

Legislative Assembly

Thursday, the 16th August, 1979

The SPEAKER (Mr Thompson) took the Chair at 2.15 p.m., and read prayers.

JUDGES' SALARIES AND PENSIONS ACT AMENDMENT BILL

Second Reading

SIR CHARLES COURT
(Nedlands—Treasurer) [2.18 p.m.]: I move—

That the Bill be now read a second time.

The present pension entitlement for a judge provides for an annual amount of 30 per cent of the judge's salary if his retirement occurs before he has completed six years of service. After six years' service, the entitlement increases at a rate of 4 per cent per annum until a figure of 50 per cent, the maximum, is achieved after 10 years of service.

In the event of a judge dying during his first six years of service, his widow would be entitled to a pension equal to five-eighths of the amount to which the judge would have been entitled had he retired on the date of his death. This means that, in the event of a judge dying during his first six years in office, leaving dependent children, the widow's entitlement to a full pension would not have accrued and there would be many years ahead in which she would have to look after and arrange for the education of her children.

A recent review of these provisions has shown that the present pension entitlement may, in fact, be an unattractive proposition to a practitioner who is offered a position on the Bench. This is particularly so where the practitioner is between the ages of 45 and 50 years and has a wife and dependent children.

If a person in this position were to be appointed to the Bench at some future date, it is obvious that he must ask how his wife and children will be supported and educated if he dies during the first few years of appointment. The Government has given consideration to this matter because the tendency nowadays and in the future, both in this State and elsewhere, is likely to be to invite persons to accept judicial office at a somewhat earlier age than previously has been the case.

Some members will recall that not so long ago there was no retiring age for judges, and they continued in office until death or until they decided to retire. Subsequently, in keeping with the general trend, a retiring age was introduced. Also in keeping with the trend in industry, commerce and the professions, it must be accepted that the retirement age is likely to

become lower rather than higher. This in turn could influence the age at which approaches are made to people to leave their practice and become a judge in one of our courts.

The Government believes that the time is now appropriate to review the existing scales. As has been mentioned, the present entitlement for a judge—or in the event of his death, his widow—is based on 30 per cent of his salary at the date of retirement or death during the period up to and including his first six years of service. It is, of course, the first six years of service which present the problem, particularly for the widow in the event of her husband's death.

It is therefore proposed that the base rate for the first six years of service be increased from 30 per cent to 40 per cent of the annual salary, but at the same time the yearly incremental percentage be reduced from 4 per cent to 2 per cent. This means that for service up to six years, the pension entitlement would be 40 per cent of the salary, rising in increments of 2 per cent per annum to the previous maximum of 50 per cent after 10 years of service.

The present entitlement is for 30 per cent of the salary for service up to six years, rising in increments of 4 per cent per annum to the maximum of 50 per cent after 10 years of service.

Provision already exists in the Act for the pension payable to a judge's widow to be terminated should the widow remarry at a future date.

I should perhaps mention here that the position of a judge is not always fully appreciated. On appointment, he gives up a practice which, in many cases, generates income in excess of his judicial salary. At the same time, he forgoes the prospect of accepting any other appointment which might provide him with some additional remuneration.

This Bill therefore seeks to remove one possible obstacle which may arise at some time in the future when a person who is suitable in all other respects is offered appointment, but feels constrained to decline on the ground that insufficient provision is made for his dependants.

The remaining amendments to sections 7, 12, and 13 and the first schedule are to correct cross references and to remove surplus words.

I commend the Bill to the House.

Debate adjourned, on motion by Mr Davies (Leader of the Opposition).

RESERVES BILL*Second Reading*

MRS CRAIG (Wellington—Minister for Local Government) [2.23 p.m.]: I move—

That the Bill be now read a second time.

This Bill contains proposals to amend certain Class "A" reserves which I will proceed to explain in detail.

Notes on each of the proposed variations together with corresponding plans of the areas concerned have been made available to the Leader of the Opposition and I also seek leave of the House to table a copy of these papers for the general information of members.

The papers were tabled (see paper No. 282).

Mrs CRAIG: Class "A" Reserve No. 12553 was set apart in 1910 for "re-afforestation" and is located about eight kilometres north of North Greenbushes townsite. When State Forest No. 29 was declared in 1928, Reserve 12553 was included within the gazetted boundaries of the forest; however, no action was ever taken to formally expunge the reservation. The Conservator of Forests has always considered the land to comprise portion of State Forest and authority is sought to cancel the reserve so that the area can be explicitly recognised as part of State Forest No. 29.

Class "A" Recreation Reserve No. 23251 comprises the majority of Burswood Island and has an area of 61.1581 hectares. The reserve is not vested and is zoned "parks and recreation and controlled access road" under the metropolitan regional planning scheme. Survey of a large portion of the reserve—21.4771 hectares—which is required by the Main Roads Department for the proposed Burswood Bridge controlled access road has now been completed and excision of the area is necessary so that formal control of the land can pass to that department.

Class "A" Reserve No. 20171 comprising 312.0935 hectares is set apart for the purpose of "parklands" and is not vested. The Environmental Protection Authority recommended and Cabinet agreed that the purpose of the reserve be changed from "parklands" to "national park". The reserve is situated several kilometres south-eastward of Cape Clairault and will form part of the proposed Leeuwin-Naturaliste National Park.

The 1966 Reserves Act provided for excision of 2 547 square metres from Class "A" Recreation and Public Utility Reserve No. 16976—Deanmore Square, Scarborough—so that the land could be utilised as a drainage compensating basin and a reserve has since been

created for this purpose. The Metropolitan Water Supply, Sewerage and Drainage Board now requires an additional 468 square metres to be excised from Reserve No. 16976 for use as a sewerage pumping station and the site chosen immediately adjoins the drainage reserve. Both the Town Planning Board and Stirling City Council, which is the controlling body for Reserve No. 16976, have no objection to the proposal and authority is sought to excise the area to permit its reservation for the desired purpose.

Class "A" National Park Reserve No. 23580, which is vested in the Merredin Shire Council, comprises an area of 1 177.65 hectares and is situated in close proximity to Merredin townsite. Investigations into the release of portion of the reserve for agricultural purposes resulted in the National Parks Authority recommending and the shire agreeing that the purpose be changed to "recreation and parkland". The authority considers that the reserve is too small to be efficiently managed as a national park in accordance with today's concepts and the Lands and Surveys Department endorses the proposal.

At the request of the Metropolitan Water Supply, Sewerage and Drainage Board, the Lands and Surveys Department effected survey of a sewerage pump station site in the vicinity of the now Hackett Drive, Crawley. The action was undertaken in 1931 and the land involved comprised portion of Class "A" Reserve No. 17375 which is vested in the National Parks Authority. Parliamentary approval to excise the land from Reserve No. 17375 was never obtained and a separate reserve was never created although improvements were placed on the land. While investigating certain maintenance problems in connection with the pump station, the board ascertained that the existing improvements were not in fact located within the limits of the original survey and that the boundaries would need re-defining. An amended survey has now been carried out and bearing in mind that the National Parks Authority has no objection to excision of the site, authority is sought to exclude the area from Class "A" Reserve No. 17375 following which the land will be reserved for a "sewerage pumping station".

Class "A" Reserves Nos. 2994 and 2995 are set apart for the purposes "parklands" and "public park" respectively and have an aggregate area of approximately 69 hectares. Both reserves were placed under the control of the National Parks Authority many years ago and have since been managed in conjunction with adjoining Class "A" John Forrest National Park Reserve No. 7537. It is proposed to rationalise this anomalous situation

by cancelling the reserves and including the areas within Class "A" Reserve No. 7537.

The Department of Fisheries and Wildlife has negotiated a land exchange with several Pingelly farmers and the proposal involves surrender of freehold land in return for two portions of Class "A" Conservation of Flora and Fauna Reserve No. 25555 which is vested in the WA Wildlife Authority. The landowners are to receive 25.3306 hectares of the Class "A" reserve and will relinquish 49.1552 hectares of their land for inclusion within that reserve. The Crown benefits in the exchange by 23.8246 hectares and an amount of \$1 200 will be paid to equalise the difference in areas. The exchange provides simplified management boundaries and permits improved access to areas of farmland which were previously isolated due to inundation during winter months. The nature reserve is considered to be one of the two most important in the wheatbelt area and authority is required to excise 25.3306 hectares from Class "A" Reserve No. 25555 so that the exchange can be implemented.

Investigations into the possible creation of several mineral claims in an area situated about 15 kilometres north of Cue townsite led to the discovery of the graves of three pioneers who perished in 1893 while searching for water. The gravesites were found near a place known as Millys Soak and are located on Class "A" Recreation and Timber Reserve No. 13805 which is vested in the Cue Shire Council. Bearing in mind the historical importance of the find, the Lands and Surveys Department effected a survey of a 20-square-metre site encompassing the graves so that the area could be excised from Class "A" Reserve No. 13805 and set apart as a separate reserve for "historical graves". The Cue Shire Council has no objection to the proposal and is prepared to accept a vesting order when the new reserve is declared. This course of action will provide the protection the graves deserve and the sanction of Parliament is now sought.

The Albany Rifle Club and the Department of Administrative Services jointly requested realignment of Class "C" Rifle Range Reserve No. 23524 in order to provide club facilities with a more adequate danger area. Implementation of the proposal involves survey and excision of portions of Class "C" Reserve No. 2903 and Class "A" Reserve No. 24258 which are set apart for "quarantine station for stock" and "national park and recreation" respectively. The vested authorities—namely, the Albany Shire Council and National Parks Authority—have no objections to the boundary alterations and in fact the national park reserve will benefit by the

inclusion of a large portion of redundant rifle range reserve. Survey of the amended boundaries has been completed and approval of Parliament is required to excise the area of 44.5 hectares from Class "A" Reserve No. 24258 so that the land can be included within Class "C" Reserve No. 23524.

Section 3 of the Reserves Act and the Reserves and Road Closure Act, 1978, provided for the cancellation of Class "A" Park and Gardens Reserve No. 30338 so that the land could revert to its former owners, namely, the Roman Catholic Church and the Melville City Council. The inclusion of a provision to effect the required alienation action was overlooked and this Bill seeks authority to remedy the situation.

I commend these proposals to the House.

Debate adjourned, on motion by Mr H. D. Evans.

STAMP ACT AMENDMENT BILL

Second Reading

Debate resumed from the 7th August.

MR DAVIES (Victoria Park—Leader of the Opposition) [2.32 p.m.]: This Bill was introduced on the 7th August last and was the result of something like three years' work in bringing the Act up to date, wiping out some anomalies, amending figures, and bringing some of the charges more into line with current day standards.

Mr Speaker, if you were to ask me whether I had gone through the Bill with a fine tooth comb and I replied, "Yes", I am sure you would not believe me. In fact, I have not. The Government has made it as easy as possible for members to examine this Bill in view of its complex nature. When this large Bill was introduced, explanatory notes were made available which have proved to be most helpful indeed. Nevertheless, it is still very hard to relate the amendments to the original Act, because that Act has been amended on so many occasions.

I usually find, when Bills of this size and nature have been introduced, that it takes me several days to understand fully what they hope to achieve. On this occasion the Treasurer was kind enough to make available to me a large volume which rests on his desk in front of him now. This is set out in the same way as I would have done it myself when considering Bills of this kind. I have the Act as it is now and the Bill which amends that Act and I underline in red the substantial changes which are to be made.

So it has been relatively easy to look at the changes. At the same time it has not been possible

to set out clearly for consideration all the consequences that might flow from these changes. I do not think it is possible for any member of this Parliament—without spending several weeks examining the Bill—to be quite certain that he is satisfied with all that is contained in the Bill. We take the introductory speech at face value and as a matter of trust. I feel certain the Government has nothing to hide in a Bill of this nature.

As the Treasurer said, minor amendments were made to the Stamp Act on the 19th October, 1976, when several irritating measures were removed and other portions of the Act brought up to date. He said then that there would be a full overhaul of the legislation and it has taken from that time to the present for the work to be completed. Members can therefore appreciate just how complex the Bill is. I am certain the Treasurer appreciates the work done by the officers of the State Taxation Department, who have tried to come up with a more concise and consolidated measure. When the Bill is reprinted I am certain it will be much easier to handle because of the changes that have been made.

There are a lot of amendments, but many of them are what might be described as cosmetic changes. We find the words, "Her Majesty" no longer appear, and the word "Crown" has been substituted. This has meant a number of amendments.

I was concerned that it appeared the powers of the commissioner had been greatly extended, but on examination it does not appear that they have. Provision has been made for ample right of appeal up to the Supreme Court against decisions of the Commissioner of State Taxation.

The word "stamp" has been removed from in front of the word "duty". There is no more reference to "stamp duty", but to "duty" only. These are changes which will make the Act much easier to read. Certain assessments have been taken in round figures of \$100. Here again this means that we know where we are going, rather than having to look at sliding scales.

In some cases everything is taken at a flat rate of \$100 or part thereof. The transfer fee for motor vehicles was dealt with in scales of \$200. If the cost of the vehicle is equally divided by two there will be no saving made under the measure; if it is an odd amount, I think the person paying the transfer fee will gain 75c. I am sure that will not make or break the Government or the person paying the duty. This has made it far more convenient for the department.

These are some of the things that have been done. I notice that building societies will have to

pay the same duty as banks and credit unions; this is not unreasonable. In the days when building societies were not so affluent the method of investing was quite different. At the present time they are looked upon as savings banks, much the same as credit unions are. I do not think it is unreasonable that building societies should have to pay the same duty on cheques as do those other financial institutions. I cannot see any reason for their enjoying any advantage over other organisations.

Some of the matters that have been reassessed have not been changed since 1882. In some instances the Government could reasonably have said, because of the change in value, that the amount could have been much greater than has been proposed. For instance, if we consider 5s. in 1882 and make it \$2 today. I think everyone would agree that that figure is far below what the amount would have been had it been increased in line with inflation. The Bill is a very practical approach to the matter of duty.

None of us likes paying duty or taxes of any kind, but to run this State we need taxation, and from this Bill the Government will raise something like a mere \$200 000. This amount will come mainly from the updating of the old penalties or taxes and from the changed stamp duty which will be paid by building societies. The amount of \$200 000 is a relatively small figure and the Government does not stand to make a killing on this occasion.

I suppose there are cynics and I must say that at times I could be described as a cynic for suggesting that the Government could make a welter out of it but it appears it will not do that now. The Premier has said the Act will be easier to apply and will not place any great impost on any particular section of the community.

A matter which I wish to bring to the attention of the House is one which I believe is a penalty for marriage. It refers to the transfer of property between spouses.

In olden days—I suppose the olden days in this case are those leading up to last year—it was generally necessary to pay death duty on property when one of the partners died. For that reason, and others, properties were registered in joint names or in sole names and when the owner knew he was to die shortly the property would be transferred to his wife in order to avoid stamp duty.

The normal transfer of property is at the rate applicable for ordinary buyers and sellers. The duty payable is \$1.25 for the first \$10 000 of value and \$1.50 thereafter. However, if the person

happens to be related—that is, spouse to spouse, as shown on pages 98 and 99 of the Bill under the deed of settlement or deed of gift—the duty payable is 2½ per cent where the amount does not exceed \$2 000; and 3½ per cent up to \$10 000; 4½ per cent up to \$20 000 and thereafter, on a sliding scale where if it exceeds \$200 000, the rate is 22 per cent.

Those duties are far greater than those normally payable between persons who are unrelated and are selling properties. If the property was transferred after the death of a spouse no duty would be payable, particularly after the 1st January, 1980, when abolition of death duty comes into force.

If a person wishes to make a gift of money or any other property, provided there is no documentation to stamp there will be no duty payable. There is now no Commonwealth gift duty. So a person can give any amount of money to another person provided there is no documentation. If a person wishes to transfer money for which there is an agreement or document—it could be the title to a property—duty must be paid. For example, if a person happened to be married and wanted, for any reason whatsoever, to transfer property, duty would also be payable. This is an anomaly which needs to be rectified.

I wrote to the Premier yesterday because this matter was brought to my attention—and it has been brought to the attention of members on this side on many occasions—where a person can give his share of the house to his wife and then find himself liable for stamp duty, even if he had sold the property to his spouse.

Of course shrewd people overcome that problem by selling half of the property for, say, \$25 000 and having the spouse write a cheque for this amount and thus the transfer would be effected. The cheque is then torn up. So in effect the transfer is effected at the lesser rate of duty and no money actually changes hands. I do not think that is an illegal act. A person is not bound to cash a cheque; he may tear it up, eat it, or do whatever he wishes with it, as I understand the law. So the shrewd ones who know this can overcome paying the high rate of duty without money changing hands.

Therefore people are being penalised for being married. However, the Premier has indicated to me that once the Bill is through Parliament and becomes law the Government will take another look at these matters because various aspects will need to be examined.

I suppose circumstances where properties change hands by order of the court on the dissolution of marriage and for other reasons would justify a lesser rate of duty. I suggest that we could take the opportunity now to deal with the anomalies and injustices in the Act by looking at the scale in the schedule which states the rate of duty applicable.

If a flat rate for all transfers is applied, whether by way of gift or sale, we will be closer to achieving our ultimate aim. I suggest that in view of the fact that death duties are to be abolished from the 1st January, 1980, we should, at this stage, examine the spouse-to-spouse transfer of property duty. If a transfer can be made after the death of one spouse without duty being applicable then why make it a penalty to transfer from spouse to spouse whilst they are alive? I do not know what loss this will mean to the Government.

No doubt I am innocent enough to believe that people would not find some way to dodge paying this duty, but no doubt people will do just that, and it could be a matter for concern. I am mainly worried about cases which relate to the matrimonial home. I believe that if the matrimonial home is being transferred from spouse to spouse the transfer should be free of duty. As I said earlier, generally, to dodge death duties a house was registered in joint names; or at some stage a spouse would wish to transfer the property to his partner in order to avoid stamp duty. I do not believe that with the abolition of death duties the same situation exists.

I congratulate the Government for updating the legislation, although I have not looked at it in detail, and I do appreciate the courtesy shown to me by the Premier in having this information supplied to me. I am quite certain that if we find further anomalies in the legislation in the future the Government will be happy to discuss them and the same would apply to us if we were the Government.

SIR CHARLES COURT
(Nedlands—Treasurer) [2.49 p.m.]: I appreciate the comments made by the Leader of the Opposition and the fact that he has acknowledged that the Government has introduced this legislation as a means to updating a very complex Act and not as a tax measure. I agree with his remarks regarding the detailed examination of every section of the Act and Bill because even those involved in the practice of this particular law would want a long time to examine every detail of it.

I have every confidence in the commissioner and his staff and appreciate the thoroughness

with which they have examined the legislation. The people involved in the day-to-day practice of this Act were consulted in some cases to obtain their reaction to the practical aspects of it and their views have been very useful.

I think the end result of the review by the commissioner reflects the desire to protect the revenue and at the same time get rid of some of the irritations and dead wood.

Personally, I am not greatly concerned about the speed with which the Bill goes through the House, except to overcome the anomalies to which I referred and the avoidance procedures which are being followed. Therefore the Bill was drafted in such a way that as soon as it has passed through Parliament we can proclaim the clauses dealing with avoidance, to protect the revenue to that extent and prevent the practices being continued, and at the same time leave ample opportunity for the remaining provisions to be implemented when adequate notice has been given to those who have to operate under this law day in, day out.

The Leader of the Opposition is quite correct in what he says about the gift rate of duty and the duty on those transactions which are passing from spouse to spouse. The Treasury and the commissioner, as well as the Government and the Attorney General, had a look at this aspect at the time the amendments were being undertaken. We are not dealing only with spouse-to-spouse transactions. In this particular clause we are talking about deeds of settlement, deeds of gifts, dissolution or sale of partnership interests, rearrangement or reconstruction of companies, partitions, exchanges or properties, and simple transfers between related parties, apart from transfers between spouses.

I understand from the research that has been done by the commissioner that since the Government's announcement about the abolition of death duties, first of all in part and then completely as from the 1st January next year, this particular transaction between spouse and spouse will become almost a non-event, because it has been less necessary in view of the intertwined relationship between this type of transaction and the death duties. Therefore, it is not in itself a very great earner of revenue and will not in fact involve many taxpayers.

However, it was decided at the time that the whole of the gift provision would be reviewed with a view possibly to bringing it down to a basis where only the normal duty prevailed. I think that was the plea made by the Leader of the Opposition—that instead of these different types

of duty as set out in the schedule on pages 98 and 99 of the Bill, the normal rate of duty should apply.

When the matter was researched at the time, it was revealed that Victoria and South Australia have a Gift Duty Act under which duty is levied; New South Wales and Tasmania follow the same principles as we do in this State, which are incorporated in the parent Act and the Bill; and Queensland repealed the Gift Duty Act and imposed the normal conveyance rate on documented gifts. We were tempted to go straight to that point, and we are in fact giving serious consideration to doing that now, not only dealing with the spouse-to-spouse provisions.

I give an undertaking to the Leader of the Opposition that when the Treasury and the commissioner have had a chance to appraise fully the changes in the law—I refer to the question of death duties being non-existent as from the 1st January so far as deaths from that point onward are concerned—and the impact of an amendment on the total question of gifts—and here I refer to those items I mentioned which cover a very wide field, namely deeds of settlement, deeds of gifts, dissolution or sale of partnership interests, rearrangement or reconstruction of companies, partitions, exchanges or properties, and simple transfers between related parties, apart from transfers between spouses—we intend then to decide whether to bring down an amendment to cover the lot.

My own inclination at the moment—and I would not like to be held to it because I have yet to see the result of the research, as to how far this clause reaches—would be to put the whole of this type of transaction on the same basis as in Queensland, regardless of the position in Victoria, South Australia, Tasmania, and New South Wales. Whether that would be done to coincide with the Budget I would not venture to say because I doubt the research could be completed in that time. However, in view of the fact that not many transactions from spouse to spouse are likely to be subject to the tax, I would prefer to deal with the question at the one time, making one sweep through the whole of the schedule, rather than try to deal with one small part of it, which would be a very complicated amendment.

Mr Davies: The suggestion I made related to the matrimonial home.

Sir CHARLES COURT: I appreciate the point and I think it is valid. I have in mind some people who have a tremendous amount of property and who have concentrated the whole of their estate into property. The spouse-to-spouse situation

exists there, and I do not think that would be the intention of the Leader of the Opposition. If we deal with the whole question of the gift provision and the schedule that goes with it we will automatically clean up those matters on the way through.

In view of the fact that the Commonwealth will abandon gift duty from the 1st July, 1979, and that Queensland has made the move it has and presumably other States will be having a look at their situations in relation to that matter, I think it would be a better proposition to get rid of all the provisions in respect of this graduated scale relating to gifts. I give the undertaking that it will be looked at, because the points raised by the Leader of the Opposition are quite valid and were in fact represented to the Government at the time.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

Third Reading

Leave granted to proceed forthwith to the third reading.

SIR CHARLES COURT
(Nedlands—Treasurer) [2.59 p.m.]: I move—

That the Bill be now read a third time.

I would like to thank the Opposition for its co-operation and the trust it has shown in both the commissioner and his staff and the Government. I repeat the undertaking I have given regarding the clause dealing with gifts, and I particularly refer to pages 98 and 99 of the Bill.

Question put and passed.

Bill read a third time and transmitted to the Council.

WESTERN AUSTRALIAN MARINE ACT AMENDMENT BILL

In Committee

The Chairman of Committees (Mr Clarko) in the Chair; Mr Rushton (Minister for Transport) in charge of the Bill.

Clauses 1 to 11 put and passed.

Clause 12: Section 92 amended—

Mr RUSHTON: Under this clause the maximum fine of \$500 may be applied to private vessels as well as commercial vessels. The professional fishermen made representations to me regarding this clause, and I conceded their

point of view. Commercial vessels will remain liable to courts of marine inquiry should they be involved in any mishap, and their certificates may be cancelled. Therefore, I move an amendment—

Page 6, lines 1 to 8—Delete the passage commencing with the words “amended by” and ending with the passage “Whaling Act, 1937 . . .” and substitute the following passage—

amended—

- (a) in lines three and four of subsection (2) by deleting the words “indictable offence and liable to imprisonment for not more than two years” and substituting the words “offence and liable to a penalty not exceeding five hundred dollars”; and
- (b) by inserting, after subsection (2), the following subsection—
- (3) In this section—
“ship” includes vessel licensed, or required to be licensed, by or under the Fisheries Act, 1905, the Pearling Act, 1912, or the Whaling Act, 1937.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 13 and 14 put and passed.

Clause 15: Sections 212A and 212B inserted—

Mr RUSHTON: The proposed amendments to this clause refer to an authorised person making reasonable inquiry as to the identity of the owner of a vessel before serving an infringement notice on the vessel. Every care must be taken before an infringement notice is served. The amendments to this clause were drawn up as a result of representations made by the member for Cottesloe. I move an amendment—

Page 8—Delete all words in lines 29 to 37, and substitute the following passage—

(2) An authorised person may—

- (a) if the identity of the alleged offender is not known and cannot immediately be ascertained, address the infringement notice concerned to, and serve it on, the owner of the vessel concerned within a period of thirty days after the date on which the alleged offence is believed to have been committed; or

Amendment put and passed.

The clause was further amended, on motions by Mr Rushton, as follows—

Page 9, lines 1 to 3—Delete the words “in the case of an alleged offence of which the leaving or mooring of a vessel is an element” and substitute the words “if the identity of the alleged offender is not known and cannot immediately be ascertained and the identity of the owner of the vessel is not known and cannot be ascertained after reasonable enquiry”.

Page 9, lines 4 and 5 and lines 8 and 9—Delete the words “the vessel” and substitute the words “that vessel” in each case.

Page 9, lines 35 and 36—Delete the words “have committed the alleged offence” and substitute the words “be the person who was in charge of the vessel at the time when the alleged offence is believed to have been committed”.

Page 11—Add after subsection (11) of the proposed new section 212A the following subsection—

(12) In subsection (3) of this section—

“the person who was in charge of the vessel” includes the person who was the driver, master, possessor, skipper, owner or user of the vessel or the person causing, permitting or suffering the vessel to be navigated, as the case requires.

Page 12, line 3—Insert after the word “person” the words “who was”.

Page 12, lines 26 and 27—Delete the words “have committed that offence” and substitute the words “be the person who was in charge of the vessel at the time when that offence is alleged to have been committed”.

Page 12—Add after the definition of “authorised person” in subsection (5) of the proposed new section 212B, the following definition—

“the person who was in charge of the vessel” includes the person who was the driver, master, possessor, skipper, owner or user of the vessel or the person causing, permitting or suffering the vessel to be navigated, as the case requires.

Page 12—Add after the proposed new section 212B the following section—

(62)

Production of
proof of identity
by authorised
persons.

212C. (1) The Department shall issue to each authorised person, other than an authorised person who is a marine inspector, a certificate in the prescribed form.

(2) An authorised person—

- (a) who is not a marine inspector shall produce the certificate issued to him under subsection (1) of this section; or
- (b) who is a marine inspector shall produce the authority card issued to him by the Department in connexion with his appointment as a marine inspector,

whenever required to do so by any person in respect of whom he has exercised or is about to exercise any of his powers under section two hundred and twelve A or two hundred and twelve B of this Act.

(3) In any proceedings under this Act, production of a certificate or authority card referred to in subsection (2) of this section is conclusive evidence in any court of the authorisation or appointment, as the case requires, by reason of which the person to whom that certificate or authority card relates became an authorised person and of his authority to exercise the powers conferred on an authorised person by sections two hundred and twelve A and two hundred and twelve B of this Act.

(4) In this section—

“authorised person” has the meaning given by section two hundred and twelve A of this Act.

Clause, as amended, put and passed.

Title put and passed.

Bill reported with amendments.

IRON ORE (HAMERSLEY RANGE) AGREEMENT ACT AMENDMENT BILL

Second Reading

Debate resumed from the 17th May.

MR JAMIESON (Welshpool) [3.10 p.m.]:
Members will be aware that this Bill increases the

income to be gained by the Government of this State before the original agreement required it to be increased. The increased money is called "an additional rental" as opposed to the royalties paid on iron ore by Hamersley Iron Pty. Limited under its agreement.

The increased payment was to have come into operation on the 15th anniversary of the first production. That would have been in 1981. However, because of the demand for decent roads by the people in that region, the Government has negotiated with Hamersley Iron Pty. Limited, and the company has agreed to the advancement of that date. To that extent, we have no opposition to the Bill.

However, we have some criticism of the use to which the money is being put. There has been a long history of promises to people in this area which have not been kept.

This extra money will be used to assist the \$24 million Pilbara road improvement plan—a five-year plan that the Government now proposes—but it will not overcome the problems even when the plan is completed. Of course, the road between Tom Price and Paraburdoo will be completed. The work on that is well under way and such work is highly desirable. As members would probably know, the main airport is at Paraburdoo; and good access to Tom Price, the bigger of the two towns, is desirable for the comfort of all concerned. This will expedite commerce and the comings and goings of the people in the two communities.

Of the \$24 million, \$10.6 million will be used to improve and upgrade the road between Nanutarra on the North West Coastal Highway and the Paraburdoo turnoff. When one enters the Paraburdoo turnoff, one can go to Paraburdoo or alternatively to Tom Price by heading in the other direction. Eventually the work will include the laying of blacktop for about 70 kilometres between Nanutarra on the North West Coastal Highway and the turnoff I mentioned. However, the total distance between the Nanutarra turnoff and Tom Price is 286 kilometres.

Allowing for the fact that the blacktop already exists between Paraburdoo and Tom Price, and allowing for the proposed 70 kilometres that I have referred to, there will be still a considerable amount that will need blacktop at the end of the five-year plan. That will involve another 200 kilometres approximately.

The plan also provides \$2 million for the Hardey River bridge and drainage improvements on the spur road to Paraburdoo. All these

improvements are necessary to make the road an all-weather proposition.

There will be \$4 million spent on access roads from Paraburdoo and Tom Price to the future initial highway between Newman and Port Hedland. As most people would know, the major highway in that area was originally to have gone from Newman, through Marble Bar, towards Port Hedland. However, the proposal now is to bring the road through the Ophthalmia Range and closer to Tom Price, with a spur connecting it with the major highway to the south and the main Australian network of highways. Eventually, that will reach the North West Coastal Highway, as I understand it, in the region of Roebourne. Perhaps it will be near Whim Creek. However, this last proposal is probably a long way off. There is no positive allocation of funds for that, so perhaps we can disregard the necessity to use \$4 million on the access road from Paraburdoo and Tom Price to the future highway between Newman and Port Hedland.

The criticism I want to make is that these schemes are all very well; but when it comes to finding ways of financing them, some dishonest promises have been made over the years by the Premier as he is now. He was not the Premier when he first made these promises. He went into the region and promised blacktop roads. However, no consideration had been given to financing his proposals. Money is still not available, in view of the Minister's statement when introducing this Bill.

During the election campaign in 1974 the then member for the district (Mr Bickerton) approached me when the announcement was made on behalf of the Liberal Party. It was announced that there would be blacktop on all the roads if the Government was changed. I made inquiries with the Main Roads Department, and I was told that such a proposal was not possible. I told that to Mr Bickerton, and he went to the area and, to his credit, he told the people that there was no way such work would be done. Of course, the people were not inclined to believe him. They believed a false promise.

The promise made at that time was a dishonest promise because there was no thought about the provision of finance for the roads. That was typical of the promises that have been made in that region.

There was an example when I asked questions last year of a promise by a former Minister for Education of a high school in Wickham, another part of the region with which we are dealing. Apparently the Minister had a lapse of memory;

he said he did not recall making any such promise.

In addition, we heard the Premier's statement that was featured prominently in *The Sunday Times* that tertiary institutions would be set up in the Pilbara. It is nearly six years since those promises were made. The promises were made without regard for the financing of the projects.

If the Australian Labor Party had done that sort of thing during an election campaign, there would be big banner headlines quoting the Premier: "Where is the money coming from?" Of course, the game is not played that way. The Government can make any promise. It does not matter how dishonest it is; how far out it is; how little the matter has been researched; where the money is likely to come from. The Government is believed; and it is not entitled to get away with it. Well, it certainly will not get away with it as far as I am concerned. I record my objection to this sort of procedure in the annals of Parliament.

The Government has done this sort of thing repeatedly. Now it is doing it again. There is a proposal before us for improving the situation there. However, it certainly will not give access to the main grid system of this State—the blacktop roads—within a considerable time. The Ophthalmia Range, through which the spur road is to be built, has not even been surveyed. That will not be a practical proposition. Eventually the roads will connect with the highway grid system; but possibly there will be a greater demand for doing something about the Fitzroy-Halls Creek road. That would provide a continuous road around Australia. Such a scheme would be more urgent than the Ophthalmia Range scheme.

All of this will cost millions of dollars—a greater sum than the State can find.

Members should bear in mind, as I have said, that there will still be 200 kilometres of unsealed road after the implementation of the five-year plan. The people of Tom Price will have a long way to go, with this Government in office, before they are connected to the blacktop system. I want to spell this out clearly, because the Government has been hoodwinking the people for long enough in relation to proposals for blacktop roads.

One would need to make elementary judgments only as to the cost of roads in that region to realise that the Government could not live up to the promises made to the people there. However, this Bill improves the situation and, to that extent, we must support it and hope that further improvements will be forthcoming.

Perhaps Hamersley Iron Pty. Limited could be induced to forego the concession contained in this

Bill and accept it at a later stage. The concession I am referring to is that the company should not be required to pay royalties for full tonnages until after its 15th anniversary. If this occurred, either before or after the end of the five-year plan, it may be possible, with the use of other funds, to complete a system of blacktop roads in that area.

In my opinion, it is most important to provide access from Tom Price to the coastal road so that the people who live there can travel to the coast for holidays and participate in the activities available there. The distance is great, but it is a relief for people who live in Tom Price or Paraburdoo to be able to travel to the ocean on occasions. They should be provided with good roads to enable them to do this more frequently.

A number of mothers of families who live in Newman visit the children's grandmothers in Perth during the school holidays. The women's husbands are not unduly concerned when they are travelling to Perth on blacktop roads. As long as they travel carefully, they are not likely to come to any great danger. The breadwinner of the family, however, is most concerned when his wife and children travel on unsealed roads, without a man to replace tyres which may be jagged on rocks or to help in the situation where the car runs off the road or turns over in a dry creek bed. It is a constant worry for the breadwinner when his wife travels to the city on these types of dirt roads. Places such as Tom Price and Paraburdoo should be connected to the blacktop road system as soon as possible. At the moment access to the coastal highway is most important. In the future access to the Eastern States, or to other places, may be necessary; but access should be provided from these towns to the coast now.

The Bill contains provisions whereby these roads may be financed to some extent. At the same time roads from other company towns in the Pilbara should be receiving attention. It is essential that all the wealth-producing towns in this State should be connected to a national road network by blacktop roads as soon as possible.

It is far more important that these blacktop roads should be provided than that improvements should be carried out on the Albany Highway and south coast road. In these areas blacktop roads are provided already. It is possible that driving on these roads is limited to some extent, because they are not as wide as they should be; but millions of dollars are being spent on these roads year after year and in my opinion this money should be used for providing blacktop roads to the major towns in this State which do not already have them. Improvements to existing blacktop roads should take second place.

These roads would certainly improve the lifestyle of the people who live in this section of the Pilbara. Therefore, they should be provided as quickly as possible. The Government does not have a good record in this regard. Its track record in relation to providing roads in the Pilbara is appalling. The Government has made promises galore in election after election; but none of these promises have been fulfilled. The Government has not been able to meet the promises it has made to the people of the region.

If anyone doubts what I am saying he should talk to the people in the region who listened to the various Liberal supporters who travelled through the area prior to the last election. These people will support what I am saying. The Minister in charge of the Bill did not personally make these promises; nevertheless, as a result of this amendment to the Act finance will be made available to help fulfil the promises which should have been fulfilled a long time ago. These promises were not fulfilled earlier, because finance was not made available by the present Government. It is to be hoped that, if the Government makes similar promises at the next election in relation to the provision of roads in other areas of the State, it tells the people involved prior to those promises being made exactly where the money will come from to perform the work proposed.

Mr Sodeman: As you know, no promises have been made which have not been kept or exceeded. The previous member (Mr Bickerton) refuted what you are saying.

Mr JAMIESON: These promises were made once again and they were reported in the Press during the last election campaign. They were made during the previous election campaign also. To his credit, Mr Bickerton travelled to the area and told the people that the roads could not be provided at that time. He had obtained this information from discussions with the Minister of the day. I told Mr Bickerton these promises could not be met and, to his credit, he went up there and told the people.

Mr Sodeman: The member for Avon has a copy of our policy.

Mr JAMIESON: I am aware of that. I have examined the policy; but it says nothing about providing tertiary education for people who live in the Pilbara, despite the fact that a great deal was said about it when the Premier was up there. The member for Pilbara cannot deny that, because these statements received banner headlines in *The Sunday Times*.

Mr Sodeman: We have exceeded our promises in that regard.

Mr Clarko: The present member for Pilbara would be the hardest worker they have ever seen up there.

Several members interjected.

The ACTING SPEAKER (Mr Watt): Order!

Mr JAMIESON: It is obvious that someone rounded up the member for Pilbara and told him he should be present in the Chamber to defend the Government. He came in with his head up like a bull tearing across one of the paddocks in the Pilbara.

Mr Sodeman: Don't be personal. Be factual.

Mr JAMIESON: I am being factual. The member for Pilbara came tearing in like a bull. It is clear that these statements were made in 1974 and again in 1977.

Mr Sodeman: That is incorrect.

Mr JAMIESON: If the member disputes what I am saying I am prepared to travel to Tom Price with him and debate the matter with the people up there.

Mr Sodeman: It is totally incorrect.

Mr JAMIESON: I have made my offer. We will see what the people who live in Tom Price have to say about the matter and what the people who live in some of the other areas up there have to say about the promises made by another member in relation to the provision of a high school in Wickham.

If the Government cannot live up to the promises it makes, members opposite deserve to go down with it. If members opposite are not prepared to criticise the Government when these things occur, they should be prepared to accept the consequences.

Mr Sodeman: There is nothing wrong with exceeding our promises.

Mr JAMIESON: I have indicated clearly I am happy that it appears the people in the Pilbara will receive finance for the provision of roads. I should like to warn the people who live in that area that even with the provisions contained in the Bill, the construction of blacktop roads connecting all the towns in the area is a long way off.

Mr Clarko: They have a great member now. He is first class.

Mr JAMIESON: He is a little better than the member for Karrinyup.

Mr Clarko: He is a lot better than the member for Welshpool.

Mr JAMIESON: However, there would not need to be a great deal of improvement in order to achieve a standard higher than that exhibited by the member for Karrinyup. Of course, if he is much better that is to his advantage. However, certainly he is backing a Government which made promises and did not keep them. The Government will regret that action in the long run. I support the proposals in the amending Bill.

MR MENSAROS (Floreat—Minister for Industrial Development) [3.30 p.m.]: I thank the Opposition for its support of the Bill. Members might not have realised that the support in this case was more important than in any other instance because the Government could have been assailed and criticised for having committed future Governments to deducting revenue from the income of those future Governments. For that reason, it is proper that the measure come to Parliament.

From what the spokesman for the Opposition has said, I take it members opposite not only support the principle of being able to build roads earlier than originally planned, but, if possible, that something more should be done also. I am satisfied that from this point of view the Government has taken this action with the full support of the Parliament, which is right and proper.

I do not think that you, Mr Speaker, desire that I deviate from the provisions of the Bill, despite the fact that the Opposition spokesman—with your indulgence—did so. I want to respond and say that as far as I know the policy specially issued in respect of the Pilbara and the north has been kept. I might even comment, in this regard, that perhaps the party which has sat on this side for some time did a little more for the area because we have a special policy whereas, from the information available to me, it appears that the Labor Party did not have a special policy for the north.

Mr Jamieson: We did, of course, because I stated it in Port Hedland. Some of your members were present at the meeting.

Mr MENSAROS: That probably comes under the category mentioned by the member for Welshpool that the Government has announced verbally a policy over and above the written policy which was issued, and to which we adhered. Even if such statements were made—and I have no personal knowledge of them—it is well known that the Commonwealth policy with regard to road funds has drastically changed. That was the main reason the Government sought to negotiate with the Hamersley company. I am sure the road

work could have been accelerated without company prepayment of royalties with the old type of Commonwealth subsidy for roads.

Road funding was recalculated, and raised on a different basis. As a result, we in Western Australia were the recipients of much reduced funds. That was the direct reason we resorted to this sort of solution.

Virtually, it is a social matter. It is a service to the population of the area. Even with today's modern transport conditions, people in the north are isolated because they rely mostly on their own vehicles as a means of transport. When one considers the extremes of weather experienced in the north, the sealed roads undoubtedly will help to alleviate that isolation. Possibly they will help to solve the social family problems which prevail because of isolation. The wives and children of the workers will be able to enjoy the facilities which exist on the coast, instead of having to remain—without any occasional holiday—in the mining towns.

With those comments, again I thank the Opposition for its support of the Bill and I commend it to the House.

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

Leave granted to proceed forthwith to the third reading.

Bill read a third time, on motion by Mr Mensaros (Minister for Industrial Development), and transmitted to the Council.

GOVERNMENT EMPLOYEES (PROMOTIONS APPEAL BOARD) ACT AMENDMENT BILL

Second Reading

Debate resumed from the 17th May.

MR TONKIN (Morley) [3.37 p.m.]: We believe that this Bill, which will amend the Government Employees (Promotions Appeal Board) Act is the recipe for industrial disputation. We noted yesterday that the Minister for Labour and Industry did not seem to know anything about the statement which, according to the *Financial Review*, he agreed to while in Sydney. Nevertheless, that statement did contain a better attitude to industrial relations where it suggested

there should be consultation, and that sanctions in industrial affairs only cause trouble. We regret there has not been proper consultation between the Government and the trade union movement on this matter.

Mr O'Connor: There has been consultation.

Mr TONKIN: The Minister can call it consultation if he wishes, but if writing letters to various unions, and then taking no notice of what those unions say, is called consultation I would not agree. There is a lot more to consultation than merely sending out roneoed letters. We believe in consultation, and we also believe the measure now before us is a recipe for industrial disputation. We emphasise this aspect because we are in favour of consultation in respect of any Bill. We suggest this legislation, above all others, is one to safeguard employees. The principal Act is to safeguard the promotional opportunities afforded to employees.

If any Bill ever was an employees' Bill, in the full sense of the expression—and rightly enacted in order to protect employees—this is one. So, the degree of consultation should have been much greater than would be the case with other measures.

We wonder why the Act is being changed. There seems to have been no criticism of the way the Act has operated, unless it has been criticised behind closed doors and we know nothing about it. There does not seem to have been a suggestion that the Act was unworkable, or that employees were not being given a fair go. I again emphasise that above all we must try to ensure that employees are given a fair go. If employees are unhappy with this legislation, then we can expect nothing but trouble.

If the legislation contains a fair provision whereby the interests of the employees can be safeguarded, that would head off one possible source of disputation. However, if we take away a safeguard so that a Government department can subvert provisions for fair and equitable promotion, then what other resources do the employees have?

So we see this Act as a safety valve; a way of seeing to it that justice is done and that it is also seen to be done. In this way disputation will be lessened. To tinker with this Act without proper agreement with employees, to change it so that an employer, a Government department, can play games and avoid the provisions of the Act—

Mr O'Connor: How will they avoid the provisions of the Act?

Mr TONKIN: That question is fair enough; I did not express my thoughts correctly. A

Government department should not be able to avoid the intentions of the Act; in other words, to avoid the safeguards that are meant to appear in the Act. Members will note that for the first time the fact that a person has been employed in an acting capacity is to be taken into account. It would be very easy for an employer, a Government department, to appoint a person in an acting capacity, so that when the matter of an appeal is raised, this person will be assured of the appointment.

This is what I meant when I said that an employer could avoid a principle that is meant to be implicit in the Act; that is, a provision to see that there is proper and fair promotion. If employees find that this provision is no longer in the Act, and that ducks and drakes are being played with the promotional system, it will cause friction, and friction is the last thing we need in industrial relations. In fact, it is something we should try to avoid.

For the sake of this State, I sincerely hope that the statement agreed to by the six State Ministers for Labour in Sydney last Friday—about which I asked questions the other day—heralds a new attitude on the part of the Government to industrial relations, a recognition that industrial relations is one of the most pregnant sources of trouble and dissatisfaction in this country. Although we will never get rid of industrial disputes altogether, we can lessen their severity, we can lessen their number, and we can lessen the period over which they drag on.

I believe the Government is looking again at this whole subject, and one of the reasons for this is that public opinion polls recently have shown a change in attitude. No longer is the Australian Labor Party being blamed for industrial disputation; no longer do people tend automatically to vote for the Liberal Party if industrial disputes occur around election time. We know that was the case in the past, and we know that this is one reason the Liberal Party has been not adverse to industrial disputation. It has rubbed its hands with glee when industrial disputation has occurred before an election. Of course this has been admitted privately to me, and to other members of the Opposition, by conservatives.

The latest opinion poll shows that no longer are people blaming the Australian Labor Party for industrial disputes, and they will not necessarily vote for the Liberal Party because of the increasing number of disputes. The result of these opinion polls has made the Liberal Party reassess its attitude to industrial relations and to say that

perhaps there is no mileage in bad industrial relations.

Perhaps with this new attitude on the part of the Government we will enter a period of better industrial relations. Several times by way of questions to the Premier I have tried to indicate that the industrial situation in South Australia is much better than it is here. In his arrogant fashion he has not been prepared to answer my questions. I indicated that the number of working days lost in South Australia due to industrial disputes was less than half those lost in this State. This situation has been the same over many years, except for the period that the Tonkin Government was in power. At that time we had a much better record in the industrial relations field, and in fact, a record that closely approximated the record of South Australia.

Sitting suspended from 3.45 to 4.04 p.m.

Mr TONKIN: I have been speaking so far to the Bill generally, discussing the deleterious effects it will have on industrial relations in this State.

I turn now to specific provisions of the Bill. One such provision is that an employee will be able to appeal only if he has superior efficiency. Before this legislation, one could appeal if one had equal efficiency, and were senior. However, this provision is to be removed, in the face of opposition from the majority of trade unions concerned. This Bill will remove from the Act the protection which a person is entitled to receive from his equality.

Before this amending Bill comes into force, the situation is that if efficiency is equal, seniority will count. That seems to me to be a very fair kind of provision. I would not be in agreement with a provision which stated that seniority counted more than efficiency. That is not at all good; efficiency should be the number one criterion for promotion.

But what if there is equal efficiency? Under this amending legislation, it will mean that the person promoted will get the job even though the appellant is many years senior, and that does not seem to be fair.

The Public Service Act perhaps has a better formula; namely, a person may appeal if he considers he has a better claim to promotion. That is a more flexible formula and might in fact allow the consideration of both efficiency and seniority.

We are not saying those are the only two factors involved; other factors also come into this question. Supposing, for example, that a person is equal in efficiency to another, but that one person is 64 years of age while the other is only 34.

Obviously, one person is far senior to the other. However, he will retire in a few months. A case can be made out that the 34-year-old, who obviously has a great deal more potential, should get the job.

We do not necessarily need to be hung up only on seniority; however, seniority must be taken into account, just as other factors need to be considered. I suggest that the formula adopted under the Public Service Act to which I have just referred may provide the greater flexibility for which people are looking.

A second new provision will prevent the intentions of this legislation from being carried out. What are the intentions of the Act? They are to prevent the unfair promotion of employees and to protect all employees. The new provision provides that acting capacity will count, provided the service occurred prior to the occurring of the vacancy. In other words, if a vacancy occurs and a person is appointed in an acting capacity, in a subsequent appeal that acting capacity will not count because it occurred subsequent to the vacancy arising.

However, supposing there was a situation where, one year before the vacancy occurred a person acted in that capacity because his superior was on holidays for a month or was sick for three weeks. Now that acting capacity is to count, even though the fact that the person concerned was appointed to that acting capacity was purely fortuitous.

This is especially important in a service which is far flung, across the State. Of course the department is not going to bring up from Katanning to Perth a person to work in an acting capacity for only three weeks and then send him down to Katanning again. It is only logical the local person who fortuitously happens to be on the spot is put into the position. He may have no greater claim to the position apart from the fact he happens to be where he is; other people perhaps may be more senior and more efficient, but they may be situated in other parts of the State and would not even be considered. Yet that fortuitous service of acting capacity will be counted in any subsequent appeal.

The Opposition is not in favour of this provision. It will mean that a department may circumvent the intentions of the Act by creating a temporary position and putting a person into that temporary position and then, later, creating a permanent position and appointing the person who acted in that capacity to the permanent position. That person would then be able to claim the acting capacity as part of his efficiency.

It is going to be possible for a person to be seconded somewhere else so that his substantive position is not vacant; in other words, no vacancy has occurred. A person can then be put into that position in an acting capacity and later may claim that acting capacity as part of his efficiency when the position genuinely becomes vacant.

In other words, a department can plan for future promotion. It can say, "In a year's time we want to promote that person. However, at the moment, he would not hold the job on an appeal because he is not of greater efficiency. So, we will deliberately make this position temporarily vacant, and give him the job in an acting capacity. We cannot create a new position because then, the acting capacity would not count under the terms of the Act. However, if we give him the acting position and create a vacancy afterwards, the acting capacity will count."

Members might say that departments are not going to act like that and do such things. If in fact we had no need to worry about the way a department works, there would be no need for this legislation. The very fact we have this Act to protect employees implies that, in fact, Government departments are capable of playing-off favourites and that employees do need some protection. Now, by removing the real protection afforded by this Act we are creating an area of potential disputation and dissatisfaction in the service, and I do not think we should be aiming at that.

Another provision is the one which changes the arrangements to be made for the delivery of an appeal. The existing Act states that an appeal "shall be despatched or delivered". This Bill seeks to amend that provision so that every appeal shall be delivered. But what if an appeal is not delivered? It is all very well for people living in Perth; they can deliver their appeals by hand and make sure they arrive at their proper destination. But what about a person living in Kalgoorlie who applies for a job and then appeals? If his appeal is not delivered he is considered not to have made an appeal.

Surely there should be some safeguard in this respect. The present Act contains a safeguard in that it specifies an appeal "shall be despatched or delivered", while the amending Bill stipulates that it shall be delivered. Therefore, under the terms of this Bill, if the appeal is despatched and not delivered it will be bad luck for the person concerned and he will be considered not to have lodged an appeal. It may not be his fault; his appeal may have gone astray in the post.

It seems to me even the present system is not the best because I understand there has been a great deal of argument before the Promotions Appeal Board where people have said, "I despatched my appeal." It has been fairly difficult to resolve such situations; very often the board has accepted that a person's appeal has been lodged because it has taken a person's word an appeal was despatched. So perhaps the present situation is not satisfactory.

As far as the Opposition is concerned, the new situation will not be satisfactory. A person can despatch something and through no fault of his own that item might not be delivered. This aspect needs to be tidied up. The Government's proposal is not satisfactory. What is needed is proof of despatch or receipt so that a person knows his letter has been received.

I do not know whether or not this next matter is an oversight on the part of the Government, but if members consider clause 17, which amends subsection (2) of section 16, they will find the clause deletes the right to give evidence, to subpoena witnesses, and to have them examined on oath or affirmation. Subsection (2) of section 16 reads as follows—

(2) The said parties to the appeal shall be entitled to be present in person and give evidence, to subpoena witnesses in the same manner and subject to the same penalties and conditions as witnesses may be summoned to give evidence before justices in petty sessions, and to have all witnesses examined on oath or affirmation.

The amending Bill takes that out. The provision is not to be put back anywhere else, so the provision whereby someone can be cross-examined, or someone can call witnesses, is taken out altogether. Does that mean appeals are going to be conducted in writing? Does that mean appellants cannot call witnesses? The reason for this alteration given by the under secretary of the department is as follows—

"Section 16(2) provides that parties can subpoena witnesses. The Chairman of the Board has requested that such action be prosecuted through the Board and not issued from another jurisdiction, the former being also the situation under the Public Service Arbitration Act. An amendment to achieve this is desirable."

That was the reason given by Mr Jones. He wants witnesses subpoenaed under their own jurisdiction rather than some other jurisdiction. By deleting this subsection it seems to me the Government has

taken out the right of employees to call witnesses and cross-examine them on oath or affirmation.

Mr O'Connor: This is covered by subsection (4) of section 17, which gives the board authority to allow this to occur.

Mr TONKIN: Because of the powers of a Royal Commission? If in fact this area is protected I would be pleased.

Mr O'Connor: What you say is correct though; it is taken out.

Mr TONKIN: The composition of the Promotions Appeal Board has caused a great deal of misunderstanding. We need to look at it fairly closely to see that the reason for this provision is satisfactory. This matter is covered by clause 7. A person will be nominated by the relevant union and we know that is a new definition; it is no longer the union of the appellant, but the union which has coverage of the position in question. This is quite an important change. A person on the board shall be nominated by the relevant union unless the appellant is not a member of that union or none of the appellants are members of the union. Perhaps there is no relevant union, or if the relevant union fails to nominate a person in 14 days the board can take certain action—I might say that 14 days has been found by experience to be too short a period in some cases; some unions have failed to nominate in 14 days because the mail service has been poor.

If there is only one appellant, the appellant can nominate someone for the board. This has been misunderstood by some people because they have thought it meant the relevant union would have cautioned them and therefore the union would be represented on the board together with the employer's representative, which would mean there would be two people in favour of the promoted person. This is misleading.

If there is more than one appellant, a person can be nominated unanimously by all the appellants. If there is no unanimity, the chairman shall choose the representative on the board from the list of names given by the various appellants.

I caution that here there is a potential problem. The chairman would need to see that if one of the appellants belongs to the same trade union as does the recommended applicant, the promoted person, the chairman may need to be careful not to appoint the union representative from that same union, because this could mean the promoted person would have two representatives on the board; namely, the employers, who would naturally be tending to defend the department's decision, plus the person from the promoted person's union. This would work to the

disadvantage of an appellant who could be from another union, as there would be no-one on the board looking at the matter from his point of view. I do not see any way around this and I think we have to allow the chairman to make this decision. I would be interested to hear if there is any way around this problem.

Mr O'Connor: I think the alteration is certainly to the advantage of the employees when we consider the situation under the existing legislation. I think the member would agree with me.

Mr TONKIN: I do not see it that way. It is neither advantageous nor disadvantageous.

Mr O'Connor: Before there was no representative from the union at all. We had someone who did not know the individual. If there are two or three applicants from a union we will have a union representative who knows them and he would be in a better position to make a decision.

Mr TONKIN: Before there was a representative on the board.

Mr O'Connor: Not necessarily from the union involved.

Mr TONKIN: Under the new legislation that person will not necessarily be from the same union if there is more than one union involved. When there is more than one relevant union a person shall be nominated unanimously by all the relevant applicants, or if they do not do that, the chairman will make a decision. I do not see any way around the kind of problems that could arise.

The matter of remuneration for members of the board has been covered under the regulations in the past, but it is now to be handled by the Minister. This makes the position a little more flexible as the Minister can make decisions daily. While regulations are more flexible than Statutes, they are nevertheless not as flexible as the ability of a Minister to make day-to-day decisions. Perhaps this matter should be in the hands of the chairman, which would make things even more flexible.

As the Minister is in the Chamber I shall put a problem to him. Some of the representatives on the board will be part-time union secretaries. It may be that they will lose wages by sitting on the board, because the time they have to give as a member of the board is not part and parcel of the time spent as a union secretary; it is part of the time of someone who is allowing them to go along as members of the board. Even if they are full-time secretaries the impact on their time will be sufficient to cause the union problems. It must be realised that trade unions have very scarce

resources. Some have more than others; some are quite well off; but some are very small and have very few members.

If a union secretary—even a full-time secretary—has to spend time on the board it will make an impact on the time he needs to administer the union's affairs. It can therefore be quite hard on unions if there is to be no remuneration for their service.

Mr O'Connor: You are not suggesting that occurs now?

Mr TONKIN: This has to be borne in mind, because the Bill is giving the Minister power to decide whether or not there shall be remuneration.

There has been a deletion of the requirement that there shall be seven days' notice of appeal. I am concerned about this. We might argue that it will be put into regulations. It can easily be taken from regulations. I cannot see why this safeguard should not be in the Act and it is something which concerns me.

Another provision in the Bill is to enable the chairman to make rulings. Chairmen have been making rulings for some time, but there is some doubt whether or not they have had the authority to do so. The Opposition will be quite happy if this Bill gives the chairman the authority to make rulings.

There are other matters which should have been provided for in the Bill and which I shall put to the Government as something that it should consider. For example, if an employee regresses to a lower grade position as a result of a work-caused injury, this fact should be taken into account when seniority or efficiency is being considered. In other words, he should not suffer promotionally because of a regress due to a work-caused injury—an injury caused through no fault of his own. If an employee is injured while giving service he should not be in the position of receiving less money. His promotional opportunity should not be adversely affected.

Secondly, a transcript should be taken of all hearings before the board. There have been a few complaints that decisions given have been inconsistent, and one way to overcome this kind of criticism is to have a transcript. That would provide a yardstick to measure one decision against another. Related to that is a request that the chairman should give written reasons for his decision. It has been fairly difficult to puzzle out some decisions.

Another request which has been made to me is that there should not be an age bar with respect to promotion. The authority should not put an age

bar on applicants for a particular job which would disqualify a person from applying or appealing. It might be argued that age could be a factor in efficiency, but it should be taken into account as a factor in efficiency itself. At a certain age an applicant could become a non-person, and would automatically lose his right to apply for a position.

Mr O'Connor: You are saying there should be no age bar applied to an applicant who makes an appeal.

Mr TONKIN: That is right. There should be a change to provide that where an appointee relinquishes a position, or resigns from it, before he actually takes it up—and it does happen that a person can be appointed to a job, and then apply for another job and accept it—the position should be filled, by the recommending authority, from the original applicants.

There has been complaint also that the number of magistrates available to hear appeals is limited which causes undue delays in the hearing of appeals. Perhaps the Government could look at the provision of more magistrates for this kind of work so that the hearing of appeals is not delayed.

The Bill provides that appeal rights shall come under the provisions of the Act for positions in respect of the Commonwealth Conciliation and Arbitration Act, and the Railways Classification Board Act. We note that an increasing number of employees are coming under Federal awards, and that provision probably is desirable.

A clause in the Bill with which we do not agree provides that a transfer within the same department shall not be considered as a promotion. Let us take the position of a person who is working at Woop Woop, and who is bypassed. He is in an area where there is little chance of promotion but he desires to work in a larger centre where there would be more opportunities for experience and study. However, as a transfer to a larger centre cannot be considered as a promotion, a person at Woop Woop cannot appeal and so he is left there. He is bypassed by other employees junior to him, less efficient than him, but who may have had better opportunities. Through no fault of his own, the person at Woop Woop misses out on promotion.

We cannot agree with that provision. If such a person had the right to appeal he could do so. If another person was transferred to Perth, and he was left out, he could appeal and point out that he had been at Woop Woop for a number of years where he was missing opportunities for study and more diverse experience. The appeal board could then decide whether or not that person had been

overlooked and disadvantaged. We think that is fair and reasonable. If that opportunity is not available—and the present Bill will deny it—that person will not be able to appeal and he will be disadvantaged through no fault of his own.

Finally, the Act is to be changed so that the board, when hearing and determining appeals, shall have regard for the provisions of the law, awards, or industrial agreements.

On the face of it, it seems hard to quarrel with that provision—that the board should take cognisance of the law. For example, if the law requires that a person should be qualified as a barrister or a surgeon, no-one will argue that the board should not have to take cognisance of such qualification. However, we are concerned that an employer could make a qualification in order to debar a particular person or a particular type of person. In other words, we have a problem because the employer—the Government—is also the law-making authority. I am aware that the Government can claim it is not the law-making authority; that it is the Parliament which makes the law. However, we know that once the Government decides on a particular law, it goes through this place. So, we will have the situation where the employer will be capable of changing the law. That is something which could be open to abuse. We warn that such abuse would cause problems if that provision was used unfairly.

Because of the lack of consultation; because of the unfortunate features of the Bill—particularly those relating to getting rid of seniority altogether and allowing “acting” to be counted as service, thereby allowing a Government department to circumvent the whole idea behind the protection of employees—and because there is no protection for the employee who has sent in an appeal which has not been received, we cannot support the measure. No case has been made out to show that the present system is not working. A case has not yet been presented to show that this amending Bill is in the best interests of industrial relations in the public sector, or in the best interests of the State. If the Government had been able to show that the present Act has not been working properly; if the Government had been able to show that it discussed these provisions with the employees, and the employees were happy with them, we would take a different attitude. At the present time, we do not believe the Bill is in the best interests of the State, and we cannot support it.

MR DAVIES (Victoria Park—Leader of the Opposition) [4.39 p.m.]: I must oppose this Bill and I am sorry, indeed, that the Government has

seen fit to interfere with the Act as it has been operating for some time.

I do not suppose there is anyone in this House who has appeared as an advocate in front of an appeal board more often than I have. As an advocate for the salaried employees in the Railway Officers Union I was before the board regularly. It was a friendly arrangement and it seemed to work very well.

When the original legislation was passed in 1945, and the board was established, it was considered a very significant step forward in industrial relations. The board provided a relief valve for tensions which had built up in the Railways Department over the years. I am speaking of the railway officers salaried section. Over the years a feeling that all was not well in the system of promotions had built up. It seemed that some people were being overlooked, for all kinds of reasons be they favouritism, nepotism, victimisation, or the like. Time and time again the unions were approaching the commissioner, the chief traffic manager, the chief mechanical engineer, and the chief civil engineer, complaining of the manner in which some promotions had taken place.

After much consultation it was decided to set up a board to which appeals could be taken. An excellent board was set up comprising a magistrate, a representative of the employees, and a departmental representative. The board worked extremely well. The Act was amended on a number of occasions when it was found that certain practices which were being followed were not considered to be proper. The amendments were generally agreed to by the Government of the day. At one time I was working with Sir Ross McLarty and he saw the position and readily agreed to correct amendments which the Government was proposing at the time. He recognised that the appeal board was a safety valve for employees who were disadvantaged within the railways system. Those disadvantages were referred to the board by way of appeal.

The reference to “departments” in the Bill includes all Government departments. Up till last year that provision included the employees of the Public Service. However, that provision was removed. I venture to say that as a result of that move the Government felt it should alter the Government Employees (Promotions Appeal Board) Act also.

In the Minister's second reading speech there is no evidence of any demand from the employers or the unions that the Act should be overhauled. One can imagine the Act being overhauled to alter

sections which were detrimental to both the employees and the Government departments. We do not cavil at that kind of review. However, when some of the main principles upon which the Act was founded, and under which the board has worked over a long time, are changed, then the Government is providing reason for confrontation.

I am sure the Government likes confrontation; it has given ample evidence of that. The Government certainly does not confer with the people concerned. It may have conferred with Government departments, but it seems to have done all that work through the Department of Labour and Industry. The Government did send out to some organisations—particularly the Railway Officers Union with which I have some affiliation, being an honorary member—a letter asking for views on certain moves which the Government was considering.

Replies were sent to the Government, but no further consultations took place. It was a surprise to find that the Government has seen fit to introduce legislation of this kind at this time because, all in all, the appeal board was working very well. It was a very friendly board and although the rules of evidence were supposed to be applied rigidly, I think they were applied fairly loosely at times. I was grateful for that because I was not an experienced advocate when I appeared before the board. One always found that the magistrate was prepared to allow a fair go.

Whether one won or lost, one went away with the feeling one had aired everything about the particular appeal, even when it was unsuccessful. One went back to one's job in a much better frame of mind.

The board has worked very well over the years and I am sorry to see that it is to change now. I am alarmed, indeed, to see there is to be only one ground of appeal; that is, superior efficiency.

Seniority has generally been considered to be a reason for appeal. Seniority has not always been considered to be the only factor to guarantee promotion. From time to time some senior people have been passed over. But seniority alone has never been a ground of appeal. The ground of appeal has always been seniority and equal efficiency or superior efficiency. There have not been three grounds of appeal—seniority, equal efficiency, and superior efficiency. The ground of appeal has been a combination of seniority and equal efficiency or superior efficiency.

Mr O'Connor: Would you agree to "relative" efficiency?

Mr DAVIES: I am prepared to agree to that. I think relative efficiency would be an easier

ground on which to win an appeal, from my experience. The union policy generally was to support the senior man. The union would advocate a case before the board only where a person was appealing on the ground of seniority and equal efficiency. If a junior man said, "I am superior to the man who is being supported", the union would not support him; he would take his own case.

I think it is essential that we leave in the Act both grounds of appeal. We are not asking only for the senior man to be considered. As well as being senior he must have equal efficiency. Relative efficiency would be hard to define but I think equal efficiency is a fair ground, all else being equal.

It might be said, "We have O'Connor and Davies, and O'Connor is the senior man. They are of equal efficiency but we will appoint O'Connor because he is the senior man."

Mr Taylor: He has not got equal efficiency.

Mr DAVIES: On the other hand, if Davies were appointed the union would support the man who had the seniority. It has worked extremely well. The board has stood the test of time far better than some other appeal and promotion systems which have been brought in over the years.

It would be quite wrong to go back to all the worst features of appointments. Now that both grounds of appeal exist, the department looks at the special qualifications a person has and says, "These are the qualifications we must have in a man who is appointed to this job", and the magistrate generally goes along with it. He says, "If the department says it must have a man with these qualifications and the appointee has these qualifications although he is not the senior man, he will be appointed". The board has made the decision. It has not been made out of favouritism, nepotism, or victimisation, and the appellant, the person who has been overlooked, goes away saying, "I tried but the board—not the department—said I was not good enough." It makes for much better industrial relations.

We will now have the situation where the favourite can be appointed and the department has only to say, "This man has superior efficiency." It does not matter about seniority and equal efficiency. A person must appeal on the ground that he has superior efficiency to the man or woman who was appointed.

Mr O'Connor: The wording on page 4 of the Bill is "relative efficiency".

Mr DAVIES: That provision relates to the promoting authority and says regard must be had

for those things; but it is not a ground of appeal. The proposed new section 14 in clause 15 of the Bill, relating to the lodging and hearing of appeals, says—

(3) An appeal may be made on the ground of superior efficiency to that of the employee promoted.

That is the only ground of appeal. Section 14 of the Act states—

(2) An appeal may be made on the ground of:—

(a) Superior efficiency to that of the employee promoted; or

(b) Equal efficiency and seniority to the employee promoted.

I am sure every thinking person would say that, all else being equal, the senior man should get the job.

Mr O'Connor: It can be taken into account.

Mr DAVIES: But it is not a ground of appeal. The only ground is to be superior efficiency. One has to go before the board and say, "I am a much better man than the fellow who has been appointed", and one must prove it. One may be equal to him but not superior to him. One may be equal to him and have seniority but still not be superior to him. The appeal cannot be allowed unless one has superior efficiency.

It is a very serious move the Government is making and I do not know whether it realises the seriousness of it. Over the years the Act has worked extremely well. The grounds of appeal have been simple and basic. There were two grounds of appeal and now there is to be only one. If we are looking to saving expense, this will eliminate about 98 per cent of the appeals which go before the board, because people will not be able to appeal if they claim they have only equal efficiency. They must claim superior efficiency. The appointing authority has only to look at the person and say, "In our opinion he is superior, so we will appoint him", and there are no grounds of appeal unless the person who has been passed over can claim to have superior efficiency.

It is quite wrong. It is a basic change in the Act itself and I believe the Government must adjourn the debate on the Bill at this stage, go back to the unions, and talk the matter out. I believe the Government has been badly advised by the Department of Labour and Industry. I doubt whether the Department of Labour and Industry knows what goes on. I do not think it would have a great deal to do with the Government Employees Promotions Appeal Board.

The appeal board has a secretary, and a magistrate is the chairman of it. Each of the departments which have access to the appeal board appoints its own representative. The Department of Labour and Industry knows little if anything—and I think it is evident it knows nothing—about the Government Employees (Promotions Appeal Board) Act. It might be reflecting an attitude which has been expressed by the Civil Service Association. We dealt with that last year. The department mucked up that Bill and it had to be amended in the Legislative Council in the dying days of the session. It has no conception of what the board is doing. I say that in all seriousness. I am not trying to decry the department in any way but I do not believe it has an understanding of how the board operates. The basic grounds of appeal have been interfered with in a very serious way which will disadvantage many employees, and we will be back to the situation where many people do not believe they have had a fair go.

On top of that, I am alarmed to see the board will now have regard for acting time in a position. This is very serious. The Minister for Labour and Industry, being an ex-Minister for Railways, will know that railway employees—traffic officers, mechanical and engineering officers—are scattered all over the country, and basically their jobs are the same. A staff clerk at Narrogin knows what a staff clerk does at Bunbury or at Northam, whether in the CTM's, the CME's, or the CCE's branch. However, the grades are different in each of those offices because of the size of the office and some of the duties which are performed. It may be that promotion goes from Narrogin to Bunbury to Perth. People have experience in the district offices and are able to do the job quite well by transferring around.

It may be that the station master at Katanning wants to be promoted to Northam. He knows how to do everything associated with the job. The places are physically miles apart but the work in the two offices is very similar. The station master at Northam may be sick for an extended period, and it is not unusual for one of the local men to relieve him. He might be sick for 12 months and it might be necessary for the local man to relieve him for that time. The next man in line in terms of seniority might be at Katanning, but he will not be brought to Northam to act in a higher capacity. The man on the spot will be used to act in the job. However, when the job becomes vacant and promotion comes up—perhaps the station master at Northam moves to another position or resigns or passes on—in assessing who is to be appointed to that job acting time may be taken

into consideration, so the man who has been acting in the job has an unfair advantage over the senior man who has not been afforded the acting time.

That was quite unfair. It created much heartburning and many problems. Only in 1953, after the Act had been operating for about eight years, was subsection (3) of section 14 amended to provide that "in considering efficiency the recommending authority and the Board shall disregard service in such office in an acting capacity by applicants for the office to be filled". That was specifically written into the Act in 1953.

The question of acting time was one of the most contentious matters ever to come before the unions. People could get an unfair advantage from acting time because of being on the spot, although they were not senior. A man acting in a job may have been the senior person on the spot but not the senior person in the department. We did not want to disrupt the operations of the department by insisting that the senior man should act at all times, but in 1953 it was felt to be a safeguard to say, "We will disregard acting time."

Now the department can have regard for acting time. There has been no change in the situation to warrant altering the amendment which has operated from 1953 to the present time. I think the 1953 amendment would have been introduced by a Labor Government. Nevertheless, it was agreed as a matter of principle that acting time should be disregarded. Acting time is now to be written into the legislation.

I am saddened to see these amendments brought before the House on the recommendation of an authority which I believe has no appreciation of the great value of the Government Employees (Promotions Appeal Board) Act.

After the Bill was introduced in May I sent a copy of it to my old union, the Railway Officers Union. The matter was discussed by the union on the 30th May, 1979. In his report to the union, the acting general secretary said—

The main changes which affect this Union are

(i) The criteria for selecting an applicant to fill a vacancy will alter so that an appeal can be made on the basis of "Superior Efficiency" alone.

A second ground of appeal now applicable—"Equal Efficiency and Seniority" is to be discarded although it is within the prerogative of the promoting authority to consider seniority in the process of establishing superior efficiency.

As the Minister has already said, that was noted. The acting general secretary continued—

(ii) An amending clause will more clearly set down what is regarded as promotion when transfers occur. For an appeal to exist, the vacancy should provide promotion to both the recommended applicant and an appellant.

(iii) Acting experience in a vacant position prior to it occurring will be recognised and will be admissible in evidence in an appeal.

We cannot grizzle about item (ii). He went on to say that the third change is the one to which the union strongly objects, as it is open to abuse by the department. In addition, the union said it could allow a junior appellant who was utilised for relief purposes an unfair advantage over other officers stationed in the country or elsewhere.

So officers could be given an unfair advantage, even though unintentional. The fact that acting time has been disregarded has meant in the past that the union did not really insist upon the senior man getting the acting time, although it did have an agreement with the department in respect of that matter.

At its meeting, the Railway Officers Union carried three motions. The first two were as follows—

That we advise the Sec. for Railways of our opposition to the Promotions Appeal Board Act being amended and ask he receive an urgent deputation to discuss the proposed legislation to prevent serious industrial unrest which is inevitable if the Bill has a successful passage through Parliament.

That we advise the Government of our opposition to amendments to the Promotions Appeal Board Act and request our Union be excluded from the altered provisions now being considered by Parliament and that they also be advised of our concern at the lack of information received from the Dept. Labour & Industry regarding the proposed amendment to the Act.

My colleague, the member for Morley, has already dealt extensively with the lack of consultation between the department and the various unions. The third motion was as follows—

That the Leader of the Opposition be advised we are totally against the Promotions Appeal Board Act being amended in accordance with the Bill before Parliament and request the Parliamentary Labor Party to take every possible action to prevent the legislation being passed in its present form.

I am only too happy to agree to that. I really believe that this Bill will make it most difficult for harmonious relations to exist between the unions and the department. I am referring not only to the Railway Officers' Union or to the Locomotive Engine Drivers' Union, but also to the unions associated with other Government instrumentalities, all of which will feel disadvantaged when acting on behalf of their members, as a result of the provisions included in the Bill.

Like the member for Morley, I feel we must ask the Government to delay the passage of the Bill and to take the matter back to the department. The department should be asked to call the unions together to discuss the legislation. I make that suggestion with the best will in the world because I believe industrial harmony can exist only if the Promotions Appeal Board continues to operate in the manner which has proved to be so successful since 1945.

The Bill contains some minor amendments with which I do not agree, and I can foresee some difficulties in respect of one or two of them. However, I do not want to argue about them at the moment. I believe in the first place the department should go back to the unions and ask them for their thoughts. That was done in November, 1978, when the department wrote to the unions; and the unions thought they would be consulted further in respect of this matter.

The Railway Officers' Union wrote to the Government and the Railways Department at the end of July, and as far as I am aware no acknowledgement has been made of those letters. That is not good enough. It has been presented as a serious suggestion that round-table discussions should take place. I believe the suggestion should be accepted in the spirit in which it was offered.

I point out that the union about which I am talking is probably one of the least militant unions registered with the Industrial Commission. I think it has had about one day's stoppage in the past 50 years. Certainly it did not have a stoppage during the 10 years I worked with it. We were always able to negotiate and to achieve what we wanted by sensible talking. The members of the union are responsible people and, as a result of the manner in which they see the railways being whittled away, they are naturally most concerned about their future.

However, we are not discussing that point now. We are discussing a very sound board which has been in operation for some 34 or 35 years, and which has been proven to be extremely successful. The board is now being decimated, and that is not

good for either the Government departments or their employees. If the Government will adjourn the debate on the Bill and take the matter back to the Department of Labour and Industry, and hold discussions with the union, I am sure something suitable to all of us will emerge.

I must oppose the Bill as it stands at the present time.

MR O'CONNOR (Mt. Lawley—Minister for Labour and Industry) [5.07 p.m.]: I am sorry to hear the Opposition oppose this Bill because I believe it contains some real advantages. The advantages will be available to those Government employees who are prepared to put in the effort, and they will be available also to the departments in the long term.

Both the member for Morley and the Leader of the Opposition commented on industrial disputation. The member for Morley said the Bill is a recipe for industrial disputation. I am not referring to the railways when I say that in many cases I do not think a recipe is needed. Some people in some unions—and I refer specifically to shop stewards—do not need a recipe for industrial disputation. In fact we have a situation today of union versus union.

Mr Davies: That is always sad.

Mr O'CONNOR: Yes, it is very sad, particularly when it has such drastic effects on Western Australia. In this case it will have drastic effects on the whole farming community of Western Australia, and it may have an effect on future crops. I only hope those concerned get together and solve their differences in the interest of the total community of this State.

Mr Tonkin: We certainly don't want to go out looking for trouble, do we?

Mr O'CONNOR: No, we do not. However, one cannot have someone continually punching one on the nose without eventually hitting back.

Mr Tonkin: Are you saying that you are hitting back?

Mr O'CONNOR: No, I am saying that we cannot allow some people consistently to abuse the law and to refuse to go to arbitration or to listen to the decision of the judge.

Mr Tonkin: Which union has done that?

Mr O'CONNOR: It is not in the interests of the community or the State for that to happen.

Mr Tonkin: Of course it is not; but which union related to this Bill is doing that?

Mr O'CONNOR: I do not know of any union related to this Bill which is doing that. However, the member for Morley was not speaking

specifically about unions related to this Bill; he was speaking about industrial disputation and making general reference to it.

Mr Tonkin: No, I was saying that anything that lessens industrial disputation is good, and I do not think this Bill will lessen it.

Mr O'CONNOR: I agree with the member for Morley that anything which lessens industrial disputation is good.

Members opposite have said no consultation has occurred. Letters were sent to the Trades and Labor Council in November of last year. Letters were sent also to each of the unions involved and to the CSA. Replies were received from only five unions. The Trades and Labor Council replied after the requested date. I might say there was not unanimity amongst the unions which did reply in respect of the 20-odd aspects contained in the letter. However, the Bill was drawn up after discussions with the Public Service Board, the Metropolitan Transport Trust, the Railways Department, the Fremantle Port Authority, the State Energy Commission, and other instrumentalities.

As a matter of fact, it was requested that some action be taken to modernise the board in the interests of the Government departments concerned, and certainly in the interests of the workers concerned.

This Bill has been on the notice paper since May of this year, and I cannot recall having received a phone call or a letter concerning the Bill from any union or person in the intervening period.

Mr Davies: The Railway Officers Union sent a letter on the 25th July, and it has not had the courtesy of a reply.

Mr O'CONNOR: To whom was the letter sent?

Mr Davies: To the Department of Labour and Industry.

Mr O'CONNOR: It did not come to me.

Mr Davies: Surely the department can do something.

Mr O'CONNOR: I said I do not recall having received a letter or a telephone call in connection with the matter. Had the unions been greatly concerned, I would have expected they would request me to meet a deputation, or at least contact me.

Mr Tonkin: They were replying to the under secretary; he wrote to them.

Mr O'CONNOR: That is correct. I introduced the Bill in May, and as the Minister in charge of

the Bill I would have thought that had there been any concern about it I would be contacted. As I said, to my knowledge, I had not received a letter or been contacted in any way by the people concerned.

I phoned the Department of Labour and Industry to see whether any letters had been received by it, and I was advised by the officers that they believed a letter had been received from the Railway Officers Union. That was the only letter in connection with the Bill of which they had any knowledge.

Mention was made of relative efficiency being taken into account. I believe that is fair because it will encourage people to improve themselves and to strive to do the best they can for their department. However, although only relative efficiency can be taken into account by the tribunal, there is no reason that it should not take seniority into account when required.

Mr Davies: But it is not a ground of appeal.

Mr O'CONNOR: I have not got to that point yet.

Mr Davies: You are misconstruing it. They can take anything into account when considering an appeal; but if you haven't got grounds for an appeal to take before the board, what is the use of the board being able to take anything into consideration?

Mr O'CONNOR: The grounds of appeal in that area are superior efficiency, as the Leader of the Opposition pointed out. Under proposed new section 4, the promoting authority shall have regard for the relative efficiency of all applicants when selecting an applicant for promotion.

I think the Bill is reasonable and is in the interests of the people involved. The Leader of the Opposition knows the members of the board and knows them to be reasonable people who would take into account all aspects. Frankly, if as was mentioned an officer was left in the country and not transferred for many years, members can rest assured the union would go to the board and make the matter known; and I am sure action would be taken.

Mr Davies: I am sorry, you have again missed the whole point.

Mr O'CONNOR: No I have not.

Mr Davies: That was about acting time. It is not a matter of being left in the country for years; it is a matter of having an opportunity to act in a position.

Mr O'CONNOR: The member for Morley spoke at length on this matter.

Mr Davies: It is not relating to acting time.

Mr O'CONNOR: I did not say it was.

Mr Davies: I am sorry, I thought you were talking about the point I made.

Mr O'CONNOR: I was referring to what the member for Morley said at that time. Obviously the three points of concern to members opposite relate to the aspects of appointment where efficiency is taken into account and where temporary positions are taken into account. However, they are not necessarily the major reasons for appointments being made.

The member for Morley made a comment that we were eliminating protection of individuals. I believe we are giving protection to those who are prepared to put the time and effort into the job. Quite frankly, I hope this move will help us to improve the services, irrespective of what department is involved.

I have no qualms about the railways. That department seems to be the main one mentioned today. The honourable member will know that when a certain salary range is reached—with the legislation as it stands—certain people may be promoted because it is believed they are more efficient and it is to the advantage of the department in the long term.

Mr Davies: Above a certain justiciable salary there are no grounds of appeal at all.

Mr O'CONNOR: I made that point. To a large degree, that has been responsible for the improved standard in the Railways Department in recent times. That has been because of the efficiency of a number of people who have been promoted, and because of the knowledge they have had. Those people have held the respect of those behind them. I think the Railways Department is one department that has done extremely well in this field.

Mr Davies: During all of those promotions, both grounds of appeal have existed; and if they thought that the man was superior, they have not appealed against him.

Mr O'CONNOR: This can be seen further down the line. Once again, in the long term it could be to the advantage of the departments involved.

Mr Davies: You have just said it is working already. I have said that if a department wants a man they advertise the job with what they used to call a "fence" around it. They used to call for an applicant with certain qualifications. If one had those qualifications and one was wanted by the department, the department would adapt the job accordingly. That has been done for a long time.

Mr O'CONNOR: I know this has happened at times. However, there have been times when the person considered to be the better one for the position has lost on appeal. The Leader of the Opposition would know that. I know of occasions when this has occurred. The person who was considered to be an asset to the department has lost the position on appeal. I must say this has not happened frequently; but it has happened at times.

The member for Morley made some comment regarding the deletion of section 16(2) as set out in clause 17(b) of the Bill. That provides for parties to subpoena witnesses. If we have a look at the Bill we see that a summons can be prescribed under regulations. Therefore, although what the member suggested appears to be the case under the amendment in this Bill, if he refers to clause 17(b) he will find that the situation is covered adequately and witnesses can be brought forward and heard in due course.

Reference was made to the remuneration for board members. It is only reasonable that this should be brought under the control of the Minister. Throughout the various departments board fees are standardised. I do not think it would be fair for the chairman of the tribunal to decide what the board fees were to be when the members of various boards throughout the State receive fees which are regulated. This provision is to bring that point into line with the position with all other boards.

The member for Morley raised the question of an employee injured at work. I will have another look at that, to see whether any action can be taken on the matter. I cannot give a positive answer at the moment, but I will undertake to look at it.

There was another point regarding the expediting of appeals. I agree that this should be done. The sooner we can have these matters out of the way, the better. I will endeavour to make sure that magistrates are made available as quickly as possible to cover these points.

Mr Davies: You will not have to worry about that because you will not have any appeals under this Bill.

Mr O'CONNOR: There may not be as many appeals.

Under this Bill there is provision for action to be taken on frivolous appeals. As the Leader of the Opposition would know from the time he served on the board, there are frivolous appeals from time to time.

Mr Davies: I never said "on the board". I was before the board.

Mr O'CONNOR: The Leader of the Opposition would know that from time to time, not regularly, there are frivolous appeals that waste the time of the people involved.

I believe seniority should be taken into account more strongly than it has been considered in the past.

I support the Bill as it is, and I hope members will give support to it.

Question put and a division taken with the following result—

Ayes 26	
Mr Blaikie	Mr Mensaros
Mr Clarko	Mr Nanovich
Sir Charles Court	Mr O'Connor
Mr Cowan	Mr Old
Mr Coyne	Mr O'Neil
Mrs Craig	Mr Rushton
Dr Dadour	Mr Sodeman
Mr Hassell	Mr Spriggs
Mr Herzfeld	Mr Stephens
Mr P. V. Jones	Mr Tubby
Mr Laurance	Mr Williams
Mr MacKinnon	Mr Young
Mr McPharlin	Mr Shalders

(Teller)

Noes 16	
Mr Barnett	Mr Jamieson
Mr Bertram	Mr Pearce
Mr B. T. Burke	Mr Skidmore
Mr T. J. Burke	Mr Taylor
Mr Davies	Mr Tonkin
Mr Grill	Dr Troy
Mr Harman	Mr Wilson
Mr Hodge	Mr Bateman

(Teller)

Pairs	
Ayes	
Mr Grayden	Mr Bryce
Mr Crane	Mr Carr
Mr Ridge	Mr T. H. Jones
Mr Sibson	Mr H. D. Evans
Mr Watt	Mr T. D. Evans
Mr Grewar	Mr McIver
Noes	

Question thus passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (Mr Blaikie) in the Chair; Mr O'Connor (Minister for Labour and Industry) in charge of the Bill.

Clauses 1 to 3 put and passed.

Clause 4: Section 3 amended—

Mr DAVIES: I want to draw attention to the number of organisations that this Bill covers. We have been talking about the Railways Department, and I have been speaking from my personal experience because I thought that might have been of some value in trying to convince the Minister that the move being made by the Government is a bad one. I suggest that the

Minister should have let the Bill go to the Committee stage and then seek a meeting with the various organisations concerned before the Bill passes through the Assembly. I think that is the fair and decent thing to do.

I note the Minister's point that the Bill has been before the Chamber since the 17th May, and that he personally has not received any representations. I point out that I think the union of which I have been speaking has done the correct thing and has gone to the Railways Department and to the Department of Labour and Industry to express its concern. I am rather alarmed that those departments have not passed the comments on to the Minister.

It is London to a brick on that many of the organisations involved in this legislation do not know that the Bill is before the Parliament. It is not one of the most important pieces of legislation to come before the Chamber as far as the State is concerned. However, it is important in relation to large sections of the community. It is probably not important to them at the present time; but it may become important in the future when members of the organisations are faced with promotion.

We should have regard for this fact. We should pay attention to what people are thinking. We should be aware that people do not worry about legislation until it affects them.

If we have been remiss in not circulating the Bill to the organisations concerned, then I will take some blame for that. However, it is not a Bill which has received wide publicity in the Press.

I will point out to members the organisations which will be affected by the Bill. They are the Western Australian Transport Commission, the State Energy Commission of Western Australia, the Fremantle Port Authority Commissioners, every port authority, every Government hospital, and "every Crown instrumentality the employees whereof are remunerated with moneys (other than grants) appropriated by the Parliament of the State to the purposes of such Crown instrumentality". That is taken from the proposed amendment and from the section as it appears in the Act which was reprinted in 1967. It goes on to deal with other organisations which are covered.

I do not want the Committee to run away with the idea that we are concerned with the railways only. That department has been involved in many appeals. The fact remains that all of these organisations are concerned. It is possible that, because they do not have as many staff as the Railways Department, they do not have as many appeals. Therefore, we would have thought that

those organisations would have been given some consideration by the Department of Labour and Industry.

I do criticise that department. It is one of the least efficient of Government departments. I could produce plenty of evidence in relation to that if the Minister wants to debate the Department of Labour and Industry. It has withdrawn into itself. It has been listless in the things it is supposed to have done.

Mr O'Connor: I do not think you are being fair.

Mr DAVIES: I am being completely fair. It took years to bring industrial safety legislation before the Parliament—the Machinery Safety Act, and things like that which should have been attended to years ago.

I make no apology for the inefficient way that department has been run. I just want to say that once again this demonstrates its inefficiency, because it has not done the things it should have done.

It made casual contact with a few organisations, accepted some replies, and that was the end of it. Now it has at least one protest before it and the department has done nothing about the matter. The letter to which I referred was dated the 25th July.

The Railways Department has a protest and it has done nothing about it either. The response from the Railways Department was that it would try to arrange a date to talk about the measure no doubt after it had gone through Parliament. Of course, after such discussions, amending Bills will need to be introduced.

Surely we should obtain the unanimity of all the people involved before the Bill is introduced. Why should we debate it for many hours when all these matters should have been decided before it was introduced?

The end result of the Bill is there will be far fewer appeals and there will be a greater number of discontented staff. People who are so inclined will be able to indulge in nepotism, favouritism, and victimisation. That has happened before and we are now creating the opportunity for it to happen again.

I am not saying every promoting authority works in this manner; but some people are small minded and think only of themselves, their families, and friends rather than of the good of the service which employs them.

I have seen this happen before and that is why the Promotions Appeal Board legislation was introduced in 1945. As a result of these

amendments to the Act, we might as well not have it.

I should like to draw the attention of the House to all the people who will be affected by this legislation. I speak of the locomotive drivers and railway employees only because I am familiar with them. If the Government decides not to proceed with these provisions at this time it will demonstrate its willingness to communicate, despite its actions to the contrary up to this stage. Here is a chance for the Government to repair a few fences and to improve its image. However, it is throwing away this opportunity.

Mr TONKIN: When replying to the second reading debate the Minister dragged his coat up and down looking for a fight and talking about industrial disputation. He said some people were looking for industrial disputation.

Mr O'Connor: You started on that point yourself.

Mr TONKIN: I said that it seemed the Government had decided to take a different line in respect of industrial disputation, especially after the agreement which was reached among all the Ministers for Labour and Industry in Sydney last Friday. I approved that change in attitude on the part of the Government. However, if that is its new policy, the Government has made a mistake by introducing this Bill.

Mr O'Connor: Are you saying this Bill is the recipe for industrial disputation?

Mr TONKIN: I am. The Minister said he did not need a recipe, because he had to fight back when people were punching him on the nose. He seems to be looking for a fight.

Mr O'Connor: We do not have to look for a fight.

Mr TONKIN: The kind of attitude adopted by the Minister will not work in the field of industrial relations. Not only does the Minister have to not look for a fight; but also he has to avoid one.

Either wittingly or unwittingly—only the Minister can tell us that—this Bill is a recipe for industrial disputation. We say that, because people will not be able to obtain justice in the appeal situation. It will be more difficult to overturn departmental decisions. That is a cause for industrial disputation.

The lack of consultation between employers and employees is one of the main causes of industrial disputation in this country. We hope the Government is beginning to understand that and will do all in its power to lessen industrial disputation. If the Government is sincere, and we

hope it is—we are prepared to believe it is sincere until we see otherwise—it has made an error of judgment by introducing this Bill, because it will cause disputation.

When we have an Act which provides for the protection of employees against an unjust decision by an employer, and it is decided to amend those provisions without consulting the employees concerned, it is a provocative step. The Government is asking for trouble by introducing this measure without consulting the people most affected by it. I am referring to the employees who will suffer as a result of the provisions contained in the Bill. If the employees are not happy with the changes proposed, it is a cause for industrial disputation.

We are prepared to accept it is impossible to please everyone all the time. The Government cannot introduce legislation designed to suit trade unions only. All sections of the community must be considered. We are aware of that and we accept it. However, we believe if it is possible to avoid disputation and a breakdown in communications, one should try to do so. We do not believe this amending legislation will improve relationships between employers and employees. As an Opposition, we are doing our duty by pointing out the situation to the Government.

Mr O'CONNOR: I was trying to point out that the Government does not want industrial disputation; but in very many cases it is impossible to avoid it. In the situation where union representatives will not become involved in industrial disputation as long as we give them everything they want, how can we inject sanity into the community?

Recently we had the situation in the Pilbara.

Mr Davies: They do not have the right of appeal.

Mr O'CONNOR: I am replying to the point brought up by the honourable member. In the situation in the Pilbara the union put forward a case containing five points, claiming all except one of them were not negotiable. The point which was negotiable referred to the 40 per cent salary increase and the negotiable part of it was the manner in which it should be paid. After being on strike for 10 weeks claiming these issues were not negotiable, negotiation eventually took place and then the men went back to work.

Mr Davies: There was interference by the Government which was very much resented by the employees.

Mr O'CONNOR: The Leader of the Opposition sat by and did everything to criticise the situation without trying to solve the problem.

He smiled all the time the men were out on strike, despite the fact that a large number of people were not being paid and the country was being affected seriously by the strike. The Leader of the Opposition did not care.

Mr Davies: It was disgraceful.

Several members interjected.

The DEPUTY CHAIRMAN (Mr Blaikie): Order! Would the Minister continue?

Mr O'CONNOR: I will continue if the Leader of the Opposition keeps quiet.

Mr Davies: If you want to debate the situation in the Pilbara, we will do that.

Mr O'CONNOR: The Leader of the Opposition wants me to debate the Bill, without replying to comments made by members opposite.

Mr Tonkin: I was talking about this Bill.

Mr O'CONNOR: The member was talking about industrial disputation.

Mr Tonkin: And this Bill.

Mr Clarko: When you get too close to the bone all the little boys start crying out.

Mr Tonkin: How does this Bill refer to the situation in the Pilbara?

Mr Sodeman: It is appropriate to give an example. You do it quite often.

The DEPUTY CHAIRMAN: Order!

Mr O'CONNOR: I should like to refer to the criticism made by the Leader of the Opposition in regard to the efficiency of the officers of the Department of Labour and Industry. A number of good, hard working people are employed by that department. They give of their best.

Mr Davies: Change the Minister!

Mr O'CONNOR: It is a pity the Leader of the Opposition has criticised the officers of the department in this manner.

Mr Davies: We will debate their record with anybody. I think it is disgusting.

Mr O'CONNOR: By criticising the department, the Leader of the Opposition criticises the people who work for it and some very good people work there.

Mr Davies: I am also criticising the Minister and the departmental head.

Mr O'CONNOR: I wished mainly to defend the department and the people working for it. As far as I am concerned they do a very good job and I know they will continue to work well despite the comments made by the Leader of the Opposition.

Mr DAVIES: Shall we debate the Pilbara issue now, Sir, or shall we leave that until a later date? I imagine you want to keep to the Bill, Sir.

Mr Sodeman: Sit down!

Mr DAVIES: I know exactly what I intend to say. I would like to refer to line 30 on page 11 of the Bill and, in particular, to the words "promoting authority". Most people have overlooked the fact that the whole concept of appointments has been changed by this Bill. Previously the department made a recommendation, in which case it was the recommending authority. The appointment was not confirmed until after any appeals had been heard. I believe a period of seven or 14 days—I am not quite certain of the exact number—was allowed during which appeals could be lodged. If no appeals were lodged during that time, the recommending authority's recommendation became operative and a permanent appointment was made.

That concept has now changed completely and there is reference to the promoting authority only. This is a bad principle. In effect the appeal board is being told that the promotion has been approved despite the fact that an appeal has been lodged.

Further on in the same clause the definition "recommending authority" is sought to be removed. This will make it more difficult for the board to grant an appeal even if there is one ground only for appeal; that is, superior efficiency. It will be said that an appointment has been made.

In the past critical dates have been fixed from which promotions and orders of seniority apply. These dates will become less important, because the department is doing its best to remove seniority.

Mr O'Connor: There were doubts in the old Act as to when the dates of appeal started and finished; whether it was on the lodgment date or the date of receipt. This has been clarified.

Mr DAVIES: I am not referring to that. That matter is remedied later in the Bill. The clause to which I am referring alters the whole system. Previously the decision of the recommending authority was accepted or rejected by the board. That authority now becomes a promoting authority and there is no recommending authority under the provisions in the Bill. The concept of the board has not been understood and we will have a situation where the department promotes rather than recommends.

The appeal board makes the final decision if there is an appeal and if no appeal has been

lodged the recommendation of the recommending authority is confirmed. The Government illustrates its lack of understanding of the way in which the Act works by introducing this clause. There has been a mad rush for the Act to be amended, the only reason for which is the changes made last year to the Public Service Act and the Promotions Appeal Board as they affect public servants.

No requests have been made for these changes. Had people been asking for the changes there might have been some reason for the Act to be amended. No reason has been given other than the fact that it is a whim on the part of the Government or somebody in the Department of Labour and Industry who does not understand the Act because he has never worked with it in the past.

The situation in relation to the Public Service Act is not relevant to this matter. If the Government wants to opt out of the Act for its employees as it did last year, it does not mean that those who elect to be covered by it should have to accept the Government making it completely unrecognisable.

It is a very bad move. It shows that the concept of the appeal board is not fully appreciated. The fact that we are now going to alter the situation means we can get into all kinds of arguments in the future as to whether or not the person is appointed by the board. He may or may not be appointed, and this I suggest can lead to further litigation.

Mr O'Connor: What the Leader of the Opposition said about the wording used is correct, but if there is no promotion there is no right of appeal, and it was thought to be more appropriate to have this wording than the wording in the other Act.

Mr DAVIES: This is the promoting authority; it is not promotion. We are talking about the person who is making the staff movements. I do not think the Minister understands it.

Mr O'Connor: I do.

Mr DAVIES: Promotion is quite different from the promoting authority. The promoting authority is the hierarchy which moves the bodies around—not physically, but on a card index or file system—and that is quite distinct from the recommending authority. The Minister is now confirming that the promotion will be made and he admits there is no recommending authority. So he has admitted there is a basic change in the concept of the legislation, which only highlights the fact that somebody is saying, "We have had enough of the Government Employees

(Promotions Appeal Board) Act. It is too fair so we will alter the concept of it."

I suppose less than 5 per cent of appeals are successful. Some of them are completed in an hour, others might take a couple of days, but a safety valve is provided for a person's qualifications to be brought out in the open. Perhaps he eventually has to admit that the man who was appointed, be he junior or senior, had superior efficiency.

During the 10 years I handled appeals I think only one could ever have been considered to be bordering on the frivolous. First of all, the advocate tells a person whether or not he has a good case. The advocate will generally take it and try to make the best out of a poor case. If it is a very poor case the appellant is told by the advocate he has not a chance and he might as well give up.

I do not think I have ever known a fine to be imposed for a frivolous appeal. There may have been some fines for frivolous appeals but I do not recall any. If we made the fine \$10 000 it would not alter the fact that some people would want to go before the board because they honestly believe they have a better case than the person who has been recommended. The magistrate is very reluctant to impose a fine for a frivolous appeal. So the amount of the fine does not mean anything. But I say we will have trouble trying to interpret what is a promotion and what is recommended by the promoting authority, because there will no longer be a recommending authority.

Clause put and passed.

Clause 5: Section 4 substituted—

Mr DAVIES: The Minister has made some play of the fact that paragraph (d) says—

(d) when selecting an applicant for promotion, the promoting authority shall have regard to the relative efficiency of all applicants;

It mentions "relative efficiency" but nowhere in the Bill is seniority mentioned. I believe the promoting authority should at the very least have regard for the relative efficiency and seniority of an applicant. I do not think the Minister can disagree with that because, after all, his final words when he replied to the debate were, "Seniority should be taken into account more strongly than it is now." I nearly fell off my newly padded seat when I heard that.

Mr O'Connor: If I said "seniority" I made a mistake; I should have said "efficiency".

Mr DAVIES: I could hardly believe it. The Minister says efficiency will be the factor. Efficiency has always been highly regarded; it has never been disregarded. But, all else being equal, seniority should count. Who in this House disagrees with that? I hear no dissenting voice, so I think we could take my suggested amendment as carried. I move an amendment—

Page 4, line 17— Insert after the word "efficiency" the words "and seniority".

The clause will then read, "when selecting an applicant for promotion, the promoting authority shall have regard to the relative efficiency and seniority of all applicants".

I do not think that that is unreasonable, and when I just asked whether any member disagreed with me that all else being equal seniority should count, no-one did disagree. And yet that very important ground of appeal is being removed. We will say some more about that in a minute, but at the moment I would like the Minister to agree with me that mine is a most reasonable amendment.

Mr O'CONNOR: I rise to oppose the amendment moved by the Leader of the Opposition mainly because it is totally unnecessary. I believe he is giving scant regard to the individuals who will be the members of this tribunal. The provision in the Bill indicates that without doubt efficiency must be taken into account but it does not preclude the tribunal from taking seniority into account. This matter is covered adequately in the Bill, and therefore I oppose the amendment.

Mr TONKIN: If we carry the Minister's argument to its logical conclusion, there is no need to mention efficiency. If we have full regard for the people who will sit as this tribunal we do not need to give them any instructions at all. Of course that is nonsense. We have a right to lay down criteria, and it is our duty to lay down criteria to enable the tribunal to come to a decision. All we are asking is that if efficiency is equal, seniority should be taken into account. It is not good enough to say we should leave this to the members of the tribunal because they do not then have to take seniority into account at all.

One of the problems in regard to promotional decisions is that of objectivity, so that it can be shown that favouritism has not occurred. Although we are not saying that seniority is the most important criterion, it is certainly the most objective. If a person says he has 30.6 years' service, that fact can be verified. To test his efficiency is much less objective. We agree that, as in the present Act, efficiency should be the

most important determinant as to whether or not a person receives promotion.

We must consider the arguments about favouritism and nepotism. When it is felt that a promotion has been granted for these reasons, it makes for friction and we regret that. We believe in fewer and fewer industrial disputes, and one way to achieve that aim is to ensure that there is a proper appeal provision for people to go before a court and to obtain justice. That is why the Opposition is in favour of retaining the *status quo*.

Too often the Government comes into this place and says in effect, "We want to change the Act because we want to change it." The Government feels that because it has the numbers in both Houses it does not have to put up a case for amending legislation and so we are told to like it or lump it. If the Government could show that the present Act is unworkable, that the present appeal system is resulting in anomalies, that certain injustices are occurring, or that inefficiency is taking place, then we would have to listen to that argument and evaluate it. But that is not what the Government has said. In effect all the Government has said is that it wants to change the Act because it wants to change the Act. It has said, "We have the numbers, and therefore, it will be changed irrespective of the objections from the employees who will be most affected by such changes, and irrespective of the arguments put up by the Opposition."

I must admit I did not intend to move an amendment, but the Leader of the Opposition thought that the amendment should be moved. This shows perhaps that he has a more optimistic attitude than I have. Perhaps my more pessimistic attitude stems from having discovered there is no system of compromise and consensus in this Parliament.

The Government will not listen to argument and will not evaluate amendments on their merit. If the Government is embarrassed, perhaps it will agree to amending the Bill in another place, to justify the existence of that place. However, the Government never has the decency to say, "You have a good point, we will agree with your amendment." That is the reason I would not move an amendment; because my experience in this place is that amendments are not judged on their merit. A strong person admits when he is wrong, and we have seen the inability of this Government ever to admit that the Opposition might have a good idea.

When a Government says an Act should be changed, it should point out anomalies, inefficiencies, or injustices which are occurring.

This Government has not done that; it has merely said blandly, "The Act will be changed whether or not you like it", and the Opposition can huff and puff to no avail. The Government revels in having the numbers to ram through legislation.

The Opposition believes due regard should be had to argument in this place. As the Government has not put a case regarding why seniority should be removed, the *status quo* should remain. Normally the Opposition would be the last to argue in favour of the *status quo* merely for the sake of it; we have seen enough of that from the conservatives without doing it ourselves. Yet we say the *status quo* should remain unless a case is put up in favour of changing it. No case has been put up. The amendments in the Bill will lessen the protection of the rights of employees.

Mr DAVIES: The Minister has demonstrated that he does not understand the situation because he said he was sure the tribunal—as he called it—would take all aspects into account when hearing appeals. Seniority can be completely disregarded in the consideration of appeals because appeals will not go before the board for the simple reason that no-one will have the right to go before the board.

This clause is not related to the board; it is related to the department or the promoting authority, which takes cognisance of such matters. How can one prove whether or not the department has paid attention to these matters? It is impossible. The Minister says he is sure the department will pay attention to them; but it is not bound to do so. That is merely a sop. The new provision says that when selecting an applicant for promotion, the promoting authority shall have regard for the relative efficiency of all applicants. I think the promoting authority should have regard for both efficiency and seniority.

The Minister seemed to be under the misapprehension that this provision will apply to the Promotions Appeal Board. It will not; it will apply to the promoting authority. Many appeals will not get to the board, and no-one will ever know whether consideration has been given to seniority.

I am happy to admit that in some cases the senior person is not the most efficient. This has been proven time and time again, and the department knows it and can take action in regard to it. At the moment the department takes this into consideration, knowing it will have to answer in the appeal court if it is not able to justify its case. However, in future the department will not have to worry about that; the only thing that will matter is efficiency.

When all else is equal, surely seniority should be the deciding factor. The Minister has not been fair; I think he has not been properly briefed on this matter because we have not received sufficient explanation.

The amendment is a good one. It will provide some satisfaction to the employee if he is able to feel that at least his seniority has been afforded some consideration. I hope the Committee will support the amendment.

Amendment put and a division taken with the following result—

	Ayes 15
Mr Barnett	Mr Jamieson
Mr Bertram	Mr Pearce
Mr B. T. Burke	Mr Skidmore
Mr T. J. Burke	Mr Taylor
Mr Davies	Mr Tonkin
Mr Grill	Mr Wilson
Mr Harman	Mr Bateman
Mr Hodge	

	Noes 22
Mr Clarko	Mr Mensaros
Sir Charles Court	Mr Nanovich
Mr Coyne	Mr O'Connor
Mrs Craig	Mr O'Neil
Dr Dadour	Mr Rushton
Mr Hassell	Mr Sodeman
Mr Herzfeld	Mr Spriggs
Mr P. V. Jones	Mr Tubby
Mr Laurance	Mr Williams
Mr MacKinnon	Mr Young
Mr McPharlin	Mr Shalders

Ayes	Pairs	Noes
Mr Bryce	Mr Grayden	
Mr Carr	Mr Crane	
Mr T. H. Jones	Mr Ridge	
Mr H. D. Evans	Mr Sibson	
Mr T. D. Evans	Mr Watt	
Mr McIver	Mr Grewar	
Dr Troy	Mr Old	

Amendment thus negatived.

Clause put and passed.

Progress

Progress reported and leave given to sit again, on motion by Mr O'Connor (Minister for Labour and Industry).

JUDGES' SALARIES AND PENSIONS ACT AMENDMENT BILL

Message: Appropriations

Message from the Governor received and read recommending appropriations for the purposes of the Bill.

BILLS (2): RETURNED

1. Bulk Handling Act Amendment Bill.
2. Cattle Industry Compensation Act Amendment Bill.

Bills returned from the Council without amendment.

(Teller) VALUATION OF LAND ACT AMENDMENT BILL

Receipt and First Reading

Bill received from the Council; and, on motion by Sir Charles Court (Premier), read a first time.

House adjourned at 6.12 p.m.