# Legislative Council

Thursday, the 30th August, 1979

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

## QUESTIONS

Questions were taken at this stage.

## VALUATION OF LAND ACT AMENDMENT BILL

*Returned*

Bill returned from the Assembly without amendment.

## BILLS (3): THIRD READING

1. Margarine Act Amendment Bill.

   Bill read a third time, on motion by the Hon. D. J. Wordsworth (Minister for Lands), and passed.

2. Iron Ore (Hamersley Range) Agreement Act Amendment Bill.

   Bill read a third time, on motion by the Hon. I. G. Medcalf (Attorney General), and passed.

3. Western Australian Marine Act Amendment Bill.

   Bill read a third time, on motion by the Hon. D. J. Wordsworth (Minister for Lands), and passed.

## BUSH FIRES ACT AMENDMENT BILL

*Second Reading*

**THE HON. D. J. WORDSWORTH** (South —Minister for Lands) [2.50 p.m.]: I move—

That the Bill be now read a second time.

The Bush Fires Act was last amended in 1977 when quite a comprehensive review was undertaken by my predecessor in office. A number of minor anomalies have become apparent from the operation of the amended Act and the revision of the regulations, which preceded its proclamation. This Bill is to remove them and at the same time to effect a number of minor drafting changes suggested by Parliamentary Counsel, which have no effect upon the purport or operation of the Act.

There are only three matters of substance.

Firstly, section 33 is to be couched in more moderate language although the present terminology has existed for a great many years. Section 33(1)(a) requires firebreaks to be maintained "clear of all inflammable matter". A small sprig of dry leaves in the middle of an otherwise bare three-metre firebreak technically creates an offence. This, members will agree, is most stringent and leaves no scope for courts to exercise discretion. The word "all" is to be deleted.

Similarly, subsection (5)(a) of the section, referring to firebreaks installed by the local authority at the expense of the landowner concerned, states that a certificate signed by the mayor or shire president is "conclusive evidence of the amount" to be paid by the landholder. The Bill substitutes "prima facie" for "conclusive".

Both these proposed alterations have arisen from observations made to the Attorney General by the Parliamentary Commissioner for Administrative Investigations and both will permit a desirable exercise of discretion in court processes.

A further amendment refers to a "fire weather officer", a senior and experienced bush fire control officer appointed under section 38 by the local authority to exercise his powers in a particular portion of the shire or town district. He may authorise a person, who has received a permit to burn during a restricted burning period, to act in accordance with his permit despite a fire danger forecast of "extreme" or "very high" from the Bureau of Meteorology in Perth. He may not do so during prohibited burning periods or when a declared emergency exists. Currently, the number of fire weather officers appointed by a local authority is subject to approval of the Bush Fires Board and only one deputy per fire weather officer is permitted.

The amendment, sought by the Country Shire Councils' Association and supported by the Bush Fires Board, will allow councils to elect the number of appointees and to appoint more than one deputy for each fire weather officer.

For about 15 years, regulations 38 and 38A have purported to authorise the banning of vehicle movement in conjunction, usually, with harvesting bans. The Crown Law Department has expressed doubts that the provisions of the Act support such regulations and it is desired to clarify the question and to preserve powers which have long been accepted as essential to adequate control during periods of critical fire risk. Accordingly, section 27 is proposed to be amended.

Other minor amendments are being made to modernise grammatical expression of the Act.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. R. T. Leeson.

## METROPOLITAN REGION TOWN PLANNING SCHEME ACT AMENDMENT BILL

*Second Reading*

**THE HON. F. E. McKENZIE** (East Metropolitan) [2.54 p.m.]: I move—

That the Bill be now read a second time.

The purpose of the Bill is to ensure that under all circumstances a person whose home and/or property becomes affected by an alteration to the Metropolitan Region Scheme is not denied the statutory rights of objection or appeal to which he is entitled by virtue of the present provisions in section 33 of the principal Act.

Section 31 of the scheme Act has fairly extensive provisions in respect of the lodging of objections to proposed amendments. Section 32 provides for the scheme to be submitted to Parliament and also gives the scheme the effect and force of law.

Reverting to section 31 amendments, the authority after it has considered the objections shall submit to the Minister the scheme with or without modification together with a copy of all written objections and a report by the authority on the objections.

The Minister, if he is of the opinion that any modification made to the scheme by the authority is of such a substantial nature, may direct the authority to do certain things, which clearly give the public the right to object, and such objections must be considered by the authority. The amended scheme is then presented to the Governor who may approve it with or without such modifications as he deems it necessary to make.

When the Governor has approved the amended scheme it is published in the *Government Gazette*. Within six sitting days following the date of publication of the gazette the scheme together with the report of the authority is submitted to each House of Parliament. If either House does not disallow the amended scheme within 12 sitting days it has effect.

However, the important point members should note about section 31 provisions is that amendments to the original scheme must be submitted to each House of Parliament and either House may disallow the amendments.

Section 33 has contained in it a provision for proposed amendments which in the opinion of the authority do not constitute a substantial alteration to the scheme.

If the authority is of such an opinion, it sends to the Minister a copy of the proposed amendment together with a written certificate stating its opinion. A notice of the amendment describing the proposed amendment and stating where and when the amendment will be available for inspection is published in the *Government Gazette* and in a daily newspaper circulating in the region. The Minister may also direct that owners directly affected by the amendment be notified.

Section 33(c) of the scheme Act reads as follows—

> (c) Any person who feels aggrieved by the proposed amendment may, within the time and in the manner prescribed, appeal to the Minister against the amendment, and the Minister shall hear the appeal in accordance with the regulations.

Section 33(d) reads as follows—

> (d) The Minister may dismiss or uphold the appeal and if the Minster upholds the appeal he shall order that the amendment be cancelled or modified and from the date of the order the amendment has no force or effect or has force and effect as so modified.

From the foregoing it can be seen that sections 31 and 33 if utilised give persons affected by amendments to the scheme the right to object, or at the very least provide an avenue of appeal to the Minister.

Those provisions are desirable and essential because citizens whose home and/or property become affected by an alteration to the Metropolitan Region Scheme are generally not willing participants. In my opinion the objections and appeal rights provided in sections 31 and 33 of the scheme Act give these unfortunate citizens only a minimal opportunity to prevent unjustified resumptions of homes and property.

I was therefore deeply shocked recently to learn that Parliament had, when it approved the metropolitan region town planning scheme in 1963, agreed to an inclusion which denied a citizen the basic right of objection or appeal. This monstrous provision comes in the form of clause 15 of the schedule, and reads as follows—

> 15. (1) Where the authority relocates or alters the route of a regional highway or road or railway or the boundaries of any other reservation under this part the authority shall prepare copies of a plan showing such relocation or alteration and the land to be excluded from or included in the altered

reservation, and the plan shall indicate the zone or zones in which any land no longer required for the reservation shall be included.

(2) Such plan shall be certified and sealed with the seal of the authority and when the plan is approved by the Minister it shall be certified by him and, subject to subclause (3) of this clause, the plan shall become part of the scheme without any further action being necessary under the scheme Act.

(3) Notice of any such relocation or alteration shall be published in the *Government Gazette* as soon as practicable after the plan relating thereto is so certified, and the relocation or alteration shall take effect and have the force of law on and from the date of such publication.

It then follows that the authority can effect amendments to the original scheme under sections 31 or 33 of the scheme Act or clause 15 of the schedule. Admittedly clause 15 has limited application, but nevertheless it is frequently used and to all intents and purposes it is another section of the scheme Act. Thousands of landowners have been affected by its use and although there have been occasions when the authority has advised the people of its intention, and has also invited appeals, it has not been consistent in this approach. Furthermore, its action in notifying affected landowners and extending appeal rights to them is contrary to the appeal provisions contained in the schedule.

This situation must not be allowed to continue. I have given serious thought to the deletion of clause 15 from the schedule, because on the 2nd, 9th, and 16th August, 1974, the authority, by way of notices appearing in the *Government Gazette*, announced proposed alteration and relocation of the Beechboro-Gosnells controlled access highway—using section 31 as its method.

These alterations to the original scheme affected hundreds of landowners and were spread out virtually along the whole length of the highway. As these proposed changes were substantial it acted correctly. The amendments referred to are known as the 1974 omnibus amendments.

On the 23rd August a notice advising of a clause 15 plan appeared in the *Government Gazette*, showing identical amendments to those previously advised under section 31. I cannot understand the reason for this duplication; but the fact that the authority was able to give notice under clause 15 for identical amendments it had previously elected to do under section 31 of the scheme Act indicated to me that Parliament had, in 1963, given the authority power to carry out substantial amendments without the citizen having the right of objection or appeal.

As it is my aim to ensure that, when a person's home or property is affected because of proposed changes to previously adopted schemes, that person is given the right of objection or appeal, and I am able to achieve that by amending sections 32 and 33 of the scheme Act, there is no need for the deletion of clause 15.

Finally, I wish to inform members that I am most grateful to the constituent who brought this matter to my attention. His persistence over a long period in time has given me the opportunity to present to Parliament a Bill which will, if approved, correct a situation which has denied the basic right of objection or appeal to thousands of landowners over the last 16 years, when clause 15 of the schedule of the Metropolitan Region Town Planning Scheme Act has been used. It is an unjust provision which only the Parliament can change, as exampled by the remarks of Mr Justice Wallace when he said, *inter alia*, in a judgment on the 22nd February, 1979—

> It is true there may appear an illogicality to the layman in clause 15 of the scheme existing in different form from that of the provisions of the Act itself, giving to the citizen the right to object to the taking of his land for the purposes of the scheme as a whole, but it is not a court's duty to have regard to moralities. What it has to have regard to is the law and the letter of the law and how it should be construed.

I commend the Bill to the House because we can have regard to morality. We have the power to alter that law; and that is precisely what I am asking members to do.

Debate adjourned, on motion by the Hon. G. E. Masters.

## LIQUOR ACT AMENDMENT BILL

*Order Discharged*

**THE HON. R. G. PIKE** (North Metropolitan) [3.03 p.m.]: I move—

> That Order of the Day No. 6 be discharged from the notice paper.

I take this step because I have today received notification from the private members' draftsman, and he has advised me that as a result of comments made by the Assistant Parliamentary Counsel the present Bill should be withdrawn and a revised Bill with recommended drafting changes be introduced subsequently.

The proposed changes are cosmetic. It is "legal eagle" "i dotting" stuff, I suppose, for want of a better name—the "ifs", "buts", "ofs", and "ands" have been changed. The number of recommendations was such that I considered it would be better to withdraw the Bill. I will be presenting a Bill after I return from the United States of America in the middle of next month.

Question put and passed.

Order discharged.

## LEGAL PRACTITIONERS ACT AMENDMENT BILL

*Second Reading*

Debate resumed from the 23rd August.

**THE HON. D. W. COOLEY** (North-East Metropolitan) [3.04 p.m.]: Among other things, this amendment to the Legal Practitioners Act permits the Barristers' Board to make rules which will enable legal practitioners to share their costs with persons other than certified practitioners. They may now enter into partnerships, subject to the board's approval, with unqualified people such as spouses, children, friends, and the like.

On those grounds, and consistent with the policy of the Australian Labor Party in respect of taxation avoidance on the one hand and the state of the economy on the other, we oppose the Bill. It is designed specifically to extend taxation concessions—in a legal manner, of course—to privileged people. We do not think that the time and the economic climate are right to engage in this sort of undertaking.

The sole purpose of the Bill, other than the minor amendments to which I have previously referred, is to allow a solicitor to split his income and so avoid paying his full share of income tax.

This move comes from a Government whose party has adopted the philosophy nationally of turning down the proposition that single income people should be able to share their incomes, or share the income of the breadwinner, anyway. I suppose it may be justified in some cases for people to avoid taxation where they see a loophole; but where the Government, in a premeditated fashion, introduces a Bill for the purpose of allowing people to avoid the payment of income tax at this time of ecomonic strain it is very close to scandalous.

I cannot see any reason for this move. In his second reading speech the Minister said—

> It is a well-known fact that most self-employed persons can split the income of their trade or profession between themselves and other members of their families by taking them into partnership. . . .

I suppose that is a way of getting around the Act. However, we all have to pay our taxes in some manner or other. If there is a downturn in the payment of taxes, the people in less fortunate circumstances have to make up the shortfall caused by people in more affluent circumstances.

The Minister, in his second reading speech, quite honestly said—and I would not suggest he would be anything but honest—

> It is envisaged that the sharing of income would apply to close relatives or others in a close relationship with the legal practitioner concerned.

It is accepted that if a man starts a carpentry business or a cabinet-making business, he can bring his wife into the business and avoid some form of taxation by naming her as a partner. I suppose that is all right—I suppose people say it is all right. However, at a time when the Government has been cracking down on people, calling them "dole bludgers" and other things because they are unemployed and receiving sustenance from the Government, it is now allowing people in privileged positions to avoid paying taxes.

People may set up tax-avoidance schemes if they so desire, but the Government should not be part of them. On those grounds we oppose the Bill strongly. A person who works on a factory bench, who is on a single income, and has his tax deducted before he receives his pay does not have the opportunity to avoid taxation by splitting his income. If he cannot do that, why should we give that privilege to other people? I do not believe a Government should be part and parcel of that sort of situation.

People who have their taxes deducted from their salaries every week do not have the opportunity to avoid taxation. Members should read this morning's issue of *The West Australian* in which they will see a list of people who have been charged under the Taxation Act for evading taxation. In some cases, people have paid no tax at all. The average worker is not evading taxation; but the category of people referred to in this Bill are. Most of the people who are charged under the provisions of the Act for evading payment of taxation are employers. They are the people who are flouting the taxation law.

If these people want to avoid taxation, and take a chance, that is their own problem; but we, as a responsible Parliament, should not be aiding and abetting such people to avoid their taxation

responsibilities. That is the sole purpose of this piece of legislation.

If there is any other reason for it, the Minister did not mention it in his second reading speech. The only reason given is that it will allow people to split their incomes and set up family trusts so that their incomes may be directed to their children, wives, and other people for the specific purpose of avoiding the payment of taxation. This is occurring at a time when we are in economic difficulties.

I am surprised the Liberal Party has taken this action after it has referred to people who receive unemployment and social service benefits as dole bludgers. I wonder who the bludgers are in respect of taxation. A former Treasurer of the Federal Government is subject to suspicion in this regard. We see people in this State enjoying lunches which they will claim as income tax exemptions. These are the people who are bludging on our community by avoiding taxation in this manner.

The Hon. W. R. Withers: Your allowances are tax free.

The Hon. D. W. COOLEY: That matter should be looked at, particularly in view of the efforts some members opposite make in that regard.

The Hon. G. E. Masters: There is an expression about people in glass houses—

The Hon. D. W. COOLEY: Members opposite call people on unemployment benefits dole bludgers. They should not confine themselves to attacking poor people who are on low incomes and young people who cannot get jobs. Members opposite see these young people on the beaches after they have attempted to obtain jobs and have been unable to do so. As a result, they call these young people dole bludgers. What do they call the people who, at three o'clock in the afternoon, are wining and dining and receiving tax concessions as a result? I wonder who the bludgers are.

The Hon. I. G. Pratt interjected.

The Hon. D. K. Dans: Why don't you ask Mr Whitlam? He is not in this Chamber and he is not under debate.

The Hon. G. E. Masters: I expect you will be talking more about this next year.

The Hon. R. G. Pike interjected.

The PRESIDENT: Order!

The Hon. D. W. COOLEY: Mr Pratt and Mr Pike should learn to respect age, intelligence, and experience. Until they come up to my standard, they should remain in their seats and keep quiet.

The Hon. D. K. Dans: That will never happen.

The Hon. R. G. Pike: Don't make false accusations. You live outside your electorate; in fact, you live miles away from it. How can you be so hypocritical?

The Hon. D. K. Dans: I will blow you out of your seat on two points.

The PRESIDENT: Order! Members are allowing the debate to denigrate the decorum of the House. I call upon members to acknowledge the authority of the Chair and refrain from making such unsatisfactory interjections.

The Hon. D. W. COOLEY: I should like to repeat that this legislation does the Government no credit. This Bill will allow barristers and solicitors to avoid the payment of taxation. I do not know how the Government can justify its being associated with such provisions. Will we allow doctors to go into partnership with their wives, children, and other people? I do not believe a doctor would be permitted to do that.

Some months ago amendments were passed in this House in regard to the Architects Act. They were similar to the provisions contained in the Bill we are debating now. These provisions will allow privileged people to obtain income tax concessions. The abolition of probate duty was not a concession as such; but the Government is encouraging people to avoid taxation as a result of the provisions contained in the Bill.

The Barristers' Board has the authority to allow a barrister or solicitor to enter into a partnership with unqualified people, such as his spouse, children, or anyone else. We strongly oppose this measure on the moral grounds I have mentioned. It would not be justified at any time regardless of the economic circumstances of the State. This Bill flagrantly allows people to avoid the payment of income tax.

We have nothing against the legal profession. It does an excellent job.

The Hon. R. Hetherington: And gets paid for it.

The Hon. D. W. COOLEY: If people want to enter into a system of tax avoidance, they may do so; but the Government should not condone it and a Bill such as this should not be passed through Parliament.

**THE HON. R. HETHERINGTON** (East Metropolitan) [3.18 p.m.]: In his second reading speech, the Attorney General made two contradictory statements. He said—

> I am advised that the Barristers' Board, in prescribing the cases and conditions—which will be in the form of rules—will

> undoubtedly exercise its usual care and circumspection so as to restrict the categories of persons with whom practitioners may share their income and so as to ensure that the practitioner will not thereby be relieved of his full normal requirement of professional indemnity.

The Attorney General went on to make the following statement and this is the part that worries me—

> It is envisaged that the sharing of income would apply to close relatives or others in a close relationship with the legal practitioner concerned.

I know it is the custom of people—of many professional people of all kinds, including, I think, doctors—to form what I call "bogus partnerships" to include wives and children. The children included in those partnerships provide nothing in the way of capital, expertise, or learning—nothing in the way of anything—but they receive a benefit. This is done within our community and I recognise that fact.

But, although this is done I do not think we should encourage more people to do it more often. This Parliament should not extend the prerogative and privilege to people who, in the long term, earn a great deal of money and who can afford to pay taxes anyway. I think we should be trying to restrict the ability of people to split incomes among their families, including their children who contribute nothing.

I am not against children, but I do not think they contribute very much to a business. No doubt, having procreated the children, the parent has a kind of incentive to provide for them. But that does not mean the parent must make those children partners in a business.

I think it would be a good idea if we were to keep out of this. I am not against income splitting for taxation purposes. As a matter of fact, I am for it, and I think it should be introduced by the Federal Government so it could be done properly. But I am against the setting up of bogus partnerships so that people can avoid their contribution to the taxation of this country. Of course, it would be expected of me to say that we believe in an egalitarian policy which sets out that people should be taxed progressively so that the people most able to pay provide services for the people who are not able to pay.

The Hon. W. R. Withers: And we are one of the most egalitarian countries in the world, even more than the Communist countries.

The Hon. R. HETHERINGTON: I note that interjection and I do not argue that the Soviet Union is any more egalitarian in its income policy; rather it is less than we are. But I am not sure that we are more egalitarian than any other country. As a matter of fact, the evidence since the defeat of the Chifley Labor Government in 1949 is that we have gradually become less and less egalitarian, and the high income people have increased their incomes and the poor, after having their real incomes increased a little under the Whitlam Government, are finding that those incomes are being reduced very severely.

Anyway, whether or not we are more egalitarian, there is a principle here. The principle is that those who do not contribute anything should not get a share of the profit. In other words, the children of legal practitioners, doctors, or anybody else, should not be partners in a business to which they contribute nothing. I think this is wrong. I believe people should be paid for what they contribute.

We have a society and an economic system at present in which some people receive a great deal of money if they are lucky and in the right job; they receive much more than they contribute socially. Let us not make the position worse by allowing the people with large incomes to make sure their incomes stay large. People who earn large incomes can afford to pay. I believe that, as far as I am concerned or anybody else is concerned.

I think this Bill is bad in principle. It will only encourage and extend a practice in our community that is bad in principle. Instead of extending and encouraging a bad principle, we should be trying to discourage it. I would like to see legislation introduced to prevent close relatives becoming partners, unless it can be shown they have contributed capital. If it can be shown that a child has saved and invested in his father's legal practice there is something to be said for that. No doubt other laws would cover that situation. I do not believe we should encourage the avoidance of income tax. Steps should be taken by the proper Government in the proper way. The proper Government is the Federal Government. Therefore, I am strongly opposed to this Bill.

**THE HON. I. G. MEDCALF** (Metropolitan —Attorney General) [3.25 p.m.]: I have listened with considerable interest to the Hon. D. W. Cooley and the Hon. R. Hetherington. I am quite astounded at the mix-up in thinking that has occurred.

The Hon. R. Hetherington: There is no mix-up.

The Hon. I. G. MEDCALF: The Hon. D. W. Cooley seemed to think we were debating the

Income Tax Assessment Act which, of course, we are not able to do as the Hon. R. Hetherington pointed out. What we are debating is completely outside that Act, which is outside the scope of this Parliament.

This Bill is not primarily directed at income at all. I was astounded to hear the Hon. D. W. Cooley say that the whole aim of this Bill, other than some minor amendments—which he added in a sort of mumble—is to save taxation for lawyers. Of course, that is not the sole purpose of this Bill at all, and I will come back to that in a minute.

I remind honourable members—particularly the two who have spoken—that the Bill contains four or five different subject matters. Some are more important than others. It so happens this particular matter comes first because it is the first of the items in numerical order.

The most important matter in this Bill is that we are permitting the Legal Aid Commission to have articled clerks assigned to it for a period of four years. Nobody mentioned that; not a sound. I did not hear the Hon. D. W. Cooley or the Hon. R. Hetherington say anything about articled clerks.

The prime purpose of this Bill is to continue the employment of articled clerks, either by the Legal Aid Commission or by private practitioners. I doubt whether the members who have spoken got beyond the first few paragraphs of the second reading speech, and I am sad about that. I have heard members of the Opposition speak out about doing something for articled clerks, and about the need to extend opportunities for them. That is exactly the purpose of this Bill. If it were not for this Government not one articled clerk would be able to be articled to the Legal Aid Commission.

The Hon. R. G. Pike: Hear, hear!

The Hon. I. G. MEDCALF: That action was taken by this Government with the blessing of this Parliament. However, we did not hear a sound about that. We are extending the opportunity for articled clerks to continue their articles for another four years with the Legal Aid Commission. They require a period of four years.

When I first put this proposition to the Legal Aid Commission it was rejected. The commission did not want articled clerks. However, I knew the desperate position of some of the lads at the university, and I put the matter forward again. The Legal Aid Commission reluctantly said it would agree to take articled clerks, and agreed to the legislation. Whether or not it would take the clerks was another matter.

We introduced the legislation, but the period was limited to expire on the 31st December of this year. Instead of the opposition we expected from various quarters, the Legal Aid Commission has been quite happy to have the opportunity to take articled clerks.

I have had the pleasure of talking to one or two clerks who have done their service at the Legal Aid Commission. These young men have said to me, "I am getting through this year. I have done my articles with the commission." I said to them, "You will be happy to know that had it not been for the Parliament agreeing to this, and the Government insisting on the right of articled clerks to serve with the Legal Aid Commission, you would not have had the opportunity to get through." All we are seeking to do now is to extend the time. Mr Cooley had nothing at all to say about that matter—he could not get beyond the first few paragraphs of the second reading speech. He said that the sole purpose of this Bill other than a few minor amendments is to provide tax relief for lawyers, or words to that effect. That shows how little he understands the real significance of the measure. The prime reason for the introduction of the Bill is to extend the opportunities for articled clerks to serve their articles with the Legal Aid Commission and with other practitioners in respect of whom they may not be articled directly. Two sections of the Bill deal with that matter.

The period of time cannot be extended automatically. In the first place, the legislation was for a period of three years—until 1979. Now, with this Bill, we are to extend it for another four years. Many young students will be given the opportunity to serve their articles. I am surprised that this fact has not been referred to.

The Hon. D. W. Cooley: We are not in opposition to that part of the Bill.

The Hon. I. G. MEDCALF: The honourable member never even mentioned it.

The Hon. D. W. Cooley: We are going to mention it during the Committee stage.

The Hon. I. G. MEDCALF: Another revolutionary change was not mentioned, and I would ask the Hon. D. W. Cooley and the Hon. R. Hetherington to ponder on this point for a moment. For 25 years the Legal Practitioners Act has contained a provision that clerks articled to the Crown Law Department are under a special obligation to serve an additional period of four years with the Crown Law Department before they can practise as barristers and solicitors. The Bill will lift that obligation. Members opposite did not even know the provision was in the Bill.

Certainly it is in the Bill, and I mentioned it during my second reading speech. Henceforth young men who serve their time either with the State or Commonwealth Crown Law Departments, will be on an equal footing with the young men who serve their time with private practitioners. They will be able to go out and practise on their own account after completing one year's service.

The Hon. D. W. Cooley: You are not saying I did not know it, are you?

The Hon. I. G. MEDCALF: I am not saying that the Hon. D. W. Cooley did not know it, but I am saying he did not mention it. I was surprised he did not mention it because it is a most significant change.

I hope it is now appreciated that the sole purpose of the Bill is not the one referred to by the honourable member. I hope it is appreciated that the prime purpose of the Bill is the one I mentioned. I commend to members opposite a further reading of the second reading speech.

Let me come to the point about which both members spoke, and the only point to which it appears they were able to direct their attention in their haste to perhaps make some political capital out of the measure.

Mr Cooley kept referring to this one point, as though we had power to change the income tax laws. We are not taking any action in regard to income tax. The honourable member did at least say that I was honest enough to point out what was going to happen, and certainly I would not mislead the House by pretending that lawyers did not have some hope that they may gain some taxing benefit out of the measure. However, that has nothing to do with this Government. It has nothing to do with the principle behind this measure; that is, the principle of putting lawyers on the same basis as everyone else in the community. No other group in the community is governed by legislation preventing it from sharing the profits of its business with other people.

The Hon. D. W. Cooley: It does not apply to every member of the community. What about wage and salary earners?

The Hon. I. G. MEDCALF: No other group in the community is governed by an Act of Parliament which says, "You are not allowed to share your profits with someone other than a member of this particular group." If there is any such group, I would like members to tell me about it.

Mr Cooley referred to doctors, and Mr Hetherington dealt with this section of the community. Doctors already have all sorts of arrangements for sharing incomes. Mr Cooley was not aware of that, but Mr Hetherington pointed it out. How they share their incomes is their business; it has nothing to do with this Bill, and it has nothing to do with the responsibilities of this Parliament. Such matters come within the ambit of the Commonwealth Income Tax Assessment Act. If a person can convince the Commissioner of Taxation that he has a legitimate reason for splitting his income, that is a matter between him and the commissioner.

The Hon. D. W. Cooley: You are aiding and abetting them.

The Hon. I. G. MEDCALF: I am talking about doctors, and there is nothing about doctors in this measure. If doctors, architects, or any other group in the community wish to split incomes, it is between them and the Australian Taxation Office. Mr Hetherington said that he is in favour of splitting incomes, but I do not think Mr Cooley is.

The Hon. D. W. Cooley: Everybody in the community should be able to do it, but they cannot.

The Hon I. G. MEDCALF: Whose fault is that? It has nothing to do with the State Government.

The Hon. D. W. Cooley: It is the fault of the political philosophy of your party.

The Hon. I. G. MEDCALF: Mr Cooley said, "Your Government is preventing people from splitting their incomes." It has nothing to do with this Government or this Parliament. Income tax is a matter for the Federal Parliament, and the Federal Parliament has legislated exclusively on the subject. Although the State Parliament could legislate on income tax, that is another matter, and no State Parliament is willing to do so as things stand at the present time. Mr Hetherington referred to bogus partnerships, but he should take this matter up in the Federal Parliament.

The Hon. R. Hetherington: I wish I could.

The Hon. I. G. MEDCALF: I should say that the honourable member should raise this matter with his Federal members.

We are giving no guarantee to the legal profession that its members can split their incomes. That is a foolish thing for anyone to say.

I would like to refer members to section 79 of the Legal Practitioners Act. This section has six subsections, and it has been in the Act for a long time. The marginal note reads, "Prohibition of certain Acts by practitioners", and the section lays down a number of different things which a legal practitioner cannot do if he wishes to

preserve his independence. He is not allowed to act as agent for a person who is not a legal practitioner—that is a purely professional matter. He is not allowed to permit his name or the name of his firm to be made use of on account of somebody who is not a legal practitioner. He is not allowed to do anything which permits a person who is not a legal practitioner to appear to hold out that he is practising with that legal practitioner. Subsection (4) says that a legal practitioner is not allowed to share with any person, other than a certified practitioner, any part of the costs which arise from his legal practice.

Nobody has been able to refer me to any other Act of Parliament which restricts by law a person in a particular occupation or profession from sharing his income with anyone else. A contractor is not prevented from sharing his income, and neither is a doctor, an accountant, an architect, or an engineer. However, a lawyer is prevented from doing this.

The reason for this was that this old section contained all these matters which related to the professional independence of lawyers, because it was desired that a lawyer should not form an unholy alliance with a land agent or a person in some other walk of life with whom he could share business and thereby lose his independence.

All we are asking under the Bill is that, subject to cases and conditions prescribed by the Barristers' Board and laid down in rules, a legal practitioner may share his income. As I have already indicated, those cases and conditions would be on all fours with arrangements which already apply in New South Wales and one or two other States and the rules must be tabled in both Houses of Parliament. If either House does not like any of those cases and conditions it can move to disallow them.

I think members can rely upon the fact that the Barristers' Board will be very strict, anyway. I am not talking about the Law Society now, but the Barristers' Board which is a statutory organisation and which is quite strict in its application of rules governing the profession.

If an honourable member feels one of those cases and conditions is questionable in any respect, he can move to disallow it in the normal way. They will be tabled in accordance with the usual provisions of the Interpretation Act which apply to rules, by-laws, and regulations under any other Act.

Members must appreciate very strict controls will be placed on this one particular item of the four major items in the Bill which seeks to remove the impediment presently restricting legal practitioners—and legal practitioners alone—and to put them on all fours with other occupations and professions.

Mr Cooley raised the tax angle. Legal practitioners must take their chances on that; I am quite certain they will not be able to convince the Commissioner of Taxation they are entitled to any tax deduction for income-splitting unless they can do so on all proper grounds, such as those mentioned by Mr Hetherington when he said he did not object if somebody contributed capital or sums to a firm. He said they may have some proper claim to sharing part of their income and, of course, he was quite right.

That may be one of the grounds for which the Commissioner of Taxation is looking. However, this Government gives no guarantee that one legal practitioner will get one cent off his tax as a result of this legislation.

The Hon. D. W. Cooley: You do not believe that!

The Hon. I. G. MEDCALF: I am not in the habit of saying things I do not believe. I will repeat it, as Mr Cooley seems convinced I do not believe it: This Government gives no guarantee that one legal practitioner will get one cent off his tax as a result of this legislation. If he does, it will be because—after the rules and cases have been laid down by the Barristers' Board and tabled in this Parliament—he is able to make some legitimate arrangement to the satisfaction and approbation of the Commissioner of Taxation in Canberra; however, that is another chapter and another matter altogether.

The Hon. D. W. Cooley: It will really be a matter for the Barristers' Board to determine.

The Hon. I. G. MEDCALF: That is another matter altogether and that is something over which neither I nor the Barristers' Board—nor, indeed, this House—has any control.

Question put and passed.

Bill read a second time.

*Sitting suspended from 3.45 to 4.04 p.m.*

*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 and 2 put and passed.

Clause 3: Section 10 amended—

The Hon. D. W. COOLEY: This is the part of the Bill about which the Attorney General made such play. He said the Opposition had completely

ignored this facet of the measure. A legal person such as the Attorney General might see this as the most important clause in the Bill, but as we do not have a legal person amongst our ranks in this Chamber, we did not look at the clause in the same way. If it is the most important part of the Bill, I thought it would have been mentioned earlier in the Attorney General's second reading speech, as clause 5 refers to section 79.

Our only objection to this Bill lies in the fact that the Government is condoning income splitting, which is actually mentioned in clause 5.

The Hon. R. HETHERINGTON: I welcome this clause. The plight of the articled clerks has always worried me and I am glad the Government has taken this step. It is unfortunate that the clause which has just been passed and this one, should be in the same Bill, because I still object to the first one in principle, while I welcome the second one.

The Hon. I. G. MEDCALF: I draw Mr Cooley's attention to the fact that the reason this matter is mentioned first is that clause 2 is tied in with section 79. Clause 2 deals with the rules to prescribe the cases and conditions. It was dealt with first because it is linked with section 79.

I am gratified that the Opposition appreciates the significance of clause 3 in relation to the change effected in respect of the Crown Law articled clerks, which is a matter about which previous members of the Labor Party have held strong views. A check of *Hansard* of former years will indicate that there has been a number of speeches made by Opposition members pointing out that the Crown Law Department articled clerks or employees were in a sense under a cloud. Therefore, this is not a matter of concern just to lawyers.

The amendment in relation to the extension of service of articled clerks is something I insisted upon. If it had not been for that, the other matters would not have got to first base. The riders on the extension of the articled clerks' period of service are the important and vital reasons for this Bill coming to the House. Perhaps with all the things I have to attend to, I overlooked giving sufficient comment and emphasis to the articled clerks in the second reading speech.

Clause put and passed.

Clause 4 put and passed.

Clause 5: Section 79 amended—

The Hon. D. W. COOLEY: I have no doubt that the Attorney General will have some satisfactory explanation for my query. The change we are making seems to be contradictory. We are amending subsection (4) to give the board power to allow practitioners to share costs with other certified practitioners, but despite what the board may say, subsection (5) would seem to contradict what we are trying to do. I hope the Attorney General can explain what is intended.

The Hon. I. G. MEDCALF: Subsection (4) of the Act simply deals with sharing of costs. Subsection (5) says that no certificated practitioner may use the name of a person other than a certificated practitioner, or a deceased or retired partner in conjunction with his own name, or hold himself forth as so practising. That means if someone other than a practitioner were allowed to be in a partnership he could not use that name. He may use only the names of certificated practitioners or deceased or retired partners. He cannot hold himself out and claim a non-practitioner as his partner. He cannot pretend a particular non-practitioner is in partnership with him, nor can he use that name, but that does not mean he cannot share the costs. One subsection deals with the sharing of costs and the other deals with how he holds himself out to the public as to who are his partners.

The Hon. O. N. B. OLIVER: The point of tax avoidance has been well canvassed, but I am concerned with Mr Cooley's difficulty in not being able to assess the difference between a self-employed person and an employee. When one is self-employed one is utterly and totally dependent on one's own resources. Self-employed people stimulate the majority of work for the work force.

In the category of small business, this large group constitutes over 80 per cent of the employees in this country.

These self-employed people do not have allowances. They do not have awards for sickness, long service leave, or holiday pay. They must stand alone. The success of this country is built upon the success of self-employed people because they are the ones who provide major employment.

The Hon. R. HETHERINGTON: It was not my intention to join this discussion until Mr Oliver spoke. It is always interesting to listen to him although I am often not sure what he means.

The Hon. O. N. B. Oliver: Having not been in the position of self-employment you would not understand.

The Hon. R. HETHERINGTON: I know several lawyers—in fact last week I was speaking to one who was busy trying to establish himself in business and expected to be broke for at least the next six months. He is quite capable and able to

do well. Many self-employed people are in fact earning very high salaries.

The Hon. A. A. Lewis: "Earning" is the operative word.

The Hon. R. HETHERINGTON: That is a debatable point. It depends.

The Hon. A. A. Lewis: I agree.

The Hon. R. HETHERINGTON: For instance, not many highly paid entertainers would earn their very exorbitant incomes.

The Hon. A. A. Lewis interjected.

The Hon. R. HETHERINGTON: Let me finish. When I say something is earned it is not necessarily what one receives. What the market provides does not mean that is earned, in the sense that people have necessarily put in the effort and time. They have the ability and do the work. Some people receive high pecuniary rewards often only because they are in the right sort of profession. So I am not convinced that the work put in by some legal practitioners is quite commensurate with the very great reward they receive. That is a highly debatable point.

The Hon. A. A. Lewis: Likewise I agree.

The Hon. R. HETHERINGTON: Regardless of what Mr Oliver may say about self-employed businessmen, I know that many professional people in our community earn large sums. Then there are some people who are on fixed salaries. For example, if one is employed by a university one is on a fixed salary. Some people are underpaid and some are overpaid.

The Hon. A. A. Lewis: Agreed.

The Hon. R. HETHERINGTON: The honourable member knows that as well as I do, and the same applies to people who charge fees.

The Hon. A. A. Lewis: But you can't separate them in our laws.

The Hon. R. HETHERINGTON: We do not do that with our other professional people either. Sometimes it is a matter of fluke, and of how one projects oneself.

Mr Oliver's statements have nothing to do with the problem; and I am still not tremendously happy with this Bill.

The Hon. O. N. B. Oliver: We cannot expect you to understand it.

The Hon. R. HETHERINGTON: That is quite interesting coming from the honourable gentleman. I have always thought that if he were an egg he would be scrambled. I can understand anything he can understand but I cannot always understand his explanations.

I am trying to say that I can understand the point that legal practitioners are the only ones who cannot share their incomes. I do not understand the point that they should not stay that way. That is all. I would like more safeguards written into the Bill.

The Attorney General said in his speech that the Barristers' Board would take great care, but the intention was to allow certain things to happen. I am not sure on some issues because even some very eminent legal practitioners for whom I have great respect concerning their legal capacity, would not have sympathy with other practitioners on certain matters that I would not think morally desirable. Therefore I believe there should be more safeguards written into the Bill. I will not pursue that point now. I was only brought to my feet by the fact that Mr Oliver seemed to be dragging his usual pale pink herrings across the Chamber.

The Hon. A. A. LEWIS: I am perhaps as critical of professionals as I am of academics when considering this matter. But I believe this is one of the more reasonable type of Bills that comes into this place. We must think of the minorities in the country and at the moment legal practitioners are the minority in the world because they cannot do something other professions can. I believe that the minorities should be looked after, whoever they may be.

Clause put and passed.

Title put and passed.

*Report*

Bill reported, without amendment, and the report adopted.

## CONSTITUTIONAL POWERS (COASTAL WATERS) BILL

*Second Reading*

Debate resumed from the 23rd August.

**THE HON. D. K. DANS** (South Metropolitan—Leader of the Opposition) [4.25 p.m.]: The Opposition supports the Bill which is one of three on the notice paper. Perhaps it would be appropriate to quote the first part of the Minister's second reading speech as follows—

> The Bill is part of a package of seas and submerged lands legislation which was agreed upon at the June, 1979 Premier's Conference. The package of legislation will, when enacted, have the effect of returning the territorial sea to the State control and will resolve questions of State and Commonwealth jurisdiction . . . .

I understand that all States of the Commonwealth have agreed to this legislation. The three Bills clearly indicate their intention and they are well supported by the Minister's second reading speech.

**THE HON. I. G. MEDCALF** (Metropolitan —Attorney General) [4.26 p.m.]: I thank the Opposition for their support of the Bill. It is very gratifying that there is unity on this. There is already unity throughout the States of Australia and the Premiers have indicated support for this type of legislation, as has the Commonwealth. It is therefore appropriate to have unity in this Parliament. I commend the Bill to the House.

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.

## CRIMES (OFFENCES AT SEA) BILL

*Second Reading*

Debate resumed from the 23rd August.

**THE HON. D. K. DANS** (South Metropolitan—Leader of the Opposition) [4.28 p.m.]: For the reasons stated in the debate on the previous Bill the Opposition agrees with the Bill in principle and detail.

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.

## OFF-SHORE (APPLICATION OF LAWS) ACT AMENDMENT BILL

*Second Reading*

Debate resumed from the 23rd August.

**THE HON. D. K. DANS** (South Metropolitan—Leader of the Opposition) [4.29 p.m.]: As the second reading speech points out, the Crimes (Offences at Sea) Bill will require consequent amendment of the Off-Shore (Application of Laws) Act, and this Bill will do just that. Therefore, as was said previously, we agree with this Bill in principle and detail.

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.

## ADJOURNMENT OF THE HOUSE: SPECIAL

**THE HON. I. G. MEDCALF** (Metropolitan —Attorney General) [4.31 p.m.]: I move—

> That the House at its rising adjourn until Tuesday, the 11th September.

Question put and passed.

*House adjourned at 4.32 p.m.*

## QUESTIONS ON NOTICE

### LAND

*City of Perth Endowment Lands*

188. The Hon. R. J. L. WILLIAMS, to the Minister for Lands:

Following the answer to part (1) of my question No. 176 on Tuesday, the 28th August, 1979—

(1) In what year did the interest accruing from the City of Perth Endowment Lands start to be paid into General Revenue for purposes other than spending on the endowment lands?

(2) What is the total of this accrued amount of interest money up to the financial year ending 1979?

(3) What is the present total of the Endowment Lands Fund?

(4) Has a minute of the Council authorising the transfer of this interest money been recorded?

(5) If there is a minute, does it indicate the section of the City of Perth Endowment Lands Act, 1920-1978, which allows this interest to be placed into general funds or is there any other regulation, by-law or special instrument under which the council has authority to so do?

The Hon. D. J. WORDSWORTH replied:

The Perth City Council has informed me as follows—

(1) 1978-79.

(2) $396 710.

(3) As at the 30th June 1979, $3 161 408.

(4) Yes.

(5) I wish this question to be divided into two parts so as to separate the factual from the legal context of the question.

### INDUSTRIAL DISPUTES

*Effect*

189. The Hon. I. G. PRATT, to the Leader of the House representing the Minister for Labour and Industry:

During the year 1978-79—

(a) what was the loss in export earnings due to strikes in Western Australia;

(b) what was the loss to State revenue due to strikes in Western Australia;

(c) how many man hours were lost due to strikes in Western Australia;

(d) what amount was lost in wages due to strikes in Western Australia; and

(e) by what figure did unemployment rise in Western Australia?

The Hon. I. G. Medcalf (for the Hon. G. C. MacKINNON) replied:

(a) and (b) No continuous series of estimates are collected for export earning or State revenue losses resulting from strike action. Only irregular surveys have been undertaken by the Department of Labour and Industry.

(c) No figures for man hours lost as a result of strikes are collected. Working days lost figures, however, are collected and whilst the figures, for the June quarter 1979 are not yet available the working days lost for the period March quarter 1978 to March quarter 1979 was 80 900 days.*

(d) June quarter 1979 figures are not yet available, however, the estimated loss of wages due to strikes between the March quarter 1978 and March quarter 1979 was $7 679 million.*

(e) Between July 1978 and June 1979 total full-time unemployment rose from 31 200 to 31 300.

* It should be noted that the Australian Bureau of Statistics figures understate the loss of working days and wages as strikes of less than 10 working days lost are not included in the figures. It is expected that the figures for the June and September quarters 1979 will be particularly high as a result of major disputes in the iron ore industry and on the waterfront.

### TRANSPORT: AIR

*Kalbarri-Perth*

190. The Hon. D. W. Cooley (for the Hon. T. McNEIL), to the Minister for Lands representing the Minister for Transport:

(1) Have Avior Airlines operating between Kalbarri - Geraldton - Dongara - Eneabba and Perth, offered a 20 per cent reduction on seven-day pre-booked return flights between those ports?

(2) If "Yes"—
  (a) has the Minister and/or the Transport Commissioner given consideration to the submission;
  (b) is a comparable or more beneficial service currently in operation in those areas;
  (c) can the public expect the Avior offer to be operational in the near future; and
  (d) has the Minister and/or the Transport Commissioner insisted on a 21-day pre-booking period instead of seven days;
  (e) if so, why?

The Hon. D. J. WORDSWORTH replied:

(1) Yes.

(2) (a) The matter is still under consideration by the Commissioner of Transport in accordance with the provisions of the Transport Commission Act.
  (b) No other regular air service operates between Kalbarri, Dongara, Eneabba, and Perth. However, as the honourable member is no doubt aware, MacRobertson Miller Airlines operate regular frequent services from Perth to Geraldton.
  (c) A decision will be made within the week.
  (d) Initially, as services were to be operated in and out of Geraldton, the Commissioner of Transport considered a 21-day prebooking period was required.
  (e) The provision of regular frequent air services to Geraldton rests with MMA in accordance with responsibilities under the Transport Commission Act. It was considered that any loss of traffic suffered by MMA could have an effect upon existing services and jeopardise continuing frequency of services and fare structures offered by MMA.

## TRANSPORT: AIR

*Bunbury-Perth and Perth-Rottnest*

191. The Hon. D. W. Cooley (for the Hon. T. McNEIL), to the Minister for Lands representing the Minister for Transport:

(1) Were tenders called for, with advertised closing date, before deciding Skywest Jet Company would provide regular air services between Perth-Bunbury and Perth-Rottnest?

(2) What criteria were used to select the successful applicant?

(3) Were applicants advised that each route would be judged separately?

(4) Were applicants advised that commuter operations out of secondary airports, such as Jandakot, were not permitted?

(5) Was the successful applicant the lowest tenderer?

(6) (a) Did the successful applicant offer best service; and
  (b) by what criteria was this decision assessed?

(7) Was it made known that preference would be given to the use of turbine aircraft?

(8) Is the Bunbury airstrip to be upgraded to take the Nomad aircraft which the successful applicant intends using?

(9) Is the Nomad aircraft, to be used on the Bunbury run, solely owned by the operator?

(10) If tenders were not called for with advertised closing date, why not?

The Hon. D. J. WORDSWORTH replied:

The Minister for Transport has been informed by the Commissioner of Transport as follows—

(1) No. Four applications for the issue of a licence to operate to Bunbury and six applications to operate to Rottnest were lodged with the Transport Commission.

(2) In consultation with the Commonwealth Department of Transport, which is responsible for air safety and airport control. The successful applicant was determined on the basis of type of aircraft, frequency of service, consistency of stop-over time, back-up facilities, passenger facilities, fare structure, and operational capabilities.

(3) No. Not by the Transport Commission.

(4) Applications were considered in the manner in which they were submitted, as airport control is the responsibility of the Commonwealth Department of Transport.

(5) The successful applicant offered the lowest fare to Bunbury and a fare 90c higher to Rottnest than the next lowest fare offered.

(6) Yes. On the basis of all the criteria referred to in (2) above.

(7) No. Not by the Transport Commission.

(8) This is a matter for the owner of the airport, the Bunbury Town Council, to decide.

(9) If a Nomad is used, the licence will be issued in accordance with the definition of "owner" in the Transport Commission Act.

(10) No. Sufficient applications were received to obviate the necessity to call tenders.

## QUESTIONS WITHOUT NOTICE

### LAND

*City of Perth Endowment Lands*

1. The Hon. R. J. L. WILLIAMS, to the Minister for Lands:

I apologise to the Minister for my inadequate understanding of the English language and ask him whether, if there is a minute, it indicates the section of the City of Perth Endowment Lands Act, 1920-1978, which allows the interest to be placed in the general fund?

The Hon. D. J. WORDSWORTH replied:

As this matter concerns the Perth City Council, I would like the question to be put on notice to enable me to obtain the appropriate answer.

### WAGE INDEXATION

*Federal Government's Announcement*

2. The Hon. D. W. COOLEY, to the Attorney General representing the Minister for Labour and Industry:

(1) Did the Federal Government consult with the State Government prior to making its announcement on wage indexation on the 17th August, 1979?

(2) If not, would the Minister indicate his Government's policy with respect to the Federal Government's initiative on wages as announced on that day?

The Hon. I. G. MEDCALF replied:

(1) No.

(2) The Western Australian Government supports the Commonwealth proposals, generally, on wage indexation with the exception of the method of discounting the Consumer Price Index.

The PRESIDENT: Order! I direct the attention of members to Standing Order No. 154 and recommend that they understand the situation in respect of the rules applying to the asking of questions.