Legislative Council.

Thursday, 16th October, 1941.

	PAGE
Bills: City of Perth Scheme for Superannuation (Amendments Authorisation), 3R.	1236
Road Districts Act Amendment (No. 2), report	1236
Income Tax, 2R.	1236
Fire Brigades Act Amendment, 2R. Com. report.	1240
Criminal Code Amendment, 2R.	1241

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

BILL—CITY OF PERTH SCHEME FOR SUPERANNUATION (AMENDMENTS AUTHORISATION).

Read a third time and returned to the Assembly with amendments.

BILL—ROAD DISTRICTS ACT AMENDMENT (No. 2).

Report of Committee adopted.

BILL—INCOME TAX.

Second Reading.

Debate resumed from the previous day.

HON. C. F. BAXTER (East) [4.36]: The peculiarity relating to the Income Tax Bill in this Chamber is that a number of members believe we have no control over it and are not able to deal with it. As a matter of fact we have the power to reduce, but not the power to increase. The Government revenue has been very flourishing in the last few years, and while I do not propose to take any action I want members to consider whether it may not be necessary in future to take a stand in view of the expenditure on Government administrative costs. It seems to matter very little what the revenue amounts to; the Government spends every penny it receives. Revenue has increased now to £11,000,000 odd, and expenditure has increased in keeping with it. The present Government has this to its credit, that during the past eight years it has increased Government administrative costs by £2,500,000 per annum, which is a colossal record. Some of that is necessitated by increased interest charges, but £2,500,000 is an enormous amount considering the previous administrative costs were only £9,000,000.

It is interesting to glance over a few years and see what the position has really been. On the 30th June, 1933, taxation yielded £1,128,574. Of this amount the financial emergency tax yielded £202,000. That was the first year of the imposition of that particular tax, and it applied for about seven months during that period. The total amount of revenue for that year was £8,322,153, and the Government administrative costs were £9,196,223. I would like members to keep these figures in mind in order to compare them with those of following years. The deficit that year was £864,000. On the 30th June, 1940, the amount derived from taxation had increased to £2,996,054. I use the 1940 year specially because it was the last year during which the emergency tax operated. Of the amount I have just quoted the financial emergency tax yielded £1,263,699. The total revenue for that year amounted to £11,119,943. While it is very gratifying to find such an increase in revenue, it is unfortunate that administrative costs have equally increased. In that year the administrative costs reached the colossal sum of £11,266,767, and there was a deficit of £146,824. In the year ended the 30th June, 1941, when the financial emergency tax was amalgamated with the income tax—an outstanding amount of about £250,000 of emergency tax was collected that year—the total receipts from taxation were £3,127,604 and the total revenue was £11,432,067. Again the administrative costs rose and kept pace with the increased revenue. In that year administrative costs amounted to £11,420,956. Taking the taxation figures for the eight years, we find that this Government has increased the taxation on the people to three times the amount collected in 1933.

Turning now to the Estimates, the Government was exceedingly fortunate last year in that it received £152,036 above the estimated revenue, and for the first time for many years there was a surplus, the amount being £11,111. Considering the enormous amount of revenue received and the fact that it exceeded the estimated revenue by £150,000, it is remarkable that the Government should have shown a surplus of only £11,111. Had the estimate of revenue for the year been correct, the Government would have shown a deficit of £163,147. This is not a very illuminating picture. We

are progressing from the position of being one of the lowest taxed States of the Commonwealth to that of the highest.

Notwithstanding this, we find ourselves penalised by the very unsympathetic Commonwealth Grants Commission. Just what power the commission has to usurp State rights in matters of Government policy is beyond my comprehension, but the commission adopts the attitude that if certain things are not done by the State, the grant will be reduced. What right has the commission to say that we shall tax our people to a certain extent or do something else? I was always under the impression that the Commonwealth Grants Commission had been appointed to ascertain whether the claimant States—South Australia, Tasmania and Western Australia—were suffering disabilities through their association with the Federation and, if so, to make grants commensurate with the disabilities, particularly those caused by the tariff. The other day the statement was made, "We have our own representative on the Grants Commission." That obviously referred to Sir George Pearce. I cannot concur in the statement. My mind goes back to the years following the 1914-18 war when I was a responsible Minister and was entrusted with many important missions to the Eastern States. My experience of Sir George Pearce was such that, after approaching him on several occasions, I preferred to go to Ministers in charge of other departments. I did not receive much sympathy from Sir George Pearce.

Hon. G. W. Miles: He is one of the best men we have had on the commission.

Hon. C. F. BAXTER: I concede that he was a good Minister and an able man who could be ill-spared from the Federal sphere, but I repeat that he has never been too sympathetic toward Western Australia.

Reverting to the taxation imposed by the present Government, I repeat my remark of last session that there was no justification for the increase of taxation then imposed. In fact, the opposite should have been the experience. State Governments should not enter the field of taxation at such a critical time when the Commonwealth needs every avenue in order to raise the requisite funds with which to carry the war effort to a successful conclusion. Still, taxation was increased last year, though there was every prospect of revenue increasing tremendously from the expenditure of defence funds. Take the expenditure on the unemployed: Today it is practically nil; at any rate it amounts to only a few thousand pounds. Thus the Government has been relieved of the heavy expenditure necessary to cope with the unemployment difficulty in former years. There are other directions in which substantial reductions have been made. For child welfare the Government is finding £30,000 a year less than previously.

Let me refer to the far-reaching benefit to revenue of expenditure from defence funds. When money is spent on defence, it naturally follows that there is an inflow of taxation from such earnings within the State. On top of that the Government had the benefit of increased revenue from the State Sawmills and State Brickworks. The State Sawmills showed a profit of £52,000 for the year—a very large amount.

Hon. J. J. Holmes: What about Broken Hill?

Hon. C. F. BAXTER: That is a Federal matter with which I do not propose to deal. Something like £350,000 flows into the coffers of the State from freights and fares paid to the railways by the Commonwealth in connection with defence. The State Shipping Service has also benefited from the transport of goods to Darwin. Railway, tramway and trolley bus services have benefited from the Commonwealth petrol restrictions and are showing greatly increased returns. All these improvements in returns could have been foreseen last year, and yet the Government increased taxation. I cannot see that the Government has any reason for glorying in the fact that taxation is not being increased this year. There is not the slightest justification for the present rate of taxation.

Expenditure to which one finds it difficult to agree was mentioned by Mr. Miles. I did not intend to touch on it. I refer to Government motor transport. I am not going to compliment the Perth City Council on what it has done, because I do not think it should have allowed its employees to use council cars during the week-end. That ratepayers' money should be used for such a purpose was never intended. Despite all my inquiries and my warnings, very little improvement has taken place in the use of Government motor cars, except the improvement brought about by petrol restriction. The increase in the number of Government

cars during the past eight years has been tremendous. Every head, sub-head and inspector has a car. These officials run mad with them, and it must be borne in mind that cars are a costly item. Will the Chief Secretary tell me whether the use of these cars has been restricted and what savings have been effected? I have not yet seen any evidence of savings. I would be pleased to learn if the method of control which I suggested to this House some two years ago has yet been adopted. The Government should have a running schedule for each of its cars, as is done in commercial concerns. That is the only way in which to secure complete control.

I cannot get away from the point that the Government is always mindful of political expediency. I ask members to carry their minds back a few years ago, when our large body of civil servants was granted a five-day working week. At the time it was said that that would prove beneficial to the service. It certainly is not beneficial to members of Parliament, who are often put in an awkward position because public offices are closed on Saturday. I question whether the five-day week is beneficial to the Public Service. I am not advocating that the working days per week should be increased, but I am afraid we are up against not only that problem, but graver problems. Another move by the Government—I was one out of 80 members of Parliament to oppose it—was the placing of the public servants under the jurisdiction of the Arbitration Court. At the time I said I considered it was a mistake both from the point of view of the service and of the State. Then something happened which I had not expected. Provision was made for the public servants to get the benefit of any increase in the basic wage. Perhaps I should not say the public servants, because that provision applies to all Government employees.

The Chief Secretary: Do you say you do not agree with it?

Hon. C. F. BAXTER: I do not disagree with it. What I object to is that civil servants earning from £600 to £1500 per annum get another £50 a year increase on account of the rise in the basic wage. Public servants receiving below £600 a year I thoroughly agree should be entitled to that increase, but not a person receiving £1,500 per annum. Such extra payments are only sops to those men, for one purpose and one purpose only.

Another matter well in my mind is this: We are approaching election time. The elections are about five months off. I am informed—and I believe the information is correct—that the Government at this late hour is intending to give the Government school teachers an increase in their salaries of from £37 to £50 per annum. I do not know where the money is to come from; but if the public servants are getting these increases, then there is every justification for the teachers to be treated likewise. But why pick on this particular time to do it?

Hon. J. J. Holmes: Perhaps it is so that they may learn how to vote.

Hon. C. F. BAXTER: I do not know. I hope the Chief Secretary will watch this point and inform me, when he replies, whether, if the basic wage is decreased, a corresponding reduction will be made in the amount paid to Government employees, including the teachers if they are granted the increase.

These pre-election moves are amusing. Members will recall one move that has proved to be a boomerang and does not reflect credit on the Government. It was the main issue put before the electors at the last election. With pamphlets and by speeches the Government proclaimed all over the State that it intended to wipe out the financial emergency tax, which was instituted in December, 1932. It was forced on the then Government, of which I was a member, by an unsympathetic Loan Council, which for many years previously had always been harassing the State to increase taxation, simply because other States were up in arms on account of our taxation. Like a bolt from the blue, at the Loan Council meeting of 1932, it was decided to reduce this State's grant by £400,000. The Government of Western Australia would have to find that money by taxation or some other method. The Government could not possibly at that time permanently increase taxation, but it was forced to find additional money. Then a brain-wave brought into existence the financial emergency tax, to which every member of the then Government was strongly opposed.

Hon. G. Fraser: Would it be a brain-wave to tax a young person earning 10s. a week and keep?

Hon. C. F. BAXTER: That tax was introduced with the intention that it should be in force for one year only, up to the 30th June, 1933. Each member of the Government was determined on that point. What a barrage was put up against it by the then Opposition, the representatives of which are now sitting on the Treasury benches! They said, "We will wipe this tax out." However, it was placed on the statute-book. The next year—in fact, only a few months later—that Opposition took over the reins of government. Did it wipe out the emergency tax? Certainly not. It was allowed to remain. During the second session that Government was in power—I may not be quite correct in this—it increased the average rate of the emergency tax from 4½d. to 9d. in the pound. You, Mr. President, are aware how session after session thereafter an attempt was made by me to grade the tax and to bring the minimum down to 2d. in the pound. That would have been a proper thing to do. Would the Government agree? Not on your life!

In a country which enjoys free services costing well over £4 per head of population, every person should contribute something to the free services which he enjoys, and 2d. in the pound would not have been felt by those on low incomes. They would scarcely know they were paying it. As they formed the largest body of taxpayers, their contributions, although small individually, would collectively have represented a large sum. But oh no! It did not suit the Labour Government, which continued imposing the tax until the last election, when it announced, "We will wipe out this emergency tax." No taxpayer in the country believed for a moment that the financial emergency tax would, in name only, be abolished. The name was abolished but the tax itself was added to the income tax, and the rates in many grades were increased. I do not propose to weary the House by giving details because the Chief Secretary has tabled the particulars. What happened? All those people in receipt of salaries, wages, commission, etc., who paid financial emergency tax at the source in 1940 for the year ended the 30th June, 1940, then paid in 1941 what was termed income tax, with the emergency tax added, for the year ended the 30th June, 1941. In short, they paid financial emergency tax twice over in the one year. Not for one moment did the taxpayers imagine that that was what was intended, or what would occur.

Hon. G. Fraser: No one paid twice in the one year.

Hon. C. F. BAXTER: I cannot understand the hon. member's reasoning. I have already explained, but apparently it is difficult for some people to understand explanations, that some taxpayers paid emergency tax at the source in 1940 and then in 1941 again paid what was called income tax but which included the emergency tax covering the year 1940.

Hon. G. Fraser: You said they paid twice in the one year; that is what I disputed.

Hon. C. F. BAXTER: They did not pay the amount twice in the one year, but in 1941 they again paid emergency tax for the year 1940 inasmuch as that tax was included in what was called the income tax levied in 1941.

Hon. G. Fraser: They paid twice in two years.

Hon. C. F. BAXTER: It cannot be denied that they paid twice for the financial year 1939-40.

Hon. J. Cornell: The point is, how are they going to obtain a refund?

Hon. C. F. BAXTER: There is no hope in life of obtaining a refund. That was a wrong thing to do—to promise the electors that the emergency tax would be abolished and then to discontinue it in name only. However, it seems merely to be beating the air to criticise the Government's expenditure.

Hon. J. J. Holmes: So many wrong things have been done that one or two more do not make much difference.

Hon. C. F. BAXTER: I am alarmed by the fact that while revenue is flowing in the whole time and there is a considerable amount of defence expenditure being undertaken by the Commonwealth in Western Australia, the Governments expenditure is keeping pace with the income. What the future holds, no one can foresee, but I do not expect it will be rosy. I do not anticipate that the Government's revenue will be as large as could be desired. Expenditure needs to be curtailed in every possible direction instead of being increased. The Treasurer says that savings are being effected in various directions. The Honorary Minister said the other night that it was difficult to obtain funds from the Treasury, but I notice

that every time an election approaches substantial amounts are expended, whether the Treasury approves or not, in different districts represented by Labour members.

I hope that even at this late hour the Government will realise how necessary it is to put an end to the ever-increasing expenditure. To say that expenditure cannot be curtailed is nonsense, and it is foolish to say that every possible saving is being made when we have daily evidence to the contrary. I have said these things time after time in this House. In view of the fact that on this occasion, as on other occasions, nothing more can be done, I suppose I must content myself with supporting the second reading.

On motion by Hon. G. W. Miles, debate adjourned.

BILL—FIRE BRIGADES ACT AMENDMENT.

Second Reading.

THE HONORARY MINISTER (Hon. E. H. Gray—West) [5.5] in moving the second reading said: This is a small Bill designed to bring our legislation into line with similar measures in the Eastern States. I hope and think it will appeal to the majority of members. This new legislation proposes to amend Section 41 of the Fire Brigades Act, 1916, which specifically deals with contributions towards the expenditure of the Fire Brigades Board. Provision is made in Subsection 2 of that section that the Treasurer shall contribute 1/4th of the annual estimated expenditure, the local authorities 3/8ths, and the insurance companies 3/8ths. The proposal in the Bill is to amend this subsection to provide that the Treasurer shall contribute 2/9ths instead of 1/4th, the local authorities 2/9ths instead of 3/8ths, and insurance companies 5/9ths instead of 3/8ths.

Representations have been made by local authorities to the Government for what may be termed a more equitable basis on which contributions may be made, and after the matter had been considered in all its aspects it was decided to accede to their request and to introduce this Bill.

Inquiries which have been undertaken show that the local authorities in this State pay a higher proportion of total fire brigade expenditure than do local authorities in the other States. In South Australia the proportion paid is 2/9ths, in New South Wales 1/4th, in Queensland 2/7ths, in Tasmania and Victoria 1/3rd each, whilst in Western Australia the proportion paid is 3/8ths. The estimated expenditure of the Fire Brigades Board for 1941-42 is £70,407. On this estimate I will give members figures indicating the effect of the passing of the Bill on the contributions by the three parties concerned. They are as follows:—

	Present Contribution	Proposed Contribution	
	£	£	£
Insurance Companies	26,403 (4)	39,116 (9)	12,712 Increase
Local Authorities	26,403 (4)	15,646 (9)	10,757 Decrease
State Government	17,601 (4)	15,646 (9)	1,955 Decrease

From these figures it will be noted that insurance companies and others are being called upon to contribute an increase of £12,712, the amount being divided amongst some 108 concerns.

Hon. L. B. Bolton: Does that mean higher premiums again?

The HONORARY MINISTER: Local authorities will benefit in relief being granted by a decrease in payments of £10,757, 51 local authorities sharing in the relief.

Hon. G. W. Miles: Is the State Government Insurance Office contributing to this fund?

The HONORARY MINISTER: No.

Hon. G. Fraser: You would not let them!

The HONORARY MINISTER: The State contributions to the board will decrease by an amount of £1,955. If endorsed, this Bill will bring our legislation into line with that of South Australia where, generally speaking, similar conditions prevail. The Government in that State, however, places a limit of £10,000 on its contributions and to that extent the South Australian Act is dissimilar to this measure, which on the estimate for this year will involve the Government in a contribution to the Fire Brigades Board of £15,646. I feel sure the majority of members will endorse the proposal.

Hon. C. F. Baxter: Is there any alteration in the composition of the board?

The HONORARY MINISTER: No. I move—

That the Bill be now read a second time.

Question put and passed.

Bill read a second time.

In Committee.

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

BILL—CRIMINAL CODE AMENDMENT.

Second Reading.

Debate resumed from the 25th September.

THE CHIEF SECRETARY (Hon. W. H. Kitson—West) [5.14]: I followed with very close attention the remarks of Mr. Cornell when he introduced the Bill, and I have come to the conclusion that the hon. member did not give this subject the careful consideration he usually devotes to Bills he introduces in this Chamber. The effect of the measure will be to prevent justices of the peace from hearing any betting charge, no matter where it may be laid, throughout the State.

The first objection I raise to that is: Why single out this particular offence? If we are to say that justices of the peace are not to be allowed to deal with betting offences, what are we to say when they adjudicate upon far more serious charges? As members are well are, there are throughout the State many districts where the courts are not presided over by a magistrate, while in some places magistrates are in attendance periodically. They may attend once a month or once a quarter, as circumstances may require. If the proposal embodied in the Bill is endorsed, the effect will be that all betting cases will have to be dealt with at the nearest township where a magistrate presides over the court, or, alternatively, arrangements will have to be made for magistrates to travel to centres where betting charges have to be heard. That, of course, would mean that a large number of people would be put to considerable inconvenience and in many instances increased cost. I do not think we should set out at this stage to create such a situation.

In the course of his remarks, Mr. Cornell referred to one or two matters that I shall deal briefly with before going on to consider the main arguments used by him in advocacy of the Bill. Firstly, I shall refer to his comments on certain figures supplied to the House as a result of a question asked by him on a previous occasion. He suggested that the figures did not coincide.

Hon. J. Cornell: On a point of personal explanation, I did nothing of the sort. What I said was that the figures given to me in answer to my question when compared with those included in the annual report of the Commissioner of Police, appeared to disclose some discrepancy, and I left it at that.

The CHIEF SECRETARY: I am not taking exception to what the hon. member said, but am merely trying to explain the difference—if there is a difference—between the two sets of figures to which the hon. member referred. In point of fact, he suggested there was a discrepancy between the figures given to him in this House and those embodied in the annual report of the Commissioner of Police. There is no discrepancy at all. Mr. Cornell failed to notice that the figures referred to related to the metropolitan area only and did not apply to the collection of betting fines throughout the State. That is the explanation of the apparent discrepancy. According to the figures included in the Commissioner's annual report, there was an increase last year of approximately £11,000 in the amount collected by way of fines for betting offences in the metropolitan area as compared with the collections for the previous year.

Another point raised by Mr. Cornell was that he could not understand why the Government should include in another measure the provision that particular offences should be dealt with only by a magistrate and not by justices of the peace, and at the same time take exception to the proposal embodied in his Bill. My reply to that is that the Government did not include the provision to which he referred in the Act he mentioned. That particular amendment was inserted in another place and was agreed to.

Hon. J. Cornell: The Government accepted the provision, which amounts to the same thing!

The CHIEF SECRETARY: I again emphasise that if we are to take exception to justices of the peace hearing betting charges, it does not seem right to single out this particular type of offence for that action.

Hon. G. W. Miles: But there are about 20 offences in that category.

The CHIEF SECRETARY: More particularly do I suggest that because far more serious charges are dealt with by justices of the peace.

Hon. J. Cornell: But Section 211 of the Criminal Code deals only with betting houses.

The CHIEF SECRETARY: I suggest that the Criminal Code is not the measure that should be amended if the hon. member desires to take exception to justices of the peace hearing betting cases as at present. At the conclusion of his remarks the hon. member said he was actuated in introducing the legislation by the idea that we should ensure consistency in the administration of justice. In support of his contention he drew attention to the different fines imposed in various parts of the State. Because in one particular centre the fines imposed are usually lower than elsewhere and because justices of the peace have very frequently adjudicated in those cases, Mr. Cornell came to the conclusion that justices of the peace should not be allowed to preside over such cases, and that the effect would be an increase in the amount of fines imposed so that they would be in future more in conformity with those ruling in, say, Perth.

Hon. W. J. Mann: And most people in the State would agree with him.

Hon. G. W. Miles: Did not a magistrate say something along those lines on one occasion.

The CHIEF SECRETARY: I hope the hon. member will be a little patient. If that is Mr. Cornell's contention, I am afraid his view is not borne out by facts which, on the contrary, show conclusively that in various parts of Western Australia where cases of this nature are dealt with, there are hardly two centres where similar penalties are inflicted. That is easily understood, because the penalty set out in Section 211 of the Criminal Code ranges from a mere caution to a fine of £100. That indicates that a court, whether it be presided over by a magistrate or by a justice of the peace, has ample discretionary powers, and that is as it should be.

On examination of what has taken place in various centres throughout the State, we find marked variance in the penalties inflicted for this one type of offence. For instance, in Perth it has become the custom for the penalty for a first offence to be £75 and £85 for a second offence. I may add that invariably a magistrate presides over the court in Perth. At Midland Junction where cases of this description are usually dealt with by justices of the peace, the fine imposed for a first offence is usually £10, with £15 for a second offence. A peculiar feature is that when a magistrate presides over the court at Midland Junction and hears cases of this description, he does not vary the penalty but invariably prescribes that which is usually imposed in that court by justices of the peace.

Hon. J. Cornell: Only the other day a magistrate at Midland Junction imposed a fine of £75.

The CHIEF SECRETARY: I am informing the hon. member as to what is the invariable custom. At Northam a magistrate usually takes this type of case and recent records show that there £50 is the customary penalty for a first offence and £75 for a second offence.

Hon. L. B. Bolton: You have missed Fremantle.

The CHIEF SECRETARY: There is no need for me to miss Fremantle; I shall come to that presently. In Bunbury the penalty is usually £20 for a first offence and £25 for a second offence. In Kalgoorlie the magistrate imposes a fine of £60, but when he goes to Norseman he usually inflicts a penalty of £50.

Hon. W. J. Mann: Different centres, different fines.

The CHIEF SECRETARY: When the magistrate goes to Laverton he inflicts a penalty of £20 but when he goes to Southern Cross he imposes a fine of £30. All these particulars indicate that whoever may preside over a court is empowered to use his discretion; in other words, there is no fixed penalty for this class of offence.

Hon. J. J. Holmes: You promised to tell us about the position at Fremantle.

The CHIEF SECRETARY: I am coming to that. At Fremantle it has been usual for a fine of £5 to be imposed upon a first offender and £10 for a second offence. Rather remarkable to relate, when that magistrate has presided over the court in Perth and dealt with betting cases, he has inflicted the same penalty.

Hon. W. J. Mann: What, £5?

The CHIEF SECRETARY: Yes, £5.

Hon. J. Cornell: It is quite obvious why he did that!

The CHIEF SECRETARY: No, it is not.

Hon. J. Cornell: Of course it is. He does not fix the penalty at Fremantle!

The PRESIDENT: Order!

The CHIEF SECRETARY: The point I am making is that, generally speaking, it is the custom of the court that counts in such matters. Otherwise why should we have the differing penalties in different courts to which I have drawn attention? As I have already pointed out, if the case is heard in Bunbury, Laverton, Southern Cross, Fremantle or Perth, invariably we find that the fines inflicted are of varying amounts. We thus come to the question of whether the position is such that we should take action that would interfere with those who presided over the lower courts, and whether the penalties to be inflicted for this particular offence should be fixed. In other words, are we to take action to interfere with the discretion exercised hitherto by those who preside over our courts? It may be said, of course, that it would be quite possible for any court, whether it be presided over by a magistrate or a justice of the peace, to inflict the maximum penalty every time.

I ask members whether they would consider that quite fair and equitable. Would it be quite fair that there should be a fixed penalty for an offence of this description? Are we to insist that the courts shall penalise each individual offender by the imposition of a fixed amount—quite irrespective of what may be the nature of the betting offence with which the person is charged? Are we going to insist that the same penalty shall be inflicted on a man who has a shilling bet as on another man who bets £5? Or that the penalty shall be the same where one man is dealing in very small wagers and another man is dealing in big wagers? All these matters have to be taken into consideration when a court is dealing with an offence of this kind. I am advised—I have no personal experience of the matter—that a court when dealing with such offences, or indeed offences of any kind, takes into consideration what is the practice.

It is for these reasons that courts are given discretionary power and that penalties vary as they do in the case of most offences. For instance the court must take into consideration the defendant's police record, and if he has a previous conviction, just how long it is since that previous conviction was recorded. The court must take into consideration the nature of the offence and its prevalence. It frequently takes cognisance of the financial circumstances—whether the defendant is a married man with children. Therefore it does seem to me that we should be chary of interference with a section of the Criminal Code as proposed by the Bill.

Further, Mr. Cornell referred to his inability to understand how it is that no proceedings are, as a rule, taken against the owners of the premises. The reason is that it has been found almost impossible to secure a conviction. I am advised that while the Act stands as it is, there is the greatest difficulty——

Hon. J. Cornell: I have placed an amendment on the Notice Paper with a view to remedying that.

The CHIEF SECRETARY: I am advised that, unfortunately, the amendment will not do what is desired. No matter how much we extend the meaning of the term "owner," it will not help the position at all. I am informed that the inclusion in the Act of the words "knowingly and wilfully" makes it almost impossible to secure a conviction against the owner.

Hon. J. J. Holmes: Cannot we take those words out of the Act?

The CHIEF SECRETARY: I do not mind if the hon. member makes the attempt, but I may point out that he has insisted on the inclusion of those words in more that one Bill that came before this Chamber. However, such is the position. The Bill as submitted is open to a number of objections. The first one is that I do not consider it right to pick out one offence and say that justices shall not try that one type. The instances cited by the hon. member are not analogous.

Hon. J. Cornell: There is sly-grogging, for instance.

The CHIEF SECRETARY: And illicit gold buying. While I understand the motive which has induced the hon. member to bring the Bill forward, I consider that he has, perhaps unwittingly, in doing so cast a slur on a large number of honourable men who from time to time have taken their places on the bench and heard all sorts of cases, many of them of far greater importance than mere betting charges. My suggestion to the hon. member is that if he desires to

take this action in regard to the offence of betting, he should be prepared to take it in regard to other types of offences. If he does desire to bring about that position, it will be necessary for him to attempt to amend the Justices Act, and not the Criminal Code. Accordingly I consider that the Bill as presented to this Chamber is not one with which we should agree.

I have already pointed out that if the measure is carried much inconvenience and additional expense will be caused in certain districts, and that it will not have the effect of stabilising the amounts of fines to be inflicted in repeated offences, because so many other factors have to be taken into account. I have pointed out that almost invariably when justices hear a case in a court where a magistrate usually presides, the fine inflicted is in accord with the fines generally inflicted there. If justices usually sit in a court and a magistrate comes along to preside there, the fine he inflicts is usually the same as that inflicted by the justices. That has been the invariable experience throughout the State. I feel that I must oppose the second reading of the Bill.

HON. H. S. W. PARKER (Metropolitan-Suburban [5.38]: I am indeed pleased to have the opportunity to support the Bill. I cannot follow the arguments just put forward by the Chief Secretary. In all cases where certain restrictions have been imposed by law as to dealing with offences, it has been done because the offences have become common and rampant, and some steps needed to be taken to alter the position. On the statute-book there are many instances of where Parliament has deemed it necessary to inflict a minimum penalty and thus take away from the magistrates their discretion. Strangely enough, but quite correctly, the Criminal Code has a general section—Section 19—which empowers a magistrate or a judge even to discharge a prisoner who has been found guilty. Very great powers are given to them in that respect, and I think it is quite right. Further I consider it quite right that magistrates should be given discretion. I certainly hold that it would be entirely and absolutely wrong for the Government to step in and suggest to any magistrate or any court that the penalties inflicted are wrong, or to give any direction as to the penalties that should be inflicted. I do, however, think it is the duty of the Legislature to voice its opinion, and this is one way in which it can do so.

Again, I consider it most unfair to ask magistrates to sit in judgment on their fellow-townsmen in matters which might mean a penalty of £100 or six months' imprisonment. It is not fair to the law, because quite obviously a fellow townsman is not going to inflict severe punishment on another townsman. The policeman does his duty by running in the local tobacconist and getting his pal, the grocer next door, to sit on the bench. The whole thing is fixed before even the arrest is made. It is not fair to the local grocer, and not fair to the police. On the other hand, if we have a magistrate whose duty it is to attend to these matters, irrespective of how popular or how unpopular he may be in the town, then we are more likely to get the proper penalty imposed.

But, as the position is at present throughout the State, magistrates inflict different penalties; and I quite agree that they should do so. But it is farcical when one finds the magistrate solemnly sitting on the bench and declaring that in future he will inflict the penalty of imprisonment, but subsequently stating that unfortunately he is over-ruled by justices and therefore cannot do it. I am going to assume that the magistrate was perfectly truthful when he definitely stated that in respect of the next lot of cases imprisonment would be ordered. He gets on the bench, and then states that he cannot inflict the punishment of imprisonment because he is over-ruled. If that magistrate is correct, it does seem to me entirely wrong not only in regard to betting charges but in regard to all other charges that the magistrate has to deal with. The magistrate is well qualified to deal with the cases. He has no axe whatever to grind, and he is uninfluenced by outside conditions. It is the common practice that when an offence becomes rampant, the punishment becomes more severe, because something must be done to stop the continued breaches of the law.

It has been suggested that the passing of the Bill would involve great expense; but what is expense when justice is being dealt out? Surely the Government is not going to consider expense when it comes to a question of justice. Again, I submit that it would be infinitely less expensive to

have the magistrate because—I am speaking with knowledge—when justices are on the bench there is rarely a plea of guilty, but when justices are not on the bench—I speak only for Perth—we find, if we watch the papers, that the plea is frequently one of guilty. In Perth defendants such as I have in mind do not go to the expense of getting counsel; but they do get defending counsel, as a rule, when justices are sitting. I am not suggesting by any means that a defendant never pleads guilty before justices, but it is found that there are more pleas of guilty before a magistrate than there are before justices. That applies especially to the Traffic Court.

The reason is very simple. Justices are not so experienced as magistrates are, and the profession to which I belong fully realises that fact. Sometimes justices will believe a defence that one knows very well the magistrate would never believe, having heard it so often. When justices hear it for the first time, it sounds highly plausible. For instance, a man charged with stealing has been found in possession of a watch which has been stolen. He says he bought it from a man in the street whom he does not know, and he gives a description of the man. Justices who hear that story for the first time believe it; but the magistrate says, "I heard that story when I first went into the law," and so the defence has no chance.

Hon. G. Fraser: Would the position not be the same in the case of justices who continued to sit on the same type of offence?

Hon. H. S. W. PARKER: Yes, if they continued to sit on that type of case, but it would seem strange to me that a man should desire to sit on that type of case, which could only make him unpopular with his fellows. One rather wonders why he does it with regard to that particular class of case, and not other classes. It is not a good thing, in my view, that justices of the peace should become so particularly interested in one type of case.

Hon. J. Cornell: And sit continually on such cases!

Hon. G. Fraser: But justices of the peace would take any other case that happened to come on.

Hon. H. S. W. PARKER: Why should the time of justices be occupied in sitting on cases that we pay magistrates to hear? Why not allow the magistrates to do their job unfettered? Why should justices be asked to deal with these cases? If I had an opportunity, when we are dealing with this Bill in Committee, I would like to provide that no justice of the peace should be allowed to sit on the bench when a magistrate was available. I do not think that it is fair to justices. They have other duties to perform besides those associated with sitting on the bench. They are not selected for their ability to judge evidence and their power to inflict penalties. The Minister has suggested that a provision such as this would cause inconvenience. I cannot see that any inconvenience would result to anyone. A case could be held up until the magistrate arrived in the district. That happens with respect to more serious offences than a betting charge. Cases are held up until the magistrate arrives in the town. Why should that not be so? It was also suggested that costs would be increased. That could not affect the Government. Why protect the offender against any increased cost? Surely there would be no increased cost to the police!

Hon. W. J. Mann: Many cases in the country have to be held up until the magistrate comes along.

Hon. H. S. W. PARKER: That is so. The Minister also suggested that many factors have to be taken into consideration. Who is better able to go into the factors which have to be taken into consideration when dealing with an offender than is a professional magistrate? He is the man. I have been rather amused at some of the things that are taken into consideration, as to whether a man has been a previous offender in the same type of case. That has all gone by the board, as everyone knows. The man who is the real genuine keeper of a betting house is not the man who is arrested. The dummy is the victim. In Perth at one time a magistrate set out to take into consideration the number of occasions when there had been a conviction against a person occupying particular premises. It was no use a man coming along who had no police record as being the keeper of premises, when several other previous keepers of such premises had already been convicted for occupying those premises. That is the main consideration, and apparently it is one not taken into account by the Chief Secretary, possibly

because he overlooked it. The person who is best able to mete out justice and inflict fines is the professional magistrate. It is not fair to a man charged with betting that an extremely worthy justice of the peace, who regards betting as one of the worst sins that can be committed, should be sitting on the bench. Would that be fair to the man who is charged? In the same way it would not be fair to the police that a justice of the peace, who thinks that betting is no offence, should be sitting on the bench.

Hon. G. W. Miles: And who might do a little betting himself!

Hon. H. S. W. PARKER: One can assume that every magistrate and every justice of the peace has probably had a bet at some time. I know extremely well one magistrate who would come within that category. It was suggested there would be great difficulty in getting convictions because of the words "knowingly and wilfully." There is a simple way to overcome that. A former Commissioner of Police said "All you have to do is to find out who the landlord is, and notify him that his premises are being used for betting purposes." The Commissioner, of course, cannot do that until he gets a conviction, but he can very readily secure a conviction. He merely has to notify the landlord that his premises are being used for betting purposes. If the landlord does not put out the tenant, the Commissioner produces in court the letter he wrote, which is evidence of the fact that the landlord was notified. It could then be proved that either on the first day, the second, or the third day, after the letter had been sent the premises were still being used for betting purposes. If the police desire to secure the necessary convictions, they can easily do so. I do not suggest that a conviction would be secured at the first attempt. There is sometimes difficulty in overcoming the words "knowingly and wilfully," but the difficulty is not great if behind the effort is a real desire to stop the practice.

The Chief Secretary: Suppose the premises are under lease!

Hon. H. S. W. PARKER: There is no trouble associated with finding out the position with regard to leased premises. The person in possession is either the owner or the occupier.

The Chief Secretary: What right would the owner have to force a tenant to go out?

Hon. H. S. W. PARKER: Premises are not allowed to be used for unlawful purposes. A provision to that effect is always contained in leases.

The Chief Secretary: Your advice is different from that which was given to me.

Hon. H. S. W. PARKER: If the police desire to do so, they can soon overcome the difficulty by notifying the owner in the way I have stated, and informing him that they propose to charge him. Very few owners would refrain from taking immediate action. There is no difficulty in finding out whether premises are being used for betting purposes. Someone has only to go into one of these places and ask for cigarettes. The inquirer will soon be told that the occupier does not keep cigarettes.

Hon. J. Cornell: You have only to go into one of those places to see everything set out on a board.

Hon. H. S. W. PARKER: I am in favour of the Bill, and trust it will prove to be the first step towards preventing justices of the peace from adjudicating upon many other types of offences. I do not think it is fair to ask justices to sit on such cases.

Hon. C. F. Baxter: Why not amend the Justices Act?

On motion by Hon. W. J. Mann, debate adjourned.

House adjourned at 5.54 p.m.