Sir DAVID BRAND: As the Bill is framed I believe that a department should be set up. As experience is gained we can enter the field of giving the Minister more powers and authority. I am quite convinced that if we are prepared to give this legislation a trial it will work, if we want it to work.

Mr. Jamieson: It will not work with the Minister you have in mind.

Sir DAVID BRAND: Yes, it will.

Mr. Jamieson: We will see!

Sir DAVID BRAND: That is a matter of opinion. All Governments have found this to be a problem: the personalities of Ministers, of Premiers, and of departmental officers. I know it is most important that a person of the right temperament be appointed as the Minister in charge of this portfolio, because he will have a difficult task to perform. At this point of time he should not carry the full responsibility of making some of the decisions.

If it is proved subsequently that he does require additional powers and further statutory backing then naturally the Government will give them, because the Government wants the legislation to work. I am sure that adjustments will be made accordingly. We cannot hope for any miracle or a magic-wand result. It is a case of Rome not being built in a day. To the extent that air is polluted and to the extent that damage is caused, we have to put the position right and we have to ensure that it remains right. I have pleasure in commending the Bill, and I thank members for their support of it.

Question put and passed.

Bill read a second time.

In Committee

The Chairman of Committees (Mr. W.A. Manning) in the Chair; Sir David Brand (Premier) in charge of the Bill.

Clauses 1 and 2 put and passed.

Progress

Progress reported and leave given to sit again, on motion by Mr. I. W. Manning.

MARKETABLE SECURITIES TRANSFER BILL

Returned

Bill returned from the Council with amendments.

INTERPRETATION ACT AMENDMENT BILL (No. 2)

Receipt and First Reading

Bill received from the Council; and, on motion by Mr. Court (Minister for Industrial Development), read a first time.

House adjourned at 12.30 a.m. (Thursday)

Legislative Council

Thursday, the 5th November, 1970

The PRESIDENT (The Hon. L. C. Diver) took the Chair at 2.30 p.m., and read prayers.

QUESTIONS (3): ON NOTICE

1. EDUCATION

School Hostels Subsidies

The Hon. J. M. THOMSON, to the Minister for Mines:

As announced in the recent Budget that the subsidy paid to Country High School Hostels of 50 cents per student per week will be increased to $1.50 per student per week, operative as from commencement of the next school year, is it intended that the $1 increase per student per week be deducted from the "term fees" paid, thus resulting in financial assistance and benefit to the parent?

The Hon. A. F. GRIFFITH replied:

At present the maximum fee charged is $160 per term. In such cases it is expected that the parents will receive the full benefit of the proposed hostel subsidy.

2. EDUCATION

School Libraries

The Hon. G. E. D. BRAND, to the Minister for Mines:

(1) How many Junior High Schools have a library for the use of teachers and students?

(2) Are Junior High Schools considered as Primary Schools for the purpose of installing libraries?

(3) Will the Minister investigate the situation with a view to the establishment of libraries in Junior High Schools, particularly those likely to become Senior High Schools in the near future?

The Hon. A. F. GRIFFITH replied:

(1) Central libraries are not provided in Junior High Schools. All schools receive library book issues and will participate in the recently announced grants for library materials.

(2) Yes, consistent with answer to (1). The annual grant for primary schools is as follows:—

Size of School	Grant
	$
0 to 50	160
51 to 120	200
121 to 200	250
201 to 300	300
301 to 450	400
451 to 600	500
601 plus	600

This is supplemented by $100 for Junior High Schools Class I and $50 for Junior High Schools Class II.

(3) Yes.

3. CENSORSHIP

Librarians

The Hon. R. F. CLAUGHTON, to the Minister for Justice:

(1) Would a librarian who places in a public library a book subject to a ban under State or Commonwealth censorship laws be guilty of an offence?

(2) If the answer to (1) is "yes" what is the nature of the offence?

The Hon. A. F. GRIFFITH replied:

(1) and (2) The question is out of order, it seeks an expression of opinion on a question of law, namely an interpretation of the Indecent Publications Act, 1902-1967.

COMMONWEALTH PLACES (ADMINISTRATION OF LAWS) BILL

Second Reading

Debate resumed from the 4th November.

THE HON. W. F. WILLESEE (North-East Metropolitan—Leader of the Opposition) [2.39 p.m.]: If we take away the legal connotation contained in this Bill, and then endeavour to interpret the situation, it will tend to touch upon the ridiculous.

At this moment we already have Commonwealth legislation which grants a right to the States to operate on Commonwealth controlled land. The legislation now before us is to allow Government instrumentalities, and Government departments, to operate within the specific rights of Commonwealth owned land.

My problem is this: Have we, until now, had a situation whereby an individual could be transgressing a Western Australian law, and immediately he moved into, say, a Commonwealth building he could say, "You can't touch me; you can do nothing about it"?

The Hon. L. A. Logan: Only if the crime was committed on premises within Commonwealth control.

The Hon. W. F. WILLESEE: That sort of situation could not exist. It would be impossible for a fire brigade to endeavour to put out a fire, as happened recently. The State Electricity Commission could not move in to deal with some issue which was applicable only to the Commonwealth.

I am therefore confused as to why this legislation is necessary at this particular stage. If this mistake has occurred in the past, to say the least it has been a very big one. I cannot believe that an Australian or Western Australian person could move into sacrosanct Commonwealth ground and not be subject to the laws of the particular State. At this point we are virtually saying that is the case, because of the legislation that has been passed by the Commonwealth Government and that which is under consideration in this State.

The Hon. A. F. Griffith: More to the point, the High Court has said that in its judgment, and we are trying to rectify the situation.

The Hon. W. F. WILLESEE: It is an extraordinary set of circumstances.

The Hon. A. F. Griffith: It certainly is.

The Hon. W. F. WILLESEE: I do not oppose the Bill. I am merely confused. If it is necessary to pass this legislation, I wonder why the Minister sees fit to have the Bill expire at the end of 1971.

The Hon. A. F. Griffith: Because I want to keep the Commonwealth to the point of doing something about this, and every other State Government feels the same way, I think.

The Hon. W. F. WILLESEE: When the Leader of the House attacks the Commonwealth, he has me on his side.

The Hon. A. F. Griffith: I am not attacking the Commonwealth.

The Hon. W. F. WILLESEE: When he speaks placatingly about the Commonwealth I am not sure that he has not got his tongue in his cheek. Either he is with me or he is against me.

The Hon. A. F. Griffith: If you withdraw that last remark, I will be with you.

The Hon. W. F. WILLESEE: I will support the Bill and sit down.

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Justice) [2.44 p.m.]: I do no more in reply than thank Mr. Willesee and Mr. Medcalf for their contributions to the debate. I add that as far as I am concerned it is not a question of opposing the Commonwealth, although if I think the State Government is right I will not hesitate to do that. I could give a dissertation on off-shore minerals, but not during the debate on this Bill.

The Hon. W. F. Willesee: You say you want the Commonwealth to do something?

The Hon. A. F. GRIFFITH: We want the Commonwealth to share the problem with the States. We do not want to find ourselves in the situation where the complementary legislation to the Commonwealth law has been passed by the States but there is no move to amend the Constitution, in which case the situation would be resolved as far as the Commonwealth is concerned but no steps would have been taken to assert the rights of the States. It has been thought for years that

State law prevailed in the circumstances which Mr. Willesee mentioned, but it was not until the High Court decision was given that we found ourselves in this very strange situation.

The Hon. F. J. S. Wise: It puts the onus on the individual States, does it not?

The Hon. A. F. GRIFFITH: As far as I am concerned, the chief responsibility of the State Government is to make sure that there are no more Worthings—no more people placed in the situation in which Mr. Worthing found himself. That is why the Bill has a limitation of time. I am not certain of this, but I think the majority of the other States, if not all of them, will in some way place a limitation of time on their Bills, although I indicated that South Australia did not intend to do that.

The Hon. W. F. Willesee: The Commonwealth Attorney-General is not with you at this point, is he?

The Hon. A. F. GRIFFITH: The Commonwealth Attorney-General is not with us on the question of a change in the Constitution—he does not see the necessity for it. Let us hope that he will see better at some later stage. I am in the position to report that at the time I introduced the Bill the Commonwealth legislation had passed the House of Representatives. I understand it has now also passed the Senate.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

Third Reading

Bill read a third time, on motion by The Hon. A. F. Griffith (Minister for Justice), and transmitted to the Assembly.

DISPOSAL OF UNCOLLECTED GOODS BILL

Second Reading

Debate resumed from the 3rd November.

THE HON. W. F. WILLESEE (North-East Metropolitan—Leader of the Opposition) [2.50 p.m.]: On the basis that the Bill deals with the problems and hardships imposed by law on bailees—which have resulted in frequent representations being made from various sections of trade and commerce—this measure has to be accepted on a trial basis.

I would not be competent to endeavour to criticise the Bill; I approach it more on the basis of "Let us give it a trial." I realise that many difficulties are associated with uncollected goods, and within the province of this Bill I think probabilities could arise which could create many problems. For instance, if a person in business accepts a damaged vehicle for repair, and he carries out repairs, after the passing of this Bill he will have greater rights than he has at present. But what happens if the nominal owner disappears? It would be most difficult, in such circumstances, to trace the ownership of the vehicle. Also, in the case of a deceased bailor, the most important fact would be that he may have sold the goods during the period he has placed the vehicle in the hands of a person for repair.

Unfortunately these are problems that arise from day to day in matters of this nature, and this Bill endeavours to tighten up, considerably, the question of disposal of goods that are uncollected. The measure is divided into sections dealing with the disposal of uncollected goods which are assessed as having a value not exceeding $300, and of other goods which are valued in excess of $300. In this respect I can visualise difficulty. Who will make the valuation? Because values can vary from time to time. It is difficult to assess a valuation that would do justice to the owner, and this becomes an all-important factor when goods in excess of $300 are to be considered.

I will not expect the Minister to answer these questions. I think we will find the answers only by application of the legislation. However, the Bill seeks to clarify the rights of the bailor. I think it clearly gives a right to the person who has previously been caught—if I can use that term—in a particular transaction. I am a little concerned about the provisions contained in clauses 9 (1), 12 (1), and 19 (2)—which are complementary—under which a bailee is required to serve notice on a bailor, because at the time the notice is to be given the bailor's whereabouts could be unknown, and in such circumstances we would have a stalemate.

What would be the position if, for instance, a person is of unsound mind? What would be the position if a person is incapable of honouring the obligations that are thrust upon him by the serving of this notice? I do not think such contingencies would arise from day to day, but they could occur during the course of a year's transactions. I do not know the answers, but I pose the questions. I think in accepting the legislation we should do so on the basis that it does represent a step forward.

This is a new piece of legislation brought before Parliament and it seeks to treat this particular problem on a different basis. It has been studied by highly qualified people and I feel sure the Minister would be the first to return to Parliament, should any problems arise with the legislation—including the problematical ones I have suggested—to introduce amendments that will place it on a firmer basis. In principle, I think

we should consider the situation of a person who does not have a complete title to a vehicle, leaving the middleman—the one who effects repairs to a damaged vehicle —lamenting without recourse to law. Under this Bill he will be given that recourse, and therefore I support the legislation.

THE HON. CLIVE GRIFFITHS (South-East Metropolitan) [2.58 p.m.]: I wish to say one or two words in support of the Bill. I believe it is a great step forward in trying to overcome a problem that does exist in the community, especially among those people who carry out repairs, in one form or another, for other people. Members would be amazed at the kind of articles people take to another person to have repaired—I have had experience of this—and then, for some reason or other never return to collect them. As a result, the repairman is left not only with the goods that he cannot dispose of, but also with the problem of finding somewhere to store them. He dare not get rid of them, because he is unable to do so by law. In addition, he has also spent a considerable amount of money on getting the goods that are left with him into working order.

I know that over a number of years I finished up in my repair business with all sorts of goods that, for some reason or other, people saw fit not to come and collect. I have spoken to other people who have differents types of businesses and they told me that they were faced with the same problems.

I think we will run into some difficulties with this legislation and in the course of time we may have to amend it to make it a little more workable than perhaps it will be when it is first put into operation. However, it is a start in the right direction and I think it is legislation that will be welcomed by all those in the community who carry out repairs. At least it is an attempt to overcome a problem which does exist. One of the difficulties repairmen will be faced with, as Mr. Willesee mentioned, is in deciding whether a particular article is worth more than $300. I do not think this will be a major problem to overcome, but it certainly will not be easy to make an assessment where there is some doubt about the value of an article. I do not know how accurate the assessment will have to be and that could well be a problem.

The Hon. W. F. Willesee: If you owned the vehicle you would be concerned about its value.

The Hon. CLIVE GRIFFITHS: I do not know whether one would be or not. I think the value only establishes which method of notification or which method of getting rid of the goods is used. For example, if the goods are worth less than $300 the method described in part III of the Bill is used; if they are worth more than $300 the method described in part VI is used.

The Hon. W. F. Willesee: What about your personal opinion as to the value of your own vehicle?

The Hon. CLIVE GRIFFITHS: Does the honourable member mean what would I think if I was the person who sent a vehicle in to get repaired?

The Hon. W. F. Willesee: Supposing you said it was worth $400 and the repairman said it was worth $300, or less?

The Hon. CLIVE GRIFFITHS: Let me put it this way: Assume I was the person who owned a particular piece of equipment and I thought it was worth more than $300 and the man who was repairing it thought it was worth less than $300. In that case the question of assessment would come into it. If the repairman thought the equipment was worth less than $300 he would send me a particular form of notification that he would sell the article if I did not collect it. When I received that I would immediately go to see him and advise him that I thought it was worth more than $300 and therefore he should have notified me on a different form. A problem arises in a case like that in regard to the method of assessment.

The Hon. A. F. Griffith: It might even cause you to pay your repair bill.

The Hon. CLIVE GRIFFITHS: Yes, and to pick up the goods. We have to bear in mind that we do not know which goods will be prescribed goods, and it could well be that all sorts of goods will come under this particular heading. Not being in a position to know what those goods will be at this stage, it seems to me that with goods valued at less than $300—considering all the trouble a repairman would have to go to to put an advertisement in the *Government Gazette*, in different newspapers, and carry out certain other requirements—I would not be too enthusiastic about notifying somebody to pick them up. However, that may not be a problem; I am simply saying that it may be.

Another point that comes quickly to mind—and again I do not know whether this would be a major problem—is that clause 29 states that the cost of any expenses or trouble a repairman has gone to in notifying a bailor that he intends to take the necessary action to sell his goods if he does not pick them up can be recovered by applying to a court of competent jurisdiction—that is, if the person concerned picks up his goods before the sale takes place. The point is that the repairman has to carry out the necessary advertising and wait a month before he can take any action to sell the goods if they are not claimed.

The Hon. F. J. S. Wise: There is a section in the Pawnbrokers Act that may be applicable in that instance. Under that section a pawnbroker can sell unredeemed articles.

The Hon. CLIVE GRIFFITHS: I do not know about that, but it seems to me that a person should be permitted—

The Hon. F. J. S. Wise: I have not had personal experience of what I was referring to.

The PRESIDENT: Order!

The Hon. CLIVE GRIFFITHS: It appears to me that a repairman ought to be able to add to the cost of the repairs the costs involved in advertising, etc., instead of having to go to a court of competent jurisdiction; so that, for instance, instead of a bill being $29 it could be increased to $32 if he was $3 out of pocket through advertising and so on. Having to apply to a court of competent jurisdiction to obtain the expenses involved means a great deal of fiddling around, and probably this means still further expense. However, at least the Bill provides an avenue to ensure that if people do not collect their goods those goods can be sold and a repairman can get his money back.

I know that many people do not claim their goods. I know from personal experience that if someone has an article valued at over $300 he will generally come back to collect his goods. Such a person is keen to collect his goods because of the value involved. However, it is the person who owns an article valued at up to $25 who frequently does not come back to collect it because he finds that it will cost up to $12 or $14 to repair and, in many instances, he can purchase a new article on $5 deposit and small weekly payments.

A person might take an article to a repairman and say, "How much will it cost to have this repaired?" and the repairman might say, "It will cost you $10 or $12." Then this person might say, "Go ahead and do the job"; but having left the article to be repaired, he might find he can buy a new one for $5 deposit and a couple of dollars a month, and so he decides not to worry about his old article and he leaves it with the repairman. From my experience this is one of the reasons people do not pick up articles they have left to be repaired. They find they can buy a new one for not a great deal more than it costs to have the old article repaired and they leave it with the repairman who, in the meantime, has carried out the repairs.

However, with goods that cost $200 or more—

The Hon. W. F. Willesee: I often wondered why you sold out.

The Hon. F. D. Willmott: He could not afford to keep going.

The Hon. CLIVE GRIFFITHS: When I did, the chap who bought me out purchased all these unredeemed goods at the same time.

The Hon. R. Thompson: You sold them, did you?

The Hon. CLIVE GRIFFITHS: No, the purchaser of my business took over the storeroom in which all these unredeemed goods were stored. Those goods were clearly marked with the names and addresses of the owners. They were goods that had been left with me since 1953. They could still be picked up if anyone could find them under the dust. I certainly did not sell them.

The Hon. R. Thompson: That was a legacy they inherited.

The Hon. CLIVE GRIFFITHS: That is so. The purchaser inherited the doubtful privilege of storing those goods until we pass this Bill. I have much pleasure in supporting the measure but I realise there will be some teething troubles. There is no doubt this legislation is a start and it will help to solve a very difficult problem

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Justice) [3.09 p.m.]: It seems that there is little necessity for me to speak at length in reply. However, I would like to avail myself of the opportunity to look at one or two of the points raised by Mr. Willesee, particularly in respect of some clauses. Therefore, I think the best thing we can do is to leave the Committee stage until next week. There may be a number of questions relating to the clauses which may be asked when the Bill is in Committee. I will have an opportunity in the meantime to study the honourable member's remarks and to deal with them on Tuesday when the Bill is in Committee.

I thank Mr. Willesee and Mr. Clive Griffiths for their support of this Bill which, of course, is new legislation as has already been said. This is a subject I believe Parliament should tackle because the present state of affairs, from the point of view of both the owner who leaves his goods with the repairman and the man who carries out the repairs, is very unsatisfactory, when the owner does not come along to pay his account and pick up the goods.

The Law Reform Committee tackled the problem which has existed for a long time, and this Bill is the result. In reply to Mr. Willesee's invitation, I do agree that it is the type of legislation which will allow experience to indicate where the faults, if any, lie in connection with it, and there is no doubt that if we find fault in any direction we should move to amend the law from time to time.

The Hon. R. F. Claughton: Before you resume your seat, I notice that in the schedule the City of Perth Parking Facilities Act is excluded. This would be mainly in relation to vehicles abandoned on the side of the road, would it?

The Hon. A. F. GRIFFITH: Let us deal with the schedule when in Committee.

The Hon. R. F. Claughton: I just thought—

The Hon. A. F. GRIFFITH: Does not the honourable member know that these interjections are highly disorderly?

The Hon. R. F. Claughton: The local authority—

The PRESIDENT: Order! The Minister will resume.

The Hon. A. F. GRIFFITH: If the honourable member wants to make a second reading speech he should do so on the schedule.

The Hon. R. F. Claughton: I just thought you might check it.

The PRESIDENT: Order!

The Hon. A. F. GRIFFITH: I have received the message. I will check it.

Question put and passed.

Bill read a second time.

SALE OF LAND BILL

Second Reading

Debate resumed from the 4th November.

THE HON. I. G. MEDCALF (Metropolitan) [3.13 p.m.]: As the Minister has indicated, this Bill comes to Parliament per medium of the Law Reform Committee which was established two or three years ago by the Government to submit Bills on subjects like this one which are non-contentious, but of benefit in reforming some of the basic laws under which the community operates. The Law Reform Committee has done an exceptionally good job. I have been able to see at fairly close hand some of the things the committee has done and I have nothing but praise for its work so far.

Nevertheless, I wish to make a few comments on this Bill because I believe that no matter how learned a committee, body, or person is who submits legislation to the House, it is incumbent upon members to look critically at the proposed legislation as after all, it is to likely become the law of the land. As legislators, we are expected to, and it is proper that we should, examine critically any Bill which comes before us.

If anything I say is construed by anyone as being in any sense criticism of the committee, such a view is erroneous. What I intend to say is merely my opinion on some of the points the committee has worked on. I propose to make my comments, and I hope the Minister will perhaps refer them to the committee to see whether something further may be heard on these matters I will raise.

One of the besetting problems in the laws affecting vendors and purchasers is how to do equity as between the vendor and the purchaser. By that I mean how to do justice between them because on occasions vendors and purchasers get themselves into very difficult situations. They sign contracts and are quite free to sign contracts in almost any terms they like so long as they keep within the general law, and therefore all sorts of varying terms are inserted in different contracts. One clause is inserted in one contract and another clause in another contract. In one case, for instance, a vendor will be bound, perhaps, to pay the commission, and in another case the purchaser will be bound to pay the commission. In one case the vendor will pay the costs and in another the purchaser will pay them, and so on.

The terms of a contract are capable of almost infinite variation. There is no standard form of contract between the two. It is true that some printed forms are available which answer the average requirements of the average man or woman, but when we look around for an average man or woman it is very difficult to find one.

It is surprising how many differences people find necessary to put in their contracts. One has to think only of one's own personal experience outside the law to realise that in the sale of any property there may be a particular matter or aspect involved. One property may have an order over it by the local authority and this requires a special mention. On the other hand, there may be a lease with an option of purchase, and that is not in a standard form. There can be any number of variations because the parties can get together and strike a bargain between themselves. They can make any sort of bargain they like.

The vendor can say, "You have to take over all the expenses and pay the land agent his commission," and, if the purchaser agrees, that is put into the contract. On the other hand, the purchaser may say, "Look here, I am not going to pay for any expenses in this. If I am to pay that price, you will pay all the costs and stamp duties," and that can be put into the contract. However, both those arrangements are contrary to the general practice under which the vendor pays the commission and the purchaser pays the stamp duties and fees. So these variations are infinite and occur all the time with the result that vendors and purchasers often get themselves into difficult situations because of the particular terms they put into their contracts.

This, therefore, leads to many problems and, as I have said, one of the most besetting is always how to do justice between the parties if they fall out, or if the contract falls down and one party cannot go on with it, or decides he is getting the worst part of the bargain and will not go on with it.

There has not been much Statute law to guide people when trying to decide these questions as between vendors and purchasers. It is true we have had the Vendor and Purchaser Act of 1878, the Purchasers' Protection Act of 1933 onwards, and the Sale of Land (Vendors' Obligations) Act of 1940, all of which Acts are to be repealed under this Bill.

In addition, we have a few other Acts, but they have been only odd landmarks here and there dealing with odd parts of the subject. We must go to the common law if we want to find what are the respective rights of the vendor and purchaser when a contract falls in and one party, for example, wants his money back. What are the rights in regard to forfeiture of the deposit? What are the rights in regard to forfeiture of instalments? If he gets his money back, should the purchaser be charged anything for living on the property for, perhaps, three or four years?

Inevitably these problems have been left to the courts and over many years the courts have decided these matters while at the same time trying to do equity between the vendor and purchaser. There has been built up a body of case law which is fairly certain in its application; but, nevertheless, basically it comes back to the contract between the parties and the bargain which they struck when they engaged to buy and sell the land.

Some of the rules built up, with which most people are familiar, are that a deposit which is treated as an earnest to bind the bargain is normally forfeited, provided it is not unconscionably large. However, normally instalments would not be forfeited.

On the other hand, if the purchaser is in occupation and gets a substantial part of his money back, he may be required to pay something by way of an occupation rent for the time he has been in the premises. The premises might be a farm and the purchaser might be getting the crops from it or pasturing his stock thereon. Alternatively, it might be some rent-producing property, or he might have had free accommodation in a house. Therefore it is considered he should pay something for this. Generally speaking, the court tries to put the parties back into the position they would have been in before the contract was signed.

Those few remarks, which are purely introductory, are quite relevant I think to consideration of the Bill. Of course the Law Reform Committee is well aware of all these matters and has gone into them at considerable depth.

I would like to refer firstly to clause 6 of the Bill which requires notice to be given of a breach of contract. This is a most important clause and it is really a very good thing that it is now to be made a statutory requirement that notice specifying the breach of contract must be given by the vendor to the purchaser before the contract can be terminated. The clause specifies that in the case of payment of money 28 days' notice must be given requiring the payment of that instalment before the contract can be forfeited by the vendor. This is very good, because many contracts do not provide any period whatever to be given and, without any notice, a vendor can rescind a contract because a purchaser has omitted to pay one instalment out of 30 or 40 instalments. This measure will prevent this from happening. It is an excellent provision.

I should have mentioned clause 5 before dealing with clause 6. Clause 5 contains a definition of "terms contract" and this is the type of contract we are dealing with in this Bill. I feel that the definition is rather restricted. I merely make that comment, but I am not necessarily suggesting that it should be enlarged. My reason for thinking that it is rather restricted is that a terms contract is now defined to mean a contract under which the purchaser is obliged to make two or more payments to the vendor over and above the deposit, or is one under which the purchaser is entitled to possession of the land before he becomes entitled to a transfer.

Two or more payments over and above the deposit are not many payments. In many contracts there can be a deposit and then a further instalment. Sometimes the further instalment is called a further portion of the deposit, although it is doubtful whether it really is part of the deposit. In any event, frequently a deposit is made, a further instalment paid, and final payment upon settlement is effected perhaps within 28 days. Under the definition this would be a terms contract, although most people would treat this type of transaction as a cash sale.

I appreciate that the definition has been made restricted because of the necessity to tighten up this aspect. Perhaps if it were not so restricted there might be opportunities for people to exclude a contract where two payments have been made over a long period. It may be that the definition could have been improved by providing a time limit. For example, the wording could state two or more payments outside a particular period, say, extending over a period of more than three months.

I appreciate that might have introduced drafting difficulties and I would not want to do that. I simply draw attention to

the fact that this definition could include some contracts which, in the commercial world, are virtually considered cash contracts.

The Hon. A. F. Griffith: In the case you mention where an offer and acceptance form is signed, and the purchaser pays 10 per cent. of the purchase price by way of a deposit, that starts off the contract. If the balance were payable on possession that would not be a terms contract.

The Hon. I. G. MEDCALF: If it were two payments apart from the deposit it would be a terms contract.

The Hon. A. F. Griffith: This would not be the position in the case of a simple deposit of 10 per cent., and the balance on possession.

The Hon. I. G. MEDCALF: No, that is true. That would not be a terms contract. However, if it were a payment of a deposit with a further instalment, say, within 14 days and the balance, say, within 28 days, that would be a terms contract.

The Hon. A. F. Griffith: The parties to the contract will know what they are doing, will they not?

The Hon. I. G. MEDCALF: We would hope so but perhaps that is the reason for this Bill.

The Hon. A. F. Griffith: That is right.

The Hon. I. G. MEDCALF: We have often wondered whether the parties always realised what they were doing and this measure is an attempt to protect the purchaser. I support the action we are taking but I maintain the definition may perhaps be a little wider than is needed, although I appreciate that drafting difficulties may be encountered if an attempt is made to narrow it.

The second part of the definition refers to a terms contract as being one under which the purchaser is entitled to possession before he becomes entitled to a transfer. This, of course, includes the case of a contract where a purchaser is let into possession when he pays the deposit.

The Hon. A. F. Griffith: That is right.

The Hon. I. G. MEDCALF: Some 28 days later he pays the balance. This is a terms contract, too. Normally that would be regarded as a cash deal. Most vendors would be unwise to let the purchaser into possession when he pays the deposit, but sometimes this is done, particularly in the case of a farm where it is necessary for someone to carry on and look after the place. I do not necessarily quarrel with the second part of the definition, but I draw attention to the slightly restricted meaning which could be placed on the first portion of the definition.

The Hon. A. F. Griffith: The only way to broaden this would be—

The Hon. I. G. MEDCALF: To provide a time limit.

The Hon. A. F. Griffith: No, but to provide for more than two payments.

The Hon. I. G. MEDCALF: Yes, that would broaden it. If the wording were three or more payments that would broaden the meaning and it would cut out the one case I mentioned where it is frequently found that a person cannot immediately produce money by way of deposit. Someone might not have the deposit which the vendor requires. The vendor is anxious to sell his property and says that he will take 5 per cent. immediately and, say, another 5 per cent. within three weeks. The purchaser knows he will be able to obtain another 5 per cent. within three weeks, and he will pay the balance on registration of a transfer or on settlement. That is really not intended to be a terms contract but it would be under this measure. That is a fairly typical situation, and I merely draw attention to it.

The Hon. A. F. Griffith: I would be prepared to have a look at this.

The Hon. I. G. MEDCALF: That is all I am asking.

The Hon. A. F. Griffith: I could perhaps talk to the Law Reform Committee about it. I see your point.

The Hon. I. G. MEDCALF: Thank you. It was not my intention that anything more than this should be done.

The next clauses to which I would like to refer are clauses 7, 8, and 10, which I think can be dealt with together. Clause 7 states that when a person proposes to sell land he must disclose the mortgages and other encumbrances which exist on the land prior to the execution of the contract. This means that before a contract is executed the vendor must disclose any mortgages, encumbrances, writs, warrants, or charges which are in existence against the land. This provision is merely a repetition of a previous Act, so there is nothing particularly new in it. I think the penalty which is provided is considerably higher than the penalty in the old Act.

Clause 8 states that after the sale of the land the vendor is not entitled to mortgage it. This is also merely a repeat of another Act and there is nothing new in the clause except that again the penalty is increased.

Clause 10, however, represents a change in the substantive law and is quite important because it states that if a person commits any breach of either of the two clauses I mentioned—that is, if the vendor fails to notify the purchaser before the contract is signed that there is a mortgage or charge over the land—or if the vendor mortgages the land at any time after the contract is signed, the purchaser may rescind. This is new law, because the clause takes the matter much further than it was taken previously. Previously, all that was incurred was a penalty and now the purchaser has the right to rescind.

The Hon. A. F. Griffith: Under present conditions, of course, the first thing one does is to search the title and ascertain what encumbrance is on it.

The Hon. I. G. MEDCALF: That is right. Of course, a prudent purchaser will continue to do that.

The Hon. A. F. Griffith: Yes.

The Hon. I. G. MEDCALF: Nevertheless, this places the onus upon the vendor to give actual, positive notification before the contract is signed of the encumbrances on the title. Whereas previously that was the law and he was liable to a penalty if he did not do it, nevertheless under the present provision the contract may be rescinded by the purchaser at any time before the registration or the final transfer takes place, if before the contract was signed—it may have been years ago—the vendor did not notify the purchaser that there was a mortgage on the title, or a writ of *fi. fa.* against the title, or some other charge no matter how small.

I do not quarrel at all with the principle of this provision and I would not like it to be thought that I do. I believe that a purchaser is entitled to a very strict account from the vendor. The purchaser is entitled, in good faith, not to be sold a pup. He is entitled to be sold what he believes he is purchasing; that is, an estate that is free of any encumbrances. On the other hand, let us take the case of a purchaser who purchases land on a terms contract that lasts for, say, 15 years. If we allow the purchaser after 15 years—just before the date of registration of transfer, and after having been in occupation for 15 years—to raise the point that before the contract was signed he was not notified that there was a writ of *fi. fa.* against the title, although it may have been discharged a considerable time ago, we are placing a formidable weapon in the hands of an unscrupulous purchaser.

Let us bear in mind that a purchaser may also be unscrupulous. It is a fact that is sometimes forgotten when we talk about victimisation of purchasers that purchasers are only human also and, unfortunately, one has to admit that sometimes there can be wrong on both sides. I can see no provision here that a purchaser will suffer any penalty in the situation I mentioned, because clause 10 states—

> 10. Where a vendor of land under a terms contract contravenes section 7 or section 8, the purchaser of the land under the contract may, by notice in writing served on the vendor at any time prior to conveyance or the registration of a transfer of the land to the purchaser, rescind the contract and thereupon may, in a court of competent jurisdiction, recover from that vendor all moneys paid by that purchaser under the contract.

Stop; finish; that is the end of the clause. I suggest that perhaps consideration might be given to one or other of two things. Perhaps, instead of waiting all this time until registration of a transfer, it might be considered more equitable to say that the purchaser can take the action at any time up to his becoming entitled to possession or receipt of the rents and profits. I put that suggestion forward merely because it is analogous to a later clause and seems to be logical. However, I am aware of a major problem in that area which I believe would mean that my suggestion would not commend itself to the Minister or the Law Reform Committee; that is, that the purchaser may be allowed into possession immediately and later on become aware of the fact that the land was mortgaged.

Perhaps a better suggestion is to add at the end of the clause something to the effect that if he recovers all moneys paid under the contract in a court it should only be on such terms as to payment of an occupation rent for the land or otherwise as the court may order. In other words, this would allow the court some discretion in perhaps not allowing a purchaser to take advantage of a vendor by reason of the stringency of the clause.

I put this up as a matter which I believe should be considered. It may have been considered already by the Law Reform Committee and it may well have an answer. It is the sort of thing that one should really discuss in committee—that is, the Law Reform Committee—and it may be that this point has already been considered by the committee. However, I would emphasise that I believe it is important that a vendor should also be able to get some compensation if his property has been held by a purchaser for many years but then, because of something that happened years ago and might have been rectified already, a purchaser is able to take advantage of the clause.

If the Minister believes that this matter has been taken care of already, or that this situation could not occur, then I will not persist with the point. However, I do raise it seriously because I believe it deserves an answer.

The Hon. A. F. Griffith: It is unlikely that a purchaser would discover a mortgage existed on a property after he had entered into a contract to purchase it for, say, a couple of years. The mortgage would have been there at the time. He would protect his purchase by lodging a *caveat*.

The Hon. I. G. MEDCALF: He might not do that; but even if he does, he would still not necessarily know there was a mortgage unless he searched the title.

The Hon. A. F. Griffith: That is the point. Surely *caveat emptor* must apply.

The Hon. I. G. MEDCALF: I refer now to clause 11 and draw attention to the definition of "sell," which includes not only what we commonly understand by "selling"—that is, signing a contract for the sale of land—but also includes the granting of an option of purchase over land. "Sell" includes advertising the land as being available for sale. So this is a fairly stringent definition and it is intended, of course, to include, if possible, every type of sale transaction. The mere advertising of the land as being available for an option of purchase would constitute the "sale" of land. So we are dealing with a fairly strict definition. I merely comment on that in passing.

Clause 13 is one which has given me a considerable amount of food for thought. This clause provides a restriction on the sale of subdivisional land and states—

> 13. A person who would, but for this Act, have the right to sell five or more lots in a subdivision or proposed subdivision shall not sell any of such lots unless—
>
> (a) he is the proprietor thereof;
>
> (b) he is selling as agent of the proprietor;
>
> (c) he sells the lot as one of five or more lots sold to one person in the one transaction; or
>
> (d) he is empowered by or under an Act to execute a transfer thereof that is registrable under the Transfer of Land Act, 1893.

Basically this comes back to a case of a person being required to be a registered proprietor before he can sell—that is, if he has more than five lots and proposes to sell one he must be the registered proprietor under the Transfer of Land Act.

This means he must have his name on the title; and this excludes the person who is buying the land himself under contract of sale. As the Minister has already indicated, this has been done for the very good reason of preventing people from selling under a chain, or a series, of contracts when they do not in fact have title. I am in favour of this principle and I am not opposing it.

I do wish, however, to draw attention to one set of circumstances which, perhaps, requires some special consideration. I refer to the case of a person who is buying under a contract and who has the right to call for a transfer—having paid part of the purchase price he has the right to call for the transfer of part of the land he is buying.

He does not in fact own the land in the sense that he has his name on the title. He is not the registered proprietor but, nevertheless, there are many contracts which provide that on payment of a certain amount of the purchase price a transfer of so many lots will be executed. This, of course, is binding and the purchaser under that contract can if he wishes call for a transfer which will give him the registered title.

Such a person under this Bill is unable to sell because he is not the registered proprietor. I know I am simplifying the other provisions but I do not think they are material to what I am saying. He cannot sell unless he is the registered proprietor, although he is entitled to call for a transfer, having paid the purchase money and being so entitled under a contract.

We have the situation today where we have a number of what we might call—for the want of a better term—big developers, who purchase land in fairly large quantities—usually on a contract of sale.

They do this because if they were to buy that land outright for cash, long before they were able to develop it, they would have to outlay a tremendous sum of money which would greatly increase their own costs and interest charges and, accordingly, increase the ultimate cost of the houses they would build on that land. It would cost the public more, or they may be unable to sell the property.

In order to keep their costs down, these tract developers purchase land in large amounts under contract of sale and then proceed to develop that land over a period of months or years. But they do not pay for the land all at once because the cost will be too high.

These people do not have the registered title, but most of them insist on having a clause in their contract whereby upon payment of a proportionate amount of the price they are entitled to a transfer of so many lots, or so much of the land which they have purchased. To simplify the position: This means if they have paid, say, a quarter of the price, they can expect a transfer of a quarter of the land. But they are not the registered proprietors and, in the meantime, they are proceeding to erect houses on the land, which they can do because the diagram has been approved by the Town Planning Board and the Titles Office, and they have the permission of the local authority to build.

Accordingly, they erect houses on the land and proceed to enter into contracts for their sale. They may enter into contracts before the houses are completed. Those contracts are often on terms because this suits the home buyers who may not want immediate possession. I am not saying that when the home buyers get possession if they have paid they should not be entitled to a transfer. That is a different story. But I do say we should permit people to sell land in this way; to

sell it provided they can demonstrate that under contract they have the right to call for a transfer under the Transfer of Land Act.

If they have the right to call for an available transfer, and they are able to execute that transfer, then, I believe, that too is worthy of consideration as one of the exceptions mentioned in clause 13. I have in mind an addition which I feel could be made to clause 13. This would be an additional paragraph (e) and would read that a person shall not sell any such land unless—and this is the addition to which I refer—

> he is then presently entitled under contract to call for an available transfer thereof that is registrable under the Transfer of Land Act, 1893, and able to execute such transfer.

It seems to me that words to that effect would adequately protect any purchaser and would still achieve the object of this legislation to ensure that people have titles when they actually sell land; because such person, though not having his name on the title, would have the right of ownership of the title. That is all I wish to say on the subject and I suggest to the Minister that he be good enough to put these points to the committee. I will be interested to hear the result.

Sitting suspended from 3.47 to 4.04 p.m.

THE HON. R. THOMPSON (South Metropolitan) [4.04 p.m.]: I wish to commend this Bill, and to thank the Law Reform Committee and the Minister for its introduction. I feel this is one of the best pieces of legislation that has been introduced in this House in the 12 years since I have been a member, because it will afford protection to people who in all sincerity enter into contracts to purchase land.

In introducing the second reading of the Bill the Minister quite correctly said: ". . . in cases the ultimate purchaser is the last in a train of transactions, and this Bill is to sustain the people who are unable to protect their transactions." I agree with those comments entirely.

From time to time we find that vendors of land have not done the right thing by the people; I refer to land developers. Possibly the first company engaged in this type of transaction to fail in Western Australia was Norm Lunt & Co. This firm failed several years ago, and with its failure many people lost the money they had paid and also their land.

The next company to fail was Group Ownership Land Development. It could not meet its obligations. There was no criminal intent by the company to defraud the people, and probably its failure was caused by inexperience. The failure of the company left many of the purchasers of land lamenting.

Before the afternoon tea suspension Mr. Medcalf was dealing with clause 13 of the Bill, and he proposed an amendment to insert a new paragraph. From the point of view of the solid and legitimate developers of land this is a most worthwhile amendment. He spoke too quickly to enable me to write down his amendment. Possibly it has some merit.

He referred to clauses 5, 6, and 10 of the Bill, and he mentioned that he could see drafting difficulties arising in amending those provisions. Last evening in the debate on the Police Act Amendment Bill (No. 2) it was revealed that it would be impossible to write a new provision into section 54 of the Police Act. This difficulty arose as a result of the requirements of drafting. I suggest that if Mr. Medcalf's amendment is accepted it will leave the gate wide open, and will enable everyone to take advantage of the situation.

I wish to refer to a case which in all probability has not as yet been made public. This concerns a firm comprising a man and his wife. The firm extended its operations into the Cockburn Shire area. It paid deposits on three areas of land, totalling 20 acres in all. On the first block it paid a deposit of $10,000, on the second block a deposit of $19,500, and on the third block a deposit of $1,000.

It transpired that the person who was in charge of this firm was a man of straw, because he was facing bankruptcy proceedings. To my way of thinking he has virtually defrauded some 30 buyers of land, of amounts totalling $35,667.10. I think this is a sad state of affairs. If the Minister intends to consider the amendment which Mr. Medcalf has proposed he should give it close scrutiny to make sure that it will not be the means of enabling persons, such as the one I have just mentioned, to operate in this manner.

This firm defrauded the purchasers of land, by accepting deposits from them. The land in question was covered by an amended town planning scheme. Late in 1968 the shire council decided to prepare a plan of development, which is a town planning scheme for part of its area, and to create building lots. The council made this decision as a start.

Very early in 1969 this developer decided to purchase land; and that was the time when he purchased the three areas in question. He proceeded to draw up a plan of subdivision of the land—and I have the plan before me—and then to sell the lots. By May, 1969, he had sold to one person a building lot, shown as No. 30 on the plan. I have the original document before me.

Although the shire council gave only preliminary approval for the preparation of a plan late in 1968, this person started to sell lots in 1969 under his own plan. It was not until midway through 1970 that

the shire finally prepared its plan, and forwarded it to the Town Planning Board, in order that any difficulties or errors might be ironed out.

Strange but true, last Friday the Minister gave preliminary approval to this plan of subdivision. Although the developer actually sold 30 lots in 1969—and this land was not his property—he had only paid deposits on the land. By a ruse he obtained the title to one block. He took the title to a finance company which lent him the equivalent of the value of the deposit he had paid. A *caveat* was then lodged against the title to the land, to the amount of the deposit. This *caveat* was not lodged in favour of the finance company but in favour of the Rural and Industries Bank.

Now we find that 30 people have paid out varying sums for the building blocks. The lowest was $890; several paid $950: nearly half of the purchasers each paid $980; and others paid $1,010, $1,060, $1,070, the highest amount being $2,020.

It is as well that before the Minister agrees to any amendments he should examine transactions in which firms like the one I have mentioned have been involved.

On the 6th May, 1969, the developer in question wrote to one of the purchasers of the building blocks. The letter states—

> Dear Sir/Madam,
>
> Please find enclosed your copy of the Contract for purchase of Lot 30 proposed subdivision Garden Heights, Spearwood. Also included is copy of proposed subdivision outlining your Block in Green.
>
> Please sign the contract in appropriate position and after witnessing, please return one copy to ourselves together with deposit of $650.00. Your Payment Booklets outlining Account No. and Due Dates for payment will be forwarded early next week.
>
> Any further information will be forwarded upon application.

So it can be seen this person really set out, from the start, to defraud the purchasers, because the proposed subdivision in the accompanying plan had never been before the shire council. Unfortunately, that person sold 30 blocks of land out of a total of 63. I might add that the 30 blocks with which I am dealing concerned one property only of about 20 acres. From my reckoning, after provision for services, 20 acres would provide between 60 and 65 blocks of land. That is the type of thing which people have to put up with. The person I have referred to calls himself a developer.

When I first heard about this matter last May, the Minister for Local Government had gone overseas, and the Minister for Fisheries and Fauna (Mr. MacKinnon) was looking after local government matters. A group of the people who had contracted to purchase blocks of land came to me and asked whether I could assist in hurrying up the Town Planning Department, so that the final plans could be approved. The purchasers feared that if something was not done quickly so that they could get the titles to the land they would lose their deposits.

My inquiries revealed that the Town Planning Department had raised some objections to the preliminary plan for the whole area submitted by the shire council. The objection related to road entrances, particularly into Newton Street in Spearwood. However, full credit to Mr. MacKinnon and the shire council, the problems were ironed out and the plan was returned to the shire for final drafting. As I have already said, preliminary approval was published in the *Government Gazette* last Friday.

People lose money through this type of activity. When the 30 people to whom I have referred realised that the original owners of land had foreclosed on the deposits which had been paid they knew they were in trouble. The terms of the original contract were that $5,000 was paid as a deposit and the balance of $45,000 was to be met with a payment of $14,500 in September, 1969, and the balance of $30,500 was to be paid on the 30th June, 1970.

When the developer could not meet his commitments the purchasers called a meeting between themselves and the matter was ultimately reported to the Bankruptcy Court. The developer concerned has now gone into liquidation. I have a copy of the minutes of the meeting of the creditors held in the offices of Melsom Wilson & Partners, on the 29th September, 1970, at 2.30 p.m. I will not mention the name of the person concerned, but I will refer to him as the developer. A paragraph of the minutes reads as follows:—

> The developer addressed the meeting stating that high overheads, lack of interest shown in the area, high interest rate on loans and the delays in sub-division had used up the Syndicate moneys.

The developer refers to the syndicate, although the sales were made on a straight-out purchase-contract basis. To continue—

> This situation had made it impossible for the company to continue. The land in Newton Street, Spearwood, was shown in a separate Statement of the partnership . . . because the developer had purchased the property in . . . before the Company had been formed and although there was an offer acceptance between the company and . . as vendor, this had not yet been registered. The syndicate members

had been kept informed as much as possible on the progress of sub-division and meetings had been held as late as June, 1970, with . . . a representative for the majority of the syndicate members.

So it can be seen that the developer did not comply with what is required under the Land Agents Act, and he did not even comply with the requirements of the Companies Act. He purchased the land in the name of an unregistered company.

I feel that this proposed legislation is tight, and it should be tight. If I have any criticism—if it can be termed criticism—it is that the penalty of $750 provided in clause 13 of the Bill is not great enough to protect the public. That sum is not sufficient to deter those who deliberately rob people.

I do not want to divulge the information—which I could do—but I have the bankruptcy statement and accounts of the developer I have been referring to. The accounts show that when the developer initially entered into the contract to purchase the properties he did not have the wherewithal to carry on. He was a smart aleck out to make money at someone else's expense. He made that money out of honest and sincere people from all parts of Western Australia.

One purchaser came from the north-west, and was probably working on one of the projects in that area. He saved his deposit by working hard but he, with 29 others, lost a total of some $30,000 because of an unscrupulous vendor.

Mr. Medcalf said that there are unscrupulous purchasers, but he was dealing with clause 10 of the Bill when he made that statement. I am sorry he is absent because I would have liked him to hear what I am saying. I followed Mr. Medcalf as closely as I possibly could, but I disagree with him when he says there are unscrupulous purchasers. It was stated that a purchaser could buy under a contract of sale over a period of 15 years. At the end of 14 years he could discover that the title was encumbered in the first place, and the contract was therefore void and his money should be returned to him. If that situation arose the vendor, in the first place, would have broken the law; not the purchaser. When this Bill becomes the law it will be the vendor's prerogative to ensure he is complying with the law.

The Hon. A. F. Griffith: It will not be his prerogative, but his province.

The Hon. R. THOMPSON: It will be his responsibility to search the title and satisfy himself that he is complying with the law. The vendor will not leave it for 14 or 15 years—as mentioned in the illustration given by Mr. Medcalf—for the purchaser to discover that the vendor broke the law. The vendor receives the protection of the law by doing the right thing in the first place, and by making sure that the title is not encumbered.

I could go on for quite a long time speaking about the case history I have with me concerning the development in Spearwood. I am quite upset about this matter because many of the people affected are hard working people. They did not buy the land for resale, and many of them had plans drawn up for the construction of homes. Now they have no land and they have no homes. The block size submitted did not conform with the shire requirements, so the purchasers did not stand a chance from the start.

The proposed legislation is probably the second best I have seen introduced in this House. In my opinion, the best legislation to be introduced into this House was the Offenders Probation and Parole Bill. This, to me, is the next best legislation I have seen for many years. Some anomalies which we cannot foresee at the present time might creep in from time to time. As I read the Bill, it has been well drafted and researched by the Law Reform Committee. I commend the measure and say that at least we should give it a try.

THE HON. CLIVE GRIFFITHS (South-East Metropolitan) [4.28 p.m.]: I do not intend to speak for very long, but I want to say that I also support the bill for the reasons expressed by the previous speaker. The legislation will provide greater protection for the purchasers of land. However, there is one point I want to make and I will take this opportunity to raise the matter. I wish to refer to the types of contracts which at the present time purchasers are being asked to enter into with vendors. To illustrate the conditions of some of the contracts, I will read out a clause from a contract which I have in my possession. It is as follows:—

14. If the Purchaser shall fail to comply with any of the terms and conditions of this agreement or shall not make any of the payments aforesaid on account of purchase price and interest on the due date upon which the same is payable the deposit aforesaid shall be absolutely forfeited to the Vendor as shall also all other moneys which shall up to the date thereof have been paid by the purchaser (which latter moneys shall be forfeited as and by way of damages or compensation for use and occupation) and the Vendor shall be at liberty without further notice and without tender of any transfer to exercise such of the following remedies as the Vendor in its absolute discretion shall think fit namely:—

(a) Enforce specific performance of this agreement.

(b) Enforce payment of the whole of the balance then unpaid of the purchase price and interest and

all other moneys payable by the Purchaser hereunder (which shall immediately become due and payable notwithstanding that the due date for payment may not have arrived.)

(c) Rescind this agreement and reenter into and hold possession of the said land as its former estate.

(d) Rescind this agreement and resell the land by public auction or private contract (in which case the Purchaser if in possession shall forthwith quit and deliver up possession of the said land) and any deficiency in price on a resale together with all costs charges and expenses incurred by the Vendor in connection therewith shall be recoverable by the Vendor from the Purchaser as and for liquidated damages. Any surplus on a resale shall belong to the Vendor.

That is the sort of contract that companies are asking people to enter into and, unfortunately, people are entering into such contracts. Clause 6 of the Bill will make it obligatory for a certain amount of notice to be given to the purchaser before a clause such as that can be invoked.

Further on in this type of contract there is another very unsatisfactory condition which I think we should consider outlawing. I will not read out the names of the company and persons involved because I do not think it is fair to do so. However, it is necessary for me to say that the purchase price of this block of land was $6,575. In the schedule to this agreement the purchaser is told that he will have to pay a deposit of $200 and the balance in 36 monthly instalments at an interest rate of 5 per cent. per annum, calculated as from the date of possession. The schedule reads—

> Periodical payments: Thirty five monthly payments of Fifty six dollars ($56.00) each the first such monthly payment being due and payable on the..... day of .....19....., and payments thereafter on the ..... day of each month.

In microscopic printing it then says—

> The final payment to cover the balance of interest and capital outstanding at that date.

In large writing, where the fellow can read it, it says there will be 36 monthly payments—35 at $56 a month, and the final payment of the balance outstanding at that date. If one were a mathematician one could work this out quickly. The final payment on this occasion would be $4,415, plus any interest.

A young person in my electorate brought this contract to my attention. He was going merrily along paying $56 a month; then he discovered that his final payment would be $4,415, plus interest. It is probably his own fault for not working this out prior to signing the contract, but I think it is not unreasonable that it should be obligatory to spell out in dollars and cents on the contract form what the final payment will be.

The Hon. F. R. H. Lavery: The same as in hire-purchase agreements for motor vehicles.

The Hon. CLIVE GRIFFITHS: It is in black and white on a hire-purchase agreement exactly what the outstanding amount is. On this contract there is one small line—and one would need a microscope to read it—which says—

> The final payment to cover the balance of interest and capital outstanding at that date.

There is no suggestion as to what the amount will be.

I agree that we cannot legislate to cover all of these situations, and perhaps people can be condemned for not working it out and satisfying themselves as to what the final payment will be, or satisfying themselves that 35 times $56 does not come to $6,575. The point I wish to make is that the terms of some of these contracts and agreements leave something to be desired.

I said to someone in a company, "If your land is a saleable commodity, at a price that is acceptable to people, and in a location in which people desire to live, you should have no trouble in selling it, and surely you should not have to hide anything from people." The person to whom I was speaking said, "We would not sell any land if people saw that. That is a legal agreement and this man cannot get out of it." I said, "I am not suggesting he ought to get out of it, but I suggest that you ought to give consideration at least to indicating fairly clearly precisely what the person's final payment will be. Perhaps you will sell less land but at least you would know that the purchaser was well and truly aware of his commitments and had made up his mind that he was capable of purchasing the land."

I took the opportunity to speak to the Bill in order to point out the difficulties that some people are faced with. I hope the Minister will give some consideration to this matter—apart from telling me that the buyer must beware—and perhaps find a solution. With those remarks, I support the Bill.

THE HON. J. HEITMAN (Upper West) [4.37 p.m.]: Like other speakers, I feel this Bill will do much to improve land sales under terms of contract. I am not so concerned with sales of land in the metropolitan area but I am concerned with sales of farm land in the country, where purchasers who could not meet their payments after last year's drought were in many cases given a fortnight's notice that the

vendors would resume their farms, although they had paid deposits as high as $90,000. In other cases, the vendors sold the mortgages to hire-purchase companies or to other people who had enough money to buy them, and quite often farms were sold for half the amount that was still owing, without any regard whatsoever for the purchasers.

It is too early to say what will happen to those people whose mortgages have been sold to money lenders, hire-purchase companies, or other people. Unless this Bill covers such situations, the farms could still be resumed. One of the reasons I rose to my feet is to find out how this Bill will affect people who are in the position I have mentioned.

I realise that there is also something to be said on the side of the vendor. The vendor might have sold his farm in order to retire to the city, build a house with the deposit he has been paid, and square off all his debts. He could then find himself with a house on which he has only paid a deposit, relying on finance to come from the purchaser of the farm, and then be unable to finish paying for his house. In those circumstances, the vendor might sell his mortgage, finish paying off his house, and hope that the purchaser would be able to meet his commitments in later years.

When the Minister replies, he might tell me how this Bill will affect people in the circumstances to which I have referred.

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Justice) [4.41 p.m.]: I would like to express to members who have spoken to this Bill my appreciation of their acceptance of the principles embodied in it. The Bill attempts to give equitable protection, within reason, to both vendor and purchaser. I am sure it was not in the minds of members of the Law Reform Committee to suggest legislation which would in any way inhibit decent business practices, but one of the principles behind the legislation is to give a means of protection to purchasers which has not previously existed.

As regards the remarks made by Mr. Heitman, I cannot at this point of time tell him the manner in which this legislation might protect or influence contracts that have been entered into by the parties to whom he referred; nor can I say that the legislation will lay down the type of contract that will be entered into. The legislation will not cure, and is not intended to cure, all the ills of which members have spoken this afternoon, but it is at least a beginning in this particular area which, to say the least, has been found in the past to be very difficult for some people.

The remarks made by Mr. Medcalf particularly interest me. Some of his suggestions might well amount to contemplation of amendments to the Bill. I invite the honourable member to draft any amendments which he considers might be desirable. I am quite willing to give consideration to amendments he might submit to me, following which I would like to have the opportunity to consult the Law Reform Committee about them. It might be, as Mr. Medcalf said, that the Law Reform Committee has already given consideration to a number of the matters he raised, but that can be very quickly ascertained when I know what those amendments are.

With that in mind, I do not propose to ask that the Committee stage of the Bill be dealt with this afternoon. I would first like the opportunity to look at the amendments which Mr. Medcalf might suggest. I acknowledge with gratitude the remarks that have been made by members, and the acceptance of the legislation in principle. I am sure the Law Reform Committee will be pleased with the reception the Bill has had in the House.

Question put and passed.

Bill read a second time.

SECURITIES INDUSTRY BILL

Introduction and First Reading

Bill introduced, on motion by The Hon. A. F. Griffith (Minister for Justice), and read a first time.

Second Reading

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Justice) [4.47 p.m.]: I move—

> That the Bill be now read a second time.

Some three years ago the Attorney-General for New South Wales invited his colleagues on the Standing Committee of State and Commonwealth Attorneys-General to consider the desirability of preparing draft legislation to regulate the formation of stock exchanges and the operations of stock and share brokers.

The matter was taken up by the Standing Committee which set up a special committee of officers to study the matter. This committee, after discussions with a specially appointed committee of the Australian Associated Stock Exchanges, and numerous references back to the Standing Committee itself, produced a draft Bill which it was hoped would eventually form the basis of legislation in all Australian States and the Territories. These proposals now have the recommendation of the Standing Committee.

The main provisions of the Standing Committee's draft Bill are as follows, and I will make reference to the relevant clause in our Bill as I go along:—

(i) To make it an offence to establish or maintain a stock market that is not the stock market of a stock exchange;

Our Bill: Clause 7.

(ii) For the giving of ministerial approval to new stock exchanges where it is considered that their rules give sufficient assurance of fair dealing;

Our Bill: Clause 8.

(iii) To confer a ministerial power to disallow any alteration of the rules of a stock exchange;

Our Bill: Clause 9.

(iv) To require, subject to appropriate exemptions—see definition of "exempt dealer" and note that in the Victorian Act, and in our present proposals, stock brokers are not required to be licensed as dealers—the licensing of all those associated with dealings in securities as—

(a) dealers

(b) dealers' representatives

(c) investment advisers

(d) investment representatives

Our Bill: Clauses 10 to 13, both inclusive, deal with these matters.

(v) To make the issue and renewal of dealers' licenses subject to the applicant lodging a bond of $10,000 conditioned on his proper dealing with all moneys coming into his hands as a dealer—there is an exemption from this requirement for one who is the holder of a dealer's licence under "a corresponding law" of any State or a territory;

Our Bill: Clause 18.

(vi) For the cancellation of licences and appeals against such cancellations;

Our Bill: Clauses 22 and 23.

(vii) To require every dealer (including a stock broker) to keep in such a manner as will enable them to be properly audited, such accounting and other records as will sufficiently explain the transactions, and reflect the financial position of his business and enable true profit and loss accounts and balance sheets to be prepared;

Our Bill: Part VI.

(viii) To require all dealers to maintain at least one trust account into which all specified trust moneys are to be paid;

Our Bill: Clause 41.

(ix) To require all dealers to present to the "relevant authority"—that is the stock exchange or Registrar of Companies—In New South Wales the Corporate Affairs Commission—an auditor's report on his accounts every year;

Our Bill: Clause 43.

(x) To require the relevant authority to send the auditor's report to the Minister where it discloses that the dealer is unable to meet his commitments or has not complied with his obligations as to the keeping of accounts;

Our Bill: Clause 45.

(xi) To authorise the Minister where an auditor's report is referred to him by the relevant authority, or where he receives a complaint that the dealer has failed to account for money or securities entrusted to him, to appoint an independent auditor;

Our Bill: Clause 46.

(xii) To require the investment of part of the moneys in stock brokers' trust accounts, and the use of the interest from such investment to provide resources for a fidelity fund for the compensation of those who have suffered loss in respect of transactions in securities by reason of the defalcation of a dealer or a dealer's clerk;

Our Bill: Contains no equivalent provision.

I will explain about this a little later. Continuing—

(xiii) To outlaw certain practices directed to misleading manipulation of a stock market.

Our Bill: Part X.

The Standing Committee's proposals have already been implemented by legislation in New South Wales and Victoria, and it is expected that similar legislation will be effected in the other States and in the Territories in the near future. The idea is that each Act will contain provision for acknowledgment of Acts in other parts of Australia as "corresponding laws." The effect of this will be to accord certain exemptions, from obligations imposed by the acknowledging law, to dealers and others involved in the securities industry who have status under the corresponding law which is acknowledged as such.

Thus clause 18 (6) provides for the exemption of persons who are stock brokers or the holders of dealers' licenses under a corresponding law from the obligation to provide the bond as would otherwise be required by clause 18. Again, under clause 41 (7), it is provided that where a dealer is obliged to keep a trust account under any corresponding law, he shall be excused from the obligation to keep a trust account in accordance with the requirements of the law of this State, if he keeps a trust account here in conformity with the requirements of the corresponding law.

In Western Australia, the Standing Committee's proposals have met certain criticism from the Stock Exchange of Perth. These criticisms, members may be surprised or pleased to hear, were directed

almost entirely at defects or omissions in the draft Bill which the exchange considered would detract from the Bill's effectiveness as a control measure. The exchange also told me that it was opposed in principle to the idea of using the interest from money in its trust accounts to build up a fidelity fund. Its view was—and is—that any fidelity fund should be maintained solely from the exchange's own resources.

To a large extent the present Bill takes account of these criticisms, and so, in some respects, differs from the legislation which has already been enacted in New South Wales and Victoria, though not to such an extent as to prevent its being given effect as a corresponding law in the way I have mentioned.

I would like now to say something about the ways in which the provisions of this Bill differ from those in the Acts of New South Wales and Victoria. There are a number of small and incidental differences; I am not going to deal with those, but simply with the major differences.

Firstly, part VII of this Bill provides for the "freezing" of dealers' statutory trust accounts where there are certain specified indications that this is desirable; for instance, if there is a reasonable ground for believing that there is a deficiency in a dealer's trust account or there has been some undue delay in properly applying trust moneys.

The second major departure from the Victorian and New South Wales provisions is in the stock brokers' fidelity fund arrangements. As I have mentioned, the provisions in these States require the investment of part of the moneys in stock brokers' trust accounts, and the use of the interest from such investment to provide resources for the fidelity fund. Our Bill—part VIII is the relevant part—makes no resort to the trust account moneys. Instead it provides that the fund shall consist of—

(a) an amount of not less than $100,000, to be provided by the exchange; and

(b) moneys resulting from the investment of that fund; and

(c) yearly payments representing an amount equal to .03 of the exchange's annual turnover, or $50,000, whichever is the greater, but reduced by any amount earned in that year by the investment of the fund and subject to the proviso that I may order a reduction in this annual contribution if I think fit having regard to the turnover and the amount of the fund; this is simply a device for ensuring that the fund does not grow too big; and

(d) moneys paid by an insurer of the fund.

In explanation of this last item, I refer members to clause 75 of the Bill. It will be seen that this obliges the trustees of the fund to keep on foot a policy of insurance which will have the effect—right from the establishment of the fund—of keeping it up to $500,000. As the amount actually in the fund increases, then the insurance may be reduced proportionately, cutting out altogether when the fund is in credit to the amount of $500,000.

The next important departure is part IX of the Bill, which requires every company carrying on business in this State and which is listed by the Stock Exchange of Perth, or any stock exchange under a corresponding law, for quotation of the company's securities, to supply to the exchange where it is listed certain information which is likely to affect trading in the securities of that company—I make particular reference to clause 79 of the Bill. There is nothing resembling these provisions in the New South Wales or Victorian legislation, but I feel, and the Stock Exchange of Perth feels, that they are desirable; the more informed the market is the less likely it is to be manipulated by persons for their own selfish ends.

The final divergence from the New South Wales and Victorian provisions which I want to mention is the outlawing of "short-selling." Short-selling, it might be explained, is a very common method of market manipulation and consists of a person offering to sell large numbers of a particular security which, in fact, he does not hold, purely in the hope that this apparent unloading will serve to depress the market in that security and thus permit him to buy in, at a price considerably less than that at which he has contracted to sell, the securities which are necessary to enable him to fulfil his contract. Of course, where this is done successfully, huge profits may be made, and—this is what has to be borne in mind—huge losses also, by those persons who were unfortunate enough to be holding large numbers of the securities in question.

Here again, I am in agreement with the Stock Exchange of Perth. We think that this practice must be outlawed, subject to the minor exceptions contained in clause 84. It would be just too inconsistent to make it an offence, as our Bill does, to knowingly disseminate false information as to any security with a view to influencing trading in that security, and yet permit the market to be grossly manipulated by the device of short-selling.

The New South Wales and Victorian Acts do not presently contain any provisions against short-selling, but I understand that amendments to those Acts are presently in process of being made, which will oblige a person who is selling short through a dealer to inform the dealer that he is not the holder of the securities in question. So they intend to go some of the way.

Apart from the differences to which I have referred, our Bill is virtually the same as the Acts presently existing in New South Wales and Victoria—or at least the same as those Acts will be when they are amended in the way in which it has been agreed they shall be amended. The other States have indicated that they propose to proceed with similar legislation as soon as possible. Thus it will be seen that the present Bill is destined to be part of an Australia-wide system of corresponding laws which will be aimed at establishing a very necessary control.

The Bill has been devised in consultation with the Stock Exchange of Perth, and I am authorised to say it has the blessing of that body. We know it is not going to be completely effective, but it is a start and, as time goes by, and experience is gained in its administration, it can be improved on.

Members will realise that under the terms of the Bill the rules and regulations of the stock exchange will be subject to approval by the Minister before they can be changed. It is reasonable, therefore, that members should know what those rules and regulations are at this point of time. As a consequence the Stock Exchange of Perth has readily made available to me a number of copies of its rules and regulations which can be examined by any member who wishes to do so. I have one copy here, but there are a number of others in my office and, if they are required, they can be produced.

Finally I wish to express my appreciation of the attitude of the Stock Exchange of Perth in its approach to the legislation. As I have said, the legislation does depart in one or two principles from the legislation of other States, but the members of the Stock Exchange of Perth believe it is right and proper that we in Western Australia should give a lead in these matters, and I am prepared to put the measure forward having those objectives in mind.

The Hon. W. F. Willesee: It is a tremendously important Bill.

The Hon. A. F. GRIFFITH: It is, I repeat: It is not intended to solve all the problems that are attached to these dealings, but at least it is an attempt, in the first instance, to regulate and better control the stock and share market.

I take Mr. Willesee's remark seriously. I am conscious that the legislation should be passed through both Houses of Parliament in the current session; therefore, I am willing that Mr. Willesee should take a reasonable adjournment of the debate. However, if he would move for an ordinary adjournment and then finds himself in a position not to be able to go ahead with the debate on Tuesday, I would be prepared to entertain some later date for the resumption.

The Hon. W. F. Willesee: If I can assess my own mental capacity, it would take me more than a month to understand the rules of the Stock Exchange of Perth.

The Hon. A. F. GRIFFITH: I am more anxious that the honourable member should understand the Bill rather than the rules of the stock exchange. However, by the same token, the rules of the stock exchange are quite important because they are the rules which members of the exchange in this State have inflicted upon themselves, if I can use that expression. These are the rules the exchange expects its members to obey.

The Hon. W. F. Willesee: It has their approval.

The Hon. A. F. GRIFFITH: The legislation has the approval of the Stock Exchange of Perth.

Debate adjourned, on motion by The Hon. W. F. Willesee (Leader of the Opposition).

WESTERN AUSTRALIAN TERTIARY EDUCATION COMMISSION BILL

Second Reading

THE HON. G. C. MacKINNON (Lower West—Minister for Health) [5.06 p.m.]: I move—

> That the Bill be now read a second time.

This Bill proposes the establishment of the Tertiary Education Commission as a statutory body, charged with the responsibility of promoting, developing and co-ordinating tertiary education in Western Australia. The commission is at present an advisory body with no executive powers, operating purely under terms of reference laid down by the Government.

Under this measure, it is proposed also to widen the functions of the commission as well as to give it statutory powers necessary for carrying out its responsibilities.

The commission was brought together in 1968 on the recommendation of the Committee on Tertiary Education which, under the chairmanship of Sir Lawrence Jackson, examined the future needs of tertiary education in this State and the form and pattern of institutions required to meet those needs. The recommendations of the Jackson committee, as it has become known, and supported by the Government, set the pattern on which subsequent development of tertiary education is based.

The committee saw the need for a standing body to advise the Government on all matters relating to tertiary education and to ensure co-ordination between all institutions concerned. Developments since that time have confirmed its views in this regard.

Until a few years ago, only one major autonomous tertiary institution existed in the State; namely, the University of Western Australia, founded about 60 years ago.

Subsequently, in 1966, the Western Australian Institute of Technology was officially opened as a college of advanced education; then later the Kalgoorlie school of Mines, Muresk Agricultural College, and the Schools of Physiotherapy and Occupational Therapy became incorporated with it.

The institute is located in five separate campuses and, in terms of student enrolment, is the second largest college of advanced education in Australia.

The Hon. J. Dolan: What do you mean by "the institute"?

The Hon. G. C. MacKINNON: The Western Australian Institute of Technology which now includes, and with which is incorporated, the colleges I mentioned; that is, the Muresk Agricultural College, the Kalgoorlie School of Mines, and so on.

It has been apparent for some years that the University of Western Australia has been approaching a maximum acceptable size on the Crawley campus and the Government, as is known, favours the establishment of Murdoch University as a second university for Western Australia.

The rapid growth and increasing diversity of tertiary education in Australia has led most other States to establish statutory bodies to co-ordinate similar development. The most comprehensive relative legislation enacted to date is that contained in the New South Wales Higher Education Act of 1969, which provides for a Universities Board and an Advanced Education Board.

Although separate co-ordinating bodies have been established for universities and for colleges of advanced education in that State, co-ordination between the two groups is to be achieved by a further body —the Higher Education Authority—comprising representatives drawn from the Universities Board and the Advanced Education Board.

A three-tiered structure such as this could not be contemplated in this State having only one established university with another planned and one college of advanced education. But it is proposed that the Western Australian Tertiary Education Commission shall embrace the universities and the Institute of Technology. It is intended that in due course the teachers' colleges will be brought within its ambit, with representation on the commission.

The commission is established also so as to concern itself with courses conducted by technical colleges, to the extent that they can be considered to be at tertiary level, with a view to avoiding duplication of courses provided at the Institute of Technology.

In this respect I should explain that "tertiary education" embraces all courses that require for their base the completion of a full period of five years of secondary education, or its equivalent.

It is proposed that the commission shall be responsible to the Minister for Education, thus bringing all tertiary education within the province of a single Ministry. To date, because of traditional associations, the University of Western Australia has come under the Premier's portfolio as has the Tertiary Education Commission, while the Institute of Technology and teachers' colleges remain the responsibility of the Minister for Education.

This is not a completely satisfactory arrangement and with the advent of Murdoch University, and with the broadening of the functions of the commission, it is considered desirable that the Minister for Education be responsible for the entire field of tertiary education, supported by the commission as an advisory body.

The present membership of the commission comprises—

Professor C. Sanders, Chairman.

Mr. H. W. Dettman, Director-General of Education.

Sir Stanley Prescott, Vice-Chancellor of the University of Western Australia.

Dr. H. S. Williams, Director of the Western Australian Institute of Technology.

Mr. C. C. Adams.

Mr. A. W. Buttrose.

Dr. K. J. Tregonning.

Until such time as a vice-chancellor is appointed, Murdoch University is represented on the commission by Professor N. S. Bayliss, Chairman of the Planning Board.

It is proposed that the Under-Treasurer or his nominee shall be a member of the commission because an important function of the commission will be to advise the Government on the financial requirements of tertiary education institutions. So it is desirable that the Under-Treasurer assist the commission in its work.

The University of Western Australia and the Institute of Technology Acts currently provide for the Under-Treasurer or his nominee to be a member of the governing body of those institutions. Although this arrangement has advantaged both the Government and the institutions concerned, the establishment of Murdoch University has rendered its continuation impractical.

Senior Treasury officers are required to carry the responsibility of the management of the State's financial affairs but not to attend to the day to day affairs of each tertiary education institution. Consequently, the Government considers that it would be preferable for the Under-Treasurer to cease to be a member of the University Senate and the Council of the

Institute of Technology but that he should be represented on the body responsible for the overall co-ordination of tertiary education.

The Bill provides for a commission of nine members of which the chairman and three other members are to be appointed by the Governor-in-Council. In addition, there are to be five *ex officio* members; the Director-General of Education, or his nominee; the Under-Treasurer, or his nominee; and the chief executive officers for the time being of the University of Western Australia, Murdoch University, and the Western Australian Institute of Technology.

It is considered that this representation is sufficient at this stage, although it would be the intention of the Government to propose additions to the membership of the commission representing other tertiary institutions that may be created from time to time. For example, it would be proposed to provide for representation of the teachers' colleges if at some future time they are separated from the Education Department and brought under the control of a body such as a board of teacher education.

It has been suggested to the Government that the commission should be enlarged to 12 members and that each tertiary education institution provide an additional member to increase the academic representation on the commission.

The Government cannot agree to this proposal. It is not desirable for a body of this type to be too large, and in this respect it is interesting to note that the New South Wales Universities Board is composed of not less than seven nor more than nine members. Moreover, all of these members are appointed by the Governor and the legislation does not provide specifically for each university to be represented, although I have no doubt that the Government of that State would have an eye to that point when making appointments. The New South Wales Advanced Education Board is constructed in exactly the same way.

In our own case we consider that the Tertiary Education Commission as proposed is well balanced. There are to be three members representing the tertiary institutions who should provide a strong academic viewpoint. The chairman would obviously be a person with an academic background and the Director-General of Education will bring to the commission a wide experience in education at all levels.

The three members to be appointed by the Governor would obviously be men with a tertiary education background and with a close interest in the needs and aims of tertiary education. I do not think the present membership of the commission can be criticised on the grounds of lack of academic weight, nor of lack of experience in education.

There is another point that should not be overlooked by those who seek an enlarged commission with greater academic representation. The Government does not seek to encourage the commission to involve itself in the detail of tertiary education management. That is a matter for the institutions themselves. It is preferable for a small commission to concern itself more with aims and principles and to bring the institutions together to find ways and means of achieving those aims.

The commission will have power to appoint subcommittees to deal at depth with any aspect of tertiary education. It would be preferable for the personnel of those subcommittees to be drawn mainly from the academic body of the institutions rather than from the membership of the commission itself. The role of the commission would be to define the aims and to lay down guidelines. It should be the role of subcommittees, constituted in the way I have described, to give substance to the framework. In this way, all tertiary institutions will participate in charting the future course of tertiary education in this State and need not fear that course will be imposed from above.

The chairman and members other than *ex officio* members are to hold office for a period of four years. The Bill also provides for the filling of casual vacancies and for acting members to be appointed in the event of prolonged absence of members in order to maintain the strength and balance of the commission.

The functions and responsibilities of the commission are set out clearly in division 2 of the Bill. Appertaining thereto, I would mention that the increase in the number and nature of tertiary education institutions in Western Australia requires that attention be given to such issues as—

The rationalisation of courses to be given at the several institutions to avoid duplication.

The need for entrance criteria to be based on a common examination or other suitable basis of assessment.

The desirability of facilities for some freedom of movement of students from one institution to another. This also raises the question of the recognition by one institution of degrees or diplomas awarded by another.

The need for co-ordination of salaries and conditions of employment of staff at the several institutions and for an informed body to consider and advise on claims in this area.

The most appropriate means of evaluating triennial financial programmes submitted by tertiary education institutions and advising on the level of Government support required.

The legislation now introduced brings these matters within the province of the Tertiary Education Commission. Other developments have also underlined the need for a statutory body with co-ordinating and accrediting powers.

The Tertiary Education Commission has done a great deal of valuable work in the two years it has been established and among its most important contributions has been the development of a rational approach to the question of the establishment of tertiary education facilities in large country towns, and the reservation of sites for future tertiary institutions.

The extension of tertiary education facilities to country centres will require the close co-operation of all major tertiary institutions as well as of the technical education and teacher training divisions of the Education Department.

By using common facilities and by co-operating in the employment of staff from all areas, it will be practicable to offer a range of tertiary education courses in major country centres, if there is an appropriate authority to co-ordinate the activities of the several bodies involved.

A further development arises from the report of a committee set up by the Commonwealth Government under the chairmanship of Mr. F. M. Wiltshire of Melbourne to inquire into the nature and appropriate form of accrediting of awards conferred by colleges of advanced education. The Wiltshire committee presented its report in 1969 and recommended that, depending on the length and content of courses, the colleges should grant three levels of awards; namely, degrees, advanced diplomas, and diplomas. The provision of a post-graduate master's degree was also recommended. The committee also proposed the establishment of a national body to accredit awards conferred by the colleges in order to ensure uniformity of standards.

The Commonwealth and State Governments have accepted the Wiltshire recommendations in principle, but agreement has yet to be reached on the form and structure of the national accrediting body. But whatever happens at the national level, each State will need to appoint a body to accredit awards at the State level and to liaise with whatever national body is eventually established. The Tertiary Education Commission is the logical body to perform this function in Western Australia and the Bill provides accordingly.

It has been pointed out to the Government that it is not necessary for the commission, in performing this function, to determine the minimum requirements for existing awards which have gained full acceptance, but that its determination should be restricted to new awards. The Government accepts this contention and the Bill so provides.

It is also proposed that the commission should review the triennial submission of the universities and the Institute of Technology in which the financial programmes of these institutions are put before the State and Commonwealth Governments. The commission will also consider proposals for adjustments to such programmes and submit its recommendations to the appropriate State or Commonwealth authority.

It is intended, in this respect, that the commission shall advise the State Government on the financial needs of tertiary education institutions in much the same manner as the Australian Universities Commission and the Advisory Committee on Advanced Education advise the Commonwealth Government, but without impairing the present procedures or relations between the institutions and the Commonwealth bodies.

At the present time there is no established machinery for considering, at the State level, salary claims and variations to conditions of service for staff of tertiary institutions. It is essential that the Government have access to expert advice on these matters. Moreover, with the growth in the number of tertiary education institutions in the State, it is desirable that salaries and conditions of service be broadly uniform having regard to the nature of the institution concerned.

Therefore, the Bill provides that the conditions of employment, including the salaries payable, of the staff of any tertiary education institution and claims relating thereto shall be considered by the commission, which will make its recommendations to the governing authority of the institution concerned. This proposed procedure has been evolved out of discussions with the university authorities and is considered to be a workable way of achieving the main aim of the measure, which is to achieve a fair measure of uniformity without eroding the autonomy of the institutions.

It is proposed that tuition and related fees charged by tertiary education institutions should be brought within the ambit of the commission in a similar manner. This is another area in which uniformity between comparable institutions is desirable. As revenue from fees is closely bound to State grants in determining eligibility for financial support from the Commonwealth, this is an important aspect of the overall financial co-ordination to be exercised by the Tertiary Education Commission. Administrative and financial provisions necessary for the commission to carry out its functions are, of course, contained in the Bill.

There has been some criticism of this Bill, mainly from members of staff of the University of Western Australia, on the grounds that the measure endangers the traditional autonomy of the university. Much of this comment has arisen from misunderstanding of the intended scope of the legislation and from fears that it could be used to take over functions that properly belong to the university. There is no such intention. The theme of this measure is co-ordination, and the agency whereby this will be achieved must be co-operation—co-operation between tertiary institutions and with the Tertiary Education Commission.

The Government has considered carefully proposals for amendments to the Bill advanced by the university in order to allay these fears and a number have been incorporated in the Bill. I am advised that the Senate of the University fully supports the Bill in its present form.

One other point of criticism suggests that the university was not consulted sufficiently in the course of preparation of the Bill and that it was not given an opportunity to study the measure before it was submitted to Parliament. On the latter point I need only remark that it would be quite improper for the Bill to be circulated outside Parliament before it was given a second reading.

As to the question of consultation, the Government has followed a correct course in this matter and ample publicity has been given to the proposals. From the beginning, Government officers engaged in the drafting of the measure have been in close touch with the Chairman of the Tertiary Education Commission and he has been fully informed and consulted at every stage.

Early in September the chairman conveyed the detail of the proposals to the members of the present commission, which of course includes representatives of the University of Western Australia and the Institute of Technology. No adverse comment was conveyed to the Government following the commission's consideration of the proposals. I therefore cannot see what more could or should have been done to inform the appropriate authority of the Government's intentions in this matter and to seek the views of its members.

I think we have reason to be satisfied with the Bill as now before this Council. The principles underlying the measure have received wide, indeed unanimous, acceptance and the form in which the principles are expressed now appears to satisfy all concerned. I commend the Bill to members.

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

House adjourned at 5.27 p.m.

Legislative Assembly

Thursday, the 5th November, 1970

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

BILLS (3): INTRODUCTION AND FIRST READING

1. Vermin Act Amendment Bill.
2. Noxious Weeds Act Amendment Bill.
3. Agriculture Protection Board Act Amendment Bill.

Bills introduced, on motions by Mr. Nalder (Minister for Agriculture), and read a first time.

PHYSICAL ENVIRONMENT PROTECTION BILL

Suggestions from the Public

SIR DAVID BRAND (Greenough—Premier) [2.20 p.m.]: As a result of a question asked by the member for Mt. Hawthorn I undertook to lay on the Table of the House the proposals, etc., which have been put up as a consequence of the invitation by the Public Service Commissioner, dealing with the question of conservation. I ask leave to table the file for one week.

The file was tabled for one week.

QUESTIONS (17): ON NOTICE

1. STATE ELECTRICITY COMMISSION

Employees' Representative

Mr. FLETCHER, to the Minister for Electricity:

Has the State Electricity Commission an employees' representative on that authority?

Mr. NALDER replied:

Yes.

2. *This question was postponed.*

3. FREMANTLE PORT AUTHORITY

Employees' Representative

Mr. FLETCHER, to the Minister for Works:

(1) Has the Fremantle Port Authority an employees' representative thereon?

(2) If not, was there ever such an incumbent?

(3) If "Yes" in what year was he removed from the Fremantle Port Authority as employees' representative?

(4) In view of the increased and increasing numbers of Fremantle Port Authority employees, will he reappoint an employees' representative at an early date?