# Legislative Council

Wednesday, the 22nd September, 1965

CONTENTS



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

## QUESTIONS (4): ON NOTICE

### DISTILLATION OF WATER

*C.S.I.R.O. Unit: Demonstration in Inland Areas*

1. The Hon. J. DOLAN asked the Minister for Mines:

(1) Is the Minister aware that C.S.I.R.O. scientists have developed a water distillation unit which can provide pure water to inland regions at £1 10s. to £2 a thousand gallons?

(2) As the scientists claim that the plant is cheap, durable, and simple in design; that the energy is free, and the maintenance small, will the Government give consideration to—

(a) having one of these units constructed; and

(b) using it for demonstration purposes in suitable inland centres?

The Hon. A. F. GRIFFITH replied:

(1) Yes. The estimated cost of water produced is £2 per thousand gallons.

(2) (a) The C.S.I.R.O. in collaboration with the Public Works Department operates an experimental still at Northam on the banks of the Avon River.

(b) A unit producing an average output of 20 gallons per day in latitude 30° covers an area 130 ft. x 3 ft. 6 ins. and is therefore not readily transportable.

The Northam unit may be inspected, however, by arrangement with the District Water Supply Engineer, Northam.

### SULPHURIC ACID

*Production and Imports*

2. The Hon. R. H. C. STUBBS asked the Minister for Mines:

(1) What quantity and value of sulphuric acid is—

(a) produced in Western Australia;

(b) imported into Western Australia?

*Use by Industries*

(2) How many industries are using sulphuric acid, including superphosphate works?

(3) Of these, how many use—

(a) local pyrites;

(b) imported brimstone?

(4) How many industries due for completion are to be users of sulphuric acid?

The Hon. A. F. GRIFFITH replied:

(1) (a) 1963-64—306,889 tons (expressed as 100 per cent. acid). 1964-65—327,054 tons (expressed as 100 per cent. acid). Values are not available.

(b) None.

(2) Superphosphate manufacture (seven works).
Titanium oxide industry.
Alumina industry.
Minor uses are for battery acid, metal cleaning, and butterfat testing.

(3) (a) Three superphosphate works use W.A. pyrites.
(b) All other manufacture is from imported brimstone, and all sales are of brimstone acid.

(4) The Kwinana fertiliser works will use sulphuric acid. Alum for a proposed paper industry may require the use of sulphuric acid.

3. *This question was postponed.*

## POTASH

*Imports, Cost, and Standard*

4. The Hon. R. H. C. STUBBS asked the Minister for Mines:

(1) What tonnage of potash has been imported into Western Australia annually for the previous three years?

(2) What is the value of same?

(3) What chemical standard applies?

The Hon. A. F. GRIFFITH replied:

The following information has been supplied by the Commonwealth Bureau of Census and Statistics:—

(1) and (2) The imports of potash into Western Australia were:—

(a) Muriate of potash.
1962-63: 4,505 tons valued at £74,137.
1963-64: 7,217 tons valued at £102,539.
1964-65: 8,149 tons valued at £148,654.

(b) Sulphate of potash.
1962-63: 420 tons valued at £8,700.
1963-64: 881 tons valued at £16,953.
1964-65: 961 tons valued at £21,135.

(c) Mixed fertilisers containing nitrogen phosphate and potash.
1962-63: 2,235 tons valued at £72,010.
1963-64: 1,210 tons valued at £38,767.
1964-65: 2,050 tons valued at £69,783.

(d) Mixed fertilisers containing nitrogen and phosphate or phosphate and potash.
1962-63: 562 tons valued at £17,318.
1963-64: 620 tons valued at £19,073.
1964-65: 20 tons valued at £1,719.
Values are given as the f.o.b. value at the port of shipment and do not include freight and insurance costs.

(3) The potash ($K_2O$) content of these materials is as follows:—
(a) Muriate of potash—60 per cent.
(b) Sulphate of Potash—48 per cent.
(c) and (d) A range of mixtures is covered by this classification and the average potash content is not available.

## ABORIGINAL BABY'S DEATH: NON-PROSECUTION OF DR. WINROW

*Tabling of Papers: Motion*

**THE HON. F. J. S. WISE** (North—Leader of the Opposition) [4.40 p.m.]: I move—

> That all papers relating to the decision by the Minister for Justice in refusing to authorise an indictment against Dr. A. Winrow following the finding by Coroner P. V. Smith at Gnowangerup, in connection with his investigation into the death of a native child, be laid upon the Table of the House.

It is very necessary for me, in speaking to and supporting the motion, to take in sequence the essential happenings in the case considered by the coroner and upon which he based his findings. In this case, a baby eight weeks old died on the 22nd March in the Gnowangerup Hospital. The baby had, with the exception of a few days, been all its life in the hospital. Coroner P. V. Smith, stationed at Albany, presided over the court held in Gnowangerup on the 29th June. Coroner Smith is an experienced magistrate, has served in more than one district of the State, and has dealt with a variety of cases. He is without doubt, I think, a magistrate who could be said to be highly regarded in his profession.

At the initial inquiry the coroner was told that medical treatment was given to the baby at the hospital and a condition of dehydration contributed to its death. Expert evidence at the inquiry was based

on an objective account of the baby's illness. Important expert evidence was given by Dr. Godfrey, medical director of the Princess Margaret Hospital, who is an acknowledged authority on child ailments and a man of vast experience. Dr. Godfrey prepared a statement following the initial inquiry at Gnowangerup, which had been adjourned from the 29th June.

On the 23rd July, Dr. Godfrey reported on the symptoms and stated his conclusions in a written statement to the magistrate and in supplementary evidence; and his conclusions were based on the evidence of the hospital records. The hospital records revealed that fluid deposited over four days showed clearly that the baby was dehydrated; and, according to Dr. Godfrey, the records proved that the baby had diarrhoea. Dr. Godfrey expressed no opinions other than those which the evidence of the hospital records dictated.

Dr. Winrow had performed the post-mortem on the infant and his finding was "dehydration and neglect". Mr. Christie later repeated the examination and his finding was "probable suprarenal gland failure due to infective diarrhoea"—infective diarrhoea, of course, being gastro-enteritis. Dr. Godfrey has since strongly emphasised that all his assumptions and findings would be supported by any doctor familiar with the care of the sick.

The evidence at the inquiry included that of the district infant health clinic sister and the hospital matron, and I can only deal—and I wish to emphasise this—with the facts as published; there is no other source of information available to me. The coroner had all the opportunity to study the written statements and records. There was nothing at all to prevent any expert person, or indeed any person, from giving evidence, if he had evidence to give at the inquiry; and the coroner also had the early evidence given by witnesses available to him before he made his report and made his findings.

I think it is important to observe, too, that the Chief Crown Prosecutor gave advice to the coroner in the court. It is necessary for me, I think, to read the findings as they appeared in *The West Australian*, and under the heading "Native Baby Death: Doctor for Trial" the following appeared:—

> GNOWANGERUP, Friday—Dr. Alec Robert Winrow (41), of Gnowangerup, was today sent for trial, charged with the manslaughter of a native baby.
>
> Coroner P. V. Smith found that the baby—Jeanette Anne Roberts, aged eight weeks—died on March 22 of dehydration.
>
> He committed Winrow for trial in Albany next month.
>
> Mr. Smith held that Winrow had been careless, had failed to treat the child in the manner laid down by the Princess Margaret Hospital, and had failed to show the care and skill towards a patient that could reasonably be required of a doctor.

The committal came at the close of an inquest which was opened earlier this month and which had been adjourned to enable Gnowangerup District Hospital matron Valerie Ruth Johnston to give evidence about what the doctor had said about his treatment of the child.

After the matron's evidence the doctor, now represented by counsel, gave evidence briefly.

In reviewing the case before delivering his finding Mr. Smith said that the baby girl had spent all but four days of her life in the Gnowangerup Hospital.

She had been born on January 24 and was thought to be premature. She was much under weight, so it was decided to keep her in hospital, where she stayed till March 14.

Mr. Smith said the baby's mother, Mrs Ilis Roberts, had several other children. She looked after them well.

On March 16 Mrs. Roberts took the baby to see the infant health sister in Gnowangerup and the sister had given evidence that there was nothing wrong with the baby.

On March 18 the mother became worried and decided to take the baby back to the hospital.

It was about 1 p.m. and there was evidence that a hospital sister and the matron were there and that the sister was cross with the mother for having brought the baby in at that time.

The hospital sister threatened that she would not take the baby and that the mother would have to bring the baby back to the surgery that night, but the baby was taken into hospital nevertheless.

In the four days the baby's weight had fallen from 8 lb. 13 oz. to 7 lb. 10 oz.

It was a case of dehydration and Dr. Robert Godfrey of the Princess Margaret Hospital had said in evidence that it had been a very severe case.

Godfrey had said that as the director of the P.M.H. he had authorised a pamphlet suggesting treatment for babies with dehydration.

Matron Johnston of Gnowangerup had criticised the treatment suggested by the P.M.H. pamphlet.

Mr. Smith said he could not accept her evidence that the treatment was in any way dangerous.

The treatment was set out simply and was easy.

The hospital had the necessary equipment but the hospital authorities and staff had not obtained the chemicals.

Records

Mr. Smith referred to the Gnowangerup Hospital records, which showed that after the baby was re-admitted to hospital on March 18 it had a total of 40 bowel actions in the four days before it died.

In the hospital the doctor had failed to give the baby adequate fluid treatment and though both he and the matron said they had seen a sign of improvement in her condition, this was not borne out by the hospital records.

The doctor had said at first that he applied the treatment prescribed in the P.M.H. pamphlet. Later, when questioned, he had said he did not prescribe the treatment.

When the matron told him the child was getting worse he had said he had not read the pamphlet and had asked: "What the devil did it say in the pamphlet?"

Apparently he thought the child was getting the same treatment as the P.M.H. recommended. He said that he asked the matron: "Are you following the circular?" and she had said: "Yes."

Chief Crown Prosecutor A. J. Dodd had pointed out the standard expected of doctors by the criminal law.

It was simple—reasonable skill and reasonable care in any acts in administering to the people they were treating.

In this inquest, Mr. Smith said, he had taken pains to inquire into the treatment.

Summarising his findings, he said he accepted the expert evidence of Godfrey.

Dealing with what he described as careless acts by Winrow, Mr. Smith said the main one was failing to correctly assess the degree of the baby's dehydration as very severe.

This was a matter of simple arithmetic and the weights had been available to the doctor. He was careless in having failed to provide adequate fluid for this dehydrated baby, which did not get enough fluid for a normal baby.

Winrow was committed for trial and remanded on bail of £500.

Mr. Smith said that officers of the Native Welfare Department were not in any way to blame.

The footnote reads as follows:—

> Before Coroner P. V. Smith. Chief Crown Prosecutor A. J. Dodd assisted. G. Kennedy for Dr. Winrow. D. Connor for the Native Welfare Department.

Because of matters which arise later in my comments, it was very necessary to give the complete wording of the Press statement of the coroner's finding. It is well known that a serious furore followed, both in the court and outside, on the announcement of the coroner's finding. The local community were, and I think still are, overwhelmingly in support of the doctor. Bitter feelings were expressed throughout the whole community on that day, and have been expressed since.

I am not at all concerning myself with extraneous special articles or with the stirring up of feuds and irrelevancies. The next important development after the 23rd July, following much local agitation, expressions of bitterness, and letter-writing, was a comment by the Minister on the 4th August, 1965, which appeared in *The West Australian*, and which reads as follows:—

> Justice Minister Griffith has asked the Crown Law Department for a report on the case of Dr. Alec Robert Winrow (41), of Gnowangerup, who faces trial on a charge of manslaughter involving the death of an eight-week-old native girl.
>
> Mr. Griffith said yesterday that he had asked for the report because of letters he had received from Gnowangerup about the case.
>
> Some of the letters had been sent by organisations, but most had come from individuals.
>
> Mr. Griffith said he could not make any further comment.

Following that statement there was conjecture upon what the Minister would do, but I do not intend to deal with conjecture. Following that the Minister did call for a report which was published on the 10th September, when the world knew that it was decided by the Minister that he would not file an indictment against Dr. Winrow. I think it is necessary for me to read the Minister's statement, because of the fact that it was in part rebutted at a later stage.

Under the heading of "Doctor Will Not Have to Stand Trial", we find that the following appeared in *The West Australian* on the 10th September, 1965:—

> Gnowangerup doctor Alec Robert Winrow (41) will not have to stand trial on a charge of manslaughter of a native baby.
>
> Dr. Winrow was committed for trial by Coroner P. V. Smith at a Gnowangerup inquest on July 23 into the death of Jeanette Ann Roberts, aged eight weeks.

The coroner found that the child had died of dehydration on March 26 and that Dr. Winrow had been careless in his treatment of her.

Justice Minister Griffith said yesterday that he had decided not to file an indictment against Dr. Winrow after he had studied the recommendations of several officers of the Crown Law Department.

He said their reports had been influenced by several factors.

The coroner had relied on the evidence of Princess Margaret Hospital medical superintendent Dr. R. Godfrey that the child, on admission to hospital, had severe dehydration and gastro-enteritis.

But Dr. Godfrey had not seen the child or questioned those who had. He had relied on the accuracy and completeness of hospital records and had made certain assumptions which were not warranted by the evidence.

Witnesses who had seen the child had given evidence that she had virtually none of the symptoms of severe dehydration and only two or three of the nine symptoms of moderate to severe dehydration.

The uncontradicted evidence on the general appearance of the child was inconsistent with a case of severe dehydration.

Mr. Griffith said there was no mention of gastro-enteritis in the hospital records and both Dr. Winrow and the hospital matron had denied that the baby had gastro-enteritis.

The government pathologist, Dr. Laurie, had been unable to find any evidence of infective diarrhoea, which was a form of gastro-enteritis. Dr. Laurie's only positive finding had been that the baby had a probable viral infection, which referred to the brain.

Mr. Griffith said that, in the opinion of Public Health Commissioner Davidson, the hospital records might not have been complete.

Dr. Davidson had considered that the diagnosis and treatment by Dr. Winrow had been quite reasonable in the circumstances and that Dr. Winrow had not been culpably negligent.

The hospital records had shown that the pulse rate and temperature of the child remained normal in hospital till the day of death. These factors and other symptoms were inconsistent with the assumptions made by Dr. Godfrey.

Judicial authorities maintained that before a medical practitioner should be charged with manslaughter arising from neglect, his negligence should be gross or culpable and not mere negligence.

Mr. Griffith denied that there had been pressure on him to drop the proceedings against Dr. Winrow.

He said he had received numerous letters about the case but none had suggested pressure.

"Decisions of this nature are not made as a result of pressure—they are made after careful examination of all the relevant facts," he said.

That is completely the Minister's statement as published. That Dr. Godfrey did rely on the hospital records is quite true. These records have since been stated by another Minister to be quite satisfactory.

Dr. Godfrey protested strongly in the Press against the Minister's statement and the Minister's conclusions. I think it is necessary to have, side by side with what the Minister said of Dr. Godfrey, together with his views, Dr. Godfrey's statement in rebuttal. In a letter to *The West Australian* on the 15th September, 1965, Dr. Godfrey said—

Baby's Death at Gnowangerup

Robert Godfrey, medical director, Princess Margaret Hospital: In *The West Australian* on Friday there appeared a report attributed to the Minister for Justice which requires rebuttal.

Mr. Griffith is reported to have said that at the inquest on July 23 into the death of Jeanette Anne Roberts:

1. I made certain assumptions not warranted by the evidence, and

2. The hospital records had shown that the pulse rate and temperature of the child remained normal throughout its period in hospital until the day of death and that these factors and other symptoms were inconsistent with the assumptions made by me.

At the request of the coroner I had studied the file of the case and prepared a statement which I read when I attended the inquest as an expert witness.

In this report I said that I believed the baby died of dehydration secondary to gastro-enteritis. My conclusions were based on the evidence of the hospital record which was studied because it was an objective account of the baby's illness and contained observations made at the time by those caring for the child.

Weight Loss

This record revealed:

1. That the baby lost 1 lb. 3 oz. in the four days between its discharge on March 14 and readmission to hospital on March 18, and a further 8 oz. in the next day. A fall in weight of such

magnitude and rapidity (the equivalent of approximately 2 stone in a 10-stone adult) could only be due to fluid deficit.

Therefore I concluded that the baby was dehydrated.

2. That there were three bowel actions on the day of admission to hospital, 12 on the next day, 12 on the next and 13 on the next. These were variously described as "frequent bowel actions" and "bowels open frequently, loose and green."

Therefore I concluded that the baby had diarrhoea.

I agree that the pulse rate and temperature of the child were recorded as normal but such a condition is by no means inconsistent with my diagnosis as in many cases of dehydration and diarrhoea the temperature may be normal and the recorded pulse rate is not always a good index of condition. In point of fact the pulse rate was recorded as normal immediately prior to death.

No unwarranted assumptions were made in reaching these conclusions. I was and am unfamiliar with the hospital at Gnowangerup and so expressed no opinions other than those which the evidence on the hospital record dictated.

A hospital record may be incomplete but it is scarcely conceivable that the observations on which I based my evidence—such as frequent bowel actions—would have been made by the nursing staff if in fact there had not been frequent bowel actions.

Dr. Winrow performed the post-mortem after the death of the baby and his finding was "dehydration and neglect." Dr. Christie later repeated the examination and his finding was "probable suprarenal gland failure due to dehydration due to infective diarrhoea."

Infective diarrhoea is gastro-enteritis.

My opinion, far from being unwarranted, was objective and supported by other evidence and was one from which I believe no doctor familiar with the care of sick children could differ.

That statement from Dr. Godfrey certainly disclosed very sharp differences of opinion between Dr. Godfrey and Dr. Davidson. Of course, Dr. Godfrey was a witness and Dr. Davidson was not. Dr. Godfrey, perhaps, has no peer in this State in regard to child ailments. That was the situation just beyond the point where the Minister had before him the opinions of Crown Law and of Dr. Davidson, plus all the coroner's views, and he decided to quash the case.

It can be said quite definitely that the Minister's decision shocked a lot of people; and whether the Minister is prepared to accept the view or not, his decision did, in fact, cast a slur on both the coroner and Dr. Godfrey. In addition, his decision was very unfair to Dr. Winrow; and it certainly reflected seriously upon the professional capacity and the reliability of Dr. Godfrey, a man of very high standing.

If Dr. Godfrey's views were and are unacceptable to the Minister, I would say that so may some of the views of the Minister's other advisers be subject to disagreement by expert opinion—subject to strong disagreement and disapproval. I repeat: I believe the Minister was very unfair to Dr. Godfrey and very unfair to the coroner. In short, at that point the case ended in a most unsatisfactory manner.

It can be said that Dr. Winrow would have been completely cleared if a jury had found him not guilty; and this surely must have been the Minister's impression of what a jury would decide on the evidence before him. The coroner decided to commit the doctor for trial for manslaughter on the evidence produced at the inquest, but the Minister decided the doctor should not be tried on private information. Therefore the Minister has discounted all the other evidence; and in my view the House and the public are entitled to know whether such an injustice as I have outlined to Dr. Winrow himself has been brought about by this unfortunate decision.

These, I submit, are things that must be brought into the open. The evidence is on the papers that we seek by this motion which, if agreed to, will, I suggest, allay a lot of fears and certainly prove whether or not the Minister's decision was justified.

I do not wish to labour this question any further; I wish simply to emphasise that I have absolutely avoided statements extraneous to the case and have made no such statements. As we have had the facts presented to us, I think we are entitled to have proof that the Minister's decision is justified.

**THE HON. H. K. WATSON** (Metropolitan) [5.8 p.m.]: For sound and substantial reasons, which I will mention in a moment, I intervene in the debate to urge the House to dispose of this motion forthwith and to dispose of it by rejecting it. I beg to be excused from discussing the merits or qualifications of a country coroner, or of comparing his ability and his knowledge of the law with that of the State's senior legal officers. But I would remind the House that in our Constitution Act there are three great branches, each of them with spheres of activity that are pretty clearly defined.

We have Parliament, which makes the laws; we have the executive Government, which administers the laws; and we have the courts, which administer justice. Amongst the executive Government, we find that the Attorney-General—or if he be not a legal man, the Minister for Justice—is the Queen's principal Minister or legal adviser. In the course of his daily ministerial activities, so far as they relate to the Coroners Act and the Criminal Code, his is the duty—and a pretty unenviable duty—to issue instructions to coroners; receive reports from coroners; decide whether an indictment shall or shall not be issued in respect of indictable offences; and decide whether these indictments shall be issued against persons committed to trial by a coroner or otherwise.

I repeat that it is the Minister's duty, by virtue of his office—and his duty alone—to decide. He has to make a decision according to law and according to good conscience, and, if he is a layman, according to the advice and recommendations of his senior legal officers in the Crown Law Department. Therefore, I suggest the wording of the motion itself is rather unfortunate when it speaks of the Minister refusing to authorise an indictment. The Minister did not refuse to do anything; he acted; he made a decision—and there is a vast difference between acting and making a choice between two alternatives, and refusing to do something. The Minister never refused to do anything.

For example, a debate on this very subject is probably occurring in another place at this very minute and it would be within the province of any member in this House to visit another place to hear the debate there. Members can exercise a choice of hearing it there or hearing it here, but if they decide to sit here, that does not say they have refused to go to another place; they have simply decided not to go there. The substance of this is very clearly set forth in subsection (2) of section 20 of the Coroners Act, and it reads as follows:—

> It shall be competent for the Attorney General or other officer authorised for the time being to prosecute crimes and misdemeanours in any court of criminal jurisdiction, to dispose of or proceed in the case in all respects as if the charge had been primarily investigated before justices, and they had committed the accused or held him to bail to take his trial.

It clearly states that the Minister may, in accordance with his powers under the Criminal Code, make a decision to sign an indictment and send a man for trial, or not to sign an indictment. It is purely a decision for the Minister; and whether it be justices or coroners who may commit a man for trial on an indictable offence, it is still for the Minister, acting on and with the advice of his expert senior legal officers, to decide whether he will or will not sign the indictment.

He has to prepare and sign the indictment; that is his exclusive prerogative; and it is no slur on any justice or on any coroner if the Minister in his wisdom and after mature consideration, including consideration of the legal points and other matters submitted to him by his legal advisers, decides not to file an indictment.

I remember that not so many years ago one coroner, almost as a matter of normal practice, committed persons for trial on indictable offences. He did it almost as a matter of course, leaving it to the senior Crown Law officers and the Attorney-General to sort out the case and finally decide whether an indictment should or should not be made.

In conjunction with section 20 of the Coroners Act we come to section 578 of the Criminal Code which states—

> When a person charged with an indictable offence has been committed for trial, and it is intended to put him on his trial for the offence, the charge is to be reduced to writing in a document which is called an indictment.
>
> The indictment is to be signed and presented to the Court by the Attorney General or some other person appointed in that behalf by the Governor.

Then we have this position that even when the Minister has filed an indictment and set everything in motion for a criminal trial, he still has the unfettered power of informing the court by writing under his hand that the Crown will not further proceed upon any indictment then pending in the court. He can file a *nolle prosequi* even after he has issued the indictment. So there is no doubt where the power lies. That is the lawful power and responsibility of the Minister, and of no-one but the Minister.

The law undertakes to punish only overt acts. There is nothing at all unusual in the Minister deciding, after mature consideration and consultation with his Crown Law officers, not to issue an indictment. That is no more remarkable than his decision to issue an indictment. It is part of the daily routine of his office, just as it was part of the daily routine of the late Emil Nulsen when he was Minister for Justice.

In each and every year there are cases when the Minister, whoever he may be, in the ordinary course of his duties, decides, upon the advice of his Crown Law officers, not to issue an indictment. I would go further and say that it is the Minister's clear-cut duty not to issue an indictment if he is of the opinion, and if his Crown Law advisers are of the opinion, that there is no case to answer.

The liberty of the subject is still the paramount concern of all of us, and no man ought lightly or capriciously to be subjected to the awesome experience of a criminal trial. It is all very well for Mr. Wise to say that Dr. Winrow has been done an injustice; that had he gone to the Criminal Court he may have been found not guilty, and would have been completely cleared. Great Scott! If one has no case to answer, but if one still has to run the risk of trial and cannot be cleared otherwise than by going through the whole performance and apparatus of a criminal trial, I say it is a pretty sorry state of affairs

The Hon. W. F. Willesee: What about the situation of the parents of the dead child?

The Hon. H. K. WATSON: I will answer that question in a few moments.

The Hon. W. F. Willesee: I will be glad to hear you.

The Hon. H. K. WATSON: In the circumstances of this case there is, in my opinion, no room for doubt that the Minister acted honourably and according to law. The proper place, in my view, for the consideration and decision of such involved and important questions as indictments is the quiet and dispassionate atmosphere of the Attorney-General's office and the office of the Crown Solicitor, and not the public and contentious forum of Parliament.

A few moments ago Mr. Willesee interjected: What about the unfortunate child?

The Hon. W. F. Willesee: The parents of the dead child.

The Hon. H. K. WATSON: Yes; the parents. My answer is this: I deplore the growing and discreditable tendency of the Labor Party in recent years to try to make political capital out of individual human misfortune and human suffering.

The Hon. F. J. S. Wise: What a rotten statement!

The Hon. F. R. H. Lavery: Hypocrisy!

The Hon. W. F. Willesee: You contemptible snob!

The Hon. F. J. S. Wise: You will get that back very solidly, directly.

**THE HON. E. M. HEENAN** (Lower North) [5.23 p.m.]: This unfortunate case that we are debating has unquestionably caused great concern in the public mind, and I think the House has to be very careful about accepting the advice of my friend, Mr. Watson, to dismiss the motion summarily.

In this community we pride ourselves that we live under the rule of law; and I hope we will always be able to take pride in that state of affairs. Under the rule of law, everyone is answerable to the tribunals that the law sets up, and once these tribunals have given their decision, the matter ends.

As Mr. Watson has pointed out, there is a Coroners Act, and it is the duty of a coroner to investigate situations such as this where a person dies. It is the coroner's duty to take evidence and to deal with it as wisely and as dispassionately as his duty impels him to. Then it is his prerogative to come to certain conclusions.

In the present case a good deal of evidence in connection with this little child's death was placed before the coroner, whom I am proud to know and whom I hold in the highest regard as being a conscientious and able man in his position. I am sure Mr. Watson meant nothing derogatory to Mr. Smith when he referred to country coroners.

The Hon. F. J. S. Wise: He meant it all right.

The Hon. E. M. HEENAN: Most of our magistrates at some time or other serve in the country, and from there they graduate to the city. Mr. Smith was in the Crown Law Department for some years and eventually became a magistrate and served in various parts of the State. I do not think his ability or his integrity could in any way be questioned.

Mr. Smith finally committed Dr. Winrow for trial on a charge of manslaughter; and I say with confidence, after hearing the newspaper account of the evidence and the other extracts that have been read to us by Mr. Wise, that many people would be perplexed if they had been in the position of the coroner. I think that unquestionably there was evidence before him which justified his decision. I am sure any impartial person would have to say that. I would say that in the circumstances it was the coroner's duty, which I am sure worried him considerably, to do as he did.

Here we have a doctor, a member of a very responsible and highly respected profession, and a man charged with a great responsibility. There was evidence before the coroner indicating that the doctor had not acted in accordance with that duty. The doctor was committed for trial, and the people of Western Australia read in the Press of the scenes that followed the committal and of the intense public outcry that was raised. I think that in some degree reflected credit on Dr. Winrow, who was serving this far-flung community and had apparently won their affection and gratitude.

**[Resolved: That motions be continued.]**

The PRESIDENT (The Hon. L. C. Diver): The honourable member will continue.

The Hon. E. M. HEENAN: I was saying that this situation which followed the committal of Dr. Winrow indicated that he had won the respect and affection of the community which he had served. Then there followed the usual outcry, and

apparently the Minister was inundated with letters and representations. It was then that the Minister, as was his responsibility, of course, went into the matter and obtained advice from his legal officers. The final decision had to be the Minister's.

In this situation I am sure that the majority of people felt that the law should have been allowed to take its normal course. There had been a death in circumstances which at least were the subject of great concern; the capacity and reliability of a doctor was in question, and the coroner who heard all the evidence had taken the responsibility of committing him for trial.

In those circumstances the Minister decided, in a way, to assume the position which many people thought, I am sure, and still think, should rightly have been left to a judge and a jury. Who is to say what view a jury would have taken of the evidence that was placed before Coroner Smith? That question can never be answered. But how necessary it is, under the rule of law, that questions such as that should take their normal course.

The Minister is not the first one, by any means, who has taken the responsibility of refusing—I think I can use the word "refusing"—to file an indictment.

The Hon. F. J. S. Wise: That is just quibbling, that one!

The Hon. E. M. HEENAN: There is nothing wrong with that. As Mr. Watson stated, I think rightly, we had a coroner who made a practice of committing people for trial willy-nilly. His atttiude was, "There is a *prima facie* case before me and my job is to commit the accused for trial and leave it to the Minister and the Crown Law Department to shoulder the next burden." To be fair to the Minister, I think he had the prerogative to waive an indictment. Trials are expensive. The whole motion of our trials by jury is set and, of course, trials are costly. I quite agree that in some obvious cases the action of a Minister in not filing an indictment is warranted. My point is that this case did not fall into that category.

I think this case was something more than a *prima facie* case. I have not seen the evidence, but what one reads in the newspapers indicates that there was a strong case against Dr. Winrow. I am sure the public felt there was a fairly strong case against him, and that he should have answered it and that, as with any other man in such circumstances, the final decision should have been determined by a judge and jury.

The Hon. A. F. Griffith: Has your firm ever had occasion to make representation to an Attorney-General for the entry of a *nolle prosequi* in any case?

The Hon. E. M. HEENAN: I had numerous cases, particularly when I was practising at Kalgoorlie where, after indictments had been filed, I would receive word that the Crown had decided to file a *nolle prosequi*.

The Hon. A. F. Griffith: Did you ever ask for one?

The Hon. E. M. HEENAN: No; I cannot recall ever having done that. It would not be a solicitor's role to write and request that a *nolle prosequi* should be entered.

The Hon. A. F. Griffith: But surely as a solicitor you know that a *nolle prosequi* can be entered?

The Hon. E. M. HEENAN: The Minister asked me if I had ever done it in my experience and I am trying to give him an honest opinion.

The Hon. A. F. Griffith: I am sure you are.

The Hon. E. M. HEENAN: I had a fairly large criminal practice on the goldfields and it was never my practice to write to the Minister and suggest that a *nolle prosequi* be entered.

The Hon. A. F. Griffith: Let me assure you it is not unusual.

The Hon. E. M. HEENAN: Yes. However, be that as it may, my point is that the case against Dr. Winrow, on the evidence as we know it, and as the public knows it, amounted to a fairly strong one. It was one that should have been properly aired in the courts and determined in the usual way. If a jury had found him guilty it would have been on record that 12 of his peers, after hearing the evidence and investigating the matter fairly, were convinced that he was guilty, and that would have been the end of that.

That is the situation every member of the community has to face if he is charged with a serious offence. If, on the other hand, after a fair trial, 12 of Dr. Winrow's fellow citizens brought in a verdict of not guilty, his character would have been cleared completely. As it is, the issue is left somewhat in the air and I think that justifies the contention by Mr. Wise that some injustice has been done to Dr. Winrow himself. This unfortunate cloud will probably always hang over his head, although I hope it will not.

I feel—as I am sure everyone else does—extremely sorry for him, and one cannot but feel impressed by the loyalty of the people in the district where he has lived. I am sure that unless he had served well in the majority of cases, at any rate, over the years, those people would not be sticking to him the way they are. But they should not be the judges, and neither should we be the judges; and in a case of such seriousness I do not think the Minister should have put himself in the position of a judge and jury, especially taking into

consideration the outcry that was raised, although I can believe the Minister that it did not influence him.

Knowing the Minister as we in this House know him I think we can all agree that that would not have put him off the track. I know that he was advised by his Crown Law officers, but there again they are legal men who study evidence in a formal, legalistic way; but they should not be the judges, either. Under our system, a judge and 12 ordinary citizens are set up to judge these important and responsible charges.

The Hon. A. F. Griffith: But surely you do not think that anybody suspected of a crime should be indicted forthwith and be asked to get out of it if he can?

The Hon. E. M. HEENAN: No, I would not agree with that at all. I repeat that I do not think the Minister can associate Dr. Winrow's case with the case of just anyone. In many of these cases there is only a scintilla of evidence against the people concerned.

The Hon. E. C. House: What is so different about this case?

The Hon. E. M. HEENAN: As I was trying to point out, the account of the proceedings which appeared in the newspapers and which was read out by Mr. Wise, and the fact that a highly placed medical officer gave evidence which apparently influenced the coroner—

The Hon. E. C. House: Do you think Dr. Winrow would have ordered a post-mortem examination if he had thought he was criminally negligent?

The Hon. E. M. HEENAN: I am not setting myself up as a judge.

The Hon. L. A. Logan: That was what you were doing in respect of the Minister for Mines.

The Hon. E. M. HEENAN: I have not done that.

The Hon. A. F. Griffith: You said that without doubt in your opinion there was a *prima facie* case.

The Hon. E. M. HEENAN: I did. Can anyone in this House who has heard the account of the evidence, as read out by Mr. Wise, and the summing up of the coroner relating to the evidence, come to any other conclusion than that there was a fairly strong case against Dr. Winrow?

The Hon. L. A. Logan: I would say it was the other way round.

The Hon. A. F. Griffith: Do you think that was the right conclusion?

The Hon. E. M. HEENAN: Does the Minister think there was little or no case against him? Does he think there was just a *prime facie* case against him, or something fairly substantial against him? The coroner thought there was. I think any impartial person, after listening to what Dr. Godfrey had to say and to the other evidence that was tendered, must come to the conclusion that there was a fairly solid case against Dr. Winrow. I am not denying the fact that there could be equally as strong a case in rebuttal.

I do not know Dr. Godfrey. I understand that he holds a professional position of high repute in his particular sphere, but there might be other doctors equally as prominent who would form a contrary expert opinion. All that should have been heard in a court of law.

It is the duty of Parliament and of all those affected to express concern in a case like this. We have to be very careful that we do not interfere with the normal course of law, before which every person in the community has equal responsibility. Each of us is equally entitled to the protection of the law, and each of us is equally responsible if we break the law. Here we have the unfortunate circumstance of a little native child dying; a member of the medical profession—a profession on which the general public places implicit reliance and in which is has implicit trust—giving evidence; a divergence of opinion between doctors; a coroner of considerable experience and of the highest integrity committing the doctor for trial; and then the whole proceedings being terminated by the Minister for Justice.

I think the Minister must have been perplexed; and I feel, as I am sure many other people feel, that in this particular case the Minister did not make a wise decision. For those reasons the motion moved by Mr. Wise is very worthy of debate. I propose to support it, and I hope the House will not avoid the obligation which, I think, rests upon it, by just dismissing the motion summarily, as was suggested by Mr. Watson.

**THE HON. A. F. GRIFFITH** (North Metropolitan—Minister for Justice) [5.52 p.m.]: I propose, firstly, to deal with the general practices that are employed in this State in regard to indictments, then to refer to the main facts of the Winrow case, and finally to discuss some of the relevant implications. Firstly I refer to section 11 of Act No. 47 of 1883 which states—

> When a person has been committed or held to bail as aforesaid to take his trial before the Supreme Court for any felony or misdemeanour, and the Attorney General shall, in the exercise of his discretion, decline to file an information against such person, the Attorney General shall forthwith grant a certificate under his hand in the form No. 2 in the Schedule to the Act, addressed to the Chief Justice of the Supreme Court, which shall be filed by the Registrar thereof with the records of the said Court.

That section envisages where the Attorney-General so declines to file an indictment he shall register a certificate. It contemplates that in some cases the Attorney-General may decline to file an indictment.

Mr. Watson has read out section 578 of the Criminal Code, but I wish to refer to it again. That section states—

> When a person charged with an indictable offence has been committed for trial, and it is intended to put him on his trial for the offence, the charge is to be reduced to writing in a document which is called an indictment.

I now refer to section 579 of that Code which states—

> The Attorney General may present an indictment in any Court of criminal jurisdiction against any person for any indictable offence, whether the accused person has been committed for trial or not and thereupon subject to section five hundred and eighty of the Code the accused shall be dealt with in all respects and the indictment and proceedings upon it are subject to the same procedure as if the accused person had been committed for trial in respect of the indictable offence alleged by the indictment to have been committed by him.

So this section deals with the situation where the Attorney-General should act in one way or the other, even though the coroner has not committed the person for trial. Where such a set of circumstances arises, it is not uncommon for an *ex officio* indictment to be filed by the Attorney-General against the person in question.

Section 581 of the Criminal Code provides—

> The Attorney-General may inform any Court, by writing under his hand, that the Crown will not further proceed upon any indictment then pending in the Court.
>
> An officer appointed by the Governor to present indictments in any Court of criminal jurisdiction may inform that Court, by writing under his hand, that the Crown will not further proceed upon any indictment then pending in that Court.
>
> When such information is given to the Court the accused person is to be discharged from any further proceedings upon that indictment.

This envisages the case where even though an indictment has been filed it is competent for the Attorney-General of the day—if there are sufficient reasons—to enter a *nolle prosequi*, and the person is discharged from any further responsibility.

I would like to tell members that this is done on many occasions. Anybody would think this is the first time that a set of circumstances like this has arisen; that I have done something which I should not have done; and that I have done something that I have no authority to do. In fact it would seem that what I have done is so wrong that this House and another place are asking for the papers to be tabled, in order that members of Parliament of both Houses can stand in judgment on what I have done; because tabling these papers would amount to just that.

Until about 1951 the practice in this State was for proceedings in a coroner's court, or in a court of petty sessions leading to a committal for trial, to be reviewed by the Crown Prosecutor, and for him to make a recommendation as he thought fit to the Solicitor-General. The Solicitor-General acting under the Governor's warrant under section 744 of the Code, made a final decision as to whether or not an indictment should be presented to the court.

Up to 1951 this authority reposed in the hands of the Solicitor-General—not with the Minister of the day, or with the Attorney-General. In or about 1951 it was suggested to the then Attorney-General that section 744 of the Criminal Code contemplated that the Solicitor-General should in fact only act in the case of absence of the Attorney-General, or on his inability to perform the duties of the office, or on a vacancy in the office. Therefore the indictment in the normal course should be presented by the Attorney-General, if he were available to act. That view was supported by the Solicitor-General in 1951, and the practice was then altered. Since then the Minister has made the final decision in cases where he was available to do so.

I feel there is no need to tell members that under section 154 of the Supreme Court Act, where there is no Attorney-General the Minister for Justice shall have and may exercise all the powers of an Attorney-General except the right of audience before any court of law; and this is the position I found myself in; and this is the position I have found myself in for a period of slightly in excess of three years. It is a responsibility that rests fairly heavily—very heavily at times—upon my shoulders.

Mr. Wise has said, with a great deal of truth, that he could only deal with the facts as they have been published in the Press because, he said, "I am not in receipt of any other information." I repeat that that is said with a great deal of truth.

The practice since 1951 in this State has been for the Minister to make his decision after considering written reports by the Crown Prosecutor and the senior law officers that are available from time to time. Where the recommendations of those officers agree, it has been the practice of Ministers in all Governments to accept those recommendations. However, when the opinions differ, the Minister has had to accept the responsibility of making the decision himself. I repeat that all

Ministers and all Attorneys-General have found themselves in this position—this unenviable position.

This case was an inquest into the death, as far as I am concerned—let me assure members—of Jeanette Ann Roberts. It did not mean anything to me that this was a native child. It did not make any difference to me, as was insinuated in some other place, not here. The important thing to me was that I was looking at the recommendations of my officers as a result of a coroner's inquiry—and I do this frequently. It might be of interest to members to know that there have been a considerable number of cases where the advice to a Minister is to decline to file. I have not refused to file in this case. My advice was not to file, for reasons I will give as I proceed.

In this case there was, as it has been said, an unsual amount of Press publicity. This was given to the unfavourable reaction to the decision of the coroner by the people in the district—people who had heard the proceedings in court. I had received, as I said, numerous letters complaining about certain aspects of the conduct of the inquest and the decision of the coroner. Some members of Parliament have mentioned to me this matter at Gnowangerup, and the Medical Department has been interviewed by the chairman and the secretary of the local shire council.

The Press came to me and said, "What is the position with this case? What do you intend to do?" I said, "It has not come before me yet"; but when they insisted, and I began to get more of these letters and complaints, I decided I would ask for a report on the situation; and there is nothing new in this—nothing new whatever. It is not an unusual occurrence for people to write. Members on both sides of this House have written to me and asked me as Attorney-General, or as Minister for Justice, to show leniency to people —to recommend to His Excellency the Governor that portions of prison sentences be remitted when it was within my authority to do so. I assure Mr. Heenan that firms of solicitors write to me in respect of persons accused of crimes.

The Hon. E. M. Heenan: I did not dispute that.

The Hon. A. F. GRIFFITH: I want to reassure him. They write to me as they did in this case, and point out certain things which in their view should be investigated—and there is nothing wrong with this. In the circumstances, I repeat, I called for a report, and I asked whether or not an indictment should be filed against Dr. Winrow for manslaughter; and a senior law officer was asked to make a review of the case and submit his recommendation. The officer did so and reported that there was insufficient evidence to prove criminal negligence on the part of Dr. Winrow, and that in his opinion no indictment should be filed.

The Chief Crown Prosecutor then made his review both of the case and of the report of the more senior officer, and he finally recommended that a prosecution should proceed. In view of the conflict that occurred between the two officers—and conflicts of this nature will undoubtedly occur from time to time, as will the opinions of doctors differ from time to time—the Solicitor-General himself made his own review and recommendation to me, and he supported the view that there should be no prosecution for manslaughter.

I then had the responsibility of considering the views that had been put forward; and, as Mr. Heenan was good enough to say, these are not decisions that are made easily. I finally made a decision that I should support the view of the two most senior officers that I have in the Crown Law Department.

It will be seen that the normal practice was followed in this case except, for reasons I have already explained, there was an independent review and a recommendation by a senior law officer in the Crown Law Department. The reason for this was that the Chief Crown Prosecutor himself had attended the Gnowangerup Court and had advised the coroner, and I wanted to be informed independently of this situation, and so I obtained the opinion of someone else.

Now I pass to the implications. When I announced the decision that I would not prosecute in this case, I gave certain reasons, and this was, admittedly, unusual. I read one Press comment which said that it was unique that I should give reasons; and perhaps it was. Usually no reasons are given, and the Criminal Code provides for the acceptance of this situation.

Although under section 43 (8) of the Coroners Act the coroner is not required—as Mr. Heenan knows—to express any opinion outside the scope of the inquest, the coroner had, in fact, in this case expressed his views, on the evidence, as to why he was committing Dr. Winrow for trial. The Law Society has written to me in this regard and has complained about the action of the coroner in this respect.

There had been an unusual amount of Press publicity concerning the case, and on the day prior to my making the decision, the Press had said that I should make the decision and that there should not be any further delay. In these circumstances, I felt that a bare announcement not to prosecute would not be satisfactory; and, on the other hand, if I had

not been prepared to give reasons, I can well imagine what would have been said. I was asked the following question:—

> What in the opinion of his judicial authorities is the difference between gross, culpable, and mere negligence in cases where a medical practitioner may become liable to a charge of manslaughter?

I quoted a paragraph from the decision of the Privy Council in Akerele v. The King (1943), which appeared in Appeal Cases, 255, at pp. 262 and 263, as follows:—

> How necessary it is to keep this distinction in mind may be illustrated by reference to two cases. In a note to Reg. v. Noakes it is said: "It is impossible to define it (i.e., culpable or criminal negligence), and it is not possible to make the distinction between actionable negligence and criminal negligence intelligible, except by means of illustrations drawn from actual judicial opinions." That was a case in which a customer sent two bottles to a chemist, one for aconite and the other for henbane. The chemist, by mistake, put the aconite into the henbane bottle with the result that the customer took thirty drops of the former and died of it. Erle C. J. left the case to the jury, but "put it strongly to them that they ought not to call upon the prisoner for his defence: the case was not sufficiently strong to warrant them in finding the prisoner guilty on a charge of felony." So in Reg. v. Crick Pollock C. B., summing up in a case in which the prisoner, who was not a regular practitioner had administered lobelia, a dangerous medicine, which produced death, said: "If the prisoner had been a medical man I should have recommended you to take the most favourable view of his conduct for it would be most fatal to the efficiency of the medical profession if no one could administer medicine without a halter round his neck." The two cases quoted are, of course, only examples, but in their Lordships' view they do rightly stress the care which should be taken before imputing criminal negligence to a professional man acting in the course of his profession.

If I erred in this case, I erred on the side of mercy, but I have no reason for doubting the decision I made. The reports of my senior legal officers satisfied me that they had carefully and honestly considered the facts and the law and the evidence that was available on the committal of Dr. Winrow for manslaughter, and they said it would fall short of that degree of culpability which the law requires before a person should be indicted and found guilty of manslaughter through neglect.

It is essential, of course, that reports and recommendations of law officers should be carefully prepared, and be honest and candid; and the candour required is best ensured by the Minister treating the reports as confidential to him. We must have this situation where legal officers can address their Ministers in this way and the reports can be kept confidential.

It is submitted that it is my duty to satisfy myself that these reports have been properly made and that the recommendations correctly flow from the reports. I am of the opinion that I discharged this duty in this matter before making my decision. The decision was not made hurriedly. It was made after talking to my legal advisers and after going into the whole process with them. I was in possession of facts more particular than those of the coroner, and I was able to deliberate with the law officers as to the situation and to suggest that I should not put the stamp of indictment on every man—if this was the suggestion—and let him get out of it the best way he can. This, surely is not right! Surely this is not right!

It is claimed that the failure to prosecute Dr. Winrow is unfair to the coroner. It is submitted—and I submit—that it is no more unfair to the coroner than it is for a superior court to review the decision of a magistrate—no more unfair than it is to the Supreme Court when the Privy Council sets aside a decision of that court; and in this case this was not unfair to the coroner.

I repeat that the law officers had access to more material than was before the coroner at the time. I take the point made by Mr. Watson. Sometimes comments in the past have been made; and merely because a coroner said, "I commit this man for trial" is no necessary reason why the Minister of the day should commit without looking fully into the situation. He should satisfy himself that there is a *prima facie* case to answer, and in this case I had to satisfy myself that there was culpable criminal negligence. The advice of my officers was that there was not.

It has been said that the decision I made was unfair to Dr. Winrow himself. His solicitor wrote pointing out certain things to me and asking that consideration be given to these facts. I do not think anyone can reasonably suggest that the result—the decision not to file an indictment —in this case was unfair to the man, because he could not prove his innocence. This is not the thing to do.

It has also been suggested that it was unfair to Dr. Godfrey to state what I did. Surely it would not be proper to put one man on trial merely to enable another man to justify his views! Surely this is not the system we apply ourselves to! I say that no reflection on my part was intended either of the coroner or of Dr. Godfrey. However, I had to give these opinions and

these reasons, and I do not reflect upon either of these two gentlemen who, I am sure, have conscientiously done their job.

Questions asked in Parliament regarding the case have been fully answered and the relevant law set out. I have read a little of it. I am of the opinion that no useful purpose would be served by having further reviews of the evidence by individual members, by the Press, or by the public. Nothing could be achieved; and the motion calling for the tabling of these papers involves a very strict principle. If this is done in this case, it could be done in all cases.

The Hon. N. E. Baxter: In many cases!

The Hon. A. F. GRIFFITH: An inquisition could follow in Parliament and a full-scale debate, or a trial, could take place in Parliament—and we have seen something of that. Surely this is not right! Files of this nature sometimes contain matters of a very confidential nature, and this is the order in which they surely must be kept.

Let me say this: If I had not been prepared to accept my responsibility in this case, there was an easy way out for me—a very easy way out! I could have indicted Dr. Winrow, and if I had done this I would have done it in opposition to the advice of the law officers I have in the Crown Law Department who strongly advised me against an indictment. Alternatively, I could have passed this responsibility back to the law officers and said, "Look, I cannot stand this. Every time I do something that someone thinks is wrong, there will be a move in Parliament for the papers. There will be an inquisition to follow in judgment of what has happened." I do not think this sort of thing would be agreeable to members of this House.

I want to say that I have the utmost confidence in the integrity of my officers. Differences of opinion there undoubtedly will be, as was the case here; but I think the people of this State should be very grateful that we have this system of review; and it is not new. It has been going on over the years. This is not something that has never been done before. I have done it before, both in the disinclination to file an indictment or with the entry of a *nolle prosequi* following the filing of an indictment, and when my legal officers advised me that in their opinion this was not a case to be proceeded with.

If there is ever a change of Government —and there will be, ultimately, I am sure —anyone in this House who finds himself in the position I am in today—

The Hon. R. F. Hutchison: You never pitied anyone else.

The Hon. A. F. GRIFFITH: —will find comfort in the fact that he has officers in the Crown Law Department upon whom he can rely and whose integrity is beyond doubt.

The Hon. R. F. Hutchison: You did not think that when we were in.

The Hon. A. F. GRIFFITH: I have never questioned the opinion of an Attorney-General or a Minister for Justice in Parliament! This will be a comfort to him because he will know he will have these officers who will, conscientiously, in the execution of the job, give him the advice he needs.

It may be next week that I will have to make another decision like this. It may be in the reverse. It may be that there is no commitment by the coroner, and it maybe that my law officers will say there is a *prima facie* case against a man in respect of some crime, and they will advise me to file an *ex officio* indictment. Will members then ask for the papers to see whether I have done the right thing? Will they castigate me and say that the papers should be put on the Table of the House to be surveyed to make sure I have acted properly?

I am glad that neither Mr. Wise nor Mr. Heenan have castigated me. I do not think my judgment in this case is questioned. It has been said that I have acted wrongly. I do not think I have. I conscientiously and seriously believe that I have done the right thing; and I will do my job as I am required to do it so long as I am here, and I will do it without favour. I will not do it without fear.

I repeat, that if I have erred in this case it is only because I have erred on the side of mercy; but I am completely satisfied that the advice I have received has been the correct advice, and I have followed it. I would hope the House would indicate its confidence in me by not agreeing to this motion.

*Sitting suspended from 6.28 to 7.45 p.m.*

**THE HON. N. E. BAXTER** (Central) [7.45 p.m.]: There are several reasons why I rise to speak on this motion and the first is because I do not believe I should cast a silent vote on it. The second reason is because of a happening in a coroner's court some few years ago; and this case, I believe, was, to a degree, parallel to the case that is being discussed this evening as it involved the death of a two-year-old child. The death was caused by a car accident and the coroner's finding was that the manner in which a certain person had driven a car was responsible for the child's death. Yet the coroner concerned did not commit the driver of the car for trial.

We have a similarity in this case; and whether both coroners were right, whether both coroners were wrong, or whether in both cases the coroners erred in some way or other is difficult to say. In one case the manner in which a person drove a car was responsible for a child's death,

and in this case it was the manner in which, according to the coroner's finding, a doctor treated or did not treat a child.

I believe there was just as much justification for calling for papers to be laid on the Table of the House in one case as in the other; and if there is any doubt in anybody's mind about the coroner's finding, as has been suggested in this instance, the same position applied where a child met its death because of the manner in which a person drove a car. If there is justification to table the papers in this case there was just as much justification in the other case to which I have referred.

I think in this case—the Dr. Winrow case—a great deal has been made of it because the Press played it up fairly well, probably in view of the fact that a doctor and a native child were involved. In both the cases I have mentioned I would say that the parents loved their children; and I know that in the case of the child which was killed in a car accident the parents loved the child dearly and they found it hard to take what had happened. I do not think this was a case of doing justice to the parents, but of whether justice was done and the case had taken its usual and reasonable course.

I would speak in this manner irrespective of what Minister was involved, and irrespective of the party to which he belonged, because of the responsibility that is placed on the Minister and his legal advisers in cases such as this. If members support the motion they are doing one thing: they are casting a reflection on the integrity of the Minister concerned, no matter who he may be, and his legal advisers. If the motion is agreed to Ministers for Justice or Attorneys-General will in the future be placed in a very invidious position because of the duty they have to perform in relation to justice. For those reasons I could not support a motion such as we have before us at the moment.

**THE HON. F. J. S. WISE** (North—Leader of the Opposition) [7.52 p.m.]: In dealing with a motion such as this a great responsibility rests on those who are prepared to affirm or deny what is said in the motion and what is stated in support of it. In his speech the Minister gave to the House details regarding indictments under Act 47 Victoria No. 6 of 1883; and I want to make it perfectly clear that at no stage or at no time have I disputed the law in the matter. I want to emphasise that very strongly. I am not disputing the law; I am not disputing the Minister's right; indeed, if it were a debate on that subject I would support to the end the Minister's right in regard to the law.

However, I submitted, and I still submit that as regards the Minister's decision under the law there has so far been no effective answer to show why the papers should not be tabled. The Minister said that decisions of this kind have been made on many occasions. Of course they have! He further said that if the papers were tabled it was tantamount to an effort to prove him wrong. That is not so. The whole of my theme and the whole of my argument, as stated in words as clearly as words may express a sentiment, was to prove that he was right in regard to what must be, and must continue to be, a stigma on Dr. Winrow. It was also to prove him wrong, based on the advice of two Crown Law officers, and on the discarded advice of and in his references to, the one, I submit, most appropriate to speak: Dr. Godfrey.

In his speech the Minister spent some time replying to what I said—although he hardly mentioned anything that I did say—on the responsibilities of a Minister. Of course, he has the same sort of responsibilities as other Ministers have now, and as those who have preceded him have had. There is nothing singular in that. The stress and strain of ministerial office is known only to those who have had that great responsibility and given of their best. It is not known to the public; even the stress and strain under which members of Parliament are working, quite apart from Ministers, is unknown to the public.

The Minister gave reasons for his decision but the waiving of the right to proceed was in connection with a very serious charge and not a tupenny ha'penny thing that was trumped up. It was one in which some very strong opinions aver that a *prima facie* case had been made out. Therefore, it is not a case of lightly entering into a decision not to proceed.

Some of these decisions are relatively simple because of the nature of the charges and the nature of the cases, and their background, all of which are under the purview of the Minister. However, one serious omission on the Minister's part was that there was no indication whatever of the advice that he did receive, or the grounds of the advice he received from the Crown Law people who advised him. If those three opinions were placed side by side on the Table in this House I would say that judgment would come down in favour of the minority. We could go on *ad infinitum* getting opinions, one after the other, and if the Minister had got four the numbers for and against would have been tied. If he had asked for a further opinion it would have been support for the contention that he dismissed.

The Hon. A. F. Griffith: That is purely conjecture on your part.

The Hon. F. J. S. WISE: Of course it is, as was the Minister's deduction when it was read. He had to get the other one and he was not prepared to make his decision after getting two very important

opinions. Of course, it is quite idle for the Minister to say, as he did say, that the suggestion to put the stamp of indictment on every case is surely wrong. Who made that suggestion? I did not.

The Hon. A. F. Griffith: I did not say you did.

The Hon. F. J. S. WISE: So far as I am concerned it must have been made extraneous to the debate. It had nothing whatever to do with it; and it was a stupid suggestion anyway.

The Hon. A. F. Griffith: That is purely a matter of opinion too.

The Hon. F. J. S. WISE: Of course it was a stupid suggestion.

The Hon. A. F. Griffith: I do not think it was stupid, with due respect to you.

The Hon. F. J. S. WISE: It was absolutely stupid.

The Hon. A. F. Griffith: Everybody is entitled to his own opinion on that sort of thing as on any other.

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

The Hon. R. F. Hutchison: That is our opinion.

The Hon. A. F. Griffith: Then why should you class your own opinions as being not stupid and others as being stupid?

The Hon. F. J. S. WISE: That is what the Minister has done. He has given an exact definition or a very good illustration in his decision. The Minister's decision was justified only on his interpretation of an odd man's views. I repeat that at no stage would I deny the right of the Minister to make his decision under a Statute. I simply state that the decision was a very unfortunate one. I now refer in brief to Mr. Baxter's comments and to his introducing a case in which there is no relevancy—

The Hon. N. E. Baxter: There is a lot of relevancy.

The Hon. F. J. S. WISE: —and no connection.

The Hon. N. E. Baxter: There is relevancy.

The Hon. F. J. S. WISE: Of course it is idle to say that, if this motion were agreed to, it would be casting a reflection on the integrity of the Minister. I again assert in this Chamber that not only would I be loth to cast a reflection on the integrity of the Minister, but I would be prepared to defend him on that ground. But that is not the circumstance or the situation. It is the question of the decision he made.

I would like to refer to the comments made by Mr. Watson. A motion which was not lightly or loosely, but carefully, worded identified the papers that were sought. Of course Mr. Watson has much experience in the use of words and their values. He certainly quibbled with them in his analysis of whether a decision not to indict had an analogy or comparison with refusing to authorise an indictment, or in deciding not to indict. It did not matter at all. I simply asked for the papers relevant to the inquiry, and for the coroner's judgment. I did not dispute or touch upon the Minister's right at all, to which so much play was given.

As the coroner said, Dr. Winrow had a case to answer and Parliament, I assert, is the proper place—the proper forum—in which to have resolved matters which are in dispute, or in which there is a strong difference of opinion between the public and the Opposition, between the public and the Government, or between the Opposition and the Government. Otherwise we would have such a dictatorial state of affairs that the Executive at any time may decide—and I think the Minister does not desire this, but I feel some Ministers do—that no paper should be tabled in any circumstance.

What sort of situation would that be? I finish on this note by referring to the unfortunate statement deliberately made by Mr. Watson. He said something like this: The Labor Party in recent years has shown a capacity to make political capital out of the plight and sufferings of unfortunate individuals. That is a deliberate lie.

The Hon. H. K. Watson: It is not.

The Hon. F. J. S. WISE: And, what is more, the honourable member knows it is a lie. That is the unfortunate situation that a member would care to introduce into this debate.

The Hon. H. K. Watson: In response to a member who led with his chin.

The Hon. F. J. S. WISE: Of course I know the honourable member likes people to lead with their chin, with his command of verbiage. It is a lie from start to finish.

The Hon. H. K. Watson: Events in the last fortnight have proved it correct.

The Hon. F. J. S. WISE: That is my view, and I object very strongly to introducing into a debate of a difficult kind—difficult for all parties concerned—

The Hon. H. K. Watson: Not too difficult to introduce.

The Hon. F. J. S. WISE: Difficult to introduce.

The Hon. H. K. Watson: You wanted to give it a fly.

The Hon. F. J. S. WISE: It would be impossible for the honourable member to introduce a debate on this subject in the manner I endeavoured to introduce it. It is very difficult to introduce, and I make no apology to anyone for the plane on which I endeavoured to keep it from start to finish, and I resist and resent the intrusion of those words.

**Question put and a division taken with the following result:—**

Ayes—8

| | |
|---|---|
| Hon. E. M. Heenan | Hon. R. H. C. Stubbs |
| Hon. R. F. Hutchison | Hon. W. F. Willesee |
| Hon. F. R. H. Lavery | Hon. F. J. S. Wise |
| Hon. H. C. Strickland | Hon. J. Dolan *(Teller)* |

Noes—17

| | |
|---|---|
| Hon. C. R. Abbey | Hon. N. McNeill |
| Hon. N. E. Baxter | Hon. T. O. Perry |
| Hon. G. E. D. Brand | Hon. H. R. Robinson |
| Hon. A. F. Griffith | Hon. S. T. J. Thompson |
| Hon. C. E. Griffiths | Hon. J. M. Thomson |
| Hon. J. Heitman | Hon. H. K. Watson |
| Hon. J. G. Hislop | Hon. F. D. Willmott |
| Hon. E. C. House | Hon. V. J. Ferry *(Teller)* |
| Hon. L. A. Logan | |

Pairs

| Ayes | Noes |
|---|---|
| Hon. R. Thompson | Hon. G. C. MacKinnon |
| Hon. J. J. Garrigan | Hon. A. R. Jones |

**Majority against—9.**

**Question thus negatived.**

**Motion defeated.**

## NOISE IN PRIMARY AND SECONDARY INDUSTRIES

*Inquiry by Select Committee: Motion*

**The HON. R. H. C. STUBBS** (South-East) [8.9 p.m.]: I move—

> That a Select Committee be appointed to inquire into and report upon the incidence of industrial noise in primary and secondary industry, to—
>
> (a) ascertain the causes of and objections to such noise;
>
> (b) recommend preventative measures to eliminate excessive noise; and
>
> (c) recommend, if found necessary, methods of compensation where hearing is damaged by noise.

The World Health Organisation's definition of health is that health is a complete physical, mental, and social well-being, and not merely an absence of disease and infirmity. For the most part the well-being of people is diminished by noise. So, in that sense of the term, there is no doubt that noise does affect health. Noise can cause much annoyance and nervous illness. It can prevent sleep. We have all had the experience of listening to a dripping tap, or a flapping blind, or perhaps a heavy vehicle in the street. All these sounds cause loss of sleep and annoyance.

Noise can break concentration and can affect safety. It is possible for a workman to misinterpret instructions, or perhaps not hear them at all, and thus involve himself and others in accidents. Noise, of course, can also induce permanent deafness. Noise is now considered an essential part of our industrial set-up and environment.

As members know, boilermakers' deafness has, as a hazard, been known for the past 150 years. Investigation in this sphere has more than demonstrated that constant exposure to 90 decibels or more can lead to the impairment of hearing.

When I first came to Parliament I made a speech on the Address-in-Reply debate and talked about the noise in the goldmining industry, and the effects of that noise on the ears of the miners. On the 22nd August, 1963, I asked the Minister for Health questions concerning a survey made underground at the mines in Kalgoorlie and Norseman to ascertain whether there is a hearing loss by mine employees due to industrial noise, and, if so, what the percentage of such loss is.

The Minister replied that such a survey had been contemplated and was being organised. When that became known I received letters from as far south as Ravensthorpe, and from Kalgoorlie, Boulder, and Mt. Magnet, written by people who were interested in the subject, and who were affected by loss of hearing from industrial noise. On the 23rd October, 1963, I asked the Minister the following question:—

> In view of the interest of the very many miners and other people suffering hearing loss disability through industrial noise—
>
> (a) when is the survey proposed by the Public Health Department likely to commence?
>
> (b) (i) Who will be the people conducting the survey; and
>
> (ii) what are their qualifications?

The Minister replied as follows:—

> (a) March, 1964.
>
> (b) Undecided, but under general control of physician, occupational health, with assistance from the Commonwealth Acoustic Laboratories.

In this Parliament, recently, I asked the Minister further questions in regard to hearing loss among goldmining employees as follows:—

> Having regard to the tests being conducted by officers of the Public Health Department and the Commonwealth Acoustics Laboratory into hearing loss by goldmine employees:—
>
> (a) Will the Minister name each of the Mines where the tests have been conducted, and the number of men in the categories of surface and underground employees, who have been tested?
>
> (b) Is there any pattern emerging from the tests?
>
> (c) If so, in what direction; and
>
> (d) When is it anticipated the tests will be completed?

The Minister replied—

> (a) (i) Great Boulder Gold Mines Ltd.
>
> Lake View & Star Ltd.
>
> North Kalgurli (1912) Ltd.
>
> Gold Mines of Kalgoorlie (Aust.) Ltd.

(ii) Number of employees whose hearing has been tested—(figures incomplete).

Surface employees—190.

Underground employees—16.

(b) Yes.

(c) A noise problem is present in certain underground and surface work places.

(d) This is a long term project and is being associated where necessary with a hearing conservation programme. This is time-consuming and progress has been slow. Preliminary work to date has been mainly concerned with sound level surveys, attempts at noise attenuation and an assessment of the problem.

I read that to show that I have had an interest in this matter for some time.

Members may have noticed a recent announcement that in Tasmania, legislation on precisely the same lines as I am suggesting here is being introduced. I have been interested in this subject for a long time. This hazard in industry is very widespread and is not confined to mining. It can be found in connection with quarrying and the use of earth-moving equipment; and it is also to be found on farms where heavy agricultural machinery with loud transmission noises is used. It is found in many other avenues of endeavour, such as the jet plane, the entertainment world, and so on. In those fields, urgent preventive measures should be taken to prevent the population becoming deaf, because there is more mechanisation all the time.

In order to prevent hearing loss, excessive noise should be reduced to an intensity where hearing is not impaired. The identification of the noise in industry is important. It is necessary to know the loudness, the cycles per second, and so on; then there should be an assessment of hearing for employees. There should be a pre-selection hearing test. Before entering employment, audiometric measurements should be taken, and the men should have an audiogram so that they will know what their hearing is. Perhaps their hearing could be checked six months or 12 months later. This is one way in which men could prove they entered industry free from impairment of hearing; and, if in a test years later they found their hearing was impaired, I think it is reasonable that they should be able to claim compensation.

Of course, the employers have to play their part, and some are doing it. Noise is screened off and prevented by the use of shields, insulation, and things like that. In some industries where noise cannot be reduced to safe levels, employees are supplied with ear plugs and ear muffs. The important thing is that action along these lines be taken on a State-wide basis. That is one of my reasons for moving for this Select Committee.

As I said before, noise has to be traced to its source in factories, foundries, and mines, and on farms. Industrialisation can be found in many places, and industry has solved the problems to a degree. Industry has made it easier to obtain manufactured clothing and food; and it has provided leisure time in which one can enjoy life, but this has been at a certain price—the price of deafness to a lot of people. One has only to be familiar with the mining industry—I am sure Mr. Brand has evidence—to know that most of the men who have been working on the machines with a high intensity of noise are deaf; and some are virtually lip readers. When one is talking to them, any background noise prevents them hearing what one is saying. Most industries are safety conscious and use protective guards against machinery, thermal clothing to protect employees from burns, and gloves and goggles to prevent employees against flash and acids; yet we are a long way behind in the subject of industrial noise.

This vexed problem of noise is really untouched, yet excess noise has a serious and adverse effect on a person's health. Noise is currently defined as unwanted sound. *The Oxford Dictionary* gives this definition: "Sound—audible air-vibration, impression made by it on the sense of hearing." We can get away from some noisy atmospheres, but in industry an employee must stay there all the time; he cannot escape from it. Interest in the effect of noise goes back to the 18th century.

As I have said, the effects of noise are greatest amongst blacksmiths, boilermakers, and so on. In those days when an apprentice finished his time, if he were not deaf he would not be considered a good journeyman. Therefore there is no doubt that loss of hearing has come with industrialisation. Since the time of the industrial revolution, noise has been with us, and it gets worse as each industry accepts mechanisation.

Scientific investigation into hearing loss through industrial noise did not commence seriously until after the first world war, since when it has advanced at a spasmodic rate. There has probably been a greater increase in the appreciation of industrial noise during the last 10 or 20 years. I think it was about 1948 when people in America started to take an interest; and, in our own State, an interest has only been taken for about eight or nine years—since the occupational health people have become interested in the problem and worked in conjunction with the Commonwealth Acoustic Laboratory.

Noise certainly affects the behaviour of a person. There is a tendency for a workman to become less efficient where noise

exists. There is evidence that when workers knock off their day's work after being in a noisy atmosphere, they are very tired and jaded. That is not only the finding in Western Australia, but it is also contained in the literature of other countries. I do not think we really appreciate industrial noise to the fullest extent. As I said before, noise can cause annoyance.

About a fortnight or three weeks ago I read where an aircraft worker said that when a jet plane was in the background he felt compelled to throw his spanner down the jet intake of the plane. That is how noise affected him. Only the day before yesterday I read in the paper where a chap in London was affected by the excessive noise of the traffic passing the place where he resided. He could not sleep. He was taking sleeping tablets, and apparently in desperation he took the whole bottle of tablets and passed out. He left a note saying, "Too much noise; cannot sleep." So members will appreciate that noise can affect human behaviour.

Noise can startle people and set off a chain reaction that can be the cause of accidents. Noise, too, can have a detrimental effect on the efficiency of workmen, and can cause extreme pain. Noise can result from the use of chippers, drop forges, riveters, jet planes, tractors, earth moving equipment, machines underground, blasting, and other mechanical aids to industry. It can also come from the transmission of vehicles.

A subcommittee of the American Academy of Ophthalmology and Otolaryngology, with regard to recovery, stated as follows:—

> Hearing loss produced by prolonged exposure to loud noise may be considered permanent if it still persists after the individual has been removed from noise environment for a period of six months.

This means that if a man is working in a noisy atmosphere and he is still in that condition after six months, he can be considered to have a permanent impairment of hearing. The nerve of his ears becomes affected; and I do not think medicine has any treatment available for this condition.

I have a friend who uses a hearing aid in his own home, but he is not able to use it at work because it is terrifically noisy. The stiletto heels of a pair of woman's shoes sound like riveters; so he is only able to use the hearing aid in his own home where he is able to adjust it in order to listen to the radio.

As I said before, industrial medicine has found out many things in regard to radiation. It is a fact that humidity and heat have an adverse effect, with consequent illness and loss of time. But we are discussing the adverse effects of industrial noise. What we are planning to do is find out the source of noise and how many people are affected. That is the purpose of this motion. We want to be able to do something about screening noise out or taking measures to prevent it.

When industry realises the seriousness of noise, I feel it will be willing to take an active interest, because it must reduce premiums. Over the years on the goldmines there have been a number of safety committees that have reduced accidents in the mines; and the men are safety conscious. The effect of all this has been an appreciable saving in premiums. Therefore it will be in its interest for industry to come to the party.

Action is urgently needed in Western Australia. The International Labour Office has adopted a recommendation as follows:—

> All appropriate measures should be taken by the employer to eliminate or reduce as far as possible noise and vibrations which constitute a danger to the health of the worker.

The suppression of harmful noise levels is one of the major tasks yet to be accomplished in order to provide the workers of our industrial work force with the safe and healthy environment to which they are entitled. Organised labour will be concerned with the health of its members if it is worth its salt.

Unions should have the opportunity, whenever possible, to share the responsibility and make any hearing conservation programme effective. Most far-sighted unions have already given their complete support to, and recognition of the value of, accident-prevention measures and would, I feel sure, co-operate to the fullest degree in any hearing conservation programme. It is up to managements to come to grips with this subject and accept the fact that noise is a problem, and make a decision that a conservation of hearing programme is necessary and should be instituted at once.

I have a letter from the Salmon Gums branch of The Farmers' Union of W.A. It is dated the 15th August, 1964, and was written to me after it was known that there was to be a survey. It reads as follows:—

> I have been instructed by the members to write to you concerning the hearing of farmers caused through driving tractors. There has been a considerable amount of publicity in the past months concerning miners hearing being affected through working on heavy machinery, by the Public Health. We understand that a survey is to be made at Norseman. We wondered if you could arrange if and when this does take place at Norseman if some of the farmers whose hearing is being affected could be tested in Norseman at the same time. Tractor manufacturers should be

> approached asking them to reduce engine and transmission noise to a safety level.

I will now quote from an article from one of the farmers' papers. It is headed, "Farm Tractor Noise Can Impair Hearing" and is as follows:—

> The noise made by farm tractors is frequently excessive so that drivers operating them over a number of years run the risk of impairing their hearing.
>
> This finding has been made following a survey carried out in N.S.W. by the Division of Occupational Health, in conjunction with the Department of Agriculture.

There is more information but it is virtually what I have already stated.

The Commonwealth Acoustic Laboratory, issued a booklet a copy of which I received nearly two years ago. As a matter of interest this same booklet is being used by the Tasmanian Government for the introduction of legislation to compensate for loss of hearing from industrial noise. The booklet mentions various noises such as machinery, tractors, drills, rock breakers, and such like. It gives the noise level above which hearing is impaired. I will quote a paragraph from the booklet as follows:—

> Difficulties on the Job
>
> At work, a hearing loss can lead to misinterpretation of instructions and warnings, causing accidents, damage and loss of time and money. Subsequent promotion of a deafened skilled worker is limited, because of difficulties in using telephones and following discussions in groups and conferences. Personality changes in a deaf person alter his capabilities.

It goes on to say that there are also social difficulties, which I quote as follows:—

> These disabilities carry over into the worker's social life, where he has difficulty in communicating with his wife and children. Enjoyment of entertainment such as television, films, theatre is always reduced, and in normal home television viewing the difference in listening level between the father and other members of the family can lead to friction and his ultimate rejection.

There is more but I will not read it. I will give one or two cases of the excess noise level. Hammering is 30 plus, and inside a circular tank is 41. Members can read this book for further information. I will not weary the House by quoting further.

It is interesting to note that the Tasmanian Government has adopted the recommendation of the Commonwealth Acoustic Laboratories. I have here a publication on occupational health and it deals with noise. It emphasises what I have already said, and states as follows:—

> . . . only with the machine age came the realization that industrial noise was one of the many causes of deafness—a cause first described in England early in the 19th century. At that time the term "boiler-maker's deafness" was used to describe the deafness of workers in boiler shops and railway roundhouses whose hearing became impaired over several years. Industrial deafness received comparatively little attention at the time as it was a social handicap rather than a working disability; moreover, it was an assumed risk and, indeed, a boiler-maker without hearing loss was considered to be inexperienced in his trade.

There is more that I could quote but I think I have made my point.

I would like to draw the attention of the Minister to preventive measures. Let us cast our minds back to the days before goldminers were required to go to laboratories to have X-rays. Silicosis was rife, and so was tuberculosis. Sick men were working in the industry who should not have been there, and it became necessary for men to be X-rayed. This meant that when a man entered the industry he would have to prove his fitness by having an X-ray and a clinic examination. Then, when he did get silicosis there was ample evidence to prove that he got it in the industry. The mining companies installed fans and water-liner machines to try to prevent the dust.

So one can see that if we use a hearing conservation programme in industry, and have a pre-occupational test in a similar manner, there would be ample evidence of impairment to hearing later. The important thing is that action can be taken to prevent the loss of hearing. I do not think anyone wants to lose his hearing. I think that if the companies looked to things on one side and the men wore ear plugs, we would do away with loss of hearing through industrial causes.

Then there is the matter of poison substances, which caused quite a few deaths. Preventive measures were taken and gloves and masks were used and the death rate was reduced to practically nil. Some old-time miners will remember that arsenical compounds were encountered in the ore at Wiluna and working in the mine caused a severe rash to break out. That was an occupational hazard. Preventive measures were introduced by the men wearing ladies' silk underwear under their underpants. This eliminated the arsenical rash and was a very effective preventive measure.

Nystagmus or impairment of eyesight was common amongst miners because of poor illumination. When

better lighting was used this disability ceased to exist. The men have better lamps, the mines are well lighted, and the disease has gone. Again, this is because of the preventive action taken. So, for the suppression of noise, screening and earplugs are necessary as preventive measures in industry. I think that a man would then have a justifiable claim for compensation if he became deaf.

As a matter of interest, I wrote to the Tasmanian Government last year to see if any compensation for deafness was paid there. The reply I received is dated the 10th November, 1964, and is as follows:—

> I acknowledge your letter of 26th October seeking information concerning legislation against noise and the inclusion of industrial deafness in the Tasmanian Workers' Compensation Act.
>
> My Department of Labour and Industry has been considering draft noise control regulations for some time but as yet no firm decision has been reached concerning them.
>
> It may interest you to know that the Traffic Regulations in Tasmania make it an offence for motor vehicle horns to be sounded in any city or town, except in an emergency. The Regulations also contain provisions designed to prevent undue noise in the operation of motor vehicles.
>
> Industrial deafness is compensible only if it can be shown that injury by accident has been caused by some definite event in the course of employment. It is not included in the Tasmanian schedule of industrial diseases.

It is interesting to note that there is to be legislation in Tasmania on the lines of the Commonwealth acoustic booklet. I wrote to the Queensland Government and it does pay compensation for deafness caused through industrial noise. I will read a paragraph from a letter dated the 3rd November, 1964, which is as follows:—

> Deafness through Industrial noise is compensible under the Queensland Workers' Compensation Acts. Industrial deafness was deemed to come within the definition of "Injury" as contained in the Acts. However, as some doubt existed, the matter was clarified by the amending Act of 1962.

I received a copy of that Act. I also wrote to New South Wales and that State also pays compensation for industrial deafness. A section of the letter I received from that State reads as follows:—

> Section 7(4B) of this Act provides that "boilermaker's deafness" and any deafness of like origin is deemed to be a disease.

I wrote to New Zealand and it has no legislation covering deafness. A survey was being conducted at the time—December, 1964—and recommendations were to be made.

I feel I have covered the motion reasonably well, and without reiterating the points I have made I have pleasure in moving the motion.

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

## BILLS (3): THIRD READING

1. Bread Act Amendment Bill.

   Bill read a third time, on motion by The Hon. L. A. Logan (Minister for Local Government), and returned to the Assembly with an amendment.

2. Mental Health Act Amendment Bill.

3. Fisheries Act Amendment Bill.

   Bills read a third time, on motions by The Hon. A. F. Griffith (Minister for Mines), and transmitted to the Assembly.

## BILLS (3): RECEIPT AND FIRST READING

1. Rural and Industries Bank Act Amendment Bill.

2. Laporte Industrial Factory Agreement Act Amendment Bill.

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

3. State Tender Board Bill.

   Bill received from the Assembly; and, on motion by The Hon. L. A. Logan (Minister for Local Government), read a first time.

## SALE OF HUMAN BLOOD ACT AMENDMENT BILL

*Returned*

Bill returned from the Assembly without amendment.

## STREET PHOTOGRAPHERS ACT AMENDMENT BILL

*Second Reading*

**THE HON. L. A. LOGAN** (Upper West —Minister for Local Government) [8.48 p.m.]: I move—

> That the Bill be now read a second time.

The explanation of this Bill could, I believe, be given in one short paragraph. However, I do not like introducing measures on that basis. As a result, and because the Act has not up until now been amended since it was originally introduced in 1947, and because we have a number of new members in the House, I thought some background to the measure would be appreciated.

In 1947 the Perth City Council put a ban on street photographers. At that time quite a number of returned soldiers were

earning a living at street photography, but apparently they were doing it against the law. So the Perth City Council imposed a ban and even went so far as to successfully prosecute some street photographers under paragraph (14) of by-law 3.

Because most of the operators were returned servicemen, the R.S.L. came into the picture and took up cudgels on their behalf. The R.S.L. adopted a resolution for submission to the Perth City Council proposing that the operations of street photographers be controlled and legalised by a system of licensing. At that time correspondence took place between the then Minister for Local Government (The Hon. A. F. Watts) and the Perth City Council. The Minister asked the Perth City Council if it was in favour of licensing as requested by the R.S.L.; but the council was then opposed to this move and gave many reasons why it should not be allowed.

The Cabinet of the day, however, decided to look into the matter and it approved of some action being taken to enable street photographers to function provided—

(a) they had been carrying on business prior to April 1947;

(b) they were ex-service personnel whose health was such that normal active work was beyond them;

(c) that they paid a licence fee.

It was not the Government of the day, however, that introduced the measure, but a private member of the Assembly in the person of Hugh A. Leslie. The measure, when before another place, became subject to some amendments; and at that time The Hon. F. J. S. Wise, who was then a member of the Assembly, was successful in having some amendments made to the Bill. After some further amendments were made to it in this House, it finally passed and was proclaimed in December, 1947.

The passing of the measure did not end the controversy at that time. Even up until 1950 certain complaints were received from people in regard to the activities of some of the street photographers, particularly when they were operating at night with flashlights. They upset quite a few of the elderly people.

After a fair amount of discussion between the Minister and the Perth City Council, the council eventually granted the licenses in 1951, and four licenses were then issued at the figure of £1 per license. From then until now it would appear that everything has gone along fairly smoothly. These people have been accepted and have gone about their daily duties without causing interference to anybody, as far as I can see. Presumably they make a living, because some of the people that we see taking photographs in the streets today have been there for a considerable time.

The Perth City Council, which has control of the Act—the Act comes under the Minister for Local Government—has made an application to me for an increase from £1 to £5 in the fee because of the time factor since the introduction of the parent Act, namely, 18 years, and also because the increase would be more commensurate with the administrative work associated with this licensing. I do not think I need add any more; that is all the Bill means.

The Hon. F. R. H. Lavery: You said just now that you could explain it in one paragraph. I should say it could be explained in one word—finance.

The Hon. L. A. LOGAN: It is all a matter of raising the fee from £1 to £5. In view of the fact that the Act has not been amended since 1947, and because Mr. Wise had then taken part in securing amendments to the Bill in another place, I thought some background to the measure would be acceptable to members.

**Debate adjourned, on motion by The Hon. J. Dolan.**

## BUILDERS' REGISTRATION ACT AMENDMENT BILL

*Second Reading*

**THE HON. A. F. GRIFFITH** (North Metropolitan—Minister for Mines) [8.53 p.m.]: I move—

That the Bill be now read a second time.

The maximum fee payable under the Builders' Registration Act to the chairman and members of the board is £4 4s. per sitting attended. The fee is laid down in subsection (4) of section 6 of the Act. The maximum amount of £4 4s. is now being paid.

It is desired to increase the fees to bring them into line with those paid to members of some other boards. This has been recommended by an interdepartmental committee which was set up to consider the payment of fees to Government boards, committees, etc., last year. Members will recall some previous reference having been made to the activities of this committee when Bills to amend the Albany and the Bunbury Harbour boards were under discussion in this Chamber.

On account of the maximum fee payable being stated in the body of the Act, it is necessary now, and would be also on any future occasion calling for an increase in fees over and above that provided for in the Act, to amend the Act itself.

In order to avoid the necessity for this procedure, it is proposed by this amending Bill to make provision for the fees to be prescribed by regulation from time to

time. Upon the tabling of regulations, members will be kept informed of the position with respect to the fees which will be paid to members of the board.

In this instance, it proposed to increase the fees for each meeting attended to £7 7s. for the chairman and £5 5s. for the other members. The board meets approximately 14 times each year.

**Debate adjourned, on motion by The Hon. J. M. Thomson.**

## LOCAL GOVERNMENT ACT AMENDMENT BILL

*Second Reading*

**THE HON. W. F. WILLESEE** (North-East Metropolitan) [8.56 p.m.]: I move—

That the Bill be now read a second time.

The Bill, as introduced in another place, proposed to bring all local authorities into line with the conditions imposed by the City of Perth Parking Facilities Act of 1956. The basic principle in the special Act is to become established as a principle for all other local authorities; that is, the basic principle as applied in the City of Perth Parking Facilities Act is to apply to all other local authorities.

When that Act was passed in 1956, both Houses of Parliament expressed a desire that the net proceeds from parking facilities should be ploughed back into the field of further facilities for the motorist. It now appears that under the Local Government Act there is no requirement to use the money in that way. It was the intention of the Bill, when introduced, to provide for this and to bring all local authorities into line with the City of Perth.

Perhaps I should read the relevant section of the City of Perth Parking Facilities Act which contains the material that it was intended should be included in this Bill. Section 7 (2) reads—

> (2) All revenue received by the Council and all charges, fines and other penalties paid or recovered under or pursuant to this Act shall be paid into the Fund or to the Council to be credited to that Fund.
>
> (3) The Council shall utilise the moneys in the Fund—
>
> (a) for the administration of such departments and the remuneration of such inspectors and other officers as the Council considers necessary for the purpose of exercising its powers and functions under this Act;
>
> (b) for the purchase, acquisition, maintenance, alteration, and improvement of land, buildings and other structures, parking meters and other mechanical devices, signs and other accessories, equipment and appliances for the establishment and provision of parking stations, parking facilities, metered zones and metered spaces and for the regulation and control of the parking and standing of vehicles within any parking region in accordance with the provisions of this Act;
>
> (c) for the establishment, provision, extension, the maintenance in good order and condition and operation of parking stations, parking facilities, metered zones and metered spaces in accordance with the provisions of this Act;
>
> (d) for the installation, and the regulation of the use of parking meters in accordance with the provisions of this Act;
>
> (e) for the provision, conduct and control of such services as are deemed under the provisions of this Act to be parking facilities;

There are further complementary provisions. It is the basic situation that it was desired to include in this measure a provision to ensure that all the moneys received from parking by all the local authorities in Western Australia would go into a special fund which would, after the payment of administrative costs and working expenses, be used for further development in the field of parking facilities.

The provisions of the Act have not yet been amended on that basis. I might add that, due to circumstances beyond my control, the legislation has at least reached this House in a slightly different form. However, I have placed on the notice paper amendments which I propose to move in Committee in order to give members an opportunity to study the Bill in the form in which it was first introduced in another place and with the intention of reinstating the initial principle of the Bill; that is, to have complete uniformity throughout the State and among all local authorities.

It might be worth mentioning that, in 1956, considerable interest was aroused not only within Parliament but also outside it when the City of Perth parking facilities legislation was brought before the House. At that time an article appeared in *The Road Patrol*, the official journal of the Royal Automobile Club, the essence of which was as follows:—

> The essential safeguard is a statutory requirement that surplus revenue from parking meters over and above maintenance costs should be used for developing ancillary parking areas.

> The R.A.C. submitted its views in this regard to the Minister who has advised the R.A.C. of his acceptance of the proposals.

In the debate which took place in the Legislative Council on that issue, the Minister for Local Government (The Hon. L. A. Logan) expressed his concern on this problem when he said—

> If one looks at the revenue received from those already installed, one realises that they are being ordered not to improve parking facilities but to boost up the finances of the local authority.

Later on in the same speech he said—

> I wonder what will happen when the revenue from the meters is sufficient to pay interest and capital on the borrowed money and show a surplus. I assume it will go into general revenue of the City of Perth soon after that stage is reached. The City Council will have to make some use of the surplus.

The then Minister for Railways (The Hon. H. C. Strickland) interjected by saying—

> It cannot go into their general revenue.

So it is quite obvious that at that time there was concern expressed by those interested in the matter outside Parliament and by members of Parliament and there was a general desire to ensure that the entire surplus of revenue obtained from parking meters would be ploughed back into the field of parking facilities.

It appears that under the Local Government Act there is not a similar complete restriction, and the whole purpose of the Bill, is to try to bring the Local Government Act into line with the City of Perth Parking Facilities Act so that local authorities will work under nearly the same conditions and the same principles as the City of Perth. In the present situation it is obvious that those local authorities adjoining the Perth City Council would be able to operate parking facilities and install parking meters and yet adopt different systems of expenditure of the revenue obtained from them.

So the Perth City Council is committed to the Act which governs all of its parking operations, and the adjoining local authorities would be permitted to work under an entirely different system. In effect, the Perth City Council is limited to a trust fund upon which it cannot operate except in accordance with the provisions of the Act by which it is governed, but the local authorities adjoining the Perth City Council would not be so restricted in the way they receive revenue from their parking facilities; or, alternatively, they could take the moneys into general revenue.

The difference between the two Acts has now been highlighted by the contemplated action of the Fremantle City Council which desires shortly to introduce parking meters and other parking facilities within its boundaries. At this point I will again quote from the March issue of the R.A.C. journal. This article is headed, "The Fremantle Parking Plan." Then followed, basically, the principle which that organisation had outlined in the 1956 issue of its journal. This article reads—

> The Fremantle City Council has recently announced its intention of installing parking meters.
>
> When this proposal was first publicised early last year the R.A.C. approached the Council suggesting that the development of off-street parking areas was a prerequisite to installing meters and that when meters were introduced the net surplus revenue therefrom should be applied solely to the provision of further off-street facilities.
>
> The Council undertook to consider the R.A.C.'s views and this was followed by the Press announcement of the building of a multi-storey parking station and a smaller car park. It was stated that the Council planned to introduce metered parking after the station was operating.
>
> The R.A.C. then sought an assurance from the Council that net surplus revenue from the operation of the overall parking plan would be used only for the development of further parking facilities.
>
> The Council declined to give an assurance about the disposal of any surplus revenue from the station but indicated that consideration could be given to this surplus being used to provide added facilities and for road improvements.
>
> Now the Council has apparently decided to introduce meters before the station is operating and to reserve the right to deal with surplus revenue other than in the manner adopted by the Perth City Council.
>
> The R.A.C. has again urged that surplus revenue from meters and the parking station be used only to provide more parking facilities. At the time of going to press no reply had been received from the Council.

That could be viewed as a serious situation in the light of the consideration that must be given to the right of the motorist to have any surplus revenue that is obtained from him by way of parking charges returned to him by way of parking facilities. I think it was the contemplated action of the Fremantle City Council that prompted the introduction of this Bill, which was subsequently amended in

another place. After the amendment had been made, *The West Australian*, in a subleading article in its issue dated the 13th September, 1965, had this to say—

> Dubious Principle
>
> Chief Secretary Craig was shortsighted in persuading the Legislative Assembly that local authorities should be able to spend parking-fee revenue on road widening and allied projects.
>
> The Perth City Council cannot use parking revenue for other than parking purposes. There are good reasons why other councils should be similarly bound.
>
> Long-term policy should be directed towards off-street parking. Streets are for the passage of vehicles, not their storage.
>
> Once councils can get money from cars that park on roads and use it for general road and resumption works that should be financed from normal revenue, councils will have a vested interest in cluttering highways with lucrative files of parked cars.
>
> Parking meters would multiply in the very places where cars should not park—on roads to and through the busy shopping centres that straddle main highways.
>
> The government and local authorities should concentrate on off-street parking and use parking revenue to promote it.

I would merely add to that article by stating that those members of this House, who, in a body, visited the M.T.T. recently, found, in the course of conversation with the general manger that, basically, his great problem or desire was that he wanted vehicles off the streets rather than have them parked in the streets. Obviously, if we seek to have a free flow of traffic along our major streets, within not only the City of Perth, but also within the adjoining cities and suburbs, we must attack this problem of parking in a general way and with complete uniformity among all those bodies associated with the problem.

I do not intend to delay the House any further on this point. I submit the Bill in its present form with the intention of moving amendments in Committee. The proposed amendments are already set out on the notice paper and they are designed for the purpose of bringing all local authorities into line with the conditions that are at present observed by the Perth City Council. I therefore trust the House will give serious consideration to the amendments in due course.

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

## LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 2)

*Second Reading*

Debate resumed, from the 21st September, on the following motion by The Hon. L. A. Logan (Minister for Local Government):—

> That the Bill be now read a second time.

**THE HON. T. O. PERRY** (Lower Central) [9.13 p.m.]: I rise to support the Bill and compliment the Minister for introducing the amendments contained in it, which I feel must assist local government and bring about better and smoother administration in local government. The Act which the Bill proposes to amend is the Local Government Act of 1960.

Mr. Benfellows, who at one time was President of the Local Government Association of Western Australia, together with many others, including departmental officers and the Minister, put a tremendous amount of time and thought into the redrafting of several Acts to achieve the consolidation of the present Act. The principal Acts affected were the Roads Districts Act, and the Municipal Corporations Act. There were other Acts, such as the Cattle Trespass, Fencing and Impounding Act, Agriculture Protection Board Act, and many others too numerous to mention. However, as I have said, the principal Acts affected were the Municipal Corporations Act containing 534 sections, and the Road Districts Act of 365 sections. They were consolidated into one Act containing 694 sections.

My earliest recollection of any mention of consolidating these Acts was in 1947 when the then Minister for Local Government (Mr. Watts) referred to the introduction of a consolidation Bill. Later on Mr. Doney, as Minister for Local Government, spoke of amending the Acts; and subsequently the late Gilbert Fraser, as Minister for Local Government, also referred to the consolidation of the Acts.

To divert for a moment, I would like to pay a tribute to the late Mr. Gilbert Fraser. He was a man who came from a very humble home, who left school at a very early age, who started work as a post boy, and who rose to become a Minister of the Crown. I am quite sure that members of the coalition Government parties, and of the Labor Party which was in government in his day, must have admired the energy, determination, and courage of the late Mr. Gilbert Fraser in seeking to achieve that end.

It was not the late Mr. Gilbert Fraser who brought the consolidation Bill to fruition. The present Minister for Local Government (The Hon. L. A. Logan) piloted that Bill through Parliament. The Act may not be perfect, and in the course of time, small weaknesses will, no doubt,

become evident. On this occasion it is proposed to rectify some of the weaknesses by effecting amendments to the Act.

I wish to refer to only a few clauses in the Bill. Clauses 2, 5, 15, and 13 all provide that when less than 10 per cent. of the ratepayers entitled to vote do vote the poll shall be declared void. Councillors, as individuals, have no right to make policy, and no power to give direction; but collectively as a council they have the responsibiilty of making and carrying out policy.

These councils administer various Acts—such as the Traffic Act, the Bush Fires Act, the Vermin Act, and the Health Act—and sometimes they become unpopular with small groups of electors or ratepayers as a result of prosecutions launched against offenders for breaches of the various Acts. Their action could cause the ratepayers to become disgruntled, and a small section could become a pressure group. I feel it is most undesirable that such pressure groups of less than 10 per cent. of the ratepayers should have the power, through their franchise which they make sure they exercise, to hold up certain works which a council proposes to undertake. Through indfference, many electors do not vote. We find the same thing happening in State and Federal politics.

The electors have the power to bind their council through the decisions which they make in various directions, such as the diversion of loan funds for purposes other than those for which the loans were raised. If at some time a council decides to use the money raised for a specific purpose in some other direction, the ratepayers can stop the council from so doing; and if less than 10 per cent. of the ratepayers had this power it would be most undesirable.

This also applies to the leasing of reserves and other similar undertakings. In these matters the council is under the direction of the ratepayers. It would be undesirable if a small section of the ratepayers could dominate the council. The clauses which I have mentioned will prevent that from happening, because a poll of more than 10 per cent. of the ratepayers or electors would be required.

Clause 6 of the Bill seeks to insert a new section—43A. I find this most interesting. The thought behind this clause had its origin in a small country town in the West Arthur Shire—the town of Darkan. I have spoken on this subject at our local shire meetings, and at the country shires executive meetings which are presided over by Mr. Heitman.

If a councillor hands in his resignation in writing to the president, mayor, or clerk, his office becomes vacant immediately. Section 43A will enable a councillor to give notice of his intention to resign, and the machinery for holding an election to fill the vacancy can be put in motion whilst the councillor still occupies his office. The longest period provided for in the existing Act for an office to be vacant without an election being held is 105 days, and that applies only when it comes before the 14th May, the date of the annual elections. If the councillor represents a ward which has only one member that ward will be without representation for a long time. In that event when a matter of importance is discussed by the council that ward will be without representation.

Clause 8 seeks to amend section 174 which sets out when a member may not speak or vote; namely, when a member has an interest other than a common interest in the matter. The interest could be either direct or indirect. Thus it is possible for a member of a council who has special knowledge of the subject matter and who is well qualified to speak on it—such as a doctor, a solicitor, or a contractor—to be prevented from speaking. Just because he has an interest, either direct or indirect, he is not pemitted to speak. The provision in clause 8 will allow such a member to announce his interest, and to be given permission to speak. This would be recorded, and the council would have the benefit of his special knowledge.

I am experiencing some difficulty in speaking. Mr. President, you might notice that my voice is rather harsh, because I have laryngitis. I should have consulted Dr. Hislop before I spoke, but I was afraid that his bill might be even bigger than the Bill before us. I support the measure.

**THE HON. J. HEITMAN** (Upper West) [9.23 p.m.]: I shall not hold up the House for very long. I have only a couple of comments to make, the first of which relates to the alteration in the number of ratepayers who are required to vote at an election for a mayor or president, or at a referendum. I still consider that 10 per cent. of the eligible voters is a minority group. If this percentage were lifted a greater interest would be created in an election or referendum, because it would be necessary to bring along a greater number of people to vote.

In the past the 10 per cent. of the eligible voters could give a majority decision, but that percentage would only be a very small portion of the total voters in the district; in fact, it would represent a very minor portion. I would like the Minister to look into this aspect, and, if possible, increase the number to 20 or 25 per cent.

The other point on which I wish to speak relates to the power of local authorities to make by-laws governing holiday camps, in much the same way as they can in respect of caravan parks. There is a great deal of difference between

the two set-ups. In the past in some areas holiday camps have been registered as caravan parks, but they were of such a low standard that they would not induce people to go caravanning. Many of these camps were established near beaches, and the caravans were placed almost side by side. They were the means of enabling people to spend a holiday at the beach at a very cheap rate, but they should have been afforded greater protection by the shires than they have up to the present time.

If they are required to be registered we would have some control over them, and we could ensure better standards in those camps. We would have proper parks with plenty of space and adequate facilities, and people would be proud to camp in them overnight. The two different set-ups might be all right in some respects, but as far as I am concerned I would not like to see too many holiday camps being established without proper control over them. The Bill seeks to bring about such control. There is nothing more I can add, and I therefore support the second reading.

**THE HON. L. A. LOGAN** (Upper West —Minister for Local Government) [9.28 p.m.]: I thank members for their support of this measure. Consideration has been given to the two points which were raised by Mr. Wise, and I think his wishes can be met. I agree with Mr. Heitman that in these days it is most essential to separate caravan parks from holiday camps. The standard required for caravan parks is very high, because we have to compete with the standard which is provided in the Eastern States. Many people from the other States come to Western Australia, and they are used to a high standard.

The Hon. F. R. H. Lavery: You are not referring to the type of establishment at Naval Base?

The Hon. L. A. LOGAN: Today what we find is a combination of a caravan park, a camp, and a chalet, being registered as a caravan park.

The Hon. F. R. H. Lavery: My question is directed to establishments from which profits are being made.

The Hon. L. A. LOGAN: By-laws cannot be made to comply with both sets of requirements, and that is the reason why the proposal is put forward to separate the two. Our caravan parks should be the equal of those in the Eastern States. They should be, because fairly rigid conditions have been laid down, and these have paid dividends. Where the owners have complied with the by-laws they have reaped the benefit through increased trade.

The amendment to section 400, to which Mr. Wise referred, was introduced to overcome a problem which the Fremantle City Council faced. In my opinion it undertook a very big job in redeveloping the centre of the city, when it undertook something like a £2,000,000 project. This showed great courage; and it was to the credit to the City of Fremantle that it should have undertaken such a mammoth job.

The Hon. F. J. S. Wise: They have terrific pride there.

The Hon. L. A. LOGAN: Those on the council ran into terrific problems. I know, because I was endeavouring to assist them to get it under way. They got it under way and then ran into a little more trouble. They sold to a company two pieces of freehold title on either side of what was supposed to be a pedestrian way. They also granted permission for the erection at the height of 11 feet of a connection between the two over the pedestrian way.

At that stage the land was private land and was purely used as a pedestrian way. This was the form in which the subdivision was approved. However, the Metropolitan Water Supply Department would not supply a service unless the land was Crown land and so the Fremantle City Council was forced, under section 20A of the Town Planning and Development Act, to transfer it to the Crown. Once it came under the control of the Crown, the permission which the council had given to the company to build over the pedestrian way was lost. This was the situation; and the architects had drawn up the plans and tenders had been called.

The Hon. F. J. S. Wise: Couldn't the Crown give it back?

The Hon. L. A. LOGAN: Yes. I think that might have been the easy way out of it. However, to speed things up, the City of Fremantle requested an amendment to the Act. I was willing to amend it because I had some other amendments in mind.

I agree with Mr. Wise that in its present form the interpretation is a little wider than it should be because it will be applicable to all. Therefore I am quite prepared to reduce the width of the pedestrian way to 33 feet. I think this will cover the situation because the one at Fremantle is 30 feet.

The Hon. F. J. S. Wise: I think that would be a practical width for a footpath.

The Hon. L. A. LOGAN: I have a plan here of the original set-up if anyone would like to have a look at it. I say again they have done a remarkable job in this redevelopment and they need encouragement for this type of work.

I thank Mr. Perry. We are sorry that he should have been suffering from laryngitis when giving his first speech. Having known his interest in local government for so long we appreciate his approach to the Bill.

I am not too sure what to think about the suggestion made by Mr. Heitman because I like to make sure I can get my amendments through. If we start going any higher we might get knocked back. I would rather accept 10 per cent. than go to 20 per cent. and lose it. However, if Mr. Heitman is prepared to test members he is at liberty to move an amendment, although I would not go any higher than 20 per cent. If members in this Chamber are prepared to accept 20 per cent., I will accept it.

I realise that 10 per cent. is not very high and I also realise it is a departure from the present principle. However, we must realise what does occur. There was one particular instance which we cannot exactly call skulduggery; but, because one particular president feared that if the situation was not changed he would not be elected at the next election, he had the system altered. There is nothing wrong with that. He apparently saw the writing on the wall.

However, the situation was that only four per cent. of the ratepayers voted. It indicated that they did not care particularly whether the president was elected or not. Of those who voted 2.1 per cent. were in favour of the change and 1.9 per cent. were not. Therefore 2.1 per cent. of the community changed the method and there was nothing that could be done about it because it was the law. However, I do think these things require to be treated a little bit responsibly.

I can name another shire which, under different circumstances, had a road widening project in mind, and it was a very good project. The council had a very excellent agreement with the Main Roads Department in regard to finance. However, three times the council put this on its loan estimates and three times it intended to raise a loan. However, three times one small pocket of ratepayers got together and defeated the loan. We know that under the Act if the loan is defeated the council cannot go ahead.

Any member who has driven through the township of Mundaring and has seen the excellent effect of the road widening project undertaken there will wonder why any ratepayer would vote against a loan for that particular purpose.

The president of the shire came into my office and said, "What are we going to do? This is the third time this loan has been refused and we are at our wit's end." I said, "What is the agreement with the Main Roads Department?" He told me that the department was providing so much and the council was providing so much. After I had asked him what the revenue of the Council was like, and he had told me, I said, "Contact the Main Roads Department and get on with the job, and pay them in three yearly instalments out of your revenue. You do not have to worry about the loan and the ratepayers if you do that."

I am sure we all know the result of that advice to the then president. Everyone who uses that road appreciates the fact that it is possible to drive through Mundaring at 40 miles an hour without the fear of running over someone.

I have given these illustrations to show that a minority group can sometimes cause the wrong thing to be done. In other instances of course a minority group will do the right thing.

However, I leave this point to members to decide. If Mr. Heitman wants to test the feeling of members I am open to the advice of the House in this regard. I commend the Bill to the House.

**Question put and passed.**

**Bill read a second time.**

*In Committee, etc.*

The Chairman of Committees (The Hon. N. E. Baxter) in the Chair; The Hon. L. A. Logan (Minister for Local Government) in charge of the Bill.

**Clause 1 put and passed.**

**Clause 2: Section 10 amended—**

The Hon. J. HEITMAN: I move an amendment—

Page 2, line 6—Delete the word "ten" and substitute the word "twenty".

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 3 to 9 put and passed.**

**Clause 10: Section 199A added—**

The Hon. F. R. H. LAVERY: I am concerned about the caravan park at Naval Base where people have permanent caravans. They pay a rent to the shire, but do not pay any rent to a private organisation. Athol Thomas some time ago drew attention to some of the ramshackle places there, and protest meetings were held and it was found that people in a good financial position had caravans there in order that they might take their children to that very beautiful beach in the summer. Knowing the battle that occurred, I would like to know whether, under this provision, it is intended to do away with that particular park.

The Hon. L. A. LOGAN: The answer to the honourable member's question is "No." I think if I asked him the question as to whether he would call the place a caravan park, he would answer "No." In my opinion the two cannot be combined under a regulation. It is necessary to separate them. This will give the shire an opportunity if it so desires to introduce by-laws to cover this particular camp or whatever it is called, and other by-laws to cover caravan parks.

The Hon. H. K. WATSON: It would seem we have a peculiarity here in that whilst the intention is that the council will make by-laws for camping grounds owned by private individuals, here we have the unusual position that the camping ground is owned by the shire and the rent is collected by the shire. Therefore it is very unlikely that the council would cramp its own style.

The Hon. L. A. LOGAN: Where does the honourable member get the idea about the privately-owned land? This is designed for land owned in any municipal district. It does not say that it must be owned by a municipality or by an individual.

The Hon. H. K. Watson: It implies an individual.

The Hon. L. A. LOGAN: No.

The Hon. H. K. Watson: That is the usual thing.

The Hon. L. A. LOGAN: It says that a council may so make by-laws regulating the use of land within its district, irrespective of what land it is. I would say it would have the right to regulate its use by a by-law.

**Clause put and passed.**

**Clause 11 put and passed.**

**Clause 12: Section 400 amended—**

The Hon. L. A. LOGAN: I move an amendment—

> Page 6, line 11—Insert after the word "way" the words "of not more than thirty-three feet."

The Hon. F. J. S. WISE: On the spur of the moment it is difficult to visualise any existing ways, walks, or courts which come within the definition of the word "way" in the Act and which would be affected by this amendment. London Court is private property; but within the use of the words "pedestrian way," if the amendment is agreed to, the owners perhaps would be regarded as having a permissive right to construct an overway or a connection between the two lines of buildings.

The Hon. L. A. Logan: You are allowed to put a pedestrian way over the top now. You are allowed to put a ladder or an access way across.

The Hon. F. J. S. WISE: If Hay Street becomes the mall that is forecast this would not affect it because that street is 66 feet from kerb to kerb. Under the circumstances I think 33 feet is quite safe.

The Hon. L. A. LOGAN: Last evening Mr. Wise queried whether paragraph (b) was the right way to do what was intended. I have had the matter examined by the draftsman and he has suggested that in section 400 (2) (a) we delete the words "if posts are used for the support of the awning or verandah, so that" and insert in lieu the words "unless prohibited by so doing by by-laws of the council, may use posts for the support of the awning or verandah provided."

I have discussed this matter with Mr. Wise and I think he is satisfied that this is the way we should deal with it.

**Amendment put and passed.**

The CHAIRMAN (The Hon. N. E. Baxter): I think it will be necessary for the Minister to move that paragraph (b) be deleted and a new paragraph be inserted in the Bill in its place.

The Hon. L. A. LOGAN: Very well. I move an amendment—

> Page 6, lines 21 to 24—Delete paragraph (b) and substitute the following:—
>
> (b) by deleting the words "if posts are used for the support of the awning or verandah, so that", in lines 4 and 5 of paragraph (a) of subsection (2) and substituting the passage "unless prohibited by so doing by by-laws of the Council, may use posts for the support of the awning or verandah provided".

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 13 and 14 put and passed.**

**Clause 15: Section 533 amended—**

The Hon. J. HEITMAN: I move an amendment—

> Page 7, line 6—Delete the word "ten" and substitute the word "twenty."

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 16 and 17 put and passed.**

**Clause 18: Section 611 amended—**

The Hon. J. HEITMAN: I move an amendment—

> Page 8, line 9—Delete the word "ten" and substitute the word "twenty."

The Hon. L. A. LOGAN: I remind members that it will be necessary to recommit the Bill for the purpose of reconsidering clause 5 with a view to making a consequential amendment.

**Amendment put and passed.**

The Hon. J. HEITMAN: I move an amendment—

> Page 8, line 14—Delete the word "ten" and substitute the word "twenty".

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 19 and 20 put and passed.**

**Title put and passed.**

**Bill reported with amendments.**

*Recommittal*

Bill recommitted, on motion by The Hon. L. A. Logan (Minister for Local Government), for the further consideration of clause 5.

*In Committee, etc.*

The Chairman of Committees (The Hon. N. E. Baxter) in the Chair; The Hon. L. A. Logan (Minister for Local Government), in charge of the Bill.

**Clause 5: Section 30 amended—**

The Hon. J. HEITMAN: I move an amendment—

Page 2, line 32—Delete the word "ten" and substitute the word "twenty".

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Bill again reported, with a further amendment.**

## PLANT DISEASES ACT AMENDMENT BILL

*Second Reading*

Debate resumed, from the 16th September, on the following motion by The Hon. L. A. Logan (Minister for Local Government):—

That the Bill be now read a second time.

**THE HON. S. T. J. THOMPSON** (Lower Central) [10.6 p.m.]: I rise to support this measure, although I would like to see something much more drastic introduced. The Bill introduced by the Minister will give some measure of relief to the numerous people who have a registered vine or a fruit tree, and who might then have forgotten all about them. The next thing they know is that they get a summons. This Bill will allow them the privilege of paying a 10s. fine without court costs, which are usually included.

The original Act was introduced in 1914, and its provisions aimed at the control of pests, both vegetable and animal, which attacked fruits or plants. I would suggest that the principal pest over the years has been fruit fly. We have battled with this pest for some 50 years now, and it was only recently that the department made some break through in its eradication.

It has been proved that, in selected areas, it is possible to eradicate the fruit fly. We have proved that in certain parts of the State. Seeing that we have been able to achieve this result in selected areas, I feel the time is appropriate for us to forget about the licensing of backyard orchards—and I do not include commercial orchards—and introduce a small charge on all properties to cover the cost of an eradication scheme; because although people may not have a fruit tree in their garden, it is possible they have a host plant which will carry this pest during the time when there is no fruit.

From what I can gather the present license fee brings in a sum of approximately £21,000 a year. I have not been able to get a breakdown of this expenditure, but I venture to say it is little more than an attempt to police the registration of orchards.

The Hon. F. J. S. Wise: Does that include fines?

The Hon. S. T. J. THOMPSON: No, only money received from registration fees. I have not the breakdown figures for all commercial and backyard orchards. The fines would, of course, amount to a very substantial figure. The Minister said that there were about 600 people summonsed each year.

The Hon. J. Dolan: That would only be £600.

The Hon. S. T. J. THOMPSON: To those fines will be added the court costs which, unfortunately, have to be paid. It is very easy to forget to register one's orchard. I have forgotten to do so on many occasions. There does not appear to be any great policing of this aspect in Western Australia. If one travels interstate one can immediately see the difference in the care taken by the States over east to prevent the spread of this pest into their areas. We appear to do very little in that respect.

I venture to say that the £21,000 does not go very far in helping to eradicate fruit fly at this stage. A scheme introduced by the department, of holding a ballot in the area concerned, has been run entirely by the local committees. In my area we are on to the second ballot and into our second three-year period, and there is no trace of fruit fly whatever in that area. The scheme is entirely self-supporting, the required amount being willingly paid by the householders. We are, however, faced with the possibility of infestation from the city areas and other areas which are not policed. I feel the time is ripe for the department to take drastic action in this matter. It should make an all-out attempt to eradicate this pest once and for all.

The Hon. L. A. Logan: What do you pay per household at Wagin?

The Hon. S. T. J. THOMPSON: The amount varies, but the average is 10s. per year per householder. It is very cheap. The amazing part of the scheme is that the properties are only visited once a week. On the face of it, it appears to be a very inefficient scheme. The trees are squirted from a knapsack spray, and although this might not appear to be very thorough, the results are certainly most encouraging.

At one time all the fruit in the Wagin and the Great Southern area was infested. The scheme is now in its fifth year, and we have not seen a single fruit fly. Wherever the scheme has been carried out it has been successful. If these things are organised we can certainly eradicate the

fruit fly. Part of the metropolitan area had a ballot last year; I think it was the Shire of Perth. In the metropolitan area the scheme would have to be taken on a face, because there is a possibility of contamination over the border.

It is different in the country areas where a few miles are involved. We live three miles from town, and we very rarely encounter fruit fly. We have been able to keep it in check down on the farm, and prevent its spread; though it does spread to a certain extent by fruit being carried. I suggest that, to be effective, the metropolitan area would have to be tackled on a face.

The backyard orchard license fee of 2s. per tree is out of date, and I recommend that the department take immediate action to introduce a scheme whereby every landowner will contribute something towards the eradication of fruit fly. We should really get on with the job of eradicating this pest in the manner I have suggested.

**THE HON. H. R. ROBINSON** (North Metropolitan) [10.14 p.m.]: I also rise to support the measure. Over the last several years I have made representations that some action be taken in connection with this matter. On many occasions people have come to me, because they have been issued with a summons in relation to the registration of their fruit trees. The people generally concerned have been New Australians, mainly Italians, who do not understand the provisions of the Act.

The first thing to happen is that an inspector goes along; and if they have not registered for the period of two years summonses are issued. There have been occasions when they have registered, but they have missed a year; and on the second year an inspection has been made and without further warning the people concerned have been prosecuted. They did not want to avoid the payment of the two shillings; but they resented the fact that they had to go to court, or plead guilty to the charge; and, in some cases, they have gone to court in ignorance not knowing they could plead guilty. The result of this is that they have been fined in the vicinity of £4 or £5 plus costs.

I know there has been great resentment about this in some portions of the metropolitan area. However, under the provisions of this Bill people will receive a warning which they did not get before. When they register for a period of five years I think the department does send out a reminder, but when they register only each year no reminder is sent out. If they happen to miss a year they are prosecuted. On many occasions I have had to make representations to the Minister in this matter, but nothing could be done. The people concerned had to pay the £4 or £5 fine; and, in some cases, the costs ran into an extra £2 or £3.

I feel it is not a case of their trying to avoid their responsibilities in regard to the eradication of fruit fly, because a big majority of ratepayers within the Shire of Perth voted for the mass spraying scheme. I would venture to say that the overall charge in the metropolitan area will be fairly reasonable, but at the same time I feel it will be necessary for people to make quite sure that they register, even though there is going to be mass spraying in their particular shire.

I support the measure as I feel it is a step in the right direction.

**THE HON. F. D. WILLMOTT** (South-West) [10.18 p.m.]: I desire to support this measure. I do not intend to take up much time, but I am particularly interested in this matter and have been for years. As some members will recall, I put up the idea of eradication of fruit fly. Unfortunately, for many years, the dement would not think in terms of eradication; it thought only in terms of control. I rather agree with Mr. Syd Thompson when he says that the introduction of these voluntary schemes has demonstrated to the department that eradication is a distinct possibility.

Concerted action taken in in the metropolitan area could be effective, but there is one essential to which consideration will have to be given before the scheme can become effective, not only in the metropolitan area but in country towns. It will be necessary to ensure that all trees are registered so that the departmen will know where the trees are that have to be treated. That is not the position at the present time.

I feel the department—as I have advocated in the past—will have to be given the power to remove trees which are not registered as that is the only way we will get the public to realise that if they do not register their trees they will lose them. I have advocated this before, and I do so again; and it should be extensively advertised that any tree, if it is not registered, will be immediately removed after a given date without any option. That is the only way to get the trees registered. I am certain there are thousands of trees in householders' backyards which are not registered and of which the department has no knowledge. Until that problem is dealt with we cannot deal with the fruit fly.

The Hon H. C. Strickland: You must include Crown lands.

The Hon. F. D. WILLMOTT: Yes, and roadways. Greenbushes is a town that carried a big mining population in the past, and there are all sorts of fruit trees dotted about what is now nothing else but bush. There are also fig trees, which are one of the worst kinds. Until that situation is dealt with, fruit fly cannot be eradicated. Trees unregistered and trees

growing on roads and on Crown land will have to be removed. Until that step is taken we cannot really eradicate fruit fly. I think it can be eradicated; and in the long run that will be cheaper than trying to control it.

The Hon. N. McNeill: Rose bushes and gooseberries can carry fruit fly.

The Hon. F. D. WILLMOTT: They can, but only when the fruit fly is in a concentrated form. If there is an eradication programme being carried out there will be only a few flies about and they will go to the most favoured spots. I think it is possible to think in terms of eradication and I hope the department will give some thought to it. I support the Bill.

**THE HON. F. J. S. WISE** (North—Leader of the Opposition) [10.22 p.m.]: I support the principle of this Bill, but there is something in clause 2 to which I think the attention of the House should be drawn. Clause 2 proposes to amend section 8. For all the deficiencies and delinquencies in connection with section 8, the penalty is £20; and, in addition, a daily penalty of £1 for every day or part of a day during which the default continues.

The proposal in this Bill is that if a person is not registered for two months, or 60 days, he shall be given the chance to register; and, if he registers, he simply pays the fee, plus 10s. as a modified penalty, as it is described.

It is centering around the words "modified penalty" that I draw the attention of the Minister. For example, the penalty in that section is £20 plus a daily penalty of £1 for 60 days, which makes it £80. This could be the penalty under paragraph (c) if a person objects to paying the 10s. and defies the law.

The Hon. L. A. Logan: That is if the court applies the maximum.

The Hon. F. J. S. WISE: Yes. I suggest the Minister have a look at section 35 of the Act as I think he will agree with me, when I outline the effect of that section, that we will have to amend the words "modified penalty" and not call it a penalty, but refer to it as a surcharge. Section 35 of the Act reads as follows:—

> The minimum penalty for any offence against this Act shall be one-twentieth of the maximum—

It goes on to say—

> —and no court or magistrate shall have any power to reduce such minimum.

The Hon. L. A. Logan: Under the new definition, the early proceedings will not be taken in a court at all.

The Hon. F. J. S. WISE: Of course not; but a penalty is provided for, and it is called a modified penalty on three occasions in the Bill; and, so that it will not conflict with section 35 of the Act, I suggest that it be not called a penalty. If it is referred to as the payment of a surcharge, there will be no conflict with section 35 of the Act; but if it is left as it is we will have the situation where a person will go to court and this new part of the Act will be read and not complimented upon. I would like the Minister to look at it.

The Hon. A. F. Griffith: The intention here was to avoid the prosecutions that have followed in the past. I did not like that.

The Hon. F. J. S. WISE: I agree with the principle as I think it is a good one. A person can say, "I have been neglectful and I will pay the 10s. surcharge on what I should have paid". However, if it is called a penalty, it will conflict with section 35 of the Act which does not permit of any reduction in a court, as the minimum fine that can be charged is one-twentieth of the maximum. In this case one-twentieth of £80 must be £4.

The Hon. A. F. Griffith: It does not become an offence until it gets into the court.

The Hon. F. J. S. WISE: Here it says he has committed an offence. I think it should be looked into.

**THE HON. F. R. H. LAVERY** (South Metropolitan) [10.27 p.m.]: I wish to support the remarks made by Mr. Syd Thompson in regard to what is happening in the other States, as I have just travelled through them by car. I went the long way round in the early part of this year. It pleased me immensely to see how fruit fly was being dealt with, particularly on the main highways. Interstate travellers were shown the greatest courtesy by inspectors. It was not a matter of ripping one's car open; one was treated with the utmost courtesy.

When a Bill was before this House two or three years ago, I mentioned that if one went down our highways travelling at 40 or 50 miles per hour, suddenly one would come across a sign which stated that fruit must not be taken past that point. A 44-gallon drum was provided; and if one were travelling at 40 to 60 miles per hour, one would not reverse to put fruit in that open-top drum, which contained no solution of any kind to kill the fruit fly.

I have seen fruit in a rotten state in these drums. I have stopped and looked because this has been of interest to me for a long time. I found maggots moving in the drums.

There has been a plebiscite held in the Applecross area and a number of people have agreed to the system of spraying, and others have disagreed to the point that they have written letters which have appeared in a certain section of *The West Australian* issued in that area. Others

have been pulling their trees out rather than let the people concerned come in to spray their trees and do damage to their plants. Eradication of fruit fly is something which needs to be investigated; and I think the time has arrived when action should be taken similar to that in dealing with the Argentine ant.

**THE HON. L. A. LOGAN** (Upper West —Minister for Local Government) [10.30 p.m.]: In view of the remarks of Mr. Wise, it would be advisable for us to leave the Committee stage until tomorrow in order that I might have a look at this. It does seem at first glance that it could be a conflict, particularly when the word "penalty" is used on both occasions.

The Hon. F. J. S. Wise: It could be all right.

The Hon. L. A. LOGAN: I will consult the draftsman tomorrow about it. I think that everyone here is imbued with the necessity to find the best way to eradicate fruit fly for the benefit not only of the fruit industry itself but for the benefit of the backyard orchardist. Nothing is so disheartening to the backyard orchardist with one or two trees to be unable year after year to eat any of his fruit because of fruit fly. The amount mentioned by Mr. Syd Thompson—the sum of 10s.—does not seem to be excessive for each householder to pay in an effort to control fruit fly. In my opinion, the householder will be in a position to start getting cheap fruit without much trouble.

It has been said that many types of plants are hosts to fruit fly as many of them are susceptible to it. Fruit fly has even been found to affect grapes to some extent. I have five grapevines in my backyard and have had terrific crops of grapes on them for the past five years, despite the birds and the bees and everything else. I have had no fruit fly, although the vines have never been sprayed.

Several members interjected.

The Hon. L. A. LOGAN: They are registered. I did the right thing and registered them for five years. I feel that more publicity should have been given to the advisability of paying for five years instead of 2s. a year. This would avoid the householder getting into trouble, because at the end of five years he receives a reminder. It would also save a terrific amount of administration. I do not know whether any publicity was arranged at the time, but there is a definite need for more. Everyone would be better off if people did this.

Whether the department will ever get down to the basis suggested by Mr. Willmott, Mr. Syd Thompson, and Mr. Lavery, I do not know. It will be pretty difficult to accomplish. However, at least the attempts being made by the local authority which has undertaken this method have certainly produced evidence that with a little bit of extra work and effort fruit fly can be controlled in this State.

Until such time as this is achieved our efforts—and there have been several in the past—to set up proper fruit-canning factories will fail because we will not have sufficient fruit-fly-free fruit to enable the factories to continue in operation. I recall the occasion when Mumzone started up at Welshpool; but it had to close down because it could not get a sufficient quantity of fruit not affected by fruit fly. This is not a good position for a State like Western Australia in which we have enormous quantities of fruit of good quality.

It therefore behoves each and every one of us—the public, and the fruitgrowers—to support any measure which is taken in an effort to evolve a scheme for the complete eradication of the fruit fly. I commend the Bill to the House.

**Question put and passed.**

**Bill read a second time.**

## HOUSING LOAN GUARANTEE ACT AMENDMENT BILL

*Second Reading*

Debate resumed, from the 16th September, on the following motion by The Hon. A. F. Griffith (Minister for Mines):—

That the Bill be now read a second time.

**THE HON. F. J. S. WISE** (North—Leader of the Opposition) [10.36 p.m.]: The main purpose of this Bill is to make available more money by the non-inclusion of the value of land in the valuation of homes, and this particularly applies to homes that are the subject of resale or transfer. It will have the effect, I think, on a close analysis, of making more money available to the State Housing Commission for reloaning, or the servicing of new loans.

The other aspects in the Bill also appear to me to be quite desirable and refer to the execution of guarantees and the authorising of the financing of other than new homes as well as new homes. I have no objection to this Bill.

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

**Question put and passed.**

**Bill read a second time.**

*In Committee, etc.*

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

*House adjourned at 10.38 p.m.*