Legislative Assembly.

Wednesday, 3rd September, 1947.

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

QUESTION.

HOUSING.

As to Permit Rate and Material Supplies.

Hon. F. J. S. WISE (on notice) asked the Premier:

(1) During the past twelve months, or at any time during the period of building control, has there been with the Housing Commission any variation of the principle of the permit issue rate being closely related to material supplies?

(2) Will he advise whether the Housing Commission has any knowledge of any direction of any sort being given to it by the previous Government in regard to the number of permits for brick and timber houses to be issued?

The PREMIER replied:

(1) As a result of recommendations made by a Royal Commissioner appointed by the previous Government in 1946, to enquire into building operations, the numbers of permits issued were increased beyond the numbers issued by the State Housing Commission prior to the enquiry. The Royal Commissioner was of the opinion that the pressure of permit holders for supplies of building material would stimulate increased production. Unfortunately, owing to a breakdown in electricity supply and the railway dispute, followed almost immediately by the Christmas holidays, the anticipated increase in building material production did not eventuate.

(2) The Housing Commission has no knowledge of any such instruction.

BILLS (2)—FIRST READING.

1, Municipal Corporations Act Amendment.

Introduced by the Minister for Local Government.

2, Increase of Rent (War Restrictions) Act Amendment.

Introduced by the Attorney General.

BILL—INDUSTRIES ASSISTANCE ACT AMENDMENT (CONTINUANCE).

Read a third time and transmitted to the Council.

MOTION—HAMPSHIRE & SONS' CATTLE AND T.B.

To Inquire by Select Committee.

Mr. HOAR (Nelson) [4.38]: I move—

That a Select Committee be appointed to inquire into and report on the following:—

(1) The incidence of tuberculosis in the 90 registered Guernsey cattle offered for sale by Messrs. P. G. Hampshire and Sons at Yarloop on Tuesday, 12th November, 1946.

(2) How many such cattle have been tested since the sale and have reacted to a T.B. test.

(3) How many such cattle were tested before the sale, and with what result.

(4) Were there any reasonable grounds for Hampshire and Sons to suspect this disease in their cattle before the sale.

(5) Any other relevant matters.

I feel justified in asking the House to agree to a Select Committee to make inquiries in the terms of the motion standing in my name on the notice paper, for the simple reason that I have, during the past few weeks, had certain information presented to me, firstly by individual farmers and secondly, by the dairy section of the Farmers' Union on behalf of the dairying industry, generally. If what I believe to be true, is true, then the sooner steps are taken by the Government to prevent a repetition of the disgraceful state of affairs that now exists, and can exist under the law dealing with the sale of cattle, the better it will be for everyone concerned.

Members will recall that last session Parliament passed the Milk Act which contained, amongst other things, a provision for compensation in the case of the destruction

of cattle, due to tuberculosis, and also a provision dealing with the compulsory testing of cattle in metropolitan herds. When the Bill became law I, for one, wondered—and I have since wondered—whether it would not have an effect on the minds of some of the breeders of cattle outside the metropolitan area who, perhaps, had reason to suspect the condition of their herds. It seemed to me that the Act might have the effect of causing them to unload those cattle on to an unsuspecting public in order to avoid a total loss to themselves at a later date. I can now say definitely that one such glaring case has come to my notice. It has had results distressing to a number of farmers ill-equipped in any way to withstand the shock of the heavy financial loss involved.

These prominent breeders of stud cattle —I refer to Messrs. P. G. Hampshire & Sons—offered for sale last November at Yarloop the whole of their well known "Brookfield" Guernsey cattle. About 90 head of stock were involved. No-one could or did at that time have any reason to suspect the honesty of the vendors, because of their past reputation as prominent breeders of good-class cattle in this State. Nevertheless, within a few months there were at least four farmers, to my certain knowledge, who suffered grievous losses as a result of tuberculosis being discovered in these cattle within a very short time after the sale. Mr. Andrew Muir, of Manjimup, lost seven out of nine, at a total cost of roughly £300. Mr. A. Fry, of Manjimup, lost seven out of seven, at a cost of £164. Mr. R. C. Smith, of Cowaramup, lost four out of four, at a cost of £100, and Mr. Robinson, also of Cowaramup, lost seven out of eight, at a total cost of £250. In the case of these four men alone a sum of over £800 was lost.

The total loss resulting from such a sale cannot at this stage be estimated, as for quite a number of months after the sale the cattle that were bought in good faith at Yarloop last year were no doubt mixed with clean cattle on the home farms. At this stage it is impossible to say how much damage was actually done by the introduction into farm herds of the unclean cattle, but we do know that in round figures the men I have mentioned lost over £800. Those who have any knowledge or experience of farming must realise how the incidence of tuberculosis can spread quickly through a clean herd, and will therefore understand the danger that even today exists in herds that have not yet come to the notice of the public in this regard.

I have here a considerable file containing letters from the four men I have mentioned. There are letters to the secretary of the dairy section of the Farmers' Union, letters to Mr. Hampshire, and his replies; letters from the Farmers' Union to a firm of solicitors, and subsequently to King's Counsel, asking for legal opinion and advice. I do not propose to read out all the correspondence, but the letters will be made available to any member who desires to peruse them. I think, however, that in support of my motion I should read one or two letters and perhaps quote passages from others. I will deal first with a letter from Mr. Fry, of Manjimup, to Mr. P. G. Hampshire, in which he says—

> Of the seven cows purchased, three aborted, two had with mammitis, one died, one dying, one T.B. symptoms very bad. Three of them have lost one-quarter.
>
> Now, Mr. Hampshire, the position is that I owe Elder, Smith & Co. £168 12s. on these cattle. As a returned Air Force pilot, I ask you to try and appreciate the position I am in and make me a liberal adjustment on my purchase, for after a veterinary inspection I do not anticipate keeping any. It is a calamity for me and is causing my wife and I much worry. I could not comply with your request for heifers, as I have none from your stock.

Mr. Hampshire replied at some length, and one paragraph of his reply, which struck me as being interesting, is as follows:—

> To say I am extremely sorry you have had the troubles and losses you mention is putting it mildly, and I fully appreciate your disappointment, but I want you to realise that all breeders have their worries and losses.

We know that all breeders have worries and losses, but in this case Mr. Hampshire was taking no risk at all where the sale of his cattle was concerned. The whole of the risk was taken by the purchasers. At a later date, when Mr. Fry sought some recompense from Mr. Hampshire, he received from him the following telegram:—

> 2nd August, 1947. A. Fry, Manjimup. While expressing deepest regret your loss, stock were sold you November in all good faith, therefore impossible to make refund.

There is a letter here from Mr. A. Muir, of Manjimup, in reply to the secretary of the Guernsey Cattle Society of Australia, W.A. Branch, Mr. Muir having been asked if he

would care to become a member of the society. The letter reads—

Yours of the 18th December, 1946, asking if I desire to become a member of the Guernsey Society and have same registered.

It was my full intention to join the society, but rumours were about that cattle (cows) from Hampshire & Sons stud sale at Yarloop were infected with T.B. and several had to be destroyed; so I decided to have mine tested for T.B. by the Government vet. To my surprise, six cows and one two-year-old bull were condemned, and had to be slaughtered. One of the six cows died on the farm before they were trucked to Picton for slaughtering, and then the portion of carcase not infected with T.B. was passed on to Nelson & Co., Metropolitan Meat Market.

After expenses from butcher at Picton, near Bunbury, were paid, my return was £22 10s., not including vet's fee and £4 10s. cartage by motor from "Deeside" Farm to Picton.

The purchase price of these nine head was £316 16s. plus railway freight and carting from Yarloop to "Deeside" Farm. All I have left is one cow and one calf—one cow that aborted and one calf from one of the cows that was slaughtered—a very fine record from one of the best-bred and productive Guernsey studs in the State.

By my experience it proves that T.B. has most likely been distributed in other parts of the State.

I think that your society should push for legislation compelling all owners of stud stock to have them tested for T.B. prior to disposal by private or public sale; this course would protect buyers who are desirous of improving their herds and eventually be a great service to the State.

Mr. R. C. Smith, of Cowaramup, wrote to the secretary of the Manjimup Road Board, as follows:—

Re your report in the paper a few weeks back about the loss to a producer of £300 as his cattle had to be destroyed through T.B.

I, too, purchased four cattle at the same sale, namely, Mr. P. G. Hampshire's, and have had to have the lot destroyed, suffering from T.B. A Government veterinary officer examined and tested them. Also a neighbour destroyed six out of seven, all purchased from the same source.

He continues in the same strain. A letter from Mr. W. A. Robinson, of Cowaramup, to the secretary of the Manjimup Road Board, reads as follows:—

I have been following your correspondence in the local papers, re the introduction of T.B. cattle to your district, with a great deal of interest. I am writing to you to place before you certain information that I have on the matter. I also purchased eight animals from the same source as the two men in your district. However, I bought privately, which makes a slight difference. I have just had the cattle tested for T.B. by the Government vet., and seven of the eight had to be destroyed for T.B. Two vets. held a post mortem on the animals and they found that each animal was badly infected. Another buyer in this district bought four animals which have also been destroyed for T.B.

I am an ex-serviceman just starting dairy farming, and the loss came as a severe blow to me. As I feel that I have a legal case, I have placed the matter in the hands of a Perth firm of solicitors. On making investigations I have discovered that 40 cattle out of a total of 48 have already been destroyed for T.B. That is not counting two that were previously destroyed in your area for other reasons.

In Mr. Baron Hay's reply to you, he stated it was not for some time after the sale that the large incidence of T.B. was noticed by a buyer who bought subject to T.B. That buyer no doubt was from S.A. The sale took place on the 12th November—a matter of 17 days which could not be reckoned as "a considerable time." This information was obtained from records at the Agricultural Department.

I have placed this information before you so that either you can help me or I can help you. The other man in this district is Mr. R. C. Smith who has given me authority in writing to use his name and details as I deem fit.

I should explain here that that statement is quite true. He did come from South Australia and he bought 16 head of cattle subject to the T.B. test. Of that number 12 head were afterwards slaughtered through T.B. infection. Then there is a letter, under date the 3rd July, from Mr. Andrew Muir, of Manjimup, to the Department of Agriculture as follows:—

I would be pleased to know did Messrs. P. G. Hampshire and Sons of Yarloop have any of their stud Guernsey cattle tested for T.B. by any of your veterinary officers 15 months before Messrs. Hampshire & Sons' stud stock sale at Yarloop. Also if any were tested for tuberculosis prior to their sale on November 12th, 1946.

If so, state number of animals, names, and marks usually taken at such a test. An infected animal mixed with a clean herd and kept with them constantly—how long would it take other animals to become infected under most favourable conditions, say a herd of 60-70? About what percentage is likely to contract the T.B.?

In reply to that letter, Mr. A. McKenzie Clark, the Chief Veterinary Surgeon of the Agricultural Department, wrote—

I am in receipt of your letter of 4th inst., making inquiry in respect to tests applied to Mr. Hampshire's cattle.

In this connection I have to advise that prior to Mr. Hampshire's sale a bull and a cow which were suspected as being affected with tuberculosis were tested and these reacted. The remainder of the herd was inspected at the same time and gave no indication of being unduly infected with tuberculosis.

Members will appreciate the fact that there is a great difference between an inspection of a herd and the searching test that is now required under the Act. A paragraph, such as that included in this letter, might be completely misleading to a farmer who attended a sale for the purpose of purchasing good class cattle. He might easily get the impression that the whole herd had been under close supervision by officials of the Agricultural Department, whereas that was not the position at all. Here only two were tested, and both reacted! Mr. Clark continued in his letter—

The infection of a herd with tuberculosis will depend upon the condition of the "carrier." For instance, an animal with gland lesions would have little likelihood of transmitting infection whilst a badly coughing cow which is fed in the same troughs as clean cattle would spread the disease rapidly. Also the spread of tuberculosis would be greater amongst cattle which are closely confined in a small area whilst station or range cattle seldom become infected to any great extent.

The disease generally is slowly progressive. The only method, as you know, of detecting the presence of tuberculosis is by a tuberculin test. It is likely that 70 per cent. would contract the disease under favourable conditions.

Next there is another letter from Mr. W. A. Robinson, of Cowaramup—this is the last letter that I will ask members to listen to—which was written to Mr. F. C. Meadows, the secretary and personal service officer of the Farmers' Union of Western Australia. It reads—

I have just received communications from Messrs. Fry and Muir of Manjimup, re cattle purchased from P. G. Hampshire affected with T.B.

I, too, have been a victim of the same vendor. However, I purchased my cattle privately on the recommendation of Hampshire. I purchased seven cows and one bull for a total cost of £208 10s. Recently I had the cattle tested by Mr. Hardy, the Government Vet. and seven of the eight re-acted to T.B. and were destroyed.

I am a member of the Cowaramup branch of the union. I am also an ex-A.I.F. serviceman of this war, whilst my wife is an ex-A.W.A.S. Wishing to start dairying, I was advised to see Hampshire for advice. I did so and he offered me the cattle for the price stated, plus £21, which I refused to pay as the bull was sick on arrival. He thoroughly recommended the cattle and told me what a good start they would give me. They were all supposed to be mated, and I was assured that they were free of disease.

During the course of my conversation, mention was made of a cow being destroyed for T.B., and I asked had the cows been tested. I was assured they had been. Shortly after I received the cattle it was evident that none of the cows were in calf, as stated, and five of the seven were dry (not in milk).

As I have no further capital with which to buy replacement stock I am in a poor position. I sought legal advice from Stone, James, solicitors, Perth. Through them Hampshire offered us £50 if we would sign a statement saying we were perfectly satisfied with the cattle and would take no legal action. Naturally we refused. I am now informed that the solicitors are loath to sue for T.B.

Mr. Graham: Who is this man, Hampshire?

Mr. HOAR: He is a very prominent breeder of cattle in this State.

Hon. F. J. S. Wise: He is the president of the Guernsey Society of Australia.

Mr. HOAR: Arriving at that point, the Farmers' Union sought to take the question up from the legal standpoint and approached Messrs. Joseph, Muir and Williams, barristers and solicitors, of St. George's-terrace, Perth. That firm's letter in reply to the union made it quite clear that no legal redress could be obtained in respect of this sale of cattle. However, one paragraph in the solicitors' letter made it necessary for the secretary of the Farmers' Union again to contact them. The paragraph to which I refer read as follows:—

It is apparent that the vendor could establish that this herd had been under close supervision of a veterinary surgeon of the Department of Agriculture, and that there was no clinical evidence of tuberculosis in his herd prior to the sale.

That was the solicitors' opinion, but in his reply to the legal firm regarding that place, Mr. Meadows wrote—

This can be disputed as it has been disclosed by the Department of Agriculture that at least one case was a positive reaction and the animal (a valuable sire) was destroyed.

This test took place on October 18th, 1946, and the beast "Yarraview Raider," the leading sire of the stud, was destroyed approximately two weeks later.

From examination of the brochure showing sale date as November 12th, 1946, and lot

number 75, showing the beast in question for sale, it is apparent this animal was destroyed just prior to the sale.

As the sale brochure shows this infected sire as having been mated with at least thirty-two cows submitted at this sale, is it not reasonable to assume that there were grounds for existent knowledge of T.B. infection in the herd?

In the light of these facts, does misrepresentation come up for consideration when a vendor sells something purporting to be in good order and condition when it is known to the vendor and his stud master that they had been mated to a diseased bull?

Dealing with that point, Messrs. Joseph, Muir & Williams replied in a further letter, dated the 5th August last, and included in the communication was the following brief passage:—

We think that a claim based on fraud would fail because of an inability to prove that any representation that the cattle were free from T.B. was ever made, and, secondly, because of an inability to prove that Hampshire knew that the cattle were so infected.

Any claim based on any warranty either expressed or implied would, we think, fail because of the following clause inserted in the conditions of sale:—

The livestock to be sold with all faults and errors of description and to be at the risk of the purchaser from the fall of the hammer.

That is the position. Members can see that no legal redress may be obtained in respect of the sale of these cattle, but, nevertheless, a very strong case can be made out against this man morally for selling cattle which I personally believe he knew to be infected prior to the date of the sale. If such an inquiry as I am proposing were agreed to by the House, I believe evidence could be submitted that would prove conclusively that Hampshire was officially advised to have his cattle tested before the sale, and he is reported to have said that he preferred to take the risk.

This is the sort of case in which, the individual, under our present law, is allowed to go free. We have the ridiculous position that a man—it might be any man—who might be thoroughly unscrupulous, who had reason to believe that his cattle were infected with this dread disease, who could be officially notified of the fact by the Department of Agriculture and advised to have them tested, and yet could throw everything to one side, sell the cattle on the market, and still have the law of the land behind him. That is a most dreadful thing. Any Government no matter of what Party it might be, should take the earliest possible steps to correct such a situation.

I believe that an inquiry would show that there was every reason for Mr. Hampshire to have treated the herd, at least as suspect because of the fact that 32 cows were disposed of at the sale and we know that these were mated to be the beast "Yarraview Raider," which was destroyed a few days before the sale. An inquiry would prove me right or wrong, but I am of opinion that this man knew the condition of his herd, knew that there was no legislation in respect to compensation, but thought that the Government would, in the next twelve months or so, introduce such legislation and that in the intervening period he might suffer a great reduction in the number of his stock, because the whole herd might slip back and deteriorate tremendously by reason of the T.B. infection and he would be left to carry the total loss.

I am thoroughly convinced that he took the risk, as he said he would, and deliberately made the cattle available to any unsuspecting person who cared to purchase them. That is the sort of thing we are faced with. I am certain that an inquiry would prove to the Government the absolute necessity of passing some protective legislation, not next year, but this session. As I have said, a man may offer his cattle for sale, knowing in his own mind, with all the facts available to him, that they are diseased, and may still have the law of the country behind him.

Mr. Read: Shameful!

Mr. HOAR: It is shameful. The unfortunate part is that if the whole 90 head were sold—I am not certain whether they were all sold—at any rate, those that were disposed of have been distributed far and wide throughout the State and are being run with healthy cattle, with a result that will be known to members representing the farming community, some of those members themselves being farmers. If we tolerate this sort of thing, there is certainly something wrong. An inquiry is urgently necessary. If an inquiry were held, farmers would be encouraged to give evidence on this and any other matters associated with it—matters possibly of which we at present know nothing.

We do not know that this is the only case that has happened in this State during the last few months. There may be others. Nobody knows the extent of tuberculosis amongst cattle throughout the State; there has been no check up. In the course of time, no doubt, we shall, by legislation, extend the provisions contained in the Milk Act to cover country districts also, so it may be that tuberculin tests throughout the State will be a matter for Government action in the near future. However, I do not know for certain that that will be done, and I want to see this matter brought to a head so that Parliament and the farmers may know just what sort of risk is being taken when buyers go in all good faith to a breeder of good repute with a good class of cattle and make their purchases. They are taking a tremendous risk and farmers should be made aware of it. An inquiry would help to realise how foolish it would be in future, knowing what has happened in this instance, to purchase any cattle that had not been tested previously.

Such an inquiry would also be of considerable help to the Government in any legislation it contemplates introducing. It would enable us to learn just what the condition of stock in this State really is. The information would be very useful to the Government in deciding how the present Act should be amended to benefit the people as a whole. Finally, the publicity that could be given to such an inquiry would definitely act as a deterrent to any other unscrupulous person who may have similar ideas of disposing of his cattle to people less able than he to bear the loss in order that such loss as would result under some future testing scheme might be passed on to others. When we examine all the facts—and they are available for examination by every member—I think the House will agree that such an inquiry as I am proposing would serve a very useful purpose indeed.

On motion by the Minister for Lands, debate adjourned.

MOTION—METROPOLITAN MARKET ACT

To Disallow Amendment of Opening-Time By-Law.

MR. READ (Victoria Park) [5.9]: I move—

> That the amendment of By-law 14 (1) made under the Metropolitan Market Act, 1926-1941, published in the "Government Gazette" of the 16th May, 1947, and laid upon the Table of the House on the 5th August, 1947, be and is hereby disallowed.

The amendment is an addendum to the regulation and is designed for the purpose of fixing the time of work of the stallholders and the employees of the Market Trust. It is in the following words:—

> . . . . and the Trust may, by resolution passed from time to time, approve an earlier opening time on any of such day or days.

The proposal is, I believe, for the stallholders and workers to commence work at 6 a.m. instead of 7 a.m., as they have been doing for the past 18 years. The present by-laws were passed about 18 years ago, when the tenants took possession of the stalls. They were granted a lease for three years with an option of renewal, or, alternatively a weekly tenancy. At the time, the by-laws provided that the market should be opened for the sale of fruit and other goods from 7 a.m. until 5 p.m. on weekdays, except on Saturdays, when the hours should be from 7 a.m. until 12 noon. As I have said, those have been the hours of work for these people for the last 18 years.

Mr. Marshall: That was done under contract of lease, not by regulation.

Mr. READ: The member for Murchison can have his say later.

Mr. Marshall: An addendum to a regulation cannot amend the original regulation. You must be astray somewhere.

Hon. F. J. S. Wise: May be!

Mr. READ: If the addendum be agreed to, it means that the stallholders and employees will have to start work at 6 a.m. The market selling hours in other States are similar to our own. In Brisbane the hours are least, from 7.30 a.m. to 4.30 p.m. In Sydney, Melbourne and Adelaide, goods are not allowed to be sold or delivered before 7 a.m. The present tendency is—and this is confirmed by recent discussions we have had—to reduce hours of work and not increase them. Great hardship would be inflicted on these workers, as there is no transport before 6 a.m. and many of them live quite a distance from the metropolitan markets. They would have to rise at about 5 a.m. and, having had breakfast, leave for work. It would then be seven hours before they got their next meal. In some cases, the people concerned own motorcars,

but the majority do not. A petition has been signed by almost all of these workers and presented to the secretary of the Market Trust asking that they be allowed to commence work at the usual hour of 7 a.m. Many of them would be obliged to discontinue their present occupation and the stallholders would thus be deprived of workers who have been with them for many years. I have several letters from those now employed and all ask that the hours of work shall not be extended. An extract from one of the letters is as follows:—

> The secretary has only issued us a lease of one year instead of the usual three years, evidently in the hope of gazetting the by-laws and having them altered in the meantime. I hope the Government will allow those members and tenants and workers in the industry to express their views to the Minister before any alteration is made.

I hope the House will agree to the motion, as otherwise hardship and injustice will be inflicted on a section of workers.

On motion by the Minister for Lands, debate adjourned.

BILL—CLOSER SETTLEMENT ACT AMENDMENT.

Second Reading.

HON. F. J. S. WISE (Gascoyne) [5.17] in moving the second reading said: In presenting this Bill to the House I wish to make it clear that, following the attempts of the Government of 1945 to amend this legislation to make it more workable, it was our intention—had circumstances been different—to introduce vital amendments to the Act to facilitate the acquiring of land, particularly for closer settlement by returned soldiers. We had in mind the introduction of a Bill to become an Act, which would be based on the Victorian legislation, applying to closer settlement and land acquisition for closer settlement. I examined the prospect of my introducing such a Bill based on the Victorian Act, but of course, with the limitations imposed on private members and such a Bill requiring a message from the Governor, it was not practicable for such a Bill to be introduced by me. I have therefore endeavoured, knowing that the Minister for Lands has found it rather difficult to apply even the amended statute—the amendment of 1945—to use the Closer Settlement Act for the purpose of acquiring land which is not offered to the Crown. My attempt is being made in a helpful way and in an effort to overcome a rather difficult situation in the acquiring of land which would admirably suit closer settlement, land which is served by facilities of all kinds and yet, not being offered to the Crown, cannot be acquired compulsorily.

The Closer Settlement Act of 1927 was introduced by Hon. M. F. Troy as Minister for Lands. It is noteworthy to recall that Sir James Mitchell had introduced two Bills of a very similar kind when he was Minister for Lands. As a matter of fact, in August, 1927, Sir James Mitchell said in this House that he had introduced the very same Bill twice. That can be found in "Hansard" of that year, page 622. During the 1927 election all Parties in this State made a feature of the necessity for a Bill to deal with the closer settlement of land and to provide for the acquisition of estates. All supported the idea that such legislation was urgently needed and the Bill that was introduced by Mr. Troy had for its purpose the cutting up and sale of large and unutilised estates which had been purchased from the Crown during the years.

There was at that time a very keen demand for land by people coming from the Eastern States who were attracted to Western Australia, and particularly the southern part of it, because of the assured seasons enjoyed, but more particularly because of the values of land here being so much below the price in other States. So the object of the 1927 Act, when introduced, was stated to be "to bring into use land that is at present unutilised; that is to say, land held in particularly large areas and which does not produce all that it could reasonably produce." It is very important to note the opinions of the then members during the discussion on the Bill, in regard to the large areas unutilised. Mr. Lindsay is reported as saying that land owners of this State had a duty to the State and if they were not prepared to produce the Government should make them do so. Sir James Mitchell said:—

> We should have the power to take all that land which is available and which is not being used. Much of the freehold land was taken up in the early days and I am sorry to say a good deal of it was taken up at 1s. per acre.

In introducing his own Bills and particularly the measure of 1922, Sir James stressed the economic loss to the State of the undeveloped land near railways which was being held in an unproductive condition, and he said that the time had come when land adjacent to railways had to be acquired to ensure its better use. The Bill introduced by Sir James was defeated, but the Bill of 1927 became law and is known as the Closer Settlement Act. Only as a last resource was provision made in the measure that land should be acquired. Resumption was only anticipated as a last resource; and the provision in the statute is that, if land cannot be classed as unutilised, there is no authority to acquire it. The broadness of the definition of unutilised land has been the stumbling block to the acquisition of large areas of land, particularly that which is unused and which therefore, in the words of Sir James Mitchell, is causing a serious economic loss to the State.

In 1927 land was needed more for closer settlement by farmers than for soldier settlement and the Bill was introduced really as a long-term measure, as a measure that could be applied for the purpose of land settlement either for soldiers or civilians. But almost a generation has passed and very little has been possible because of the alternatives given in the statute to the owners of land. There is a provision that even though it is proved that the land is unutilised within the definition of that particular section of the Act, the owner has the opportunity to sub-divide it so that it may be sold as farms to other people. He is given 12 months to arrive at that decision even after it has been proved that the land is unutilised. Through the years when there was ample Crown land of sorts available for settlement, when it was a case of driving and penetrating into our less safe areas, there was not a demand, or a continued demand, for areas that had been ceded from the Crown. So we had the experience of the pressure for land pushing out into areas some of which have been abandoned since and also the use of land which had a low classification under the principles and practice of the Lands Department.

It has been said by many people that the opportunities of this State are almost limitless in the land that is still available for selection. But that is not a statement in accordance with facts. It is true that there are large areas of light lands which have attendant problems, problems not only of minor or trace element deficiencies, but problems associated with the protection necessary for stocking and with the availability of water and also problems of accessibility. But there are very large areas which in my view—and I think in the view of most Western Australians—should not be insisted upon or pressed by public opinion as lands for development when there are so many areas still only partly used and adjacent to facilities to develop which the State has incurred liabilities.

With the forcing of land settlement into less safe and indeed more uneconomic areas, there has had to be in Western Australia, even up to this stage of a little over 100 years of development, tremendous loss both personal and public in connection with the agricultural settlement of these difficult regions. It is interesting to record that from 1939 to 1944 light lands were written down under direction from the Government at that time by £500,000 in the agricultural areas of Western Australia. In some areas very large sums were written down from the settlers' land account to enable them to carry on. In 1939, one single year, £100,357 was written down in the value of the land and therefore in the rentals to be paid per annum by settlers in the area from Ajana to Kalannie. In the districts in which that extensive re-pricing took place there were many officers of the Lands Department energetically inspecting individual areas to give the farmer in the region inside the 10-inch rainfall belt an opportunity of being charged a price commensurate with the productive capacity of his land.

One cannot regard even the least safe areas as wholly unsafe. The member for Mt. Marshall is a great enthusiast for his district, and he knows that within the marginal area reconstruction plans some doubts still remain, particularly when a buoyant season is experienced, as to the wisdom of retracting so far from the outer edge of settlement for the purposes of wheatgrowing. But is must be admitted that there are areas where it would be very unwise because of the difficulties of our season, for farmers to be faced with a single-crop prospect. We could not really anticipate that they would ultimately make a lot of money out of land settlement in such regions. In

the difficult areas of this, or any other, State there is the responsibility, nationally and by the State, to ensure that the lands so occupied afford to the settler a prospect of ultimate success. During those years of war in which the writing-down of land rents was most vigorous, all Crown lands then available for selection were withdrawn.

In anticipation of a demand, post-war, the Government of 1939-40 arranged that no land which had been subdivided, surveyed and classified was still to be available for open selection. It was all withdrawn from selection pending an examination of all the districts, and held specifically for soldier settlement. At that time there were approximately 8,900 blocks of surveyed land within the agricultural districts of the State, and available for settlement. I quote those figures from the Surveyor General's report of 1944. The Surveyor General pointed out that a close study of the existing classifications showed that the vacant surveyed land did not give a prospect for as many settlers as there were blocks, but a considerable portion of land initially surveyed would not measure up to the requirements, which demanded some prospects for the men taking up the blocks. We find in the report of the Surveyor General emphasis laid on the fact that the number of blocks would have to be reduced considerably to ensure that the individual settlers would have a chance of success.

I think this House will agree that there is no denying the principle that a sound agricultural policy will seek to satisfy requirements by ensuring the best returns and prospects. Any deviation from that principle places a handicap not only on the individual but on the progress of the State, no matter where the land is situated, and no matter what the capacity of the farmer may be. That being so, it is necessary immediately, or at least within the next five or ten years, to ensure that there is developed in this State a policy of sound settlement of the areas of Crown land still remaining. Much has been done to improve our knowledge of the capacity of the lighter lands. Reports have been made not only by soils chemists, agriculturalists and other specialists, but also as the result of an inquiry by members of this House, and they have shown conclusively that there are, within certain limitations and certain anticipated costs, great opportunities for the development of the light lands of this State. But, as I have already indicated, there are many problems, such as those of crop limitation and those involving the minor elements. It would not be fair to overlook the problem in the light of the scientific knowledge available to us.

We have the experience at this moment, in the district represented by the member for Albany, that an area was selected at Many Peaks by the Government, and the soils people thoroughly investigated it. That area was submitted as a project to the Commonwealth authorities but they, after one or two years' research decided that that land was not satisfactory for inclusion in their scheme. That area, which the member for Albany knows well, is close to country that is successfully occupied by the Norman family, yet, in the light of all the knowledge and experience of practical men, as well as that of scientists, the Commonwealth Government is not satisfied that it should be included in the State-Commonwealth soldier settlement scheme.

The Minister for Works: Do you personally think there is any ground for dissatisfaction with that land?

Hon. F. J. S. WISE: I think there still remains some doubt. I am of opinion that any fair-minded person would, in the light of all the knowledge, say that to apply these areas to soldier settlers immediately would be to give to them unfair handicaps. I think it is necessary for a little more to be known of that country—and of any similar territory—before an acceptance of the responsibility is fully made.

The Minister for Works: An investigation has been proceeded with for two or three years.

Hon. F. J. S. WISE: It is still proceeding. I do not know what is in the mind of the Minister for Lands in the matter, but I would think he would be willing to take a risk on such an area being included in a State scheme.

The Minister for Lands: I would, and the Government has just approved of a grant of another £1,200 for further experiments.

Hon. F. J. S. WISE: I am glad to hear that, because I think that is sound practice and a sound method towards progress. But I think that in taking the whole of the light lands of the State, including the areas held

by the Midland Railway Co., and those by the Crown from Esperance to Mingenew, a lot still remains to be known before we can say that that is the land, and not that which is adjacent to facilities, that I have previously mentioned, which should be first developed. In the area between Boyup Brook and Cranbrook, and the land west of Mt. Barker, which I had an opportunity of seeing with both the member for Albany and the Minister for Education, there are problems to be overcome in these days—when we are not to be stampeded into settlement—and thinking of it wholly as something virtuous—and a need for much more to be known, not merely of the deficiencies of the land but in the matter of costs of preparing it for successful occupation. That is a very important phase. We have considerable areas in this State which cannot be made economic in production without the use of bulldozers and up-to-date machinery, but they can be made economic with the use of that machinery. But we are not in any way sure how development of much of the heavier timbered land in the safe rainfall areas can be carried out so that we can get the best production.

The Minister for Works: Especially with our present-day knowledge of clovers.

Hon. F. J. S. WISE: That is so. Then we get the same position with our heavier lands which require drainage because it is inevitable, and has been apparent throughout agriculture in Australia, that where drainage of natural water has taken place, as a national undertaking, there are attendant soil and evaporation problems. So I feel that these are matters which will require not a rushing in to permit of settlement, but a steady, progressive and continuing plan of examination and research to ensure that when settlement is undertaken it will be on sound lines. In view of that attitude I think—which view I hold strongly—that it is reasonable to suggest that owners of good land in any part of Australia, who are not adapting it to its best use, are acting in opposition to the national interest. I believe that can be said of landholders not only in Western Australia and, that being my view, I believe there is no question but that power should rest with the authorities to resume land for re-settlement purposes.

The Bill that I am submitting to the House is based on the need to acquire land that is at present not being offered to the Crown for closer settlement purposes and particularly, at this stage, for soldier settlement purposes, because if the best prospect is to be offered to such settlers it can be found only in the land that is served by facilities and amenities, but which is not at present being put to proper use. There are no strictures in this Bill as to its being suitable as a long-term measure. A week or so ago, when I asked the Minister for Lands whether he had acquired any land under the Closer Settlement Act as it now exists, his answer was "No," and I feel that the reason why he gave that answer was that, in spite of the 1945 amendment, he still finds the Act difficult of application. This Bill is introduced to overcome that position and its provisions will be suitable not only to meet the present situation but as a long-term statute applying to the needs of the State.

I said earlier that I would have preferred to have been in a position to introduce a Bill along the lines of the Victorian statute. Any member who has studied that measure, which is the Land Settlement Acquisition Act of 1943, will have found in it the kind of provisions that I am seeking to apply in this State. It is not easy for a private member to overcome all the disabilities, in spite of the foundation in the Closer Settlement Act, on which I must build. To achieve the purpose it might still be preferable for the Government to introduce a measure entirely along the lines of the Victorian Act. However, on examining the Bill I think the Government will find the vital provisions of the Victorian Act embodied here.

The Minister for Lands: What is the title of the Victorian Act?

Hon. F. J. S. WISE: It is the Closer Settlement Acquisition Act, No. 4994 of 1943. The first provision in the Bill is for four members on the committee or board of inquiry instead of the three laid down in the present statute. It provides also for the Minister to have the rights and responsibility in administration instead of, as in the statute, the Governor. In the Bill it is proposed that the board should consist of the Director of Land Settlement, the Surveyor General, one of the Commissioners of the Rural and Industries Bank and a farmer with knowledge of the land in the

locality—the subject land intended to be acquired. That will give the board, consisting of four members, the benefit of expert local as well as general knowledge to enable it to make recommendations.

A further provision is that the board shall have authority not only to report but to make recommendations to the Minister. One of the weaknesses of the present Act is that it gives the board authority merely to make a report on the land, on the recommendation of the Governor, as to its suitability and as to whether it is unutilised land. The Bill provides that the board shall make a recommendation which, coming from men of such standing, would carry some weight. In addition, it is proposed to delete from the Act the word "unutilised," so that it will be possible for the Crown to acquire land not necessarily unutilised but suitable for subdivision for successful settlement.

The Minister for Works: What conditions would you impose other than the one you have just mentioned?

Hon. F. J. S. WISE: No conditions whatever, except that after full scrutiny by such a board the land, if acquired and subdivided, would show a substantial increase in productive capacity. That is specified in the Bill, on page two; if the acquisition for that purpose would be likely to result in a substantial increase in production from such land and an increase in the number of persons who would be ordinarily resident or employed thereon.

Mr. Leslie: That is the difficulty.

Hon. F. J. S. WISE: In some areas desirable of acquisition that would be so, but in others—I can think of an estate which I believe the member for Mt. Marshall has in mind—it might not apply. There are areas in which there is no doubt that the number of persons would in some cases eventually equal the number of stock now carried.

The Attorney General: Have you examined the recent legislation in England as to the utilisation of agricultural land?

Hon. F. J. S. WISE: Yes. I have a copy of the English statute and of the speeches made during the introduction of the measure. I have also a copy of an interesting Bill dealing with this subject, that which was introduced first but which failed in the New Zealand Parliament. The New Zealand Act was carefully scrutinised by a Commission which was Australia-wide. I refer to the third report of the Rural Reconstruction Commission, which gives a background and basis for the compulsory acquisition of land, which is, in its Australian form, somewhat along the lines of the Victorian Act. The intention here, taken mainly from the Victorian Act, will give in this State opportunity of seeing how we can meet, with an almost certain prospect of success, the heavy demand for early settlement of some of our returned men.

One provision in the Bill makes it incumbent on the owner of the subject land to provide his books of account—that also is taken from the Victorian Act—to give the board an opportunity of seeing whether, based on the average productive use of land in a given district, the returns of such an owner show, as many of them would show, that the owners are not putting the land to its best use.

The Premier: Do you think that would be a reliable guide as to the actual price of the land?

Hon. F. J. S. WISE: The actual price of the land is a matter for serious and earnest consideration. I want to make it quite clear that there is no merit whatever in cutting up large estates merely for the purpose of subdividing them. Many large areas in this and other States are farmed far more successfully by wise direction and the employment of skilled men than would be apparent if those areas were cut up, with the attendant costs of subdivision and improvements necessary to equip them as single units.

The Premier: Obviously one would not embark upon subdivision in such cases.

Hon. F. J. S. WISE: That is so.

The Attorney General: I remember the reference to that in the Rural Reconstruction Commission's report.

Hon. F. J. S. WISE: I think evidence was taken in each of the States on that point. Members will appreciate the fact that nothing in the Bill has been introduced for the purpose of embarrassing or harassing successful farmers who are utilising their land most appropriately.

The Premier: With regard to the bookkeeping aspect, you would have one farmer making a very much greater profit than an-

other on a block on the opposite side of the road. Would there be any difference in the valuation of those areas if repurchased?

Hon. F. J. S. WISE: If the land were valued, the personal equation must come into the question in respect of any measure aiming at the better use of land.

The Minister for Works: Book-keeping in that case would be relatively unimportant.

Hon. F. J. S. WISE: I can assure the Premier that in areas within 150 miles of Perth, ample proof could be obtained by an examination of the returns from certain properties that the land is not being properly utilised.

The Minister for Works: I do not think anyone would dispute that.

Hon. F. J. S. WISE: I do not think so.

Mr. Leslie: You would require evidence of the volume of production and so on.

Hon. F. J. S. WISE: I do not care how the result might be achieved, provided we reach the required objective and an adequate measure of the position. A further clause in the Bill sets out that the Minister shall have the responsibility of notifying the owner of a property of intention to act upon the recommendation of the board. Under the present statute the board has the responsibility of notifying the owner of land respecting the intentions of the board. I think that notification should come from very much higher up. The responsibility of the board should be made quite clear. It should be the analysing of the prospects of an area and its suitability for subdivision.

The responsibility of notifying the owner of any intention to act in respect of the land should come from the Minister himself. Personally, I would have faith in any Minister of Lands, from whatever political party he might come, to have sufficient sense of responsibility respecting the action he should take in that regard. I have removed the responsibility, therefore, from the board to the Minister. The Bill proposes to repeal a number of sections in the original Act, but if members peruse the measure they will see that all those provisions that are sought to be repealed, appear in the Bill in a more concise form. A clause in the Bill sets out that the present owner of land, in respect of which the board proposes to take action, shall have reserved to him, on the basis of the unimproved land value assessment under the Land and Income Tax Assessment Act, 1907-1936, an area to the unimproved value of £4,000.

The Minister for Works: That is one of the conditions I mentioned that would have to be observed.

Hon. F. J. S. WISE: That does not appear in the present Act, the appropriate section of which, in effect, permits an area to be reserved sufficient to enable the farmer successfully to farm for himself and his family. I think that provision will be found in Section 7. Some members—possibly some sitting on either side of the House—may suggest that in reserving the right to the present owner to retain land of an unimproved value of £4,000, I have placed the figure too high. I know that in Victoria the valuation limit is fixed at £3,000. I did not desire there to be any cavilling about the matter, and it certainly is not my intention to embarrass any landholder unnecessarily.

My desire is to reserve to the present holder of land an area sufficient to enable the property to be successfully farmed in the interests of the present and future generations. An examination of the various statutes enacted in the other States of the Commonwealth, in New Zealand and Great Britain will indicate that they vary materially on that particular point. For example, in Victoria the figure is fixed at £3,000 whereas in New South Wales there is no limit to the valuation. On the other hand, in Tasmania the price is fixed, I think, at £2,000. The same variations will be found in the other legislation I have indicated and if the Government or, for that matter, any private member can demonstrate that the figure I have included is not satisfactory, we can amend that particular part of the Bill.

Mr. Leslie: How do our unimproved land values compare with those obtaining in the States and countries you have mentioned?

Hon. F. J. S. WISE: In Victoria £3,000 would represent in unimproved land values about one-third of the area to which an unimproved value of £4,000 would apply in Western Australia. In Victoria the valuations are so high and the areas under cultivation so compact that an unimproved value of £3,000 would not apply to a very extensive area. I have consulted the principal valuations officer of the Taxation Department in this State as to the wisdom

of the figure I have adopted and the advice I received is that, on the average, in the general and mixed farming districts of the State such an unimproved value would represent total assets worth between £8,000 and £10,000. In the more highly developed districts of this State where costly improvements are required, such as in the apple-growing areas, the difference in the capitalisation as between the unimproved land values and the improved values might easily be as 40 is to 60. In some instances, a much higher capitalisation than that would apply to industries.

The Attorney General: Who would select the land to be retained?

Hon. F. J. S. WISE: That should certainly be within the province of the owner. That should be necessary in his own interests.

The Attorney General: I do not think it is so expressed at present.

Hon. F. J. S. WISE: No, I am glad that the Minister raised that point. It would certainly be fair to give the owner of the land the right to say which part of it should be reserved for him.

The Premier: The land would have to be purchased on the basis of 1942 valuations, would it not?

Hon. F. J. S. WISE: Under the existing Commonwealth law that is so. I have in this House and in many places expressed—I have written it in certain works the Premier may not have had the time to read, even if he had the inclination to do so—my absolute dissatisfaction at the date line for property valuations being fixed as at February, 1942. It is particularly unfair to Western Australia. This State, more than any other, was in February, 1942, in a condition of alarm or at least of very grave concern.

The Premier: I have read your report.

Hon. F. J. S. WISE: If there is to be a date line, I suggest that it should be August or early September, 1939, before the war broke out. We get quite an erroneous impression from both angles; we get a serious depreciation of land values due to war causes and we get a tremendous appreciation of land values in some industries because of the large increase in prices of some products for which a demand was created by the war.

The Attorney General: Such as beer.

Hon. F. J. S. WISE: I do not know that beer is produced in many of the districts to which I am referring.

Mr. Leslie: You have to take into consideration the purchasing power of the pound.

Hon. F. J. S. WISE: That is so.

Mr. Leslie: You cannot buy land for 25s. an acre today; the price is 50s.

Hon. F. J. S. WISE: The hon. member will find that I have included in the Bill a special clause to meet that situation. This is what appears under the determination of compensation—

> In the determination of compensation the value of the land acquired shall be taken to be such amount as a bona fide purchaser proposing to use the land for the same purpose as that for which it was being used at the time of the passing of this Act would reasonably be expected to offer, but in the consideration of the purpose for which the land was being used at the time of such passing of this Act, due regard shall be had to any limitation of such purpose which has actually occurred as the result of circumstances directly attributable to the 1939-1945 war.

I deemed it appropriate to introduce that subsection which, in the main, is taken from the Victorian statute, in order to ensure that there should be no quibble as to what the appropriate value should be. Members will find in the remaining clauses of the Bill several consequential amendments. Authority is given to the owner of the land to object to, and appeal against, the compensation offered to him even after he has offered the land at a set sum. There is provision for the Minister to object to the price. There is also provision to meet the case where an offer made may be regarded as a disputed price. Then the Minister or the owner of the land may take appropriate action before a judge.

The later clauses of the Bill contain all the machinery necessary to overcome the difficulty and disability of objections being made to the price offered either by the vendor or the purchaser. If the judge holds that the land at that price is the true value for the owner, the Crown even then may withdraw if it is not satisfied. This, too, is copied from the statutes of two other States, so it will not be incumbent on the Crown to purchase if, in the view of its expert officers, such land could not satisfactorily be subdivided at the price sought by the vendor.

That, in brief, is an analysis of the Bill. I regard the more efficient use of the land as one of the prime factors in the development and holding of this country, not to push settlement into areas that may be regarded as, or may have been proved to be unsafe, but to ensure that the livable and safe areas carry the maximum of population. Quite apart from that, it is very necessary in these days of scarcity of good land to use our resources to the very limit. I think, therefore, that the principle contained in this Bill should remove any emotional or political aspects and introduce a practical as well as an economic approach to the problem.

I feel sure that many farmer members of this House will agree that it is not fair to the farming community or to any part of the rural community to have good land uneconomically held. That is one of the reasons why we find in many districts retardation instead of development. The Minister for Education, in his speech on the amendment introduced in 1945, made some very pertinent observations on this point. I recommend members to read the report of that speech when the Bill introduced by my colleague, the then Minister for Lands, was before the House, because there is in it an analysis of the requirements of the rural community of this State.

As to making a better use of the land, I think the statement will bear repetition that the safest way to promote the health of the rural communities, here or elsewhere, is to ensure that the better land already served with amenities and facilities is the land to be first fully developed. In the light of past experience, I think it would be unwise to attempt to settle the more risky and more remote Crown lands still available unless a thorough scrutiny were made by an acknowledged authority into their defects, and an effort were made by the State to remedy them before settlement. The passage of this Bill would provide an opportunity for the better settlement of our returned soldiers than would be the case were they settled in the less safe areas. In my opinion, it would be a valuable adjunct to the areas already available to the Minister for Lands and the areas within his jurisdiction. Quite apart from the present time, future generations would gain something which would be in the best interests of the State.

As I have said, I am quite prepared to trust the Minister for Lands with the authorities that this Bill would confer upon him and I introduce it in an earnest endeavour to assist the Government in its problem of land settlement. The Bill is not on all-fours with the kind of Bill that I hoped we would have introduced, because we would have gone much further and perhaps repealed the existing Act and introduced a measure along the lines for which we have models before us. This Bill, however, preserves to the Crown all the rights it has to exercise its power of eminent domain. This is important, because it gives the right, which is inherent in British communities, to the Crown to use land for any purpose and to acquire it for any purpose in the best interests of the people. I move—

That the Bill be now read a second time.

On motion by the Minister for Lands, debate adjourned.

BILL—CHILD WELFARE.

In Committee.

Resumed from the previous day. Mr. Perkins in the Chair; the Minister for Education in charge of the Bill.

The CHAIRMAN: Progress was reported after Clause 19 had been agreed to.

Clause 20—Power of Court:

The MINISTER FOR EDUCATION: In accordance with my expressed intention last evening to amend this clause on the lines suggested by the member for North-East Fremantle, I move an amendment—

That in line one the figure and brackets "(1)" be struck out.

This will correct the numbering of the clause.

Amendment put and passed.

Hon. J. T. TONKIN: I move an amendment—

That in line two of paragraph (a) after the word "by" the words "or against" be inserted.

I think it wrong for children, whether they have committed an offence or have had an offence committed against them, to be brought into any court other than the Children's Court. It is generally conceded that children should, as far as is possible, be kept away from the atmosphere of an ordinary

court, so it has always been attempted to have the Children's Court as little like an ordinary court as possible. The Bill proposes to take away from the jurisdiction of the Children's Court those cases where it is alleged that offences have been committed against children, and for that there may be some favourable argument if it had been intended to retain in control of the court a man with very little knowledge of the law or without legal training. In such circumstances a defendant might be prejudiced in his defence if the magistrate did not have proper regard to the rules of evidence and listened too much to the children and not enough to the person charged. I know from my own experience that there is a tendency on the part of children to romance. They can be led on to say things which are not true. This is not done deliberately, but with the idea of pleasing the person who is questioning them.

Sitting suspended from 6.15 to 7.30 p.m.

Hon. J. T. TONKIN: I admit that in a court where the rules of evidence are not being followed and the person presiding has not been legally trained, it is not quite desirable that adults should be tried for offences alleged against them. But the Bill proposes to place a legally-trained man in charge, and therefore the reason that previously existed for taking such cases as those to which I have referred away from the Children's Court no longer exists; and no adult would be under a disadvantage through being tried in that court. There would, however, be this definite advantage to the children: They would be kept away from the atmosphere of courts other than the Children's Court. Anybody who has been in such courts for any purpose whatever—other than lawyers, who are hardened to the practice—knows that the atmosphere is very strange and severe, and the effect upon the children is very difficult to calculate. I think it is far better that, if possible, children should not go into the courts at all. Where offences against children are alleged, those cases could very well be tried in the Children's Court provided that the right steps are taken to see that no accused person is placed at a disadvantage through being tried in such a court.

When speaking on the second reading, I said it was desirable that a legally trained man should be the magistrate. I said that only because I believed that the cases which were being tried in the court under existing conditions would still be tried in that court. But if it is proposed to take from the court all cases except those concerning offences committed by children, I would definitely prefer a trained social worker to a legally-trained man, because I see no reason under those circumstances for wanting a legally-trained man who would give the law instead of sympathy and understanding in such a court. However, since I believe all cases involving children should be taken in the Children's Court, I think it desirable that the person in charge should be a legally-trained man.

If the Minister insists that cases in which offences are alleged to have been committed against children are not to be tried in the Children's Court but are to be removed, I can see little reason for wanting to put a legally-trained man in the Children's Court, and consider that a trained social worker would be far preferable. The Minister would do well to reconsider this point and do one thing or the other. Let us have a court where the children who are tried will be those who have committed offences, and place a trained social worker in charge; or let us have all cases involving children, whether they have committed offences or had offences committed against them, tried in the Children's Court, with a man in charge who is legally trained. But I cannot see the necessity for removing cases of this kind from the court once it is provided that the man in control will be just as competent as the man in control of the other court to which the Minister desires to transfer these cases.

The MINISTER FOR EDUCATION: I regret that I cannot accept this amendment. This is a juvenile court and not one for the trial of adults. I have gone so far as to permit the hon. member to convince me that it would be desirable for the time being to allow the court to retain the right to have jurisdiction in affiliation cases because, first of all, the interests of very small children are usually concerned in those cases and not so much the interests of the adult; and, secondly, because the hon. member, although he indicates that lawyers have no sympathy—

Hon. J. T. Tonkin: I did not say that.

The MINISTER FOR EDUCATION: That was the implication in the hon. member's observations; that it would be much better to have a social worker who would give sympathy rather than a lawyer who would give law. Although the implication is that the lawyer has no sympathy, I was prepared to look sympathetically on his view in regard to these particular cases and therefore went outside our original intention that this will be entirely a court to deal with the trial or inquire into the behaviour of juvenile persons. I am certainly not going to agree—nor do I think the better practice elsewhere is to agree—to such a course. I have, since I took on the responsibility of introducing this measure—and indeed before that time—made some study of the practice in places where juvenile courts have been well, soundly, efficiently and kindly established over a great number of years; and, while there is a considerable conflict of opinion in regard to whether affiliation cases shall be taken in such courts or not, I find there is very little conflict as to the desirability of removing from those courts the trial of adult persons in regard to offences against children.

Hon. J. T. Tonkin: The New Zealand Act provides that these cases shall be heard in the Children's Court.

The MINISTER FOR EDUCATION: The New Zealand Act may do so, but fortunately or unfortunately, I did not take the New Zealand Act as the basis for alterations to our Act. I have preferred to give consideration to the practice prevailing in the majority of the American States and, to a degree, in Great Britain. The hon. member painted a dismal picture of the treatment that a child would receive, in connection with a charge against an adult for an offence against a child, in a court other than a children's court. I remind him that the rules of evidence and the procedure to be followed in such cases in the Children's Court, and in other courts—the lower courts anyway—are precisely the same. The child would be obliged, if obliged in either court, to give evidence in the Children's Court and would be subject, if subject in either court, to cross-examination and examination in the Children's Court. The same rules of evidence are applicable to both because there is nothing in this measure, nor in the existing Child Welfare Act to declare that the court shall adopt some other attitude in regard to the taking of evidence.

It is well known that the Evidence Act contains provisions enabling the judge or magistrate, as the case may be, to declare that if a child is not capable of being put on oath he can accept a statement in lieu. There is in the Justices Act a provision that the public may be excluded from the other type of court, to which the hon. member objects, where it is considered to be in the best interests to do so. Any reasonable magistrate would take such precautions as the hon. member would desire in these matters. But the main principle involved in this measure, and that to which I adhere, is that I do not want adults tried in a court which is intended to deal with offences by juvenile persons. For these reasons, and the last mentioned most particularly, I oppose the amendment.

Hon. J. T. TONKIN: Apparently I have not made clear the point I have in mind. It is the practice all over the world to make children's courts as informal as possible. In some places magistrates hear cases in their own rooms, in order to get away from the austerity of the usual type of court. The idea is not to overawe them with authority but to gain their confidence in order to ascertain what is wrong, and so put them on the right track. The New Zealand Act definitely provides that all cases, including those of offences against children, shall be heard in the Children's Court; and our own Act has a similar provision, and there is a very good reason for it.

When the Minister thought about framing the Bill he had in mind a change in personnel. He wished to place in charge of the Children's Court a legally trained man. Why have such a man, who would be familiar with the rules of evidence, if the Minister proposes to remove from that court, as he does, affiliation cases and those of offences against children? By doing that the only cases remaining to be considered by the Children's Court would be those coming under the Guardianship of Infants Act, offences committed by children, and neglected children. If these are to be the only cases to be considered, a trained social worker would be preferable to a legally trained man; not because lawyers as a class are devoid of sympathy, but because their very training and avocation make them far harder and stricter than a social worker.

If the intention is to remove from the court all cases in which adults could be involved, and leave only those involving children, I see no reason for providing for a legally trained man. The Minister would find very few people to agree with him in those circumstances, but plenty to agree with him if the Children's Court is to continue to try cases involving adults, and where the penalty against the adult might be very severe. It is essential in such cases that the man being tried should have every opportunity which the law affords to defend himself before a magistrate who is thoroughly familiar with the practice in the other courts. I want this to be one thing or the other. If it is to be truly a children's court, I do not want a legally trained man in charge.

The Minister for Education: That is not in the Bill, anyway.

Hon. J. T. TONKIN: No, but the Minister said it was his intention, and that is what he will do.

The Minister for Education: Quite.

Hon. J. T. TONKIN: What is the reason for that, if such a man is to handle only cases of neglected children and those concerning offences committed by children, where it is often far better not to have the charge considered, but for the magistrate to talk to the child concerned and then take appropriate action? That is the practice fairly generally. Whether children have committed an offence or whether an offence has been committed against them, I do not want them to have to go to a court, other than the Children's Court, and that is why I am opposed to this proposal. If an offence is committed against a child of four to six years of age, the Minister will probably have that child in the Supreme Court. Is that desirable?

The Minister for Education: If it is a serious offence, he would have to go there, in any event. These courts can only commit for trial.

Hon. J. T. TONKIN: But there would be many who would not have to go.

The Minister for Education: They would be subject to the same rules of evidence as I mentioned just now.

Hon. J. T. TONKIN: By following the course I propose, we might obviate the child having to experience the atmosphere of the Supreme Court.

The Chief Secretary: In an ordinary case a child would have to go to the other court as a witness.

Hon. J. T. TONKIN: If the Minister has his way we will not obviate that.

The Chief Secretary: A child may be a witness in an ordinary case and may have to go to any court.

Hon. J. T. TONKIN: At what age?

The Chief Secretary: At any age.

Hon. J. T. TONKIN: I regard New Zealand as one of the foremost countries in the world in child welfare legislation matters. It is there recognised that education is an important part of child welfare activity, and the Child Welfare Department has therefore been made a branch of the Education Department. It is provided, in New Zealand, that cases involving children—including cases of offences committed against children—shall be heard in the Children's Court. The Minister has not yet given any sound reason why it is necessary to take such cases from that court. He has said he desires to make this purely a Children's Court, and in so doing he will force some children out of it and into the adult court.

The Minister for Education: I will force some adults out of the Children's Court and into adult courts.

Amendment put and division taken with the following result:—

Ayes	20
Noes	19
Majority	1

AYES.

Mr. Coverley	Mr. Nulsen
Mr. Fox	Mr. Panton
Mr. Graham	Mr. Read
Mr. Hawke	Mr. Reynolds
Mr. Hegney	Mr. Sleeman
Mr. Hoar	Mr. Smith
Mr. Leahy	Mr. Tonkin
Mr. Marshall	Mr. Triat
Mr. May	Mr. Wise
Mr. Needham	Mr. Rodoreda (*Teller.*)

NOES.

Mr. Abbott	Mr. McLarty
Mr. Ackland	Mr. Murray
Mrs. Cardell-Oliver	Mr. Nimmo
Mr. Cornell	Mr. Seward
Mr. Doney	Mr. Thorn
Mr. Grayden	Mr. Watts
Mr. Hall	Mr. Wild
Mr. Leslie	Mr. Yates
Mr. Mann	Mr. Brand
Mr. McDonald	(*Teller.*)

PAIRS.

AYES.	NOES.
Mr. Styants	Mr. Bovell
Mr. Kelly	Mr. Hill
Mr. Johnson	Mr. Shearn
Mr. Collier	Mr. Nalder

Amendment thus passed.

The MINISTER FOR EDUCATION: I move an amendment—

That in line 1 of paragraph (b) the words "subject to Subsection (2) of this section," be struck out.

Amendment put and passed.

The MINISTER FOR EDUCATION: I move an amendment—

That Subclause (2) be struck out.

That also has relation to affiliation cases, and is consequential on the previous amendment.

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

Clause 21—Jurisdiction of other courts to cease.

The MINISTER FOR EDUCATION: I move an amendment—

That in lines 1 and 2 the words "subject to Section 20, Subsection (2) of this Act" be struck out.

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

Clause 22—Agreed to.

Clause 23—Exclusion of persons from hearing.

Hon. J. B. SLEEMAN: Subclause (2) provides that the publication of any report of the proceedings before the court shall be unlawful. That would be all right, but the subclause goes on to say "unless the court expressly authorises the same, or the same may be made by any person in the performance of his official duties pursuant to this or any other Act or regulations." Unless the Minister can explain why he wants that provision I will move an amendment with a view to striking out sub-paragraphs (i) and (ii). I do not think there should be any publicity attaching to proceedings in the Children's Court and I would not give the court power to authorise publication.

The MINISTER FOR EDUCATION: The member for Fremantle will understand that publication includes more than reports in the Press and that is why the second part of the subclause has been included. If that were not done, the term "publication" would have to be interpreted in its legal sense, which would mean that officers of the Child Welfare Department could not possibly make a report on proceedings before the court. The suggestion for publication to be at the discretion of the magistrate is that for many years the position has been the reverse. Publicity has been given to the proceedings in the Children's Court if the magistrate did not order that no report should be published. In consequence, there has been a lot of publicity. I still believe, as I think the member for Fremantle believes, that it is advisable not to hasten too fast in these matters. For many years, contrary to my views and possibly to those of the member for Fremantle, we have had almost unrestricted publicity in connection with Children's Court cases apart from the publication of names. In past years we have even had the names published in some instances. I want to make a forward step, and there may be cases where the magistrate would consider publication of the circumstances, without the names, would be desirable as a warning to others, or as a means of letting the public know that certain offences would have to go to the court, or it might be for some other good purpose. The publication would always be at the discretion of the magistrate. If the subclause is passed as it stands, there will be no publication except in cases for which the magistrate may consider there are good reasons for publicity.

Hon. J. B. SLEEMAN: I am not quite satisfied with the Minister's explanation because, as he indicated, publication would cover quite a lot of things. I had intended to move an amendment but I was too late to get it on the notice paper. I had intended to move for an additional subclause to read as follows:—

(3) It shall be unlawful for any report of the proceedings of the court or of any decision made or conviction registered by the court to be divulged or furnished to the Police Department or the Navy, the Army, the Air Force, or the State or Commonwealth Public Services.

My object was that, notwithstanding that particulars regarding convictions in the Children's Court are supposed to be private and confidential and are not to be used against the individuals concerned, experience has shown that that is not the position. Not long ago a young fellow applied

for admission to the Police Force. He was of good physique and a fine type. I asked him how he had got on, and he said that he had not got on at all. I asked him what was wrong and he said that as a kiddy he had had a conviction against him in the Children's Court, and therefore he was excluded from any chance of joining the Police Force. That is not right. No use should be made of the fact that such a young man had been convicted in the Children's Court when he was just a child. During the last war one young man was debarred from entering the Navy because there was a conviction in the Children's Court against him. I suppose that would apply to the Army as well, especially if a young fellow wanted to enter an officers' school. Such conviction should not count against a man in after life. As I cannot do what I had intended, I shall now move an amendment—

That all the words after "unlawful" in line three of Subclause (2) be struck out.

The CHAIRMAN: The hon. member has already handed in another amendment.

Hon. J. B. SLEEMAN: I hope to move that later on.

Mr. READ: I support the amendment. I do not know whether it covers the position adequately. I support the contention that publication of a conviction imposes a hardship upon a youth. I have had a couple of instances similar to those mentioned by the member for Fremantle. I know of youths who were prohibited from joining the Australian Navy because of convictions recorded against them in the Children's Court. Such information should not be divulged and used against men in such circumstances.

The MINISTER FOR EDUCATION: I cannot agree to the amendment in its present form because I do not think it would achieve the objective of the member for Fremantle. I am quite prepared to agree with portion of his contentions, particularly respecting the undesirability of a Children's Court record being used against an individual in after years, especially if the offence was committed by a child of tender years. An instance was brought under the notice of the Minister for Justice by the former member for Wagin last year regarding a farmer in a certain district who was pilloried, in my opinion, most improperly and severely because of a conviction against him in the Children's Court, that notwithstanding the fact that for 15 or 16 years he had conducted himself in that district in a very orderly and honourable manner. He had committed an offence, which was very doubtfully proved when the case was before the court. I am not without some degree of sympathy with the views of the member for Fremantle in so far as they apply to that phase. However, I want him to recognise that it is well to leave that aspect of the publication of proceedings to the discretion of the magistrate, which I think is desirable for the reasons I gave previously. I suggest that we report progress and I shall endeavour to frame an amendment that will meet his views and mine.

Hon. J. B. SLEEMAN: I shall be satisfied if the Minister will frame an amendment to meet my desires. I do not want anything published from the Children's Court that may result in a conviction imposed upon a little child being used against that individual when he becomes a man. I do not want the fact of a conviction made known to the Police Department, the Army, the Navy, the Air Force or either the Commonwealth or State Public Services. If the Minister assures me that that will be stopped, I shall be quite satisfied.

Progress reported.

BILL—CONSTITUTION ACTS AMENDMENT (RE-ELECTION OF MINISTERS).

Second Reading.

THE ATTORNEY GENERAL (Hon. R. R. McDonald—West Perth) [8.12] in moving the second reading said: This is a Bill to abolish the necessity for members having to stand for re-election after having accepted appointment to any one of the eight principal executive offices of the Crown; in other words, appointment to a full Ministerial portfolio. Under the Constitution Acts Amendment Act, 1899, by Section 43, there are eight principal executive offices of the Government liable to be vacated on political grounds, and by Section 38 of the same Act, if any member of the Legislative Council or Legislative Assembly, after his election, accepts an office of profit under the Crown, then his seat becomes vacant, but he is eligible for re-election.

Some few months ago I received a communication from Professor Beasley, Professor of Law at the University of Western Australia, in which he made these observations—

E. A. Forcey, in his "Royal Power of Dissolution of Parliament in the British Commonwealth," says that Western Australia and Ontario are the only Dominions of the Crown in which it is still necessary for Ministers to resign and be re-elected.

Professor Beasley added—

This is a case in which it seems to me that Ontario might well be left in possession of the unique requirement of such a by-election.

The Bill will be easily followed by members. It means that when a member is elected to the Legislative Council or Legislative Assembly, if during his period as a member he receives an appointment to full Ministerial office, he is deemed to be eligible and does not thereby vacate his seat and have to stand for re-election. In other words, if the people of his province or district show their confidence in him by returning him to Parliament to serve for the term prescribed, then he is deemed to be eligible at any time during that term to be appointed to Ministerial office and, if so appointed, does not have to stand for re-election after receiving the appointment.

Mr. SPEAKER: Order! There is too much conversation in the Chamber.

The ATTORNEY GENERAL: I asked the Parliamentary Draftsman to give me some notes of the position in the other States of Australia, and he informed me that there is provision in New South Wales, Victoria and Tasmania by which the acceptance of Ministerial office does not entail any by-election; that is to say, a member, on appointment to Ministerial office, does not need to resign and does not vacate his seat, and does not have to stand for re-election. In Queensland and South Australia the law appears to be that the acceptance of office does not in any way alter the right of a member to continue in Parliament without submitting himself for re-election. It seems, therefore, that in New South Wales, Victoria, Queensland, and South Australia acceptance of Ministerial office does not necessitate a by-election on the part of a member who is called upon to assume such an office. Under this Bill, if at any time during his term a member of Parliament is appointed to act and accepts one of the principal executive offices of the Government, his seat as a member of Parliament will not be vacated and he will not be required to submit himself for re-election.

In England the law is somewhat different. There it has been altered to this extent, that if a member of the House of Commons accepts Ministerial office, provided his acceptance takes place within nine months of the summoning of a new Parliament, he does not need to submit himself for re-election. Thus, if a member there were appointed to Ministerial office more than nine months after the summoning of a new Parliament, he apparently would have to submit himself for re-election.

Hon. A. H. Panton: That would mean a Parliament, not a session of Parliament.

The ATTORNEY GENERAL: That is so. It means that if there is a new Parliament, and if either the old Government continues in power or a new Government is formed, then all those members who attain and accept Ministerial office within nine months of the summoning of the new Parliament do not have to submit themselves for re-election. In England it is rather different in one respect, and that is in relation to Ministers who may be members of the House of Lords. They, of course, would never vacate their office by reason of any Ministerial appointment, because they are not elected members of Parliament; they hold their seats as members of Parliament by virtue of their dignity as peers or by virtue of the office they hold in some other respect. They hold their right to membership of the House of Lords in general, if not always, for life.

I have thought, however, that in our case we might prudently and properly fall in line with the position as it appears to be in the other States of Australia, that if the electors bestow their confidence upon a member of either House of the Parliament by returning him as their member for the normal period of years prescribed for the particular House, then, if he should be appointed to and accept Ministerial office during that term, he might well be allowed to accept that office without the expense and inconvenience of a by-election being occasioned. As this is a new Parliament, it has been thought that it is a convenient time to bring this matter to the notice of members in order that they may record their opinion on the amendment

of the law which is proposed. I therefore commend this Bill to members as one which is quite non-party in character—it will apply to all Governments at all times—and I suggest it is one which will be convenient and in line with modern thought in constitutional matters. I think it is a Bill which the House will feel has merit and can be supported. I move—

That the Bill be now read a second time.

On motion by Hon. A. H. Panton, debate adjourned.

BILL—CROWN SUITS.

Second Reading.

THE ATTORNEY GENERAL (Hon R. R. McDonald—West Perth) [8.25] in moving the second reading said: I have the merit, I think, of having shown some activity in this connection on previous occasions and I now take the opportunity of presenting a Bill to the House to bring about what I regard as a very material reform, one which is long overdue in the interests of the ordinary man and woman in relation to their rights against the Crown. Shortly, the object of the Bill is to make the Crown liable in the same way as the subject, or the ordinary man or woman, is liable. The ordinary man and woman, or it may be a firm or partnership or company, these being only a larger association of men and women, are required by law, and have been from time immemorial, to observe their contracts and if they do injury to anybody they have to make compensation for the injury they have caused. But that has not been the case of the Crown. The immunity or part immunity of the Crown is due to a very ancient common law maxim, which was that the King could do no wrong. The result was that if a servant of the Crown or Government injured a subject, that is to say, an ordinary man or woman, no claim for compensation or damages lay against the Government or the Crown.

It might in certain circumstances be permissible to bring an action against the individual who did the wrongful act, but that remedy may not be altogether fair, because the individual may have been acting simply as the servant of the Crown, or it may be that the individual would be unable to pay compensation sufficient to make good the damage sustained by the person who had been wronged. When it was realised that such a state of affairs was not in accordance with justice, exceptions were made from time to time in favour of the subject in respect of his rights against the Crown. In 1898, this Parliament passed an Act known as the Crown Suits Act, which is entitled "An Act to facilitate the protection and recovery of Crown property, and the enforcement of claims against the Crown." It is therefore an Act which runs both ways; that is to say, it facilitates any claims which the Crown might have against the subject and it also gives some limited remedy to the subject against the Crown. I am interested chiefly in the position as it relates to the remedy of the subject against the Crown and that is set out in Section 33 of the Crown Suits Act as it stands today. That section states—

> No claim or demand shall be made against the Crown under this Part of this Act unless it is founded upon and arises out of some one of the causes of action mentioned in this section. Provided that nothing herein contained shall be deemed to give a cause of action for breach of contract which would not have arisen in like circumstances before the passing of this Act.

The section goes on to give the cases in which the subject may sue the Crown as follows:—

> (1) Breach of any contract entered into by or under the lawful authority of the Governor on behalf of the Crown or of the Executive Government of the Colony, whether such authority is expressed or implied.
>
> (2) A wrong or damage, independent of contract, done or suffered in, upon, or in connection with a public work as hereinafter defined.

A public work is defined at some length and has reference to any railway, tramway, road, bridge, building, quarry and to various other things that are mentioned in the section. So the Crown Suits Act conferred upon the subject the right to sue on a contract made by the Crown with the subject if the contract was made with the express or implied authority of the Government. It gave the subject the right to sue for damages for a wrong or injury done by the Government to an individual if, and only if, that wrong or injury was sustained in connection with a public work as defined in Section 33.

In connection with other wrongs, there would be no remedy at all. Let me take an illustration, though I do not propose

to labour this matter unduly. If a car is being driven by an inspector of the Audit Department and knocks a man down and he loses his leg, he has no claim against the Crown under the Crown Suits Act for damages; whereas against a subject under similar circumstances he would have a claim for the amount of damage he had sustained by the negligence of the driver. A further anomaly is that if the car was a Government car owned by the Water Supply Department and, by negligent driving, a man was injured, he would in those circumstances have an action because the Metropolitan Water Supply Act contains a special clause which enables the Crown to be made liable.

Hon. E. Nulsen: That would apply to the railways, too.

The ATTORNEY GENERAL: Within limitations. There are other acts such as the State Trading Concerns Act and the Alunite Industry Act which contain sections under which the Crown may be liable for wrongs and which give the subject, in the case of wrongs done by the State Trading Concerns or their servants, a remedy that the subject would not have if the same wrong were done by an ordinary employee of the State Government. So it will be seen that there is a range of important wrongs or injuries that may be sustained by the ordinary man, woman or child in respect of which he has no remedy against the Crown, although in the same circumstances he would be entitled to recover damages against a fellow citizen.

There are other cases as to which I do not intend to go into details at this stage, where the subject would have redress at law against a fellow subject but has no redress at law against the Crown by virtue of the limitations of the Crown Suits Act. In the past, where a subject had sustained damage or injury and could not sue under the Crown Suits Act he availed himself of an ancient form of action known as the Petition of Right. That is to say, he prepared a petition to the King in which he set out the facts and said he was denied a remedy by the ordinary processes of law in those cases by the Crown Suits Act of the State of Western Australia, and prayed the King to do justice in his case. Such a petition of right would be sent in normal times or by normal practice in the past through His Excellency the Governor to the Home Office of the British Government, and the normal procedure would be for the petition to be endorsed on behalf of the King with the words, "Let right be done." The petition then came back to the State and was entertained and heard in the ordinary way before the ordinary courts of justice—usually the Supreme Court; in fact, I think, always the Supreme Court. If the court decided that the plaintiff would have been entitled to recover if the defendant had been an ordinary citizen, usually the petitioner was allowed to recover to the same extent.

Hon. E. Nulsen: That is an ordinance of 1867.

The ATTORNEY GENERAL: Yes; as the member for Kanowna, my predecessor in the Crown Law Department, has reminded me, the right of the subject to use the procedure of a Petition of Right was more or less explicitly stated by an ordinance of our own State of 1867. But in a case which came before the High Court three or four years ago—the case of Dalgety versus the Crown—it was held in effect by the Court that the Petition of Right did not exist in cases outside the Crown Suits Act. In other words, substantially the High Court felt that the Crown Suits Act had overridden the ordinance of 1867 and had really limited the remedies of the subject against the Crown to the particular matters specified in the Crown Suits Act and had thereby taken away from the subject the alternative redress which the subject had previously had by means of a Petition of Right to the King. It will therefore be seen that within the last three or four years the remedy of the subject for damage or injury sustained has become even more limited than it was prior to the decision of the High Court to which I have referred. The Commonwealth of Australia never sheltered itself behind the ancient doctrine that the King could do no wrong. By Section 56 of the Commonwealth Judiciary Act of 1903 it is provided—

> Any person making any claim against the Commonwealth, whether in contract or in tort, may in respect of the claim bring a suit against the Commonwealth in the High Court or in the Supreme Court of the State in which the claim arose.

The word "tort" as members are aware, is only a technical one for "wrong" or "in-

jury." Section 64 of that same Act provides—

In any suit to which the Commonwealth or State is a party—

that is, where the State sues the Commonwealth—

—the rights of parties shall as nearly as possible be the same, and judgment may be given and costs awarded on either side, as in a suit between subject and subject.

In New South Wales, as far back as 1912, by an Act known as the Claims Against the Government and Crown Suits Act, it is provided by Sections 3 and 4 that—

Any person having or deeming himself to have any just claim or demand whatever against the Government of New South Wales may set forth the same in a petition to the Governor and every such case shall be commenced in the same way, and the proceedings and rights of parties therein shall as nearly as possible be the same, and judgment and costs shall follow or may be awarded on either side as in an ordinary case between subject and subject.

We see, therefore, that in the Commonwealth, since 1903, and in New South Wales since 1912, the subject has been entitled to get redress against the Crown in the same way as he would be entitled against an individual, and the Crown or Government has accepted as proper for itself the same obligations as it requires the ordinary man or woman to accept for injuries which he or she commits against any other person.

Hon. J. B. Sleeman: Why was it not made an Act in Great Britain?

The ATTORNEY GENERAL: In Great Britain, as I was about to remark, the House of Commons appointed a committee in 1927, of great authority, presided over by Lord Justice Slessor of the Court of Appeal of the High Court of Great Britain. That committee reported that there was no justifiable ground for refusing the subject the same rights against the Crown as one subject had against another. A Bill was framed by the committee and was introduced into the House of Commons in 1927, but for some reason, which I have not been able to find out, it was not proceeded with.

Hon. J. B. Sleeman: It was not proclaimed.

The ATTORNEY GENERAL: It was never proceeded with, beyond the introduction.

Hon. N. Keenan: Lord Justice Slessor resigned.

The ATTORNEY GENERAL: I am reminded that Lord Justice Slessor resigned about that time, and he was chairman of the committee. It has been left to the present Government of Great Britain, led by Mr. Attlee, to make a belated advance in that country to overcome the injustice to the subject which has existed for so long there, as well as in this State. I have here a copy of a Bill, in connection with this matter, that has been introduced this year by the Government of Great Britain. It provides, at the very commencement of Clause 1 as follows:

Subject to the provisions of this Act, the Crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject.

There are, included in the Bill introduced into the British Parliament, a great many exceptions or precautions as to its operations because in Britain there are the Armed Forces and various other institutions peculiar to that country and for which we have no counterpart in this State. But, in general the object of the British Government is to assimilate the rights of the subject against the Government or the Crown, to the rights that one subject has against another subject. In other words, the British Government is asking the British Parliament to accept the view that the law which it considers the ordinary man and woman should obey and comply with shall also be accepted by the Crown and by the Government of the country in which those people live. I have no information as to whether this Bill has passed into law or not, but I feel there is no doubt it will pass into law. I observe that it was introduced into the House by no less an authority than the Lord Chancellor of Great Britain, who is the Leader of the Government in the House of Lords. The Bill now before this House repeals the Crown Suits Act and re-enacts the law on the subject of suits by and against the Crown. The substance of the measure is in these terms—

Subject to this Act, the Crown may sue and be sued in any Court or otherwise competent jurisdiction in the same manner as a subject.

That is to say, the Crown will, with one or two comparatively small reservations, be in the same position in accounting for damages or wrongs it has done, as the ordinary man or woman is today.

Hon. F. J. S. Wise: What you are proposing will be almost uniform with the position in all the other States of Australia.

The ATTORNEY GENERAL: That is not quite so. I have referred to the Commonwealth law and that of New South Wales but, as far as I am aware, I do not think the other States have passed laws in similar terms. It has been proposed that Victoria shall pass a law in similar terms. I do not want to weary the House with this aspect, but if any members care to read the 1944 volume of "Hansard" at page 793, they will find some remarks I made on this subject, in which I dealt with expressions of opinion from high legal authorities in Great Britain and also in Victoria. Mr. Justice Lowe of the Victorian Supreme Court made a very strong appeal for the introduction in Victoria of legislation to provide that the subject may have the same rights against the Crown as the subject would have against a fellow citizen.

Hon. J. B. Sleeman: Is it not possible to sue a Minister of the Crown now?

The ATTORNEY GENERAL: In general, no. He may sometimes be sued in relation to contracts with the Crown, but in relation to wrongs or injuries, unless they arise out of a public work, the Crown, as a general rule, is not liable, and Ministers are not liable. In this Bill the law has been restated. It has been simplified and stated in clear and short terms. In the Crown Suits Act there was a considerable amount of unnecessary verbiage and reference to obsolete terms and forms which have been omitted in the Bill as no longer having any application. I do not propose to deal with those in detail at this stage, but will give something of an explanation of each clause, shortly, to explain what change it makes in respect of the law as it now obtains. I will refer first to one or two things in the Crown Suits Act as it stands today. When the Government sues or is sued it is referred to as the Crown. When the Act was passed in 1898 the State was an independent sovereign State, and there was only one Crown as far as Western Australia was concerned. Since Federation there have been in Australia two Crowns; the Crown in the right of the Commonwealth, and the Crown in the right of the State.

Hon. F. J. S. Wise: The State has now become the half-crown!

The ATTORNEY GENERAL: Not even the half-crown, I am afraid.

Hon. N. Keenan: The dollar!

The ATTORNEY GENERAL: So it is thought that to entitle proceedings now in the name of the Crown is not quite in accordance with existing constitutional facts. Under the Commonwealth Judiciary Act, to which I have referred, proceedings are taken against or by the Commonwealth, and in this Bill it is proposed—if it should become law—that proceedings in which the Government is involved will be taken either by or against the State of Western Australia. That is thought to be consistent with the Commonwealth Judiciary Act, and it avoids use of a term that has now become somewhat ambiguous, constitutionally—namely the term "Crown." A new provision is inserted in the Bill which is not found in the Crown Suits Act. It relates to cases that occur between subject and subject, either in the Supreme Court or in inferior courts in which a constitutional issue may be raised or involved. In such a case the Bill empowers the Attorney General or Minister for Justice to intervene in order to be heard on the constitutional issue, and it empowers the Supreme Court in a proper instance to remove the proceedings from the inferior court and have them dealt with in the Supreme Court, when it is felt that the constitutional issue involved is of such importance that it should receive consideration by a judge of the Supreme Court of the State.

In my previous remarks on the subject I have said that the limitation of proceedings against the Crown or Government contained in the present Crown Suits Act, of 12 months, and which is contained in so many other Acts, even down to three months or six months, was somewhat unfair to the subject. In the ordinary way a remedy can be pursued against another person—a natural person—at any time within six years, but, where the Government was concerned it has, in the past, been careful to fence itself about with a very much smaller time limitation as to the period in which proceedings could be taken. As this legislation by which the Crown and the subject both accept the same liabilities is something new in this State, I have not proposed to go so far as to make the Crown liable for the same length of time as is the ordinary

person. I have therefore retained in the Bill a provision that proceedings against the Crown must be taken within 12 months of the cause of action arising.

It may later be desirable—this House may think it desirable as far as the limitation of proceedings is concerned—to extend that time and make it more in accordance with the time that applies to ordinary people, but in introducing this legislation for the consideration of the House, and bearing in mind that the Crown in some ways is more vulnerable to claims than is a private person, I have retained the limitation of 12 months, but with a proviso—which is not in the present legislation—that if the plaintiff did not know and could not have known with reasonable care that he had been injured, then the time does not run against him for bringing proceedings until he knew of his damage or might have known of it by the exercise of reasonable care. It does sometimes happen, and has happened in my experience, that a subject has been injured by Crown operations and has not known of it for months afterwards.

The instance I have in mind was where the Crown entered on private land and removed marketable timber, and it was not known to the owner of the land, for some time after the actual entry by the Crown took place, that the Crown had removed timber from his area, and yet the limitation of 12 months in the present law would run not from the time that the land owner knew of the trespass on his land but from the time that the trespass took place, though the land owner was not at the time aware of it. I had opportunity, by the consideration of this House in 1944, of dealing with this subject at greater length than I propose to deal with it tonight, referring much more widely to the law on this subject and to the observations that had been made by a number of persons of high authority. If any member would like to pursue the matter further, I might take the liberty of referring him to the remarks that I made in speaking to the House in 1944.

All members will appreciate very fully, I know, that in the old days when the maxim, "The Crown can do no wrong," flourished to its fullest extent, the activities of the Crown were extremely limited. Therefore, the opportunities for the subject to receive an injury for which he could obtain no redress from the Crown were comparatively limited. Today Governments operat in a very wide sphere. They conduct al kinds of activities and very large service: It is now possible that the ordinary citize may receive some damage for which he ca obtain no redress under the present law much more freely than was the position 5(or 100 years ago. I feel sure that I can sa with justification that the time has now com when this archaic law to which I have refer red should no longer find a legitimate plac in the jurisprudence of any progressiv State or country.

I think the general view is that ver shortly the position, in British countrie especially, will be that if Parliament lay down a code of obligations to be impose upon the ordinary man or woman, the leas the Government can do is to observe obliga tions of the same standard. I feel that th House will be prepared to welcome the con sideration of this measure. While it is ver short, it does include certain provisions tha may call for some explanation. I think i will be sufficient for me to say at this stag that I shall be very pleased when dealing with the Bill clause by clause to give any explanation in my power as to the meaning of various provisions and the reference they have to the existing law in this State. I move—

That the Bill be now read a second time.

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

House adjourned at 9.4 p.m.

Legislative Assembly.

Thursday, 4th September, 1947.

The SPEAKER took the Chair at 2.15 p.m., and read prayers.