Legislative Council

Thursday, the 20th September, 1979

The PRESIDENT (the Hon. Clive Griffiths) took the Chair at 2.30 p.m., and read prayers.

GOVERNMENT EMPLOYEES (PROMOTIONS APPEAL BOARD) ACT AMENDMENT BILL

Third Reading

Bill read a third time, on motion by the Hon. G. C. MacKinnon (Leader of the House), and passed.

CRIMINAL CODE AMENDMENT BILL

Second Reading

THE HON. I. G. MEDCALF (Metropolitan —Attorney General) [2.39 p.m.]: I move—

That the Bill be now read a second time.

Until a few years ago it was a long-standing practice of magistrates, in cases where they thought it appropriate, to discharge offenders without penalty by cautioning the persons involved and, perhaps, ordering the payment of incidental costs.

However, the Full Court of Western Australia held in the case of Walsh *v.* Giumelli that a caution was not a penalty. The court said that, unless authorised by Statute, a magistrate was not empowered to convict without imposing a penalty because to do so was to convict without passing sentence and to do that was to fail finally to determine the complaint. The effect of the Full Court's decision was to stop the use of the caution in magistrates' courts.

As can be appreciated, the caution was used by magistrates fairly frequently; it has been estimated that it could have been used in as many as 10 per cent of the cases dealt with by them. In the case of persons convicted of drunkenness, it has been estimated that more than 20 per cent of offenders were cautioned.

Members will appreciate that the cautioning power was a useful one, because there are always those cases where, although an offence has been committed, more severe punishment is not warranted, or is inappropriate.

Because the use of the caution was an unauthorised procedure, there were no rules relating to its use, and it was simply used by magistrates as and when they thought it appropriate. The practice had grown over many years. One of the solicitors appearing in the Full Court case indicated to the court that he could recall its being used around 1910. The matter was thereupon referred to the Law Reform Commission in these terms—

> To consider alternative ways of dealing with offenders charged with offences which, in the past, may have attracted a caution.

The commission issued a very comprehensive report which dealt not only with the situation resulting from the case referred to, but a number of other aspects involving a consideration of various sections of the Criminal Code.

At my request this report has been carefully examined by officers of the Crown Law Department. The object was to safely incorporate in the code such amendments as were necessary to "restore" the caution procedure along the lines indicated in the report, without prejudice to such further inquiries as might be required to be instituted on other aspects of the commission's recommendations. It was not a simple matter to devise amendments isolating the items in the report which would "restore" the procedure on a legitimate basis from other items of an ancillary nature which required more careful consideration by Parliamentary Counsel. However, the issues have now been resolved; and the Government considers that statutory backing should be given to the practice of cautioning convicted offenders.

The Bill which is now before the House seeks to do just that. In doing so, the Government has been mindful of achieving the purpose without introducing more complications than those which already exist by making use of sections of the code already in use and understood by lawyers and the public and dealing with associated matters.

The amendment proposes that where a person pleads guilty or a court considers the offence proven, then the court, having regard to the character, antecedents, or youth of the offender, of the trivial nature of the offence, or any extenuating circumstances under which the offence was committed, may—

> convict the offender and discharge him without penalty and unconditionally; or
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> discharge him without penalty but on any recognisance which is provided for under section 19 of the Criminal Code.

Such options would be available to the court only on a charge of any offence not punishable with more than three years' imprisonment, with or without any alternative punishment, and provided that any previous offence is within the following categories—

(1) an offence committed as a child and dealt with in a Children's Court;
(2) an offence not punishable by imprisonment; or
(3) an offence carrying a maximum sentence of less than six month's imprisonment in respect of which the person has not been sentenced to imprisonment without the option of a fine.

There is another important reform in the Bill.

Section 669 of the Code contains a subsection which prohibits any further proceedings being taken for the same cause. Whilst this is perfectly legitimate and proper in the case of criminal proceedings, it is considered unfair and unjust that persons who have suffered loss or injury should be unable to recover civil damages merely because the offender has had leniency extended to him under this section in relation to his criminal charge. The subsection is contrary to general principles of justice and fairness.

The Bill therefore proposes that whilst dismissal without conviction or discharge following conviction will still be a bar to further criminal proceedings, it will not be a bar to civil proceedings.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. R. F. Claughton.

HONEY POOL ACT AMENDMENT BILL

Second Reading

Debate resumed from the 18th September.

THE HON. R. T. LEESON (South-East) [2.45 p.m.]: This Bill is before the House because of a technical or a legal mistake made in relation to the words "prescribed participant". The problem with the definition of those words prevented the Honey Pool board being set up under the Act. That meant that the legislation had to be returned to this House for clarification.

The term "prescribed participant" has now been defined in the correct manner. The board was to take office from the 1st July, so it is some three months late. It will take office on the passing of this Bill.

Because of the necessity for this amendment, we on this side support the Bill.

THE HON. H. W. GAYFER (Central) [2.47 p.m.]: It is 12 months since, on the 20th September 1978, the Minister gave the second reading speech on the measure which ultimately became the parent Act. In his second reading speech, the Minister said the Bill was proposed—

> to provide for an appointed trustee as chairman and five elected trustees, and to delete the existing provision which permits the co-opting of associate trustees.

Subsequently debate on the Bill was adjourned. When the second reading debate was resumed, seven members spoke on the issue. This fact caused the Minister handling the Bill to observe that it had created more interest than the Dog Act had created. The speakers were Mr Stubbs, Mr Berry, Mr Withers, Mr Baxter, Mr Dans, the Minister, and myself. We shared in that second reading debate on the 21st September.

Members will have noticed that all of us talked about everything but the Bill, and it was fairly obvious that none of us bothered to follow the Bill through, because when it went into the Committee stage there was no talk whatsoever. As a House of Review, we need to be—perhaps "cautious" is not the word I am trying to find—we should take some of the blame because the industry now seeks clarification of a Bill which passed through this House of Review.

The Hon. D. W. Cooley: So called.

The Hon. H. W. GAYFER: It is a House of Review. Even Mr Cooley could have spoken to the Bill, if he had seen the obvious mistake. The mistake was there.

The Hon. D. W. Cooley: It is a rubber stamp.

The Hon. H. W. GAYFER: I do not know about that. I noticed that although Mr Cooley's name does not appear in the speeches, he did make interjections. He said that the Honey Pool Bill was a socialistic venture. However, that is beside the point. I feel sure Mr Cooley will make his observations later.

The Hon. D. W. Cooley: Not today.

The Hon. H. W. GAYFER: I am sorry about that.

Within the Bill which became the parent Act, the following appeared—

> (2) The Board shall consist of six Directors appointed by the Governor, namely—
>
> (a) one person shall be a person who is nominated for appointment by the Minister on the nomination of the Corporation; and—

If we had looked at it, we would have found that obviously it said nothing about that person being the chairman. It said nothing at all.

The appointment of a chairman is not mentioned anywhere else in the Bill. It is fairly

obvious that, when the board was formed, it would be necessary to appoint a chairman. In his second reading speech, the Minister implied that the chairman would be the person appointed as trustee and he would later be a director. However, that fact certainly did not appear in the Bill.

That is one of the reasons it has been necessary for this matter to be brought before us again for amendment and clarification. The requirements of delivery to the Honey Pool by a director are set out in rather loose terms also. It appears obvious now that one would need to have contributed to the previous pool before one could claim to be a trustee—now director—of the disposal of the honey in the pool.

I have given two glaring examples of matters which we should have examined previously. We did not do so, and consequently this amending Bill is before us.

However, be that as it may, I note that the chairman is to be an appointed person and he will be chosen from a list of names submitted by the corporation. The chairman will be selected by the Minister. I do not really approve of that technique of appointing the chairman. I do not mind a trustee or now director being appointed as a director from names submitted by the corporation, because we gave a great deal of credit to the corporation—which is Westralian Farmers—when the Bill was introduced initially.

There will be six directors now, five of whom will be elected in the normal manner and the sixth will be appointed. I feel that it might be more appropriate for the chairman to be elected by the directors. However, there is an amendment in clause 4 of the Bill which provides that if a director ceases to be a "prescribed participant"—that is, if he does not in a period of 12 months ending the 30th day of June during the term of his office as a director, deliver to the Honey Pool an amount of honey that is equivalent to, or greater than, the amount prescribed for the purpose of the definition of "prescribed participant"—his directorship is forfeited. Bearing in mind the vagaries of the industry, this may be the reason that it is necessary for the chairman to be appointed from the corporation.

Nobody from the Honey Pool has approached me in regard to this matter; but I feel the time may come when the directors themselves would like to appoint their own chairman from amongst the honey producers, rather than have him appointed by the Minister from the corporation. In fact, the Chairman of Directors of Wesfarmers is elected from the shareholders and the chairman of the Grain Pool is not one of the appointed trustees or directors of it.

In time, the situation will develop to the stage that it will be more the responsibility of the growers to elect their own chairman through their directors.

There are problems in relation to this matter. There is the problem also that, if a director does not contribute to the pool during the previous 12 months, his seat is in doubt and could well be forfeited. This is rather harsh. If there is a drought, fire, or some other disaster which prevents someone from contributing, it would be preferable if the period could be extended to two years. If someone has not contributed to the pool for two years, he should cease to be a director. This is the situation with Co-operative Bulk Handling. If someone does not contribute for two years his share is redeemed, unless there is a good reason that it should not be.

I am making observations only. No-one has approached me directly; but now that the matter has come back to us and we have an amending Bill before us, we should have a closer look at it.

The Honey Pool Act is a very good one and I complimented the Minister last year when he introduced the Bill, and I do so again. However, further amendments may be necessary in the near future.

I support the Bill.

THE HON. D. J. WORDSWORTH (South—Minister for Lands) [2.56 p.m.]: I thank the Opposition for its support of the Bill and, in particular, the Hon. H. W. Gayfer for his comments in regard to it. I do not believe there would be a person in either House who has had the experience Mr Gayfer has had with co-operatives and marketing.

The history of the Honey Pool goes back over some years. The pool received legal status in 1955 when the Honey Pool Act was proclaimed. Mr Gayfer has made some very interesting observations. It is possible that the small number of participants to the pool is one of the reasons for the problems. There are approximately 90 commercial producers of honey in Western Australia and they play a very vital role in the whole of the Australian industry. Of the total honey production in Western Australia, two-thirds goes to the Honey Pool and that constitutes one-third of Australia's total exports of honey. The pool has worked very successfully. It is regrettable that it has been held up, because of this minor technicality. Mr Gayfer's observations have been of great benefit.

The honourable member referred to the eligibility aspect in clause 4 of the Bill. I should like to point out it goes back to section 6 (8) of the Act which refers to the conditions under which the Governor can terminate the appointment of a director. The honourable member was correct in his observations.

I thank members for their support.

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. D. J. Wordsworth (Minister for Lands), and passed.

ACTS AMENDMENT AND REPEAL (DISQUALIFICATION FOR PARLIAMENT) BILL

In Committee

The Chairman of Committees (the Hon. V. J. Ferry) in the Chair; the Hon. I. G. Medcalf (Attorney General) in charge of the Bill.

Clauses 1 to 7 put and passed.

Clause 8: Section 31 amended—

The Hon. R. HETHERINGTON: The Constitution Acts Amendment Act, which this clause seeks to amend, states—

> Has been in any part of Her Majesty's dominions attainted or convicted of treason or felony.

I am wondering what "attainted" means, and why we are leaving it in the Constitution. Does it serve any useful purpose, or is it an archaism or an anachronism?

I wonder also whether the Attorney General will once again tell me the difference between "felony" and "misdemeanour". When does a crime become a felony?

The Hon. I. G. MEDCALF: The word "attainted" is simply the verb which comes from the noun "attainder". It was an old form of proceeding called "a Bill of attainder". A Bill of attainder was a proceeding which was taken before Parliament in cases of high treason. Largely the word "attainder" would have only historical import because I do not suppose it is likely we would have a Bill of attainder at present.

The Hon. R. Hetherington: I would hope not.

The Hon. I. G. MEDCALF: Nonetheless, under the Parliamentary Priviliges Act of 1891 we have all the rights, powers, obligations, and privileges of the House of Commons and it is considered desirable we should not simply take out all those words which happen to be archaic unless we are quite certain there will be no residual effects. That is the reason the term is retained.

With regard to the second question asked by the honourable member, a felony is a more serious offence than a misdemeanour. There are degrees of criminality or crime, and whilst "felony" is an old term, it is not necessarily an archaic term. One hears about felons in literature, but one rarely hears the phrase used now in law. It has been left in the Bill because it is still a real term. It is a more serious offence than a mere misdemeanour.

The Hon. R. HETHERINGTON: I thank the Attorney General; he has confirmed what I thought about "attainted". In fact, what he said makes me believe it should be taken out of the Constitution. Acts of attainder were used by the Tudors when they could not get rid of people at law. A Bill was passed through both Houses of Parliament to get rid of those people.

It seems to me that such behaviour—although it may have been useful in the past in Tudor England and Stuart England—is something no longer useful or desirable in modern Western Australia. Therefore, I think it should not be included in the Constitution.

I ask the Attorney General to consider what I have said, to inquire and perhaps think about it. If we remodel our Constitution we should not leave in it the notion that we might still have as reprehensible an Act as an Act of attainder. Such an Act is something I think we could well do without.

I was tempted to move an amendment to remove from our Constitution the notion that all people convicted of a felony should be forever debarred from being a member of Parliament. However, I thought that would be foolish, on the spur of the moment, and would not be treating the Constitution with sufficient seriousness. There are various degrees of felony. A person can be convicted at a very early age and then live an exemplary life.

It could be argued that as a result of the experience of being convicted of a felony, some people later make better members of Parliament. I see Mr Withers looking inquiringly at me, but I am not arguing that being a felon automatically makes one a better member of Parliament. I am

saying it does not necessarily make one a bad member of Parliament.

The Hon. W. R. Withers: I would not be involved in any felony whether or not I was a member of Parliament.

The Hon. R. HETHERINGTON: I would rather see either this provision deleted from the Constitution or a term of years applied after which a person convicted of a felony may become a member of Parliament.

I suggest this quite seriously. Our modern notions of rehabilitation, crime and punishment, and criminology, make this something we should consider in this century. I merely ask the Attorney General to look at this—I am sure he will do so; I will not even ask him to rise to his feet to say he will—to consider whether we should further amend the Constitution Acts Amendment Act to remove the word "attainted" which is not only archaic, but has connotations that are undesirable.

I hope we will not ever have an Idi Amin in Western Australia, but we do not want to make it any easier for such a thing to happen. However, it is bad to have such a reference in our Constitution today. We should consider the position of people who have been convicted, because quite often people who have been convicted of quite serious crimes in their youth learn from that experience and live to become examplary citizens who may grace this institution and we should not permanently deny them the opportunity.

Clause put and passed.

Clause 9: Section 32 repealed—

The Hon. R. HETHERINGTON: In his second reading speech the Attorney General suggested that I was accepting this Bill in principle and perhaps I was not terribly opposed to it. However, I think he has done me an injustice. I said I was very sympathetic with what the Government was trying to do, and I still say that. However in this clause there is a matter of principle to which I am still strongly opposed.

The report of the then Western Australian Law Reform Commission which I quoted yesterday and which I will quote again today, said—

> Traditionally the consideration to which regard has been had in deciding that persons interested in Government contracts should be disqualified, is the need to limit the influence of the Executive over Parliament by awarding of lucrative contracts to members.

I said in my second reading speech and I repeat: Nowhere does the report say why we should change that traditional view except that it is very inconvenient to define what a contract is and to cover all the combinations and permutations involved. I understand this. I am still sympathetic with what the Attorney General is trying to do, but I am opposed to it in principle because I believe that before we repeal this provision we should try to seek some other way of setting up institutional checks and balances. This is most important.

The Attorney General argued—and I have heard the arguments from a number of people with whom I have discussed this, and as a matter of fact I even used the argument myself when talking with someone else—that this is a political matter and we must leave it to the judgment of the people; that if Governments misbehave in this way by awarding contracts, they will suffer the political consequences. He also said that there had been two Select Committees set up in the United Kingdom to examine this question, and the provision had been removed from the United Kingdom Constitutional Act by legislation and that no harm had come of this. However, I am reminded of the words of the Leader of the House that are flung across this Chamber many times at me. He says, "But we do things differently here". When we look at the history of some of the other States, we are reminded that indeed we do things differently here.

There have been some suggestions of improper practices in some Parliaments in some States in the past. In many ways there is not the tradition in the Australian Parliaments that there is in the United Kingdom—the tradition that has been handed down from time immemorial. It is said that this means from the time of Edward the Confessor.

The Hon. W. R. Withers: That proves antiquity, not integrity.

The Hon. R. HETHERINGTON: So a whole range of customs, ideas, and conventions apply in the United Kingdom that do not necessarily apply here.

I understand what the Attorney General says, and he knows I understand what he was talking about. I accept his comments about the difficulties involved; that is fair enough. However, it still seems to me that we need to write in somewhere in our Constitution or somewhere in our system that there must be some control.

I quoted some possible alternative measures, and I am not accusing the Attorney General of misunderstanding me, but rather I am accusing myself of not having put them clearly enough. What I meant to say was that we need some such thing as a register of members' interests or perhaps

we could open up Governments to scrutiny. In this particular instance I am not wedded to either of those concepts, and I cannot come up with a quick and glib solution. I am sure the Attorney General would not expect me to do so.

This is the very area where I believe we do need an inquiry by a Select Committee. It is most important that it not be possible for members to be given kickbacks from a Government. All sorts of ways exist to reward members without bribing them, and it should be written into the legislation somewhere that kickbacks are undesirable. In other words, we should not just leave the matter to the general feeling of the community.

At various times some members of this Chamber have spoken about the decline of morals in our community. In many ways our standards and values are changing, and not always for the better. I believe one of the reasons for this is that the people who have goods to sell—and here I will criticise private enterprise which I hope I may do although some members opposite seem to treat it as a sacred cow—have encouraged in our community the attitude that we should gratify our desires and pleasures now. This attitude has been assisted by the development of the electronic media. In my opinion a person who accepts these values is less human than he was before. It seems to me that if we are to have a civilised society, we should learn to postpone present satisfactions for future and greater satisfactions.

In some ways with the whole array of supermarkets and the growth of large cities we are developing a community which takes a less rigorous view of what I would call the old-fashioned virtue of honesty than perhaps I do, and which thinks anything is all right, if one can get away with it. That is happening in our community, although I hope it does not seep through to our Governments. However, I presume that is possible.

I have argued on occasions about the United Nations Declaration on Human Rights. Many people believe the declaration is not worth the paper it is written on, because the Soviet Union has signed it, and does not practise those human rights. Others have said we have signed the declaration, and we do not practise many of the human rights to which it refers.

However, at least it is there; it represents a set of values to which we give lip service and by which we can be judged. If I want to criticise members of this Government, members of my own party, or anyone else for not doing certain things, I can say that what they have done does not fit in with the United Nations Declaration on Human Rights which we claim to support.

For this reason, it should be spelt out quite clearly somewhere in legislation that members should not accept contracts. I know it is not easy. I cannot stand here and read out a provision I would put into the Constitution to resolve this problem. Certainly, before I even begin to try to draft something, I would need to do a great deal of work and be much better informed than I am at the moment.

For this reason, I vigorously oppose clause 9. It is not that I do not want section 32 of the Constitution Acts Amendment Act repealed and replaced by something else. However, until we have something better, we should not simply repeal it and leave nothing in its place; we cannot rely on political deterrents to make sure nothing happens.

Modern government is too big. One of the reasons, of course, that the Government and the Law Reform Commission want to get rid of this clause is the ramifications of government today which mean, as the Attorney General quite correctly said, that people might find themselves offending quite unwittingly. However, it also means if we do not have a Government which is determined to give a kickback to its supporters, it is quite often difficult if it goes about it the right way to follow the ramifications through.

So, I think we need to look for alternative ways and provide for institutionalised checks and balances; I am sure the Attorney General will be sympathetic with my verbiage, even if he, like I, at present does not know quite how to provide those institutionalised checks and balances.

We should inquire further. Until we have done that, and provided what I regard as proper or sufficient alternatives—or at least some sort of alternatives—I must oppose this clause.

The Hon. A. A. LEWIS: I debated with myself whether to enter the discussion on this clause, or on clause 12, because I think the two clauses are tied in together. As Mr Hetherington made his move on this clause, I thought I would join battle in the same spirit as he has conducted his debate.

I agree with a lot of what Mr Hetherington said; in fact, I have been examining this subject for some time. Indeed, I put the point of view of the Government parties to the Federal Government inquiry into this matter.

The great problem is that contracts with government can be entered into at various levels. I should like to use as an example my own situation. When I came to this place, I was the

owner of a business. Initially, I did not know how long I would stay here.

The Hon. D. W. Cooley: You still do not.

The Hon. A. A. LEWIS: That is right, but I have a far better idea now—with seven years under my belt—than I did then.

A proportion of my business consisted of selling a great number of machines to Government institutions. When I became a member of Parliament, I had to give away that part of my business. The fact that I appointed a succession of managers to run my business or that I would spend only about half an hour each week looking at what was going on in my business did not matter. A proportion of my business—and, consequently, a proportion of my profits—was denied to me because of my role as a member of Parliament.

What about the person who sells out his business and contracts to be the manager of a company for three years, and that company does business with the Government? The company concerned would be barred from entering into contracts with the Government because its manager was a member of Parliament. Then, of course, we have the giant contracts which are beyond my ken; I have never dealt with them.

My feeling is that by deleting this section, we will leave the onus of responsibility on the individual member. I have had many arguments with members of the Opposition on the possibility of dishonest people becoming members of Parliament. I cannot remember a dishonest person who has knowingly—to use the word of the parliamentary draftsman—entered this place with the object of trying, as a member of Parliament, to make an unfair profit from a "shonky" deal with the Government.

That sort of person does not get elected to Parliament, because whether he was in business, in a Government department, or anywhere else prior to his attempting to win a seat in Parliament, the public would know about him if he were that sort of person. It is a little far fetched to suggest that someone of that nature would campaign as a nice fellow, with the sole objective of making a big coup once he got into Parliament.

I find myself in the same sort of difficulty as Mr Hetherington, although I am looking at the matter from a different angle.

I turn now to the registry of holdings; how far do we go with this? It has been said—I do not know whether it is true—that one member of the House of Commons declared a tie he was given by an airline. The House of Commons has a registry which asks members to declare trips and gifts.

Who should be included in a register? We are talking about members of Parliament; and let us be frank, although we like to convince the electorate that we have lots of power as back-bench members, in reality the under secretary of a department would have far more chance of doing deals. The Press has far more influence on the public than have we as individual back-bench members.

So should the registry include public servants, and if so, how far down the Public Service list do we go? Do the people in the Government Stores have to declare what they have? Should Rupert Murdoch declare everything he has? Does the proprietor of David Syme and Co. have to declare everything he has? I have a cutting here from *The West Australian* dated the 4th November, 1977, which reads as follows—

> MPs SHOULD
> TELL, SAYS
> PRESS CHIEF
>
> CANBERRA: Members of Parliament should be required by law to declare all pecuniary interests, a senior newspaper executive said yesterday.
>
> Mr Ranald Macdonald, the managing director of David Syme and Co, publisher of the Age, told the National Press Club that the absence of the law was a scandalous neglect of a genuine public issue.

The Hon. R. Hetherington: I would not disagree with you; but we are not debating that.

The Hon. A. A. LEWIS: How far do we go in protecting society as it is known today? I agreed with a lot of what Mr Hetherington said about morals. Do our wives and close family need to be in the register? Should they be allowed to work for Governments? Does a member who holds shares in Mr Cooley's favourite company—BHP—have to sell those shares when he becomes a Minister? This would be worse for Ministers on this side of the Chamber because they serve for a long time, whereas Opposition members usually serve for just three years. Should a member whose shares rose from $5 each to $10 each have to sell those shares when he became a Minister? Who would recompense him for his having to sell those shares? What compensation does he get for doing a job for the State? I believe this concept is completely unacceptable.

The Hon. R. F. Claughton: You seem to be saying that Ministers who sell all their shares

would not need to be on a register. If they sold all their shares they would not need to be on a register.

The Hon. A. A. LEWIS: We could take it one step further and say, "Should they sell all their real estate?" There might be a capital gain involved because of some move by the Government. I am trying to canvass the sort of things with which Mr Hetherington dealt.

If we look at the section of the Act which is proposed to be repealed we see it refers to individuals or close relations entering into a contract. Section 35 of the Constitutions Act Amendment Act reads as follows—

> 35. The foregoing provisions shall not extend to any contract, agreement, or commission made, entered into, or accepted by any incorporated company where such company consists of more than twenty persons,—

A member of this House could own a 1 per cent holding in a company and three other people could own 33 per cent each. This would be illegal. We could have another situation where a member could own 95 per cent of shares in a business and 20 or 30 other people could own the other 5 per cent. So the situation can be got around as it is now.

I can recall the "mouse hole" theory of Mr Ben Chifley. He said, "If someone is doing us for tax it means there is a little hole there and a little bit of tax is going in. You always know where it is so you can clobber them if the mice get too big. If you bung up the hole you will have mice running around the room all over the place."

I support the Government's move. I can see no reason that entry into Parliament should debar people from taking an interest in their previous occupations. In fact, I think it is a good thing to retain such interests. Mr Claughton mentioned the Museum Board and the benefit he received from serving on that. If a member retains an interest he will keep in contact with people with whom he was dealing in the past; people he was elected to represent. I have some legal jargon with me that agrees with this and which indicates that the restrictions under which we now work are against our constitutional rights as members of Parliament.

I will move on to mention the declaration of interest in a subject. I am one who believes that once one has declared his interest, in no way should this be a reason for one to be debarred from voting on that interest. If a member has declared his interest, people will know he has an interest. I believe the fact that we have declared an interest in a subject should not debar us from having a vote, as this would be letting down everyone in the electorate who voted for us.

It is my point of view that once a member declares his interest in a subject he can then go ahead and vote the way he believes he ought to vote in the interest of his electorate. He should not be debarred from voting. Any member who gets up to speak on a subject should declare his interest in that subject. It would not be a bad thing for all of us to look at this; as individuals.

In most cases a person who has an interest in a particular subject probably knows more about it than the average person. The Hon. Fred McKenzie and the Hon. Don Cooley do not have to declare that they have interests in certain parts of the union movement. We all know that, but they still vote on those items involving unions. What is the difference between them and someone who owns a property, a business, or a farm, declaring that interest and then voting on the matter involved?

The Hon. R. Hetherington: The Hon. Fred McKenzie does not have a financial interest. It is a different sort of interest.

The Hon. A. A. LEWIS: It could be classed as such when reading some of the fine legal print.

The Hon. R. Hetherington: You could be pushing that one a little.

The Hon. A. A. LEWIS: I have had a look at some of the Crown Law Department's submissions—with due reference to the Attorney General—to be presented shortly and I would not be prepared to bet money on it. I am not decrying the Crown Law Department when I say this.

This Bill has to be accepted in toto and it will probably be the biggest step forward to ensure there is truth and honesty within the Government.

The Hon. R. Hetherington: You have greater faith than I have.

The Hon. A. A. LEWIS: I could go on and on quoting various cases in the Federal Parliament and others, but I will not. If members are to join registers and make these declarations then there will be numerous other people who will have to do the same. If we are freed from this then we will be able to solve our own problems in the Parliament. The crooks will be found out; they always show up. The Government is on the correct track with this Bill.

Sitting suspended from 3.43 to 4.00 p.m.

The Hon. GRACE VAUGHAN: In opposing the repeal of section 32 the Opposition finds the Government inconsistent. Mr Lewis presented in part my argument as to why I think it is

inconsistent. He pointed out very forcibly that the repeal of section 32 did no harm because of other provisions which would prevent bribery and undue influence on the Government by members who have contracts with the Government or who have interests in firms which have contracts with the Government.

If the Government considers it can repeal section 32 so that those who have financial interests will not by virtue of the repeal of this section have any undue influence or advantage over other people who may be wanting to contract with the Government, why, then, does the Government consider that the people who are members of the committees and other bodies mentioned in part 3 of the fifth schedule will in fact either be influenced by the Government or influence the Government through their membership of those bodies? I will later speak to the clause to which it is more relevant. At the moment I want just to speak about inconsistency.

The explanatory notes which the Attorney General circulated to members state that the 1956 Select Committee of the House of Commons had pointed out that the House had inherent power to regulate the behaviour of its members and any member who abused the position could be dealt with by the House itself by way of contempt proceedings. Surely if that applies to section 32 in the matter of contractual arrangements, it also applies to persons who are members of bodies. I will not continue, Mr Chairman, because you might rule me out of order. I point out the inconsistency of saying we have the power to control members in regard to contractual arrangements, but not in regard to membership of bodies and committees.

The Hon. I. G. MEDCALF: I listened with interest to the comments of Mr Hetherington. He spoke about this matter at some length. If I did him an injustice I am sorry; I did not intend to. Perhaps I went too far. I did not intend to imply he was in favour of the Government's Bill.

The Hon. R. Hetherington: I was not accusing you of being malicious in any way, I can assure you.

The Hon. I. G. MEDCALF: I did not intend to do him any injustice. He dealt with various matters and one point I believe I should comment on is his reference to the electronic media and the way private enterprise through the use of the media has created in the community an appetite for material things. I think he drew the inference that because of this situation we are now likely to have a greater desire for instant pleasure, benefits, or advantages than we have had in the past, and that this may mean, now or in the future, we will have members of Parliament being rewarded by being given Government contracts.

The Hon. R. Hetherington: I was suggesting values are changing and this is one of the ways in which they are changing.

The Hon. I. G. MEDCALF: While these areas are fascinating, I think we need not deal with them. One might well ask: If the electronic media have given private enterprise the power to do this, should we do something about the electronic media? The answer is, "No." We must go further than the electronic media. Private enterprise has done this by using the tool to hand; that is, the electronic media. We must go much deeper to find the causes, because we can find the same avaricious desire for material benefits in all walks of life which have nothing to do with the electronic media or private enterprise. We can find the situation of unions clamouring for material benefits, sometimes, I regret to say, to the detriment of principles.

So it is on all sides and if one really wants to go into the matter one probably has to go a long way back into history to find the causes of the gradual disintegration with man becoming more concerned about material matters than spiritual matters, and the decline of religion or the soul in favour of the body. This brings us into a very difficult area, and I would like to leave it at that.

The Hon. R. Hetherington: I am grateful for that.

The Hon. I. G. MEDCALF: If one approaches it from that philosophical point of view, while it is a good basis for debate, I do not know that it advances in any way the matter now before us. The Government is taking the view—which I will make quite simple and short—that the concept which is embodied in the section we are talking about in relation to Government contracts is old hat. It was designed for the nineteenth century when members of the House of Commons were trying to gain advantage through private Bills in relation to railway and canal companies and similar organisations in which they were interested. They were obviously making use of their position as directors or leading shareholders of the companies to get rights to land or in order to put a railway or canal on their own land, and so on.

Nowadays company law is so complicated and complex and one could find so many loopholes in it that the concept is not worth having. On the other hand, it is simply catching the innocent. That is the whole reason for the Government's attitude; that is, that anyone who is intent on

getting away with something in relation to this legislation will be able to find all sorts of loopholes.

As far as the average member is concerned, he is the innocent victim. I can quote an actual case, which will not affect anyone here, where a former member of the other Chamber had done some legal work for the Government. He had appeared for the Potato Marketing Board or a similar board in prosecutions in the courts. He is no longer a member of the lower Chamber. He is now the Federal Attorney General, as a matter of fact. To his consternation, on opening the *Daily News* one night he discovered that a well-known legal practitioner in Perth had said he was going to have his seat declared vacant because he had accepted a Government contract and would claim the fee of $400. The lawyer said he would have this member out of Parliament. Some precedent existed for this proposition being correct. The member took counsel's opinion on it. Counsel came to the conclusion it was a good case to defend and he had a good chance of defending it. As far as I recall, it did not go any further because the person concerned had made his point and did not take it any further.

That is one of many such instances. Senator Webster, the present Minister for Science, was a director of a company which had a contract to supply timber, I think, to the PMG Department. He was hardly even a shareholder. He certainly had no particular interest in the company and I believe he did not even receive a fee as a director. Certainly he was held to have no financial interest in the company, at any rate of an income nature. He was brought to book by a common informer and the case went to the High Court on the basis that he had a Government contract. He had not participated in any of the agreements and had not had anything to do with the company for years.

They are two illustrations of actual situations within my own knowledge. I will not give illustrations of other situations where people have been afraid they have offended and have taken advice.

The concept is an old one. The Government maintains it is out of date and that anyone who wants to do anything about it can get away with it, but the innocent will be caught if at some future date it can be shown that in reality a problem exists—I have said I do not believe it does—in relation to handouts or Government favours. If anyone can show that is likely to occur we can have another look at it, but surely we must get rid of this old concept which does not do any good, but which hinders the innocent and does not safeguard the position in regard to the guilty.

The Hon. R. HETHERINGTON: I do not want to debate changing social mores with the Attorney General. The substantive point I was trying to make is that values are changing. I thought he seemed unduly optimistic that our social values were such that the public and political deterrents might be sufficient. I think it is a pity the Attorney General did not take enough time to write more of the second reading speech himself. I have been most interested in what he has just said. He has been very persuasive. He has not quite persuaded me, but he has made a most important point which I feel remiss in not having made myself earlier in the second reading debate. That point is that the people who want to get away with it can do so quite often; it is the innocent who are likely to suffer, the little people who are not aware of the problems and cannot retain lawyers to ensure they weave their way through the reefs.

For that reason I am sympathetic with what the Government is trying to do, but I think we should try to find a way in which we can let off the innocent and check the guilty. Therefore, I oppose the clause, although somewhat reluctantly. I think it is important that we do look for other institutional checks.

Clause put and a division taken with the following result—

Ayes 16

Hon. N. E. Baxter	Hon. N. F. Moore
Hon. H. W. Gayfer	Hon. O. N. B. Oliver
Hon. T. Knight	Hon. W. M. Piesse
Hon. A. A. Lewis	Hon. J. C. Tozer
Hon. G. C. MacKinnon	Hon. R. J. L. Williams
Hon. Margaret McAleer	Hon. W. R. Withers
Hon. N. McNeill	Hon. D. J. Wordsworth
Hon. I. G. Medcalf	Hon. G. E. Masters *(Teller)*

Noes 7

Hon. Lyla Elliott	Hon. R. H. C. Stubbs
Hon. R. Hetherington	Hon. Grace Vaughan
Hon. R. T. Leeson	Hon. R. F. Claughton
Hon. F. E. McKenzie	*(Teller)*

Pairs

Ayes	Noes
The Hon. R. G. Pike	The Hon. D. K. Dans
The Hon. I. G. Pratt	The Hon. D. W. Cooley

Clause thus passed.

Clause 10 put and passed.

Clause 11: Section 34 substituted—

The Hon. R. HETHERINGTON: Mr Chairman, I hope you will exercise a little tolerance if I stray onto further clauses, because I want to talk about the fifth schedule which is mentioned in this clause, and it is the subject of another clause.

During the second reading debate I said I thought there were better ways of listing the

offices which members of Parliament will not be able to hold under this proposed legislation, rather than putting them in the Constitution Act. I advanced the argument that in my opinion a Constitution Act should be as short as possible and should deal as far as possible with principle rather than detail. I know it is not feasible to leave out all detail, particularly in our kind of Constitution Act which was originally passed by the British Government. By interjection I drew the attention of the Attorney General to the fact that Great Britain does not have a Constitution Act, but that the British Constitution is to be found in a series of Statutes, one of which deals with the question of who may or may not be a member of Parliament.

However, because Britain has no formal written Constitution the Statute dealing with who may or may not be a member of Parliament is one Statute among many; whereas we have a formal, written Constitution which is bounded by the Federal Constitution.

It seems to me we should not write into our Constitution Act schedules of the kind to be found in the fifth schedule to this Bill. I suggest we should write into the Constitution a provision saying that a person is disqualified from membership of the Legislature if he holds certain important offices which should be listed, and then the provision should say that he may not hold such other offices as the Parliament may decide.

That provision should be where everybody can read it. I agree wholeheartedly with the Attorney General that we should have an Act in which people can see the offices concerned. The offices should be able to be seen clearly and specifically in a slim Act.

I do not regard myself as competent to draft the words of such a provision. When I spoke previously I said that I did not have a solution, but I thought of it yesterday; and it was too late to consult the Parliamentary Draftsman. If the Attorney General accepts my point he would be able to have a provision drafted. If he does not accept my point I would be wasting my time drafting one, anyway.

I will not force this point to a division: I merely say I think this would be a better way of doing it. It would have more finesse and would not overload the Constitution with a long schedule. It would also have the advantage that offices which may not be held by members of Parliament would be in an Act of Parliament rather than a schedule, and would have to be amended by an Act of Parliament. I will develop argument on that on the relevant clause.

I merely suggest now that it would be better if the general principle were written into the Constitution Act. I know in one sense power would be given to Parliament under the Bill before the Chamber. However, it would not actually be a power in the hands of Parliament, but a power given to the Government by proclamation, with the Parliament having the right to disallow. I would rather the offices were listed in their own right in substantive legislation.

I do not know whether this appeals to the Attorney General. I ask him to consider it; even if he rejects it now he might continue to consider it and perhaps do something about it later.

The Hon. I. G. MEDCALF: Mr Hetherington suggested that he had this type of answer in mind in answer to my statement that I knew of no better way of doing this. I have an open mind on the subject; indeed I have an open mind on many subjects, although perhaps not all.

However, whilst I like things neatly and tidily sewn up, and whilst I do not like prolix or fat Acts of Parliament, the Constitution Acts Amendment Act will in fact be a fairly slim Act if this measure is passed. In spite of the fact that the proposed fifth schedule will be added to it, it will still be fairly slim.

However, that is not really the point made by Mr Hetherington. His real point is that matters of detail should not appear in the Constitution itself. I have a good deal of sympathy for that point of view. The reason we are proposing to put this in the Constitution is that it will be where prospective members will trip over it. It will be in front of them, and will be part of what might be called the prime law of the land.

The argument advanced by Mr Hetherington is that it is not a very good exercise to put it in the Constitution Acts Amendment Act. Whilst I have a good deal of sympathy with that argument I will not propose at this stage to make any change in what we have before us. I am prepared to assure the honourable member that I will have a look at the matter and if it is possible to devise some other scheme which will still have the effect of preserving the notoriety of the positions mentioned in the schedule, I will certainly consider including it in a future amending Bill.

Clause put and passed.

Clause 12 put and passed.

Clause 13: Section 36 substituted—

The Hon. I. G. MEDCALF: This clause provides that certain offices and places must be vacated before a member can take his seat. It

concerns offices or places in the service of the Commonwealth in another State or Territory.

In such cases, the Governor may, by Order-in-Council, exempt that office; and he may, by subsequent Order-in-Council, revoke the previous order. It has been found, on a close scrutiny of the Bill by independent counsel, that in order to make certain that Parliament has the right to disallow, we should accept the amendments which appear in my name under clause 13. I move an amendment—

> Page 6, line 7—Delete the passage "subsection (5)" and substitute the passage "subsections (5) and (6)".

Amendment put and passed.

The clause was further amended, on motions by the Hon. I. G. Medcalf as follows—

> Page 6, line 9—Delete the words "effect on" and substitute the words "and have effect on and from".
>
> Page 6, line 15—Delete the words "take effect at" and substitute the passage ",subject to subsection (6) of this section, take and have effect at and from".

Clause, as amended, put and passed.

Clause 14: Section 37 substituted—

The Hon. R. HETHERINGTON: The argument I used earlier about clause 11 applies here, and for that reason I formally oppose the clause.

As a result of looking at this clause, I have become aware of the very good provision in our Constitution that allows a person to stand for Parliament and not vacate his position until he has taken the oath. That applies to certain officers, but I am not sure that I agree that all the right officers are included. This seems to be a very elegant way of doing this. It prevents all kinds of incidents that have happened in some places when fairly minor public servants have stood for Parliament and have had to resign.

I am not talking about a situation in Western Australia; I am talking about other places. The people concerned had to resign on the understanding that they would be reappointed. Under the provision in our Constitution, such people are suspended. They do not lose their positions until they actually take the oath.

I thought I should mention this because it is an elegant provision, although I am opposing the clause in itself for the reasons I outlined earlier.

The Hon. O. N. B. OLIVER: I am pleased that Mr Hetherington has decided not to repeat the arguments he put forward on the second reading and in consideration of the previous clause debated.

The Hon. R. Hetherington: Only if you do not provoke me.

The Hon. O. N. B. OLIVER: I will not provoke Mr Hetherington. I would like to mention a dilemma which faces some people. In my own case, I held an office under the Crown, under the Defence Act. That Act has yet to be repealed. It has not been enforced. I could have an office under the Crown, and I could obtain benefits from that. That comes within this clause, and that is why I have chosen to speak at this time.

The provision goes further than members of Parliament. I know it is not totally relevant to the legislation, but it may have far wider effects. People are co-opted to boards on which there may be what is called a "conflict of interest". One must decide whether one wants people to make contributions which will be worth while. We require the type of person who will act honestly and declare his interest. That is the type of person required for boards. Members of Parliament fill that category. The contributions given by those people would be to the benefit of the Parliament and the boards with which they are associated.

This is a delicate situation. I appreciate the concern expressed by the previous speakers. However, we have to have more vision. We should co-opt the people who can give the greatest benefit to the State. If we are forced to cast aside those people because of some technicality we should remove that technicality. This Bill sets out to do that. Therefore I support the clause.

The Hon. GRACE VAUGHAN: I think I can say now the things I was not expressing very explicitly earlier. I see a contradiction in our repealing section 32 and yet applying more barriers to those people who may belong to committees and other bodies. It seems that in many ways parliamentarians are isolated from the community, often by virtue of the aura they have. People see them as unapproachable in the sense of close community contact. It seems that our being on committees and advisory bodies brings us closer to the grass roots.

The formality met by many members of Parliament in community organisations is a very real problem. People feel they have to be formal with members of Parliament.

Another problem is that few people in the community are willing to give of their time and their expertise to serving on the bodies outlined in part 3 of schedule V. That means society is poorer because a person is a member of Parliament. Why should there be any difference between people

who have contracts with the Government or are associated with contractual arrangements and people who are likely to assist the Government by virtue of their expertise?

As Mr Lewis said, quite often a person who owns a business has a contribution to make to the Parliament concerning the area of business in which he is interested. Surely a person with expertise in the community should be given the same treatment. I see an inconsistency here.

We are leaving it to other provisions to ensure that there is no undue influence by a member who has a business; yet, on the other hand, we are saying we must hedge around with all sorts of provisions the acceptance by any member of Parliament of a position where his expertise can be of benefit to society.

There are many people who by the existing barriers are precluded from entering Parliament. We do not have enough people offering for Parliament—this is not to denigrate anyone within the Parliament—who have the expertise which can be of value to the Parliament. Political parties often scratch their heads, looking for good candidates. They are not all like Mr Lewis and me; the parties are kidding to us to stand!

If we regard the State Parliament as the top decision-making body, we ought to be thinking about having the best people in the Parliament. I do not mean the best people intellectually; I mean we should be aiming for a body of people who have expertise in all sorts of areas.

Mr Lewis mentioned that there is no difference between his having business expertise and bringing it into the Parliament, and Mr McKenzie's having expertise in the trade union movement and in the railways and bringing that expertise into the Parliament. I agree with him on that point.

I cannot see why we are removing barriers against persons who have contracts with the Government, while on the other hand we are hedging around those people who can influence the Parliament in the sense of a valuable input.

I do not know whether I can speak now about the bodies and authorities in the schedule. I suppose I can, because this clause refers to part 3 of the fifth schedule. I could not begin to enumerate the bodies which ought to be left out, because all of part 3 should be left out. The people on those bodies are the judges of whether a person's being a member of Parliament will have undue influence on that body. It is the body which should request that the person be taken off the committee.

It seems to me the Government's thinking is that the people in part 3 are likely to be influenced by the Parliament or by the Government in the decisions they make as members of various bodies, rather than that they will bring undue influence into the Parliament. However, we must bear in mind that it is a two-way argument. By introducing part 3 we are depriving society and Parliament of people who can be of great benefit.

I will let Mr Hetherington argue about parts 1 and 2 of the fifth schedule. Approximately 190 bodies are covered by the two amendments the Government has introduced. Of those bodies 20 are not specific. It is a matter of "any" committee or body involved in a particular activity. Therefore, we could have another 50 or 60 bodies as part of the list. We would have a total of approximately 250 bodies on which parliamentarians are not allowed to be represented.

As a result, in some areas where a few people only have any real knowledge of the matter, the society involved will be deprived of the ability of those people. That is more unfair and more deleterious to the community than the matter mentioned by Mr Lewis when he referred to the business community. Business spreads over many interests in the community; but the bodies I have referred to encompass everything, including business, farming, welfare, and other matters.

There must be a specification in regard to public servants and members of the other Legislature; but part 3 will be deleterious to our society. I know from private talks with the Attorney General that there has been an attempt to encompass within the body of the Bill the matters spelt out in the schedule.

The Hon. I. G. MEDCALF: I will not comment on the points made by the Hon. R. Hetherington or the Hon. O. N. B. Oliver, because they were self-explanatory. There are two sides to every argument or debate and the Hon. Grace Vaughan has put up one side of the case which we have considered already. In other words, she said, and quite rightly, that it is of value to members of Parliament to be involved in community activities. It is beneficial for members of Parliament to be members of boards and committees. Indeed, there would not be one member of Parliament here who is not involved in various community activities of one kind or another. All members of Parliament are involved in some kind of work or activity of a social or charitable nature in their own electorates or elsewhere. Undoubtedly it is of great value for members to be involved with people and to know

what they are thinking, because their views change from time to time.

If this were a debate on this question, I would say the honourable member had won the debate; but it is not a debate on that question. We are talking about offices of profit under the Crown and the very offices the honourable member is talking about are prohibited already. Members of Parliament could not be involved in the bodies to which the member referred without offending against our existing Constitution. Most of those bodies, if not all of them, have Government-appointed members. We are not talking about ordinary social activities, although I agree with the honourable member in that regard.

It might be beneficial for a member of Parliament to be a member of the beekeepers' board. When we deal with legislation relating to the Honey Pool, as we did this afternoon, we would have a member from the beekeepers' board and he would be able to tell us a great deal about honey which we do not already know. However, if he was a member of that board, he would probably be holding an office of profit under the Crown.

I may stand to be corrected, because I have not actually checked the situation in regard to the beekeepers' board; but the officers of boards, commissions, and councils have been selected, because they involve Government patronage.

When we said we were abolishing the concept of "office of profit under the Crown", we were abolishing the concept in those six words, but we are including in the list as many of the positions as we can which may offend as a result of those six words. Therefore, we are not really changing the principle. We are simply making the law more certain than it is at the present time.

If the honourable member were asked whether she would like to be a member of the Apple Sales Advisory Committee which, for all I know, might pay a handsome fee to members, she might think that was a good idea. However, it could involve the forfeiture of her seat in Parliament. We are saying a member of Parliament cannot be a member of the Apple Sales Advisory Committee for that very reason. We are naming these bodies and, unless they are named, it is possible for members of Parliament to join them.

If one is asked to be a member of a body, one can look at the list and see whether or not it is feasible. It might be beneficial to be a member of a board, particularly one which deals with agricultural matters. One would gain a great insight into certain aspects of agricultural activity. I concede the points made by the honourable member in that regard. It is very desirable to be involved with different groups and bodies within the community.

The Hon. Grace Vaughan is involved with social work and other activities. However, if it is a question of a member of Parliament becoming a member of a board which pays a fee, we come back to the old idea of patronage. A member may then be susceptible to the Executive of Parliament. The member may think, "If I do not do what I am told in the Chamber, I will lose my position". That is the theory. Whether or not it is true depends on the individual. In some cases it would not make one iota of difference. The person would vote according to his conscience; but there is always a suspicion in the public's mind and we are trying to make the position more certain than it was before.

The Hon. GRACE VAUGHAN: I thank the Attorney General for his reply. Surely there is some way this problem can be overcome. No fee should be accepted by a member of Parliament if he is appointed to a board. Frequently some of these committees and authorities meet once a month only or perhaps once every two months. It is stretching a long bow to consider them as money-earning jobs.

It may be necessary to alter the Acts which set up the various authorities and bodies, but it should be possible to incorporate in the various Acts the exclusion of a fee for a member of Parliament.

There is an example which I should like to point out, because it is in my area of expertise. I am referring to "any advisory committee set up by the Department for Community Welfare". Few members of Parliament are professionally qualified to give advice.

The Hon. H. W. Gayfer: Does it make you an expert because you are qualified?

The Hon. GRACE VAUGHAN: No; that is a long story.

The Hon. H. W. Gayfer: You said it is your "area of expertise".

The Hon. GRACE VAUGHAN: It is in my field of expertise; but that is not just because I am qualified.

The Hon. A. A. Lewis: She has a soft heart.

The Hon. GRACE VAUGHAN: If the Government wants to overcome all the problems, a simple and logical way of doing so is to have this list of bodies so that members know whether or not they may join a particular committee or authority. However, this will result in the loss of a great deal of expertise.

The Hon. I. G. Medcalf: You cannot be on those boards now.

The Hon. GRACE VAUGHAN: We should improve the situation.

The Hon. I. G. Medcalf: Do you want to repeal the Constitution which prevents the office of profit concept? You would like to take that out, would you?

The Hon. GRACE VAUGHAN: I do not wish to do so entirely in relation to the boards which are not permanent jobs, but which can be performed by members of Parliament if they have the particular expertise because they involve occasional work only.

The Hon. I. G. Medcalf: Some of them are quite well paid.

The Hon. GRACE VAUGHAN: There should be some way of legislating for members of Parliament to accept an appointment to an authority set up by the Government, without their being paid for it.

The Hon. I. G. Medcalf: He would not receive any allowances either?

The Hon. GRACE VAUGHAN: He may receive a travel allowance, but he should not receive any other allowances. It is possible for the Government to devise a way to ensure members of Parliament can be members of these authorities. Society should not be deprived of the valuable contribution they may make, simply by virtue of their occupation. It is a form of discrimination.

One can understand this matter in relation to public servants, because they are involved in a full-time job and are responsible to a Minister who expects objectivity and loyalty from the Public Service. One can understand and accept that situation when one bears in mind that changes of Government occur.

It is difficult to find suitable people for many of these advisory committees. As a result, many people are dissuaded from standing as members of Parliament, because they feel they will have to give up a great deal in other areas.

I know there is no likelihood of my suggestions being put into effect immediately. I do not have a firm idea of how it can be done. However, by way of Order-in-Council, which is a loophole for exempting some officers and adding others, possibly the Government can devise some means whereby the suggestions I have made are practicable.

The Hon. I. G. MEDCALF: I am the first to admit that an argument could be made out for the proposition outlined. It is one side of a two-sided argument. I do not think, as a Parliament, we would get away with it if we were to abolish the concept of "office of profit" in relation to boards, commissions, and councils and provide that any member of Parliament could be a member of any of those instrumentalities even if he did not receive fees. I do not know how popular that would be; that members of Parliament should serve on various bodies without being paid.

I wonder whether the proposal to enable members of Parliament to serve on bodies without receiving fees would be publicly or politically acceptable. The member has put forward a very good argument but I do not think it is politically viable. I am not saying it is not viable legally.

If a case were to be made out for an exemption of any one particular body it would be examined in the light of the principles which we believe ought to apply. I am quite prepared to give consideration to the point which has been made. But I feel that unless the political climate were to change in relation to members of Parliament accepting other offices, it might be difficult to introduce.

Clause put and passed.

Clauses 15 to 20 put and passed.

Clause 21: Section 42 substituted—

The Hon. R. HETHERINGTON: I move an amendment—

> Delete all words after the figure "42" on page 11, line 11 down to and including the word "section" on page 12, line 3.

I have moved the amendment to indicate that I really disapprove of this method of amending the schedule. If the schedule is to be amended, it should be as a result of legislation introduced in this Parliament.

I am aware that if the schedule is amended by proclamation a regulation will be tabled in Parliament, and members can then move to disallow the regulation, in either House. We all know that is very difficult. It is easy to miss papers which are laid on the Table of the House.

I am not opposed to changing the schedule, but it should be done as a result of a Bill which passes through both Houses of Parliament in order to make sure it will be scrutinised. It is no use pretending that because members are able to scrutinise papers they actually look at them. I find it difficult to keep up with the regulations of the Education Department and sometimes I find a regulation floating around which I should have moved to disallow.

I suggest to the Attorney General that he consider this matter quite seriously because it is

not something which should be done by proclamation and disallowance.

The Hon. I. G. MEDCALF: This matter has been considered quite seriously because we had to provide a method whereby a situation could be created to exempt a member of Parliament who happened to transgress, through no fault of his own, and had been appointed to a board or a council or a committee referred to in the schedule. A member would find himself in a difficult situation in that he would forfeit his seat in Parliament.

It was necessary to provide for that particular board to be eliminated so that action could be taken immediately. That applies also where it is felt is is unnecessary for a board to remain in the schedule, or that a board should be added as a result of a new Act of Parliament. If Parliament was not sitting action would have to be taken immediately to proclaim an alteration. There really must be a quick way to amend the schedule without an Act of Parliament. A safeguard is that it will be subject to disallowance, and also subject to a delay of 30 days in the case of bodies which are to be added to the schedule. I believe the provision should remain as it is, otherwise there would be no alternative other than to wait for the next session of Parliament.

The Hon. R. HETHERINGTON: I find the argument persuasive, but if we are to accept it I think the proclamation should be ratified by Parliament. I still believe the matter should be brought before Parliament in the form of a Bill with a covering explanation. I am chary of Executive action. I will think about it further and take advice. My objections would be met if a provision were incorporated in this legislation to provide that a ratifying Bill be introduced within so many days of the resumption of Parliament.

Amendment put and negatived.

The Hon. GRACE VAUGHAN: Proposed new section 42(2)(b) states—

> . . . in the case of any other Order . . .

I presume that refers to the deletion of some board.

The Hon. I. G. Medcalf: That is right.

The Hon. GRACE VAUGHAN: So that also can be done by Order-in-Council.

The Hon. I. G. Medcalf: That operates immediately, without a delay period.

The Hon. GRACE VAUGHAN: So if I were to put forward a list of organisations which I wanted deleted from the schedule, what would be my approach?

The Hon. I. G. MEDCALF: If a body is to be exempted, obviously it will be done for some particular reason. A member of Parliament could have been appointed inadvertently to a board and there should be power to make the order immediately.

With regard to the list of organisations suggested by the member, to be exempted, she would need to make representation to me and I would give consideration to putting forward a recommendation to the Governor-in-Executive-Council.

The Hon. GRACE VAUGHAN: In the case of an Order-in-Council, if a new board was added, it would not be included in the schedule to the Act, and if a board was exempted it would not be taken out of the schedule. The situation would be according to the list kept by the Clerk of the Parliaments.

The Hon. I. G. Medcalf: It would be one of the items listed now.

The Hon. GRACE VAUGHAN: If an Order-in-Council provided for the addition of an advisory committee on bicycle paths, would it be added physically to the schedule, or would it be added to the list kept by the Clerk of the Parliaments? Another board could appear in the schedule, although the entry may not be effective.

The Hon. I. G. MEDCALF: I think in that case it would be taken out at the reprint stage.

The reasoning behind my next amendment is exactly the same as that in relation to clause 13. There is a power of disallowance by Parliament, and senior counsel has pointed out we should ensure that is made clear by making it subject to subsection (3). The power of Parliament to disallow will then be made thoroughly clear.

I move an amendment—

> Page 11, line 15—Delete the word "An" and substitute the passage "Subject to subsection (3) of this section, an".

Amendment put and passed.

The clause was further amended, on motions by the Hon. I. G. Medcalf, as follows—

> Page 11, line 16—Insert after the word "take" the words "and have".
>
> Page 11, line 23—Insert after the word "at" the words "and from".
>
> Page 11, line 27—Insert after the word "on" the words "and from".

The Hon. R. HETHERINGTON: I wonder whether the Attorney General would care to comment on the suggestion I made earlier about the notion of ratifying legislation. I will not ask

him to accept it on the spur of the moment, but I wonder whether he thinks it has any merit.

The Hon. I. G. MEDCALF: The matter raised by the honourable member has been of concern to me. Certainly the point he raised is worthy of consideration. As I indicated earlier in regard to his other suggestion, I am prepared to look at this in the future. Certainly I will have the question studied.

Clause, as amended, put and passed.

Clause 22 put and passed.

Clause 23: Schedule V added—

The Hon. R. HETHERINGTON: I am not here debating whether we should or should not have a schedule. I am now raising the question of who should or should not be allowed to be members of Parliament. I am assuming that my remarks apply either to the schedule, or if the Attorney General accepts my other suggestion, to the legislation.

I wonder whether people are in the appropriate sections in the schedule. I take the point made by two earlier speakers to another clause that Government back-bench members and members of the Opposition—who are back-bench members technically—do not have a great deal of power. Certainly we have less power than all the people mentioned in, say, division 2 of the schedule. We have less real power, I would think, than permanent heads of departments who really do wield a great deal of power.

The Hon. W. R. Withers: It is more important that we have influence rather than power.

The Hon. R. HETHERINGTON: Yes, I am making the point that heads of departments hold positions of power and influence. I am not saying that is a bad thing. I think it is important that we do have influence. I am not playing down the role of a member of Parliament. No doubt at another time in this place I will suggest how our influence might be better used, and how we might become better members of Parliament.

In a modern Government, with our modern expert Public Service which we cannot do without, the people in charge of departments—such as the Commissioner of Main Roads, the Director General of Transport, and the Solicitor General—are very important people. It used to be thought that they should not enter Parliament. Certainly I believe they should not be encouraged lightly to enter Parliament.

If a person has decided on a career in the Public Service, and if he has reached the position of head of a department, he has made a decision that this is where he can best wield influence. I do not want to go overboard on this matter, because as I said earlier not everyone behind me agrees with what I am saying. We should have a continuing discussion about the matter. However, I am inclined to think that such people should resign their positions before standing for Parliament.

Let me put forward a hypothetical case. Let us say that a Solicitor General stood as a Labor Party candidate against the Attorney General.

The Hon. I. G. Medcalf: He would not be so foolish!

The Hon. R. HETHERINGTON: I do not think he would be. However, let me put another hypothetical case. Were I to become the Minister for Education one day, and if the Director General of Education stood against me for the Liberal Party—he would not be so foolish either—and lost, he would be an embarrassment to the Minister if he had not resigned his position. He should not be able to do this.

At least heads of department should resign from their positions before standing for Parliament even if they do not resign from the Public Service. I do not know quite where I would draw the line. Certainly I do not want to stop public servants from standing for Parliament, but it may be necessary to include, say, assistant directors general. It may well be that if such a person ran against a Minister and lost, the Minister would be quite happy to have him back in his previous position. I could imagine the situation, where, if I were a Minister I would be quite happy to have, as head of the department, a person whose politics were not mine because I would know that he would give me disinterested advice—and I am using the word "disinterested" in its correct way.

The Hon. D. J. Wordsworth: Such people would be cutting their salaries in half.

The Hon. R. HETHERINGTON: Certainly a person would have to consider his decision very carefully in such situations. I wonder whether all the people in part 2, divisions 1 and 2, should not, in fact, be in part 1, and whether we should have some other provision for permanent heads of departments.

I do not seek to move an amendment on this, but it is certainly a matter I would like to consider in a Select Committee if I ever had the opportunity. As the Attorney General said in one of his speeches to this Bill, things have indeed changed, and we must look at the position of public servants.

We will allow people down the line in the Public Service to stand for Parliament without

resigning and this is quite proper. We have reached the stage where we allow school teachers to criticise Governments in public, and this is quite proper. We have loosened up in some areas of the Public Service, but we should think of the relationship of the people in the top echelons with their Ministers and wonder whether we should tighten up the provisions for them. I have been told that I am talking nonsense, and that we should loosen the provisions rather than tighten them.

I am glad to see that members of Parliament can be members of the Western Australian Museum Board and the Library Board. Indeed, members could well sit on these boards with profit.

Perhaps not this year, but certainly next year when we return after the election and we have more time and we are under less pressure, we should set up a Select Committee to examine who should be where in the schedule.

There is a whole range of problems; I have thought about them many times. I have lectured about the relationship between Ministers and their heads of departments. It is a very sensitive and important relationship. The head of a department has to be seen to be disinterested and above the political battle—or does he, these days? I am not quite sure about that!

We are relaxing our restrictions on public servants in regard to public criticisms. I remember an argument we once had at a seminar, although I do not think we ever reached a conclusion about it. What happens if a person in a high position in the Public Service is the only person who knows that the Government is about to do something foolish? Does he tell? I suppose he must make up his own mind about that. The Public Service has become large and expert and so a whole new range of situations has arisen. We, therefore, have to rethink our checks and balances in this area. I know the Attorney General will not disagree with that last statement.

I raise these matters in the Chamber so that whatever the persuasion of the Government in power next year, it may continue to think about them.

The Hon. I. G. MEDCALF: The Government has given very careful attention to this, as I mentioned. These various lists have been examined by the heads of the departments and by the Ministers concerned. We have followed the English idea generally and we have simply named the judicial officers in part 1. Although they are heads of departments, we treat them the same as we treat members of the service.

It is true that Mr Ellicott—Solicitor General during the term of the Whitlam Government—retired from that position to contest a seat, which he won. The question might well be, "What would have happened to him had he lost?" I very much doubt whether he would have attempted to go back to his old position. Mr Ellicott was in a different situation from most, because he came into private practice at the Sydney Bar.

I cannot see that any of these heads of departments in their right minds—I stress, in their right minds—would stand for Parliament, quite apart from the financial benefits they would lose. These are substantial; a solicitor general's salary is equivalent to that of a judge of the Supreme Court and he also receives Public Service allowances and conditions. If he came down to the level of a humble member of Parliament, he would suffer seriously. So, from a material point of view, it would be a bad thing for him to do.

However, that is not the point. It is always possible; indeed, anything is possible. I suppose there will always be different opinions on this matter. A considerable amount of care has been taken. I would not be prepared to say to the honourable member that I would be in favour of establishing a Select Committee to examine this matter next year, because it has already been carefully examined. However, any representations made will be carefully examined in the light of the particular facts.

I move an amendment—

> Page 14, line 39—Insert after the word "authority" the passage "or of The Western Australian Museum constituted by the Museum Act, 1959, The Library Board of Western Australia constituted under the Library Board of Western Australia Act, 1951, the Western Australian Alcohol and Drug Authority established under the Alcohol and Drug Authority Act, 1974 or the Cancer Council of Western Australia or the Board of a Cancer Institute constituted under the Cancer Council of Western Australia Act, 1958".

To explain all the amendments at this point: The effect of the first amendment will be that whilst members of the Western Australian Museum, the Library Board and the other bodies mentioned are outside this legislation and a member of Parliament can be a member of one of those boards, nevertheless the employees of those boards ought to be in the same position as other Public Service employees.

The effect of the second amendment is that some people employed are not actually in departments, but nevertheless come within the Public Service Act. Therefore, they should be included also, just as if they were within departments, because they do come under the Public Service Act. The third amendment seeks to insert "Art Gallery", because members of that board may receive fees. The fourth amendment seeks to insert "Government Employees' Housing Authority" because that is in the same category as all the other boards mentioned, and should have been inserted earlier.

Amendment put and passed.

The clause was further amended, on motions by the Hon. I. G. Medcalf, as follows—

Page 14, after line 39—Insert the following item—

Officer within the meaning of the Public Service Act, 1978 not referred to in a preceding item of this Division.

Page 16, after line 42—Insert the following item—

The Board of the Art Gallery of Western Australia constituted under the Art Gallery Act, 1959.

Page 18, after line 38—Insert the following item—

The Government Employees' Housing Authority established by the Government Employees' Housing Act, 1964.

Clause, as amended, put and passed.

Clauses 24 to 37 put and passed.

New clause 6—

The Hon. I. G. MEDCALF: I move—

Page 2—Insert after clause 5 the following new clause to stand as clause 6—

Section 22 amended.

6. The proviso to section 22 of the principal Act is amended—

(a) by deleting the passage commencing with the word "if" in line one and ending with the word "may" in line three and substituting the passage "a member may, instead of taking an oath,", and

(b) as to the form of affirmation, by deleting the passage commencing with the word "solemnly" in line one and ending with the word "promise" in line three and substituting the passage "do solemnly, sincerely and truly declare".

This new clause, which is not in line with the other clauses with which we have been dealing, is to cure an anomaly which the Hon. Robert Hetherington and others have pointed out exists in the Constitution. The Constitution contains an old form of words in relation to the taking of oaths. Before making an affirmation—which is the alternative to taking an oath—a member must first declare that the taking of an oath is unlawful according to his religious belief.

It may be that he wishes to make an affirmation for other than religious reasons, and it is unnecessary to use that phraseology in connection with making an affirmation under other legislation of this State, including making an affirmation in the courts. It is considered we should bring the wording of our Constitution into line with the wording we use in other legislation, including the form of affirmation made in the courts.

The Hon. R. HETHERINGTON: This is one proposed section of the Bill I can wholeheartedly support. It is true I mentioned this matter to the Attorney General. In fact, what we have in the Constitution at present is obviously a form of words used by Quakers, who believed in the unlawfulness of the oath. Their "unlawful" referred to the law of God, which they saw as being higher than ordinary law.

However, it does not allow for agnostics and atheists who do not talk in terms of laws being unlawful, because they obviously cannot talk in terms of this higher law.

I am glad to see the Attorney General heard me and other members, and has brought this matter forward as I thought he would.

I, of course, have some interest in this matter because I am told I am the first person to make an affirmation since 1919, and that the person who made an affirmation in 1919 changed his mind after the following election, and took an oath. I am hoping I will be re-elected in the coming election, and that I will be able to make the new affirmation.

The Hon. I. G. Medcalf: There is a chance yet that you may become converted.

New clause put and passed.

Title put and passed.

Report

Bill reported, with amendments, and the report adopted.

QUESTIONS

Questions were taken at this stage.

ADJOURNMENT OF THE HOUSE: SPECIAL

THE HON. G. C. MacKINNON (South-West—Leader of the House) [5.45 p.m.]: I move—

That the House at its rising adjourn until Tuesday, the 2nd October.

Question put and passed.

House adjourned at 5.46 p.m.

QUESTIONS ON NOTICE

FRUIT

Fruit-fly Baiting Schemes

219. The Hon. V. J. FERRY, to the Minister for Lands representing the Minister for Agriculture:

(1) In what areas or districts of the State are fruit-fly baiting schemes now in operation?

(2) What are the areas of the State to which the provisions of section 12 of the Plant Diseases Act apply in relation to fruit fly, and which have been published in the *Government Gazette*?

The Hon. D. J. WORDSWORTH replied:

(1) Albany
Balingup-Mullalyup
Beverley
Bickley-Carmel
Boddington
Boyup Brook
Busselton
Carnarvon
Collie
Darkan
Donnybrook-Newlands
Harvey
Katanning
Kojonup
Koorda
Manjimup
Mukinbudin
Narembeen
Narrogin
Pingelly
Pinjarra-Dwellingup
Southern Cross
Tambellup
Wagin
Waroona-Hamel
Williams
Wongan-Ballidu
Wyalkatchem.

(2) The major area includes generally all that land from the coast immediately north of Wanneroo, eastwards to Wundowie, southwards to Quindanning, eastwards to a point south of Tollibin, then due south to Katanning and due west to the coast at Cape Clairault.

Other gazetted areas include the town areas of Chittering, Bakers Hill, Clackline, Northam, Toodyay, Grass Valley, York, Beverley, Brookton, Pingelly, Narrogin, Cunderdin, Meckering, Kellerberrin, Merredin, Southern Cross, Boulder, Kalgoorlie, Norseman, Esperance, Albany, Nannup, Bridgetown, and Boyup Brook.

EDUCATION: HIGH SCHOOLS

Registrars

220. The Hon. R. F. CLAUGHTON, to the Minister for Lands representing the Minister for Education:

(1) Will the Minister advise which senior high schools do not have a registrar appointed?

(2) (a) What is the present enrolment at each of these schools; and
(b) what is their projected enrolment for 1980?

(3) To which of these schools will a registrar be appointed in 1980?

The Hon. D. J. WORDSWORTH replied:

(1) to (3) The information sought is detailed and the member will be advised by letter.

FUNERAL FUNDS

Legislation and Registration

221. The Hon. Lyla ELLIOTT, to the Leader of the House representing the Minister for Consumer Affairs:

With reference to the matters raised by me during the Address-in-Reply debate earlier this year concerning the need for an inquiry into the funeral industry and legislation to govern funeral funds—

(1) Has any action been taken by the Government on either of these matters?

(2) If not, is action contemplated?

(3) If so, when?

The Hon. G. C. MacKINNON replied:

(1) No. Inquiries made with the Bureau of Consumer Affairs indicate there have not been sufficient complaints to warrant the type of action the honourable member suggests.

(2) No.
(3) See (2) above.

POLICE STATIONS

North-west: Unsentenced Prisoners

222. The Hon. Lyla ELLIOTT, to the Leader of the House representing the Chief Secretary:

Will the Minister advise—

(1) What was the total sum paid by way of meal money for unsentenced prisoners for the year 1978-79 for each of the following police stations—

(a) Onslow;

(b) Halls Creek;

(c) Fitzroy Crossing;

(d) Wyndham;

(e) Kununurra;

(f) Marble Bar;

(g) Laverton; and

(h) Leonora?

(2) What was the total sum reimbursed through the Department of Corrections for sentenced prisoners at each of these police stations for the year 1978-79?

The Hon. G. C. MacKINNON replied:

(1) The total sum paid by way of meal money for unsentenced prisoners for the fiscal year 1978-79 for the police stations mentioned was as follows—

	$ c
(a) Onslow	1 098.30
(b) Halls Creek	2 230.50
(c) Fitzroy Crossing	4 878.60
(d) Wyndham	682.80
(e) Kununurra	1 144.80
(f) Marble Bar	1 535.10
(g) Laverton	2 089.90
(h) Leonora	1 575.00

(2) The total sum reimbursed through the Department of Corrections for sentenced prisoners at the respective police stations for the year 1978-79 was as follows—

	$ c
(a) Onslow	3 702.60
(b) Halls Creek	6 157.80
(c) Fitzroy Crossing	9 247.30
(d) Wyndham	97.80
(e) Kununurra	959.70
(f) Marble Bar	3 149.10
(g) Laverton	5 562.40
(h) Leonora	2 741.60

QUESTION WITHOUT NOTICE

RECREATION

Football Final: Television Coverage

The Hon. R. F. Claughton (for the Hon. R. T. LEESON), to the Minister for Lands representing the Minister for Recreation:

Will the Minister give an assurance that he will confer with Telecom to ensure that the people of Western Australia are able to view the 1979 VFL Grand Final on television?

The Hon. A. A. Lewis: Come on! We cannot even see the Western Australian grand final.

The Hon. D. J. WORDSWORTH replied:

The Minister will undertake to make representation on this matter.