Legislative Council.

Tuesday, 10th October, 1950.

CONTENTS.

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

ASSENT TO BILL.

Message from the Governor received and read notifying assent to Supply Bill (No. 1), £6,000,000.

STANDING ORDERS COMMITTEE.

Report Presented.

HON. J. A. DIMMITT (Suburban) [4.36]: I submit the report of the Standing Orders Committee and would advise that the committee met in pursuance of a resolution passed in this House on Wednesday, the 17th August, 1949. The committee held nine meetings and spent many hours in giving consideration to all the Standing Orders.

It was felt that the basic principles of practice and procedure as laid down in our Standing Orders were in line with those of all the Parliaments of the British Commonwealth of Nations. They had stood the test of time and the committee felt that in that respect they should not be amended. There was in other directions plenty of scope for the committee's activities, and the report submits a number of proposed amendments together with reasons for them. It will be within the province of the House to accept, reject or amend those amendments. I regret to state that we were without the services of the late Hon. Charles Baxter. During the early sittings he was too ill to attend and, as members know, he passed on before our deliberations were completed.

It is proposed that this matter shall be dealt with in the form of two motions. The first is that the report be received and the second, that it be printed and distributed, and a time stated for its consideration. I formally move—

That the report of the Standing Orders Committee be received.

Question put and passed.

Report received.

On motion by Hon. J. A. Dimmitt, resolved:

That the report be printed and its consideration in Committee be made an Order of the Day for Tuesday, the 24th October.

BILLS (2)—THIRD READING.

1, The Fremantle Gas and Coke Company's Act Amendment.

2, Railways Classification Board Act Amendment.

Transmitted to the Assembly.

BILL—TRANSFER OF LAND ACT AMENDMENT.

Second Reading.

THE MINISTER FOR TRANSPORT (Hon. C. H. Simpson—Midland) [4.41] in moving the second reading said: Members will be pleased to hear that this Bill, while seemingly rather formidable, is more innocuous than it appears. Although there are many amendments, the majority are designed to consolidate the Act, which was passed in 1893, and the seventeen amending Acts, most of which contained amendments of a minor nature. The Act is now out of print, and as a reprint is essential, it is most desirable in the interests of all parties that it be consolidated.

The Commissioner of Titles has given much time and thought to the preparation of the Bill, and I was pleased to observe, therefore, the remark of the Leader of the Opposition in another place that, after closely examining the Bill, he considered that it was excellently drafted. The opportunity has also been taken to add several new provisions which have been recommended by the Commissioner of Titles, and to rectify certain matters that experience has proved to be of little or no value.

Members will agree that the Transfer of Land Act, which relates to titles and dealings in land estate, is one of the major Acts governing transactions in land in this State. The first Transfer of Land Act in Western Australia was introduced in 1874 and in 1893 was repealed by the present Act, which, in conformity with the legislation of other States, is based on what is known as the Torrens system of titles. This system was contained in a measure introduced in the South Australian legislature in 1858 by Sir Robert Torrens. In the course of time, these principles were incorporated into the laws of the other States and into those of New Zealand. I understand that, to an extent, they have even been adopted in Britain, the United States of America and in certain of the Canadian provinces.

This is a remarkable tribute to an Australian legislator and emphasises the soundness of the principles enunciated in our own legislation.

In explaining the Bill, I propose to deal only with those matters that depart materially from the law as it now exists. If any member should wish for further information, I shall be pleased to endeavour to supply it when replying to the debate on the second reading. The first important amendment affects persons who are authorised to bring land under the operation of the Act. Prior to the introduction of the parent Act, land was dealt with under a system based on the traditional English procedure, which was somewhat cumbersome. The main object of the parent Act was to facilitate the transfer of land, but it did not operate in connection with land that had been granted by the Crown prior to the introduction of the Act, unless application was made by the owner, or certain other persons authorised to do so, to bring that land under its operation. Section 20 of the Act provides a list of persons who may apply to bring land under this legislation.

It has been judicially decided that a tenant for life, within the meaning of the Settled Land Act, does not come within the provisions of Section 20 of the Transfer of Land Act. It is submitted that such a person should be able to apply, provided the trustees of the settlement consent and the title issues in their names. Similar provisions to the proposed amendment now exist in the Victorian Transfer of Land Act. As members are aware, under the law of the land, a tenant for life has extremely wide powers in connection with land the subject of a settlement which makes him a tenant for life. It is thought that, to simplify transactions dealing with settled land, he should have power to bring it under the Transfer of Land Act, and this is provided for in the Bill.

The next amendment of any consequence proposes to insert a new section, to be known as Section 20A. It is designed to expedite the task of an applicant who desires to bring land under the Act. The proposed new section will authorise the Commissioner to accept as evidence recitals in documents 20 years old, and will require the applicant to negative the existence of unregistered conveyances or assurances affecting the land only as to his own knowledge or that of his agent.

A further new provision in the Bill, which will be known as Section 66A, provides that a separate certificate of title shall not issue for an easement. It has not been the practice to issue a certificate for an easement alone. When an owner acquires an easement appurtenant to his land, he surrenders his existing certificate and then applies for a new certificate showing the easement as appurtenant to the land described in his certificate. The new section is required to set out the position beyond doubt.

Section 68 is one of the most important in the Transfer of Land Act. It is a cardinal principle of the Torrens system that a person who becomes the registered proprietor of land under the Act secures an indefeasible title. This indefeasibility is, however, subject to certain statutory exceptions which are set out in that section. One of these exceptions is "the interest of any tenant."

There seems no doubt that this exception was meant to relieve tenants from the obligation of registering their leases or lodging caveats to protect their tenants' rights. The courts, however, have tended to interpret this exception in a wider manner than was ever expected. On a similar section of the Victorian Transfer of Land Act, the Victorian courts held that "the interest of any tenant" includes unregistered purchasers, tenants for life, and other rights quite apart from what are generally understood as tenants' rights.

We feel that it would be reasonable to allow a lease of up to five years to take priority without registration or lodgment of a caveat. Under this amendment a lease for more than five years, or a lease containing options of purchase, or options of renewal, would need to be registered or protected by a caveat. Otherwise, it might be defeated by a subsequent registered interest. At present a purchaser is required to inquire on purchase, irrespective of what is disclosed when a search is made at the Title Office, as to any existing tenancy, because he purchases subject to any existing tenancy although there may be no registered lease or any notification on the title that such tenancy exists. The principle of the Act is to protect purchasers or other parties who act upon the information disclosed on the register.

Hon. H. K. Watson: Would not that protection be unduly at the expense of the tenant?

The MINISTER FOR TRANSPORT: As I proceed, that point may become clear to the hon. member. It is felt that protecting tenants for five years and under, without notification by them on the register, is sufficient. If a tenant of over five years wishes to be protected from anyone obtaining a title against him, he will have to register his lease or at least lodge a caveat, so anyone concerned may know that he is in occupation or has claim to the premises.

The next amendment is one of an administrative nature. At present there is no authority for the Registrar to require the issue of a new duplicate title when the one that exists has become thoroughly dilapidated. I think if a title is in a dilapidated condition provision should be made for a new one to be taken out. In the old days, of course, these title deeds

were printed on vellum which lasted for some considerable time. Today, however, vellum is too expensive and paper is used, which means that if title deeds are not cared for as they should be, they get torn and become dilapidated. It is thought, therefore, that people should take out new title deeds in such cases, the cost of which would be probably about £1.

Members will be interested to note that the next provision deals with the rare occasions on which an original title deed becomes lost or is destroyed. Members probably know that the original title deed is retained at the Titles Office and a duplicate is issued to the owner. There have been occasions when the original title deed has been lost or destroyed, and this provision gives authority to the Registrar to compile and place on record a new title deed in lieu of the lost or destroyed original. Although there is no obligation on the Registrar to do so, the custom at the present time is to enter a record of an easement that may be created by a transfer or lease. It is thought that this practice should become portion of the duties of the Registrar and provision is made accordingly.

It is proposed to repeal Section 80, which requires lists of certificates called in for cancellation or rectification and not brought in, to be exhibited in the Office of Titles and advertised in the "Government Gazette" and in such newspapers as the Commissioner shall direct. Notice is always sent by post to the owner requesting the production of such a certificate, but the provisions of this section have not been observed for many years past. The section serves no useful purpose and the Commissioner of Titles recommends that it be repealed. This section applied mostly to resumptions. As soon as a resumption is gazetted, the legal estate passes to the Crown, and the duplicate certificate is called in. To put an owner to the expense of advertising in the "Government Gazette" is not considered to be warranted.

Section 91 provides that no lease shall be binding on a mortgagee unless he shall have consented to the lease prior to its being registered. On a similar section of the Victorian Act it was held that the consent of a mortgagee to an unregistered lease was not binding upon him. The reason for the decision was that the section, by implication, meant that a mortgagee's consent was not binding if the lease was unregistered. That decision was one of major importance, because a tenant would feel quite secure if he obtained the consent of the mortgagee, even though he might not register his lease. As members are aware, some leases cannot be registered, and it is not incumbent actually to register any lease. It is felt that this is contrary to what was intended by the section and contrary to normal practice in the commercial world, where the majority of leases are unregistered and mortgagees' consents are commonly accepted and expected to be binding. The amendment to this section will ensure that such consents will be binding in the future.

Under the provisions of Section 108, a mortgagee or annuitant is empowered to sell when the mortgagor or grantor of the charge has made default under the mortgage or charge. The proposed amendment will widen the powers of a mortgagee or annuitant by empowering him, when selling on default, to make such roads, streets and passages, and grant and reserve such easements as the circumstances of the case may require or the mortgagee or annuitant may think fit. In other words, the mortgagee or annuitant is empowered to sell the land to the best advantage. In some cases the land might well warrant subdivision that would be of advantage not only to the mortgagee but also to the mortgagor. If the provision in the Bill is approved, this authority will be given to the mortgagee.

As members know, Section 110 of the Act provides that, upon a sale by a mortgagee or annuitant, the estate or interest of the mortgagor or grantor at the time of registration of the mortgage or charge passes to the purchaser free from all liability under subsequent encumbrances, except a lease to which the mortgagee or annuitant has consented in writing. The proposed amendment will keep alive any grant of easement to which a mortgagee or annuitant has consented in writing. It is submitted that a grant of easement should be in the same position as a lease. A mortgagee or annuitant has the right to consent or to refuse consent to a subsequent grant of easement. If he consents to it, the grant of easement should be preserved in the same way as a lease, to which he has consented, is at present preserved.

This merely extends the right of an owner to give an easement that will be binding on the mortgagee if he consents to it. The Act does not give any right to a subsequent mortgagee to require the transfer to himself of the estate and interest of a prior mortgagee who is entitled to and requires payment of his mortgage debt. The purpose of the proposed amendment is to give a subsequent mortgagee the chance to protect his investment by paying off a prior mortgagee who is entitled to, and who insists upon, the payment of his mortgage debt. The subsequent mortgagee would then be entitled to a transfer of the prior mortgage.

This will be an additional protection not only to a subsequent mortgagee but also to the owner. If a mortgagee requires payment, it is not always in the interests of either the owner or a subsequent encumbrancer that the land should be sold. The second mortgagee or subsequent encumbrancer has no right, although he might

be willing, if he could, to take over a prior mortgage and carry on the owner to a more propitious time. This proposal will give him authority to obtain a transfer of a prior mortgage if the mortgagee is demanding payment and insisting upon realising his security.

The next provision will also introduce a new principle into the Act. At present there is no provision for the creation of restrictive covenants by separate instrument. Section 69 authorises the creation of such a covenant in a transfer, but the position sometimes arises where owners of land desire to create restrictive covenants when no land is being transferred by one party to the other. It is desirable, therefore, to provide that a restrictive covenant may be created by separate instrument, and Clause 34 gives this power, but safeguards the rights of a mortgagee or annuitant by requiring his consent.

There are cases where the owner of a block of land may desire to build, but his view would be completely blocked if the owner of an allotment in front of him were to erect a certain type of building. At present there is no authority for the parties to enter into an engagement to protect the interests of both but, under the provision I have indicated, such an engagement will be valid and binding. The Act contains no provision for obtaining the removal of a restrictive covenant. Sometimes a restrictive covenant becomes unnecessary or undesirable.

For instance, because of a change in the character of the property or the neighbourhood, all parties interested in the restrictive covenant may desire its removal or modification. The proposed new section provides for the Commissioner to discharge or modify the restrictive covenant when all parties interested request such discharge or modification. As members know, in some estates there is a restriction against erecting buildings for commercial purposes and the time may come when that will not be at all appropriate. This sort of restriction is found much more in the older countries where residential suburbs have become city property, and there are restrictive covenants existing on the land which nobody wants. At present there are no means of getting rid of such covenants here, but this provision will enable that to be done.

When the Bill was before another place a further important provision in relation to restrictive covenants was deleted on a close division on the grounds that if a case were taken to court, as provided in the clause, costs could be awarded against a person opposing the cancellation of the restrictive covenant. It was suggested that if a person applied for the lifting of a restriction covering a large number of blocks of land, another person opposed it, and the applicant was successful, then the judge might award costs against the person opposing the cancellation of the restriction. This, another place considered, on a very close division on party lines, to be inequitable. It is my intention, in Committee, to propose the reinsertion of this provision, and to add that the costs of any application to the court under the provision shall be awarded against the applicant in any event.

To explain briefly the debatable provision, members must understand that sometimes restrictive covenants are attached to very large areas of land which have become subdivided amongst many owners. For instance, a company may have subdivided land into several hundred lots, and on the sale of each lot imposed a condition on the purchaser to build only a brick dwelling-house. For a variety of reasons, some of the persons interested may wish to be freed of the restriction. Because of the number of persons interested, it would be a practical impossibility to obtain the consent of all to the discharge or modification of the restriction. Subsection (1) of the proposed new section, therefore, empowers any person interested in the land to approach the Supreme Court for an order wholly or partially discharging or modifying the restriction. The Court is empowered to make such an order on being satisfied—

> (a) that by reason of changes in the character of the property or the neighbourhood or other material reason, the restriction should be deemed to be obsolete or that its continued existence would impede the reasonable user of the land without securing any practical benefits;
>
> (b) that all persons of full age entitled to the benefit of the restriction have agreed to such discharge or modification or by their acts or omissions may reasonably be considered to have waived the benefit of the restriction; or
>
> (c) that the proposed discharge or modification will not substantially injure the persons entitled to the benefit of the restriction.

The Supreme Court is provided for in this case rather than a judge in chambers because people who may be absent are affected and publicity should be given to the matter. As I have said, I propose in Committee to ask that this provision be reinserted with a further amendment that I hope will meet the wishes of another place. I inform the House that this provision is one that is desired by the Commissioner of Titles, who is the legal officer responsible for the administration of the Act.

The next major amendment affects a most important section of the Act, Section 134, one on which the effective working of the Torrens system depends. It is a principle of the Torrens system that a proposing purchaser of land under the system should not be obliged to go behind the register book and that, where he is dealing without fraud with the registered proprietor and becomes registered himself, he should secure an indefeasible title notwithstanding any weaknesses in the vendor's title.

There is a High Court case which has caused grave misgivings as to whether the system is providing that security of title which its authors intended. In that case a purchaser of land took a transfer from a registered proprietor and himself became registered. Simultaneously with the registration of the transfer the vendor had cleared his title by registration of a discharge of an existing mortgage. The purchaser therefore paid his money and registered his transfer on the faith of a clear title. It was later discovered that the discharge of mortgage had been forged by an agent and the court held that the purchaser in those circumstances did not get a clear title.

In other words, if the purchaser had insisted on the discharge of the mortgage being registered, and after it had been registered he had then obtained a transfer, he would have secured a good title, and any loss would have fallen upon the mortgagee; but because, when his transfer was lodged, a discharge of mortgage was lodged at the same time, it was held that he was not dealing at that time with the registered proprietor clear of encumbrances but with the registered proprietor subject to the encumbrances, and he was not protected. It is in the public interest that this uncertainty as to the position of a proposing purchaser should be set at rest, and that people should be given the benefit of that certainty of title to land which they are entitled to expect from a governmental registration system.

It is considered that a purchaser should be able to rely on the state of the register at the time he registers his transfer and should not be concerned to inquire into the validity of other documents lodged by the vendor by which the register is put in that state. If any of these documents are forged and a person is thereby deprived of a registered interest, the system itself—that is, the statutory assurance fund—should bear the loss and not an innocent purchaser who has paid his money on the faith of a registered title. The object of this amendment is to bring about that result.

There have not been many cases of this nature but when they have occurred they have caused considerable hardship. Forgeries are not tried when large commercial dealings are concerned because the parties are too well known. But they occur in smaller transactions where persons without much knowledge rely on somebody to look after their interests, and it is in such cases that hardship has occurred in Australia on more than one occasion.

The Act provides that once a caveat has lapsed it shall not be renewed by the same person in respect of the same estate or interest. This seems unnecessarily harsh. The effect of the proposed amendment is to enable a caveator whose caveat has lapsed, to renew his claim, but his interest is made subject to the state of the register book at the time his caveat is renewed. There are many occasions where he may permit his caveat to lapse. He may do that through not receiving notice of a particular transaction that is going through, and yet he cannot renew his caveat as the law now exists. An example would be that a man might have lodged a caveat to protect an equitable mortgage over a number of pieces of land. The owner might transfer the land comprised in one certificate, but if he gives notice, he must give notice respecting the caveat as a whole, or the whole interest.

If the caveat lapses, a subsequent one cannot be lodged again in the same interest. Additional provision is being inserted which will give the Commissioner power to remove a caveat either on his own initiative, or on the application of any person interested where it appears that the estate or interest claimed by the caveator has ceased to exist. Prior to doing so, the Commissioner must give notice to the caveator requiring him to commence proceedings to substantiate his claim. If he does not do so within a reasonable time, the caveat may be removed. There are many caveats on the register book protecting interests which have long ceased to exist—for example, a caveat protecting the interests of a lessee whose lease may have expired years ago.

A lessee might have lodged a caveat to protect his lease, and after the lease expired he would have no further interest in it, but such a person never, or seldom, takes steps to withdraw the caveat. So it remains on the lessor's or owner's title until some transaction is put through which enables the owner to give notice. But until he puts through a transaction, such as a transfer or something else which affects the caveat, he cannot get it off. Therefore it remains indefinitely on the title. Another example is that a person may have lodged a caveat to protect an option of purchase, and the option itself might have expired many years before, but the owner of the land cannot get the caveat removed until he obtains a withdrawal signed by the person who lodged it, unless a dealing is put through in connection with the land. The suggested amendment gives the registered proprietor an opportunity of getting rid of the obsolete caveat.

The principal Act provides that a power of attorney from a registered proprietor may be filed at the Titles Office by lodging the original or duplicate of the power, or an attested copy. An attested copy—that is, one which is not signed by the registered proprietor but is certified by two persons as being a true copy of the original—should not be considered sufficient. It is proposed to delete the reference to filing an attested copy, and to require that the power lodged shall be the original, a duplicate, an office copy issued under the Powers of Attorney Act, 1896, or a copy certified by the Registrar of Companies of a power deposited with him under the Companies Act. In any of the above cases, the signature of the person giving the power is either on the power filed in the Titles Office or on a copy filed in the Supreme Court or the Companies Office.

The proposed amendment includes a subclause which authorises the Registrar to presume that a power executed within three months of lodgment is still in force, but also authorises him in any case to require evidence that the power is unrevoked. It is submitted that the Registrar should be authorised to require evidence that a power is still in force even if such power has at some time past been filed in the Supreme Court or the Companies Office.

Under the provisions of the existing Act, which enable powers of attorney to be filed at the Supreme Court, a power of attorney is deemed to be in force until revocation of it is actually filed in the court, however old it may be. In dealing with such important matters as affect estates in land, it is thought that the Registrar should be reasonably satisfied that the power is still in force. So this provision, if it becomes operative, will enable the Registrar to require such evidence of the existence or non-revocation of a power that is three months old, as he thinks fit. Proof is usually given by means of a declaration from the person utilising the power, that it is still in force.

Provision is made for the amendment of Section 181 so that there may be authority for regulations to cover certain matters not included in the present section. These are, firstly, the medium in which documents shall be written and executed, and the size and quality of paper to be used. As documents registered form a permanent part of the records of the office and may be required many years after registration, it is considered that there should be authority to insist upon such matters as documents being printed, typed or written in ink instead of, say, in pencil, and also upon the use of good-quality paper. Provision is also made to prescribe by regulation the fees to be charged and the contributions to be made to the assurance fund.

Section 184 empowers the Commissioner to remove from the register book rights of an official assignee or trustee in bankruptcy or of an execution creditor notified as encumbrances when convinced that such rights have been satisfied, extinguished or otherwise determined. The present section is not wide enough, as there are other rights which can be notified as encumbrances and for which there is no provision for removal on proof that such rights have been satisfied, extinguished or determined. An example is the rights of beneficiaries under the will of a deceased proprietor notified as an encumbrance on a certificate. The scope of the section is, therefore, enlarged by referring to any right or interest notified as an encumbrance.

The limitation of actions is dealt with under Section 211 of the parent Act and extends the period for bringing actions by persons suffering from disability. Among the disabilities therein enumerated are coverture and absence from Western Australia. Since the passing of the Married Women's Property Act, coverture is no longer a disability, and absence from Western Australia is no longer a disability recognised by the Limitations Act, 1935. The proposed amendment deletes reference to coverture and absence from Western Australia as disabilities.

Next there is Section 216 which speaks of "felony" and "penal servitude"—terms that are now inaccurate. The punishment provided by Section 216—or rather the maximum punishment there provided—is a term of imprisonment not exceeding two years, or penal servitude for a term not exceeding 14 years. It is proposed to repeal that section as being obsolete and insert in lieu a new section making the punishment more commensurate with modern ideas. Under the proposed new section, the maximum punishment would be a penalty of £100 or imprisonment for a maximum term of 12 months, or both. It is considered that any offence for which the punishment as provided by this section would be inadequate, would be covered by the Criminal Code.

It is proposed to insert a new provision allowing for the removal from a certificate of title of any easement notified thereon which has not been used for 20 years and which has been abandoned. For these provisions to be invoked, it will be necessary to show both non-use for the specified period and abandonment. For instance, if the land entitled to the benefit of an easement is still vacant, so that the owner has not had occasion to enjoy the benefit of the easement, it would not be deemed abandoned, and would not be removed. It is submitted that if an owner has had the opportunity to enjoy the easement but has not done so for 20 years it is of no practical use to him, and should be removed on the application of any person interested. A further proposal

is the insertion of a provision empowering the Commissioner, when bringing land under the Act, to issue a certificate without notifying thereon as an encumbrance an easement which has not been used and enjoyed for at least 20 years, and which has been abandoned.

I have endeavoured to give the House a clear picture of the more important of the new provisions in the Bill. There are several minor amendments which are designed either to place the Act in line with modern practices or to facilitate administration. Being of a less important nature these can be dealt with in Committee without discussion at this stage. As I have said, I am prepared to answer any questions when I close the debate on the second reading, and will therefore listen with keen interest to members' comments. I move—

That the Bill be now read a second time.

HON. H. S. W. PARKER (Suburban) [5.20]: I have had an opportunity of looking through the Bill and also of discussing its provisions with the members of the sub-committee, comprising a number of conveyancing lawyers, who really drew the measure up. Those gentlemen are particularly keen that the measure should be passed by Parliament for quite a number of reasons, one of them, as explained by the Minister, being that the present statute is out of print. Many lawyers and students as well are unable to obtain copies of the Act, which really represents the law relating to transactions in real property in Western Australia.

Under what is referred to as the old system, any dealings in land—there is a certain amount of property to which this applies—have caused a tremendous amount of trouble involving much research before anyone could regard himself as safe in buying. One would have to go through a big pile of documents tracing the title back to the original Crown grant. Before the principal Act was in force, all the relevant documents would have to be traced back, and members will be interested to know that even at this stage quite a lot of land is held that was secured in those early days.

If a person desires to purchase the freehold of an area, to lease it or even to secure a mortgage over it, he is under an obligation to search through an immense pile of documents before he can be satisfied that everything is all correct. He must go through them to see what the documents contain so as to be sure that no restrictive covenant applies to the land. This legislation does away with all that necessity and enables the purchaser to get a title that is quite clear, or one that shows any easements or such like on it. By the payment of a small fee at the Titles Office one is easily able to ascertain all the relative particulars regarding a specific block including the price paid for it, the owner's name, mortgages and so forth.

Now it has been deemed advisable, seeing that the Act has to be reprinted, to include certain amendments that have been found necessary. Most of the amendments are purely technical and are suggested with the object of facilitating the dealings in land. One rather strange happening occurred in another place with respect to one amendment, and I was pleased to hear the Minister say that it was proposed to re-insert the provision in the Bill. I do not agree with all the Minister said on some points, but those matters can be better dealt with at the Committee stage.

Reference was made to restrictive covenants. One can readily understand the position where a man may have purchased a large estate that was largely bushland at the time he acquired it, and now that land is in the suburban area. It may have been laid down that the land was not to be cut up into blocks of less than an acre, that no houses were to be built on the blocks or some other restriction imposed. Let me take it that the restriction applying to the blocks was that no houses should be constructed on them.

In these days, observance of such a restriction would mean that the estate, now situate in the suburbs, could not be developed because no houses could be built there. The effect would be that nobody would be interested in the property at all. In those circumstances the question would naturally arise as to how the restrictive covenant could be removed from the title. I know of some restrictive covenants that render the titles quite valueless, and people are not prepared to buy properties so encumbered. In one instance the covenant provided for the erection of a hotel sign on a particular block. That covenant is absolutely valueless now. The hotel is a great distance away, and there are many separate properties between the sign and the hotel, so that the sign has no significance. The fact remains that no-one is in a position to agree to the removal of the restrictive covenant from the title. The Registrar of Titles cannot do anything about it.

In another place an amendment was moved, the effect of which was to strike out the power sought to be vested in a judge to deal with such matters. No judge, when asked to decide such an issue, would act willy-nilly but would be guided by advice and the evidence placed before him. That matter can be further dealt with in Committee. There are other matters included in the Bill about which members may desire information, but I do not think any good purpose would be served by going into detail about them now. I suggest that consideration be given to such matters at the Committee stage.

I am satisfied that the Bill represents what the sub-committee responsible for drafting the measure require in order to deal with the present unsatisfactory position and I have pleasure in supporting the second reading. When the amending legislation is finally passed, I hope the Government Printer will assist the legal profession by seeing that the Act is printed quickly, for copies are urgently needed by all who deal in real estate.

On motion by Hon. E. M. Heenan, debate adjourned.

BILLS (2)—FIRST READING.

1, State Housing Act Amendment.

2, Building Operations and Building Materials Control Act Amendment and Continuance.

Received from the Assembly.

BILL—MINING ACT AMENDMENT.

Second Reading.

Debate resumed from the 26th September.

HON. E. M. HEENAN (North-East) [5.27]: The object of the Bill is to amend the Mining Act in two rather important respects. It is not very often that we have amendments to that Act before us, and in view of the fact that the goldmining industry is one of the most important in the State, the necessity arises for careful consideration to be given to any provisions to be inserted in the legislation.

Before particularising with regard to the proposed amendments, I desire to reiterate what I stated in the House recently. The present condition of the mining industry is not altogether happy, although I am pleased to say that there are some bright aspects discernible on the horizon. The Bill, in my opinion, will tend to enhance those brighter prospects. The industry needs all the assistance and consideration that can be extended to it. Certain towns and districts that in the past contributed greatly towards the welfare of the State, supported large populations and helped to maintain the railway system and so forth, have been wiped off the map. Buildings that stood for 50 years in some centres have, to my knowledge, been pulled down within recent months and transported elsewhere. In such circumstances those little townships have gone off the map, and their prospects of revival are rendered negligible.

Getting back to the brighter aspects of the position, we heard the Minister, when introducing this measure, tell us of the fine programme which the Western Mining Corporation has undertaken in the Yilgarn field. Members will recall that he told us that this company—which has won a splendid reputation in mining, not only in this State but, I understand, throughout Australia—proposes to spend £1,000,000 in the Yilgarn goldfield. That is an undertaking which I am sure will evoke the admiration of all concerned with the welfare of the goldmining industry in this State; and whatever contribution I can make towards facilitating that programme, I will be pleased to render.

Yilgarn is a mining district which has had a fine record in our goldmining history. It contains a large belt of auriferous country which, although low grade, holds out excellent prospects for large-scale development. It is a matter of deep gratification, therefore, that a sound organisation like the Western Mining Corporation, with financial and technical resources at its command has, at a time when a lot of other companies are adopting a wait-and-see policy, gone forward, and is prepared to back its faith in the future of goldmining to the extent indicated by the Minister.

The first important amendment in the Bill deals with Section 92, which enables any individual or company with a number of adjacent leases to enjoy certain privileges in respect of labour conditions. Under the Act, each one of a number of adjacent leases has to be manned for the first year with four men. The men have to be kept working on those leases in order to comply with the labour covenants provided in the Act. Under existing conditions, anyone with a number of adjacent leases can apply to a warden and ask that the labour which should be employed on each individual lease may be concentrated on one lease. This means that a company with six leases, all of which it does not wish to work, can apply to the warden for leave to concentrate the 24 men who would be employed on one or two leases, the others being exempt from the labour conditions.

The amendment embodied in the Bill proposes to broaden that provision to the extent of allowing anyone owning a number of leases in a mining area, such as the Yilgarn district in this case, to concentrate on one or more of them, the labour which should be spread over all the leases. I understand that the Western Mining Corporation has taken up more than 100 leases in this field and those leases are spread over a length of about 15 miles. Obviously it would be unwise for the company to work every lease individually. It proposes to operate on a large scale and to concentrate its efforts in one area until its exploratory work has been carried out.

This alteration of the law seems quite legitimate and one that the corporation will need. The applications referred to will have to be made to a warden; and speaking without the Act in front of me I think that the warden's recommendation has to go to the Minister for approval. Moreover, applications have to be made from time to time, and anyone can object to them. I am of the opinion

—and my opinion is fortified after discussing the proposal with prospectors and others who might be interested—that there is no valid objection to the proposal, and this House would be wise to agree to it.

The only other amendment is to Section 277. In the Act which I have before me the section is numbered 299, but I assume that in the most recently consolidated issue of the Mining Act the section will be No. 277. The proposal is to allow applications to be made for reserves for the purpose of alkali and alluvial prospecting. Here again the amendment is brought forward at the instance of a company. This one is known as the Australian Mining and Smelting Co. Ltd. Its object is to explore and test Western Australian fields in the hope of discovering deposits of alkali, which is apparently essential for the manufacture of fertilisers.

It seems to me that here is a prospect of another industry opening in Western Australia on a large scale. We all know from reports we have read in the Press recently that there is a shortage of such deposits. I understand that an expert has been brought out from Europe, and it is proposed to explore the Western Australian deposits in the hope that something can be located that will warrant development on a large scale. We have the Minister's assurance—my reading of the Bill bears out what he has told us—that although it is proposed to allow the granting of reserves of up to 5,000 acres, which is a tremendous area, the rights of prospectors and others who may want to take up mining leases or prospect for gold will not be jeopardised.

I hope that the amendments, if carried, will make some contribution to the welfare of our mining industry and will facilitate the operations of two companies whose activities, I think, hold a lot in store for the future of that industry. I also hope that later on the Minister may feel inclined to submit another amendment or alter the regulations of his department in a way that will bestow benefits on the small man, on the battling prospector, who is also a very essential part of the mining industry. These amendments will assist the operations of two large companies which I am satisfied deserve that assistance. But I hope the time is not far distant when the small man—namely, the prospector—will be given further inducements to carry on his activities. I support the Bill.

HON. G. BENNETTS (South-East) [5.43]: I am pleased to see these amendments, as the Yilgarn and the Dundas districts are both in my territory and the Western Mining Corporation is prepared to spend a lot of money for the development of this State. I think that it is not merely a Western Australian but a world-wide company. It has plenty of capital and is very progressive.

At Norseman the company has two or three large mines, has built homes for the workers, and is prepared to provide amenities for the district. It has established a swimming pool and is going ahead with the provision of play centres and other improvements. That is the sort of company we want—one which is prepared to go into outback places and develop them and to provide amenities which will assist the Government to keep people away from the towns. Unless such steps are taken, we will not retain men and women in the back country.

I have been resident in Kalgoorlie practically since the establishment of the mining industry there. I went to the district in 1896 and I saw the mines begin. The Boulder mine was just a small show with a poppet head 25 feet high. My father was the first winder driver on the Great Boulder, having gone there in 1894. I have seen the hardships of people on the Goldfields. In those days the underground miners developed diseases due to faulty ventilation, and other causes. Very few of those men are alive today. They paid, with their health and their lives, for the better conditions now prevailing and the amenities being installed by the large mining companies today.

In the Bullfinch area one company requires a number of concessions because of the low grade of the ore, which I understand averages about 3dwt. to the ton. That company has its main plant there, near the big Bullfinch lode and intends to develop a number of smaller shows in the surrounding districts in order to sweeten up that low-grade ore. I hope the Government will give assistance by ensuring the company an adequate water supply. I do not know whether the company intends to build a hospital there, though I believe it will do so, but at all events I hope the Government will give all the help possible. The company intends to cart ore to Bullfinch from Bonnievale and other districts. This company has an establishment at Coolgardie also, where it has a mine about five miles on the Norseman side of the town. There is a bitumen road to the Barbara mine and ore is transported by diesel truck to the central battery for crushing.

The company intends also to cart ore from about 30 miles on the opposite side of Coolgardie. It is building homes in the township and is running buses to take the men to and from work. Such companies are doing much to keep some of our outback townships in existence. We have known, for many years, that when the returns from wheat and wool declined, we could depend on goldmining to keep the State going. The industry has brought us safely

through bad periods in the past and we know we cannot depend on the prices of wheat and wool remaining for ever at their present levels.

The goldmining industry must be kept in sound condition to carry us over lean times in the future when the returns from many of our exportable commodities decline. The company to which I have referred intends to cart ore from Southern Cross to Bullfinch, and therefore the roads must be put in order. I understand that within two years about 1,000 men will be employed on the plant at Bullfinch. Under this measure prospectors will be allowed to prospect for alluvial gold on the leases. Our prospectors are the men on whom we depend to find good shows for the big companies to work, and unless we give them every assistance and encouragement, we cannot expect such men to go out into the bush.

In 1908 or 1909 I saw a prospector named Robinson pushing his barrow from Boulder to Randells, a distance of about 42 miles. He pushed that barrow which contained his shaker and other equipment and he put up his plant just down from the Santa Claus mine at Randells. I was whip-boy on the Santa Claus mine at the time. There was plenty of alluvial gold there in those days and this man did quite well.

Hon. H. S. W. Parker: Did he wish to amalgamate the leases?

Hon. G. BENNETTS: I do not know. We must encourage our prospectors, in order that they may find good propositions for the big companies to develop. I am pleased to support the Bill.

HON. R. J. BOYLEN (South-East) [5.52]: I support the measure, and particularly the amendments to Section 92. The Bill is a move in the right direction for the companies that have a number of leases but are restricted in their activities because of labour problems. It will give them opportunity of using the available labour force in the particular areas that they desire to develop. The result will be that in time those areas will become productive much sooner than would otherwise have been the case.

Care must be taken that monopolies are not created by the exclusion of smaller companies. The Bill is in keeping with modern methods of mining under which we see today, for instance, a central plant treating ore, some of which may be transported a considerable distance. I think that system will spread to many areas, particularly in the Yilgarn district. I do not think the larger mining companies, such as the Western Mining Corporation, will tie up their leases for very long before bringing them into production. For these reasons I support the Bill.

HON. G. FRASER (West) [5.55]: I am not as enthusiastic about the amendments contained in the Bill as are some of my colleagues. The original Mining Act was based on the experience of the early days on the Goldfields and, though I do not intend to oppose this measure, I would like some assurance from the Minister in regard to a couple of points. I realise that the proposed amendment of Section 92 is for the purpose of overcoming the difficulty that would otherwise be experienced in allowing the Western Mining Corporation to operate at Bullfinch—

The Minister for Mines: And other districts, also.

Hon. G. FRASER: I desire an assurance that by means of these amendments we will not be throwing open a gate that has been closed for many years. For a long while there has been labour trouble with regard to the working of various leases, and I would like to be sure that this measure will not allow the reintroduction of dummying and other practices that were so prevalent in the early days of the Goldfields and that were the main reasons for the passing of the original Mining Act.

The Minister for Mines: Conditions today are very different.

Hon. G. FRASER: I sympathise with the attempt being made here to allow a company to operate in a certain area, but we must be careful to do nothing that will result in damage being done in other portions of the State. I come now to the proposed amendment of Section 273. The Bill mentions an area of 100 square miles, the length of which shall not exceed 10 miles. Two members representing Goldfields provinces have said that prospectors will not be excluded from such leases, but I want the assurance of the Minister that that interpretation is correct; otherwise the provision would give a company a monopoly over 100 square miles of country.

Hon. H. S. W. Parker: Does not this refer only to alkali?

Hon. G. FRASER: No. There is prospecting for alkali, as well as for alluvial gold.

Hon. J. M. A. Cunningham: Do you object to that?

Hon. G. FRASER: No, unless the lease excludes all others from going on to the land.

Hon. J. M. A. Cunningham: Do you refer to deeper prospecting?

Hon. G. FRASER: Depth is not mentioned. I am concerned about prospecting for alluvial gold. I had some experience regarding prospecting during the depression years. In those days the Western Mining Corporation had rights over a large area but actually welcomed prospectors on its leases and was prepared to take over any shows they discovered. Will the same attitude be adopted with regard to the

leases under these provisions, or will the result be that an area of 100 square miles will be completely tied up by a company?

The Minister for Mines: I will check up on that.

Hon. G. FRASER: I want to be sure about that, as 100 square miles is a considerable slice of country. We should do everything possible to assist the development of the mining industry, but I do not wish to vote in favour of anything that will exclude prospectors from leases of this kind. This State owes a great deal to its prospectors, for what they have done for the goldmining industry. If the Minister can satisfy me on the two points I have raised, I will have no further qualms about the Bill.

On motion by Hon. W. R. Hall, debate adjourned.

BILL—PUBLIC SERVICE APPEAL BOARD ACT AMENDMENT.

Second Reading.

THE MINISTER FOR TRANSPORT (Hon. C. H. Simpson—Midland) [6.0] in moving the second reading said: This Bill has two objects, both of which are the result of discussions between the executive of the Civil Service Association and the Public Service Commissioner, who agree that the amendments are in the best interests of the Public Service and its members. These objects are—

1. To permit the appointment to permanent positions, in a restricted class, of temporary clerical officers, whose services are satisfactory but whose educational standards do not qualify them for promotion to higher grade positions.

2. To delete from the Act references to striking and unauthorised cessation of work by civil servants.

To take the second and more minor amendment first, members may recollect that in 1920 there was a strike of civil servants. Subsequently, the principal Act was passed to establish an authority to adjudicate upon disputes between the Government and the Public Service. Section 15 details the penalties to be imposed upon any public servant taking part in a strike, and the long title of the Act contains the words "and to prevent the unauthorised cessation of work on the part of public servants."

In 1935, the majority of civil servants were brought under the provisions of the Industrial Arbitration Act, and it is considered, therefore, that reference in the principal Act to unauthorised stoppages of work by public servants has ceased to have any importance, and is also a slur on the character of a loyal and efficient body of employees.

In regard to the other more important amendment, it must first be understood that the parent Act, taken in conjunction with the Public Service Act, provides ample authority for the appointment of temporary officers to permanent positions. Any such temporary officer appointed to a permanent position would then have the right, available to all permanent officers, of appealing to the Public Service Appeal Board against the salary classification of his position. In the event of his appeal being successful, the officer would then receive the higher rate of salary and enjoy the increased seniority granted him by the appeal board. The amendment proposes that when a position within the male clerical automatic range is increased to a class above the automatic range, and the occupant of the position has not passed the prescribed promotional examination or an examination accepted as equivalent by the Public Service Commissioner, then the position shall be declared vacant, and the occupant, except during the period of acting in it, will not receive the benefit of the higher salary. The position on being declared vacant will be advertised in the usual way in the "Government Gazette" and all officers will have the oppportunity of applying for it.

This procedure will be followed only when the occupant of the position has not passed the Public Service promotional examination or an equivalent approved by the Public Service Commissioner. The minimum educational standard for the entry of junior clerks to the Public Service is a pass in five subjects, including English and Mathematics "A," in the Junior University examination. The passing of the Junior examination entitles officers to annual increments in the automatic range until at the age of 27 years an officer is receiving £559 per annum.

An adaption of this range will permit the appointment of temporary officers within the range. Irrespective of their ages, these officers will receive annual increments until they reach the maximum rate of £559. Progress by promotion beyond the salary rate of £559 will not be allowed until such time as the promotional examination is passed. This standard is not less than three subjects, including English, in the Leaving examination or its equivalent. This restriction, while enabling officers to enjoy a reasonable salary rate for the lower class of clerical work, will preserve promotion to senior positions leading to the higher administrative ranges to officers who have fitted themselves to accept responsibility by suitable courses of study.

At the same time, and this is perhaps of greater importance, it will facilitate the appointment to permanent positions of temporary officers who have given long and satisfactory service, and who thus will gain greater security, superannuation

benefits and increased sick leave privileges. As I have said, the Bill is the result of conferences between the Public Service Commissioner and representatives of the Civil Service Association, all of whom agree that it is in the best interest of the Public Service. The Civil Service Association recently met the Premier and asked that the Bill be submitted to Parliament as early as possible. I move—

That the Bill be now read a second time.

On motion by Hon. E. H. Gray, debate adjourned.

House adjourned at 6.6 p.m.

Legislative Assembly.

Tuesday, 10th October, 1950.

CONTENTS.

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

QUESTIONS.

MILK.

As to Production and Commonwealth Scheme.

Mr. W. HEGNEY asked the Minister for Health:

(1) Will the State Government administer the free milk scheme for school children recently announced by the Commonwealth Minister for Health?

(2) Has the State Government yet been acquainted with any details of the proposed scheme?

(3) If so, what are they?

(4) What is the approximate daily consumption of milk in the metropolitan area at the present time?

(5) What will be the estimated additional daily consumption if and when the scheme comes into operation?

(6) Is the Government satisfied that the supply of milk will be sufficient to enable the scheme to commence on the date foreshadowed by the Commonwealth Minister for Health, namely, the 1st February, 1951?

The MINISTER replied:

(1) Under consideration.

(2) Yes.

(3) The outline of the scheme submitted by the Commonwealth is as follows:—

(a) A national scheme to improve the nutrition of children by the provision of a quantity of milk not exceeding one-half pint per day of an approved standard to be supplied to all children 12 years of age and under attending public or private primary schools and recognised kindergartens, creches and nursery schools. Older children may be included where deemed expedient for administration, the idea being that if majority of class under 13 then it may be desirable to include the older children also. Insofar as recognised kindergartens, creches and nursery schools are concerned, we must be satisfied that they are properly run and there is adequate supervision and control.

(b) Aim is to provide 1/3rd pint bottle (narrow-necked with metal cap) of pasteurised milk each school day, together with a drinking straw, and probably 50 to 60 per cent. of children could be provided for in this way, subject to supplies being available. Where this is not practicable, one of the following alternatives is suggested:—

(i) Where there are bottling plants using wide-necked bottles, pasteurised milk or milk from tuberculin-tested herds may be supplied (I) ½-pint bottle to each child, or (II) 1-pint bottle divided between three children.

(ii) Where bulk milk only (pasteurised or from tuberculin-tested herds) is available, 1/3rd pint is to be