cranes and container handling equipment.

The port has built up a record tonnage of over 40 million tonnes a year. To understand how that has occurred, one must realise that the only common requirement to date has been that of navigation, as all the companies use the same channel and, having come into the inner harbour, ships go their own ways to each of the companies' loading facilities.

Pilotage has been handled by an organisation set up for that purpose and the Department of Marine and Harbours has provided the necessary organisational structure to make the port legal.

It is most unfortunate that the port of Dampier cannot continue to be a private port without the need to set up another semi-Government bureaucracy. Let us face it, a port authority is a mini-bureaucracy. It is answerable almost to no-one, except when something goes wrong or it wants to borrow money. The chief requirement placed on a port authority is to provide an annual report to the Minister.

When I was Minister responsible for this area approximately seven years ago, the establishment of a port authority at Dampier was in the offing. I certainly saw no need for it, nor did my successor; but now it seems the idea has fallen on fertile ground. We already have port authorities at Fremantle, Geraldton, Bunbury, and Albany and they all have their own Acts of Parliament, none of which is alike. While it might sound a good idea to have a uniform Act applicable to all, one finds on examination that this would create difficulties and it could be counter-productive.

The Bill before us acknowledges special circumstances, as each of the resource companies listed has its own agreement Act and that matter has been considered in the drafting of this Bill.

As I pointed out earlier, all the infrastructure of the port to date has been supplied by the companies.

It is interesting to note that the Minister's second reading speech states that "the authority must act as a commercial organisation, but unlike other port authorities, however, it will be entitled to retain and reinvest any profits". It was interesting to note where the Minister placed the words "as a commercial organisation". He did not say that "the authority unlike any others must act as a commercial organisation". One likes to think they all act as commercial organisations.

I notice that the Bill is very much the same as other Acts.The companies will be able to set their fees, but should the Governor see the need he may by order revise the prescribed fee if in his opinion the port authority has not in any financial year collected sufficient revenue. That is the sort of terminology used in all port authority Acts. So, while the three companies are expected to find all the funds, the Government still has some control over the fees to be charged.

The membership of the port authority is in some ways very different from other port authorities. As might be expected, one of the members of the port authority will be nominated by Hamersley Iron Pty. Ltd. and another will be nominated by Woodside Offshore Petroleum Pty. Ltd. Unlike other port authorities, the general manager is to be a member of the port authority and there will be two other Government appointees, making in all five, with the chairman being one of the Government appointees. On looking at that it is not hard to see that things are very overloaded with Government nominees.

Dampier Salt (Operations) Pty. Ltd. does not seem to have a representative, unless its representative is appointed by the Governor as one of the members he is able to appoint. It would seem that unless the Government appoints one of the Dampier Salt representatives, the representatives of the companies which are expected to foot the bill will be outnumbered by three to two.

It is certainly very unusual to find the general manager of a port authority on the board and undoubtedly at times this will make it difficult for board members to examine the management of the authority. Although in business one sometimes sees a top general manager promoted to a board, one must remember that the remaining members of the board have the right to appoint that general manager. This may not necessarily be the case with this port authority.

I am reminded of what happened at the Esperance Port Authority with the appointment of the last managing secretary. It was with that in mind that I examined the two clauses which provide the approval for a general manager to be appointed. Clause 7 provides that the port authority may, with the approval of the Governor, appoint a general manager. In other words, it must have the approval of the Government. In the Esperance case the wording was "the Governor, on the nomination of the port authority, may appoint a managing secretary".

The Esperance Port Authority proposed a person who had worked within the authority for a great number of years and who was held in high esteem. He had in fact acted in the position on occasions. However, the Minister refused to accept his nomination. The more the port authority nominated him, the more the Minister refused to accept his nomination. The authority was finally bullied into nominating the person whom the Minister wanted to be nominated, someone who I gather had had a Public Service career spent in New Guinea as an anthropologist, who had been running a restaurant in Esperance at the time, and who was a good party follower. I will not comment on that further because the matter was debated in the House and supported with local Press cuttings. But the wording in this case is even stronger in favour of the Government.

I hope the joint venturers realise where they are leading themselves by accepting this, because the Government will not only be nominating its own two members but will also have the right to select the general manager, which will give it three nominees.

So we are to see a port which seems to have been running very smoothly—smoothly enough to be the port handling the biggest tonnage of any port in Australia—changed to a mini-bureaucracy which will obviously see more costs involved. I hope the companies are well aware of what they are doing. We would have liked to see it continue as a private port.

Hon. Tom Knight: A free port.

Hon. D. J. WORDSWORTH: No, not a free port. That is something Mr Grill has in mind for Bunbury, much to the displeasure of the people of Esperance.

With those few words I indicate that the Opposition will reluctantly support the legislation.

HON. PETER DOWDING (North—Minister for Employment and Training) [5.57 p.m.]: I thank the Opposition for its support. This is, of course, a private port substantially funded by the companies, which were fully consulted on this legislation.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

Third Reading

Bill read a third time, on motion by Hon. Peter Dowding (Minister for Employment and Training), and passed.

ADJOURNMENT OF THE HOUSE: SPECIAL

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [6.01 p.m.]: I move—

> That the House at its rising adjourn until 2.15 p.m. on Tuesday, 23 April.

Question put and passed.

ADJOURNMENT OF THE HOUSE: ORDINARY

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [6.02 p.m.]: I move—

> That the House do now adjourn.

The PRESIDENT: Order! Honourable members, before I put the question I feel constrained to say that as the President of this House I am quite disturbed that before the House sat this afternoon, in my capacity as President, I called on the Leader of the House to explain to him that I had some

arrangements and I needed to know, and sought some guidance from him, whether this House would be sitting after the tea suspension. He advised me emphatically that the House would be sitting after tea, and in accordance with that instruction I altered my arrangements. I feel that as President I was entitled to be advised by the Leader of the House when he changed his mind and determined that the House was not going to sit after the tea suspension.

Question put and passed.

House adjourned at 6.03 p.m.

QUESTIONS ON NOTICE

REGIONAL DEVELOPMENT: ADMINISTRATORS

Hire Cars: Use

749. Hon. TOM McNEIL, to the Minister for Employment and Training representing the Minister for Industrial Development:

(1) What are the policy guidelines for the use of hire cars by regional administrators or their staff?

(2) What is the expenditure of each Regional Administration Office for hire cars in the past five years?

Hon. PETER DOWDING replied:

(1) The policy has been for hire cars to be used when necessary for matters of expediency.

When officers fly from home base to another area they may use hire cars to conduct their business.

It should be noted that as from 1 January, 1985, responsibility for the regional offices in the north of the State was transferred to the Department of Regional Development and the North-West. The Department of Industrial Development retains its southern regional offices and these are manned by the Department's Regional Managers.

(2) Expenditure figures for the past three years are shown in the table below. For the 1980-81 and 1981-82 financial years responsibility for Regional Offices rested with the Department of Regional Development and the North-West.

EXPENDITURE STATEMENT

USE OF HIRE CARS BY

REGIONAL OFFICES

	1984-85	1983-84	1982-83
	$	$	$
Carnarvon	140.00	319.87	830.38
Esperance	527.35	298.18	270.81
Kalgoorlie	—	—	—
Albany	202.61	382.61	227.82
Geraldton	496.60	307.31	547.70
Kununurra	3 269.91	3 343.28	3 779.23
Port Hedland	—	—	—
Bunbury	—	1 035.27	—
	4 781.03	7 430.60	9 512.34

FIRES: BUSHFIRES

Lancelin: Army Manoeuvres

767. Hon. TOM McNEIL, to the Leader of the House representing the Minister for Communication and Defence Liaison:

(1) What action has the Government taken to safeguard property in the Lancelin region from bushfires caused by Army manoeuvres?

(2) What compensation is proposed in the event of the Army causing bushfires which destroy private property?

(3) How did the Army receive approval for manoeuvres to be conducted during a high fire risk period?

Hon. D. K. DANS replied:

The Minister for Communication and Defence Liaison advised me that—

(1) The Bush Fires Board and the Army have a standing arrangement that requires consultation prior to any firing of artillery on the range at Lancelin. On days of extreme fire danger no firing is permitted, and on days of high fire danger the Army is required to have a fire tender in attendance during firing.

(2) Claims for compensation for any damage caused by army manoeuvres are considered on the merits of each individual case by the Department of Defence.

(3) Answered by (1) above.

TRANSPORT: FREIGHT

Smallgoods: Cost Increase

774. Hon. E. J. CHARLTON, to the Minister for Employment and Training representing the Minister for Transport:

(1) Is the Government aware that freight costs on small goods into most country areas has increased dramatically since the deregulation of transport on small goods?

(2) Has there been a decrease in the movement of freight carried by Total West during the period of deregulation?

Hon. PETER DOWDING replied:

(1) While freight rates for very small consignments have increased, often markedly, to many country towns as a consequence of the introduction of modal competition for all general freight ser-

vices, these increased rates have been more than offset by the very substantial reductions in rates for the very great majority of general freight movements. The net savings to users as a consequence of deregulation were estimated at about $12.6 million during the last financial year.

(2) It would not be appropriate to discuss market information relating to a private company.

FIRES: BUSHFIRES

Lancelin: Army Manoeuvres

777. Hon. TOM McNEIL, to the Leader of the House representing the Minister for Communication and Defence Liaison:

(1) In view of the Army's denial that it was responsible for causing the bushfire outbreaks north of Lancelin on Saturday, 30 March 1985, is it the Government's intention to conduct an investigation into the cause?

(2) If "Yes"—

(a) what form will the inquiry take; and

(b) who will be involved in the inquiry?

(3) If "No" to (1), why not?

Hon. D. K. DANS replied:

The Minister for Communication and Defence Liaison advised me that—

(1) No.

(2) Not applicable.

(3) The Government considers such an exercise to be of limited benefit, and therefore unwarranted.

FIRES: BUSHFIRES

Lancelin: Army Manoeuvres

778. Hon. TOM McNEIL, to the Leader of the House representing the Minister for Communication and Defence Liaison:

What approaches has the Government made to the Army to ascertain responsibility for the bushfires which occurred in the region where the Army was conducting manoeuvres on the weekend of 30 March 1985?

Hon. D. K. DANS replied:

The Minister for Communication and Defence Liaison advised me that—

Inquiries made revealed that Army authorities observed standing arrangements in regard to firing on their artillery range at Lancelin, and that there were no fires alight at the conclusion of activities.

FIRES: BUSHFIRES

Lancelin: Army Manoeuvres

779. Hon. TOM McNEIL, to the Leader of the House representing the Minister for Communication and Defence Liaison:

(1) Is the Government aware of the reports that four Mercedes 4 x 4 Army fire fighting units were lost fighting the bushfire north of Lancelin on the weekend of 30 March 1985?

(2) What reported damage was caused to the Dandaragan Shire equipment?

(3) What reported damage was caused to the volunteer fire fighters equipment?

Hon. D. K. DANS replied:

The Minister for Communication and Defence Liaison advised me that—

(1) There were four Army fire fighting units involved, but they were not lost.

(2) and (3) He was advised that two shire graders suffered damage due to rough terrain while preparing fire breaks, and similarly vehicles owned by volunteers suffered some damage. None was burned during the operation.

LOCAL GOVERNMENT: DANDARAGAN SHIRE COUNCIL

Army Manoeuvres: Fire Risk Periods

780. Hon. TOM McNEIL, to the Leader of the House representing the Minister for Communication and Defence Liaison:

Is the Minister prepared to request the Army's compliance that no manoeuvres will take place within Dandaragan Shire boundaries during high fire risk periods?

Hon. D. K. DANS replied:

The Minister for Communication and Defence Liaison advised me that the Bushfires Board and the Army have a standing arrangement that requires consultation prior to any firing of artillery on the range at Lancelin. On days of extreme fire danger no firing is permitted, and on days of high fire danger the

Army is required to have a fire tender in attendance during firing.

LOCAL GOVERNMENT: DANDARAGAN SHIRE COUNCIL

Army Manoeuvres: Guidelines

781. Hon. TOM McNEIL, to the Leader of the House representing the Minister for Communication and Defence Liaison:

What are the guidelines to be followed by the Army prior to using guns or bombs during manoeuvres within the boundaries of the Dandaragan Shire?

Hon. D. K. DANS replied:

The Minister for Communication and Defence Liaison advised me that this question should be addressed to the Department of Defence.

TRAFFIC SIGN

Canning Highway-Douglas Avenue

782. Hon. P. G. PENDAL, to the Minister for Employment and Training representing the Minister for Transport:

I refer to his answer to question 704 of Tuesday, 26 March 1985, and ask—

In view of local resident disagreement with comments contained in the answer would he arrange for an on-site inspection at peak hours between myself, local residents and an officer of his department?

Hon. PETER DOWDING replied:

Yes. Arrangements can be made for an on-site inspection and an officer of the Main Roads Department will contact the member.

BUNBURY 150TH ANNIVERSARY CELEBRATIONS

Grant: Refusal

795. Hon. V. J. FERRY, to the Minister for Employment and Training representing the Minister with special responsibility for "Bunbury 2000":

(1) Is it a fact that the Government has refused to grant a request of the Bunbury Special Projects Committee for a $50 000 grant for the Bunbury 150th Year Celebrations?

(2) If the request has not been refused what is the current position in regard to servicing this need for Bunbury?

(3) Is it a fact that the Government provided a grant to assist the Albany 150th year Celebrations?

(4) If so—

(a) what was the amount of the grant; and

(b) what conditions applied to this arrangement?

Hon. PETER DOWDING replied:

(1) Yes, although I should mention that the City of Bunbury received $50 000 towards the cost of celebrations when it attained city status. In promoting the highly successful "Bunbury 2000" concept the Government has also made a substantial financial contribution to the development of the region and we will continue to support that project.

(2) Not applicable.

(3) Yes. As the first European settlement in Western Australia it was considered that the 150th anniversary of Albany was of special significance. It should be appreciated however that, as time passes, every town in the State will achieve its sesquicentennial year and it will simply not be possible to financially assist them all, notwithstanding their role in the development of the State.

(4) Albany received grants of:

$75 000 towards the cost of the celebrations;

$15 000 towards the cost of the Brig *Amity*; and

$20 000 in trust for the continuing maintenance of the Brig.

796. *Postponed.*

TRANSPORT: AIR

Perth-Sydney: Excursion Fare

797. Hon. TOM McNEIL, to the Leader of the House representing the Premier:

(1) Is the Premier aware of the report in *The West Australian* of Wednesday, 17 April 1985, that TAA has made a submission to the Independent Air Fares Committee to force East-West Airlines to cancel its cut price excursion fare to Sydney?

(2) What action has or does the Government intend taking to protect the interests of West Australians?

(3) Will the Government investigate the report in order to protect the interests of West Australians?

Hon. D. K. DANS replied:

(1) Yes.

(2) The State Government has no direct control over the level of interstate air fares. The Government has, however, made a submission to the Independent Air Fares Committee in which it argues strongly for continued approval of East-West Airlines' cut price excursion fares, not only between Perth and Sydney, but on all trunk routes over which East-West Airlines operates.

The Government will also be making a submission to the Independent Review of Economic Regulation of Domestic Aviation. The submission will argue forcibly for changes to the two airline policy which are in the interests of Western Australian air travellers. Further detail of the submission can be found in the answer to question 924 on 28 March 1985.

(3) Answered by (1) and (2) above.