Beach Whaling, Blue Iron Supply, Vickers Hadwa, Santa Fe Pomoroy, Steel Mains Limited, J. & E. Ledger, Bradford Kendall, Harper and Swift, Dravo, Fabricated Products, Structural Engineering, and Davmar. Members may not be aware of the fact that some of the engineering that is undertaken is of world standard.

The die bases for undersea drilling rigs which are being made for the Blue Iron Supply Co. represent repetitive orders which are growing for these items. It is the first time this equipment has been manufactured in Australia. The die bases are dropped to the sea bed and used to guide the drill stem in underwater oil exploration.

The stainless steel work undertaken for Dravo had been offered to other firms in Australia, but only the State Engineering Works were able to handle the job to the required tolerance for size and welding straightness.

The plate rolling equipment at the works has the capacity to roll heavier plate than can be rolled by any other firm in Western Australia, with the exception of the Western Australian Government Railways. Consequently, the works receive a number of orders in this field for private industry.

Mr. Williams: Do you know, off the cuff, whether they made a profit last year?

Mr. JAMIESON: Yes. They have made a profit of several hundreds of thousands of dollars for a considerable number of years. The annual report of the works will be supplied when the Budget is presented. The works have served the State well. If one were to walk around the works one would see a considerable amount of machinery which was placed there by the American forces and still retains their label to this day. Much of it has become unserviceable and antiquated and needs replacement.

Mr. Williams: The Bill also mentions the W.A. Meat Export Works.

Mr. JAMIESON: This was done a couple of years ago. The Bill simply includes the two as one. I commend the Bill to members.

The report was tabled.

Debate adjourned, on motion by Mr. Williams.

BILLS (3): RETURNED

1. Constitution Acts Amendment Bill.
2. Legal Contribution Trust Act Amendment Bill.
3. Housing Loan Guarantee Act Amendment Bill.

Bills returned from the Council without amendment.

House adjourned at 11.35 p.m.

Legislative Council

Thursday, the 4th May, 1972

The PRESIDENT (The Hon L. C. Diver) took the Chair at 2.15 p.m., and read prayers.

QUESTIONS (2): WITHOUT NOTICE

1. ABORIGINAL LAND RIGHTS

Press Report

The Hon. A. F. GRIFFITH, to the Leader of the House:

(1) Did the Minister see the report on page 4 of today's issue of *The West Australian* which was headed, "Government fails on native land rights."

(2) Did the Leader of the House read that portion of the article which stated—

> The clauses would have given Aborigines exclusive rights to natural resources on reserves and absolved them from the payment of royalties or rent to the State for using the land or its natural resources?

I would like to know whether the Minister shares my concern at the inaccurate report of the proceedings which took place last night, in the knowledge that this sort of inaccurate reporting gives the public of Western Australia a totally incorrect impression of the proceedings of Parliament?

The Hon. W. F. WILLESEE replied:

(1) and (2) I have read the article and I believe it gave the wrong impression. My impression of the result of the Bill which was passed here last night is that land rights had been given to the Aboriginal people of Western Australia with regard to their reserves but mineral rights will not go with that land. As regards royalties, it was never suggested at any time that the Aboriginal people should pay them. The question was whether they should collect them. That is my interpretation of what happened in this Chamber.

2. REGIONAL HIGH SCHOOL

Kimberley

The Hon. W. R. WITHERS, to the Leader of the House:

(1) Does the Minister plan to upgrade the Derby Junior High School to the status of a regional high school?

(2) When will the Kimberley region have a regional high school?

(3) Where will a regional high school for the Kimberley be located?

The Hon. W. F. WILLESEE replied?

(1) Not at this stage.

(2) The establishment of a regional high school in the Kimberley area will be dependent upon the rate of growth in the area.

(3) No decision has been made with respect to the siting of a future high school in the Kimberley region.

DAYLIGHT SAVING

Ministerial Statement

THE HON. R. H. C. STUBBS (South-East—Chief Secretary) [2.24 p.m.]: Mr. President, I would like permission to make a Ministerial statement.

The PRESIDENT: The Chief Secretary seeks permission to make a Ministerial statement. Is there a dissentient voice? There being no dissentient voice, permission is granted.

The Hon. R. H. C. STUBBS: It will be remembered that Mr. Medcalf moved a motion in this House on the 30th March this year in regard to daylight saving. Consequent upon that, I have now formed a committee, which will meet at the Department of Labour's conference room on the sixth floor of Willmar House, 606 Murray Street, West Perth, on Monday next at 2.30 p.m. The Secretary of the Chief Secretary's Department is the convenor. The other members of the committee are—

Mr. J. Harris, Government Astronomer.

Representatives of—

The Chairman of Commissioners, Rural and Industries Bank, Barrack Street, Perth.

The Director of Public Health, Health Department, Murray Street, Perth.

The Director of Education, Education Department, Havelock Street, Perth.

The Chairman, Transport Commission, 136 Stirling Highway, Nedlands.

The Secretary, Trades and Labour Council of W.A., Beaufort Street, Perth.

The Director, Chamber of Manufactures (W.A.) Inc., Manufacturers Building, 212 Adelaide Terrace, Perth.

The Secretary, Chamber of Commerce, G.P.O. Box D170, Perth.

The Secretary, Farmers' Union of W.A. Inc., 239 Adelaide Terrace, Perth.

The Secretary, West Australian Motion Picture Exhibitors' Association, Perth Chamber of Commerce, G.P.O. Box D170, Perth.

The Postmaster General's Department in Western Australia.

The Environmental Protection Authority.

The Hon. A. F. Griffith: Who will represent the Country Party and the Liberal Party?

The Hon. R. H. C. STUBBS: This is the committee that was suggested, and I think it is fairly representative.

The Hon. A. F. Griffith: There is no representative of the Country Women's Association.

The PRESIDENT: Order! Members will have many opportunities to speak on this matter.

QUESTION ON NOTICE

LIQUOR ACT

Licenses

The Hon. R. J. L. WILLIAMS, to the Leader of the House:

(1) With reference to my question on Wednesday, the 26th April, 1972, relating to the applications for licenses pursuant to the Liquor Act, and in view of the reply thereto—is it not correct that applications for cabaret licenses were lodged in February and March, 1971, by—

(a) The Old Time Music Hall Pty. Ltd., and

(b) Diamond Lil's Pty. Ltd.,

and that objections were lodged on the grounds that each of the companies referred to was the holder of a restaurant license pursuant to the Act for the premises to which the applications referred?

(2) If the reply to (1) is in the affirmative—

(a) how can the Minister reconcile the answer given to part (1) of my previous question indicating that only one application for a dual restaurant and cabaret license had been received by the Licensing Court;

(b) does the reply to (1) of my previous question refer to either of the companies referred to; and

(c) is not the reply to (1) of my previous question incorrect and misleading to the House?

(3) Will the Minister again examine the points raised in my previous question and advise whether or not the replies are correct?

(4) If not, why not?

The Hon. W. F. WILLESEE replied:

(1) (a) The Old Time Music Hall, 6 Collie Street, Fremantle.

Forms of application for a Cabaret License were lodged on 15-2-71, but the necessary plans were not submitted at that time. The applicant has not yet lodged the required plans, and therefore the application is not valid and cannot be considered until such time as the plans have been lodged, and a report submitted by the Senior Supervisor.

(b) Diamond Lil's Wild West Saloon, 919 Beaufort Street, Inglewood.

Forms of application, plans etc. for a Cabaret License were lodged with the Court on 23-3-71. Despite a written request the applicant has not yet lodged a Certificate from the Local Authority, and this application cannot be considered until the Certificate is lodged.

Objections to the applications were lodged by the Senior Inspector of the Liquor and Gaming Branch.

(2) (a) As the application for The Old Time Music Hall is not valid, the Court is unable to give it consideration. With regard to Diamond Lil's application, because all documents in connection with the application have not been lodged, Section 59 of the Liquor Act prevents the Court from hearing the application.

(b) The previous reply did not refer to either of the applications mentioned.

(c) The practice of the Court is to only consider matters received as applications when such matters are in order for hearing by the Court.

(3) and (4) With the foregoing explanations the replies to the previous questions are correct.

WEST KAMBALDA RAILWAY BILL

Introduction and First Reading

Bill introduced, on motion by The Hon. J. Dolan (Minister for Railways), and read a first time.

Second Reading

THE HON. J. DOLAN (South-East Metropolitan—Minister for Railways) [2.30 p.m.]: I move—

That the Bill be now read a second time.

The purpose of this short measure is to provide the legislative authority for the Railways Department to construct a standard gauge spur railway to serve Western Mining Corporation Limited's production and mill area at Kambalda.

In the Nickel Refinery (Western Mining Corporation Limited) Agreement Act—No. 76 of 1970—it is provided that the State will introduce and sponsor in Parliament a Bill for an Act to construct a spur line from such point on the Kalgoorlie-Kambalda railway as the corporation reasonably requires and the Railways Commission approves, to the boundary of the corporation's production area or mill area at Kambalda, or to some agreed point within those areas The length of this spur line is 5 miles 35 chains along the route described in the schedule to this Bill, and delineated on W.A.G.R. Plan 64711, a copy of which I will table.

The spur line will be used to convey nickel from the mines to the smelter which is currently being built in the Kalgoorlie area for Western Mining Corporation Limited, and the construction work has been programmed to ensure that it is operable prior to the commissioning date of the smelter, currently expected to be in May, 1973.

The West Kalgoorlie-Lake Lefroy railway, which was authorised by Act No. 110 of 1970, has not yet been constructed; and it is proposed that work on this railway be undertaken in conjunction with the spur railway. Planning for the earthworks and track laying for both these projects is at present in hand and approval for the spur railway is necessary to enable a commencement of the work on both lines.

The cost of the spur railway will be met by Western Mining Corporation Limited. This is in addition to the $9,000,000 which will be contributed by the corporation towards the cost involved in providing a standard gauge line from West Kalgoorlie to Esperance via the Kambalda-Lefroy route.

The agreement Act with the corporation provides that the State shall grant the corporation a lease of land over which the spur railway runs or on which any siding or other structure is erected. At the termination of such lease everything thereon shall revest in the State and the State shall not be required to pay any compensation in respect thereof.

I will also table a copy of a report submitted by the Director-General of Transport in which he acknowledges the spur

railway as an important link in the overall system which is designed to handle the transport of nickel ores, matte, and concentrates between the production area and the smelter, the port of Esperance, and the Kwinana refinery. The Director-General recommends construction of the railway.

The plan and the report were tabled.

Debate adjourned, on motion by The Hon. D. J. Wordsworth.

CRIMINAL CODE AMENDMENT BILL

Second Reading

THE HON. W. F. WILLESEE (North-East Metropolitan—Leader of the House) [2.34 p.m.]: I move—

That the Bill be now read a second time.

The principal object of this Bill is to extend the classes of indictable offences which can be dealt with summarily by Courts of Petty Sessions. This was a subject considered to be of sufficient importance to refer to the Law Reform Committee for that committee's investigation and recommendation. The committee was asked to consider the need for further legislation to provide for summary trial of indictable offences.

The usual working paper prepared by the committee was circulated to the Chief Justice and judges of the Supreme Court, the magistrates, the Royal Association of Justices of Western Australia, the Commissioner of Police, and the Law Reform Commissions of other jurisdictions.

Trials by judge and jury on indictment undeniably take longer and are more costly both to the State and to the individual charged than are summary trials. It is believed that many accused would prefer summary trial because of its practical advantages. Because a person can be dealt with earlier his anxieties are sooner resolved one way or the other. Moreover, the maximum penalty which can be imposed on summary conviction is generally less than that which can be imposed by the superior court.

Support for the foregoing conclusions may be found in the experience of the District Court. Since that court came into operation on the 1st April, 1970, some 1,265 indictments have been filed in the court. Of these 1,107 have pleaded guilty to offences which Courts of Petty Sessions have been required to commit for trial and of which many may be dealt with summarily under the proposals contained in this Bill. These proposals, which have been recommended by the committee, may be accepted with confidence by members as being approved by interested persons and organisations representative of the community.

The consensus of opinion expressed on the material set out in the working paper was that any extension of the power to deal summarily with indictable offences should be restricted to magistrates. Generally this view was accepted, but having regard for the vast area of the State and the scattered population it was considered that some regard should be had for the position where a magistrate is not readily available, and I would emphasise this point, where the defendant is prepared to consent to being dealt with by two justices.

The power to deal summarily with the additional offences will not sacrifice any of the traditional principles associated with trials of criminal cases.

Without the assistance of the work carried out by justices of the peace in this State the administration of justice could not be efficiently undertaken. Nevertheless, without doubt they will agree that magistrates properly qualified should preside when dealing with offences enumerated in this Bill.

The complexities of laws make it impossible for persons not wholly engaged in the day to day work of the law to acquire the knowledge required for this important task. This does not mean that justices of the peace will not continue to play an important role in dispensing justice in other cases.

Offences which are proposed to be dealt with summarily are—

- Obstructing officers of courts of justice;
- Poisoning water holes;
- Keeping and using gaming houses;
- Keeping and using betting houses;
- Keeping and using places for the purpose of lotteries;
- Assault;
- Assault occasioning bodily harm;
- Trivial cases of defamation;
- Housebreaking and burglary where the value of the property does not exceed $500 and where no violence is used in the commission of the offence; and
- Stealing and wilful damage—the value of property to be increased from $300 to $500.

Some difficulties have been experienced in obtaining convictions against adult offenders who procure or induce children to commit acts of gross indecency with them. At present it is necessary to prove an act closely akin to assault before a conviction can be obtained. The growing concern about the increasing number of these offences brought to notice makes it essential for the protection of children of tender years that the matter be reviewed. Accordingly it is proposed to amend the appropriate section along the lines of the English legislation in current use and to

make it clear that an offence is committed by a person who incites a person to deal indecently with him or with another person.

Section 289 of the Criminal Code dealing with the crime of attempting to commit suicide is to be repealed. There is general agreement that persons who attempt to take their own lives are in need of medical treatment and therefore should not be subject to court proceedings. For some years past it has been the policy of the Commissioner of Police not to prefer charges in such cases but to have the person concerned transferred to the Mental Health Services for treatment. There should be no objection to the repeal of this section, which for practical purposes has not been operative for some time.

The present provisions of the Criminal Code do not include a specific section which authorises the joinder of counts against more than one person, but there are references in the code which make it clear that this may be done. Although it has been done frequently very real difficulties have been experienced in the matter. The provision has been redrafted to overcome the problem.

A person charged on indictment for offences of stealing, false pretences or cheating may be convicted of any other offence committed with respect to the same property if such other offences are established by the evidence. It is proposed that an alternative verdict may be given in respect of offences dealing with obtaining goods or credit by false pretences or by a wilfully false promise. The suggested amendment is reasonable under the circumstances existing today.

The settled policy of the Crown is to indict a person on a charge of manslaughter where by reason of his unreasonable conduct in the driving of a motor vehicle he is responsible for the death of another person.

This policy was the subject of comment by a member of a court of criminal appeal on the need to leave to a jury the responsibility of returning a lesser verdict of reckless or dangerous driving causing death. The Crown's policy is founded on Supreme Court decisions that the degree of negligence is the same for both offences. The Law Reform Committee after considering the matter submitted alternative proposals for consideration.

The Government has accordingly decided to redraft section 277 dealing with unlawful homicide so that it will clearly include the offence of causing death by negligent use or management of a motor vehicle. Members will no doubt agree that any attempt to reduce the severity of the crime would be against the public interest, having regard for the increase in the road toll.

The provisions in the legislation now before members are submitted as those necessary to meet the changing needs of the community, and could be expected to receive the support of those interested in protecting law-abiding citizens without jeopardising the rights of those who offend.

Debate adjourned, on motion by The Hon. G. W. Berry.

JUSTICES ACT AMENDMENT BILL

Second Reading

THE HON. W. F. WILLESEE (North-East Metropolitan—Leader of the House) [2.42 p.m.]: I move—

> That the Bill be now read a second time.

The provisions of this Bill are consequential upon amendments proposed to the Criminal Code providing for an extension of classes of offences which can be dealt with summarily by courts of petty sessions. Opportunity is also taken to incorporate other amendments considered desirable for the better administration of justice.

The increasing number of offences which are proposed to be capable of being dealt with summarily makes it desirable that wherever possible the charges should be determined by stipendiary magistrates. Where a magistrate is available or defendants do not consent it is proposed that Justices of the Peace shall be precluded from dealing with the charges.

While the important part played by Justices of the Peace is recognised, it is also recognised in these days of specialisation that wherever possible magistrates should deal with charges of a serious nature.

Some doubt has been expressed about the power to enforce under the provisions of the Justices Act, recognizances which are not entered into pursuant to the order or decision of a court of summary jurisdiction. An example of such recognizances are those entered into after arrest without warrant but before court appearance. An amendment is therefore proposed to cover all recognizances arising in summary matters obviating the need to take recovery action by sueing in the local court for the amount of the recognizance.

The court of petty sessions has a discretion not available to the local court to order any or total release from the forfeiture where it appears that there are special reasons for the breach of the recognizance. At present any party to a charge who has been dealt with in default of his appearance may apply to the court for an order to have the decision made in his absence set aside, and for the matter to be reheard. The object of this provision is to provide an easy and economical means of ensuring that every

person can be reasonably certain of a fair decision from the court. The section is used mainly in cases where persons plead guilty, usually in traffic cases, and then consider that the penalty imposed is harsh or that it is excessive.

A person seeking a rehearing must apply to the court within 21 days of the decision. Experience has shown that it is not always possible, for various reasons such as unavoidable absences from usual place of residence or distance from the court, for the application to be made within the prescribed time. The court is empowered therefore to extend the period should it think fit.

As stated, the section is intended to provide ready means of enabling a party to have a charge reheard. Most of these applications involve breaches of the Traffic Act in which police officers are usually the complainants. In such cases the amount of security for costs has not been required. In a recent case where a shire traffic inspector was the complainant an objection against the rehearing was successfully upheld on the grounds that the amount of security for costs had not been lodged with the court. It is proposed to remove this requirement in respect of applications for rehearing.

An increase in the value of goods protected aganist seizure under warrants of execution issued in default of payment of penalties is considered necessary. The existing provision has remained unchanged since the Act was enacted in 1902. An increase to the same amount as provided in the Local Courts Act is reasonable having regard to changes in money values since that early date.

Where on a police prosecution a person has been convicted after trial or on a plea of guilty, and it appears through some mischance of error that a conviction should not have been recorded, it is fair that the complainant should have the power to rectify the matter and have the convicion quashed or seek an order-to-review. In summary convictions it is frequently not worth the expense for the defendant to appeal, although he may feel aggrieved that the conviction stands against him. Under these circumstances the amendment empowering the Attorney-General to seek an order-to-review is in the best interests of the administration of justice and enables the record to be corrected at no expense to the defendant. In the event of costs being ordered against the Attorney-General in such cases suitable provision is made for the payment of such costs by the Treasurer.

One of the problems facing every organisation is the custody and storage of records and courts are no exception in this respect. The ever increasing number of charges, most of which are not of a serious nature, has created a heavy demand for storage. Legal opinion is uncertain whether there is any validity for the destruction of records of courts of petty sessions. Generally microfilm storage has become an accepted alternative to the retention of original records.

An examination of the problem by Crown Law officers has resulted in a suggestion that certain records be placed on microfilm after three years and the original record then destroyed. The microfilm negative is to be recognised as the court record for the next 50 years. The practical effect of this proposal is that a court record of the conviction of a person will be maintained for 53 years. As offenders cannot be charged in courts of petty sessions until they have attained the age of 18 years, the prescribed period of 53 years would appear to be adequate.

Debate adjourned, on motion by The Hon. I. G. Medcalf.

PUBLIC TRUSTEE ACT AMENDMENT BILL

Second Reading

THE HON. W. F. WILLESEE (North-East Metropolitan—Leader of the House) [2.48 p.m.]: I move—

That the Bill be now read a second time.

The object of this Bill is to remove the restriction imposed on the Public Trustee in respect of the matter of the fees and charges which can be levied for his services.

Subsection (1) of section 38 of the principal Act permits such fees being charged as are prescribed by regulation.

Subsection (2) sets a ceiling to those charges at no more than $10 when the gross capital of an estate does not exceed $200; the sum of $20, or 2½ per cent. whichever is the greater, when the gross capital of the estate exceeds $200 and 5 per cent. of such income to the estate received by the Public Trustee—provided that the latter charge shall not apply when the Public Trustee is acting merely as agent or attorney.

In the proposal to repeal subsection (2) the Bill would remove those restrictions on the amount of fees and charges which may be prescribed by regulation.

The Public Trust Office established in 1941 provides a useful service to the community. Whilst the principal activity is the administration of estates of the deceased, other matters including some of a social service nature are undertaken.

When required the affairs of incapable persons are administered by the Public Trustee, who also undertakes the investment of moneys under control of the courts and of the Workers' Compensation Board. Persons may also appoint the Public Trustee to act as their agent, as already indicated. These services cannot be readily undertaken by any other organisation on

the same economical basis. The State has always accepted certain responsibilities in respect of incapable persons, infants and others who need some form of protection.

The present scale of fees and charges has, except for some minor adjustments, remained unchanged since the office was established while increases in operating costs have occurred. Also there has been a significant change in matters which are required to be dealt with by the Public Trustee and, indeed, by any executor or administrator.

Additional costs in satisfying the requirements of the Commissioner of Taxation and other authorities should rightly be borne by the respective estates. The time and expense involved in investigating to settle next-of-kin should be a charge against the particular estate and not be spread in an overall rate to the expense of other estates where such investigations are not required.

The removal of the restriction as proposed will allow changes to be made from time to time as circumstances warrant. Parliament will be kept fully apprised from time to time as regulations are tabled.

At this point the Public Trustee considers that it will be necessary to fix a rate of 3 per cent. as compared with the ceiling rate of 2½ per cent. at present allowed. In addition, rates will be prescribed for the extra services in respect of particular estates, and so on, to which I have referred and it is considered that such increase is reasonable having regard to the higher operating costs which the Public Trustee is required to meet.

Section 40 of the Principal Act deals with the common fund and its investment. Paragraph (b) of Subsection (4) requires that the interest payable to the respective estates, the moneys of which are held in the common fund, shall be paid to the credit of those estates half yearly and that the Public Trustee shall not charge or deduct any fee in respect of such credits.

The purpose of clause 4 of the Bill is to allow commission to be taken on income from earnings of investment of the common fund which is credited to estates.

In support of this proposal it is submitted that the investment of moneys in the common fund involves considerable work and therefore some charge is reasonable. In order to allow comparison of the return from moneys held on behalf of estates in the common fund with that from other classes of investment it is desirable that each should be treated on the same basis. The authority to charge commission on amounts credited from the common fund will require some upward adjustment of the rates which is done with the approval of the Minister.

Debate adjourned on motion by The Hon. A. F. Griffith (Leader of the Opposition).

PUBLIC WORKS ACT AMENDMENT BILL

Second Reading

Debate resumed from the 2nd May.

THE HON. R. J. L. WILLIAMS (Metropolitan) [2.53 pm.]: I have on the notice paper an amendment which I intend to move at the Committee stage and, lest anyone accuse me of any kind of silly prejudice, let me put the matter straight now. The paragraph that I shall ask the Committee to delete is an addition to the principal Act and reads—

> (8A) Dwellings, hostels, or other amenities for the welfare of aborigines.

Had it read, "Dwellings, hostels, or other amenities for the welfare of the blind, deaf, dumb, or sick, I would still object because I object to the expansion of public works into this field. It seems the definition of "public work" is already wide-embracing and I cannot see the reason for the inclusion of the definition in paragraph (8A) to which I have referred.

It has been said in another place that 98 per cent. of the land is negotiated and only 2 per cent resumed because of failure or lack of negotiations. They are very commendable figures and the statistics prove these facts. This does not alter the fact that if we pass the clause, as it is printed, this definition will be in the Act. It also does not alter the fact that if I—or anyone else—own a house which I offer for sale and do not wish to sell to a particular party—be it any other Government department—the "public work" definition, by this extension, is applicable.

Those are my reasons for objecting to this paragraph. I have no quarrel with other provisions in the Bill, but I give notice that in Committee I will move for the deletion of this paragraph.

THE HON. I. G. MEDCALF (Metropolitan) [2.55 p.m.]: I, too, shall be brief. I shall raise two points during the second reading debate because this may enable the Minister to consider what I have to say and not be taken by surprise at a later stage. The first point is extremely minor and relates to clause 9. It is the small matter of a word and I raise it with some misgivings, because I do not like to raise very minor matters. My query concerns where the word "either" in line 26 should be situated. I think it is in the wrong place and should be in line 25, because it seems to qualify two subparagraphs rather than one.

The Hon. J. Dolan: What page?

The Hon. I. G. MEDCALF: I am referring to page 5.

The Hon. J. Dolan: What line?

The Hon. I. G. MEDCALF: It is line 26. This is a matter for the Committee to decide but I thought I should mention it so the Minister may have a chance to look at it. The Minister—and indeed the draftsman—may well disagree with me and in this case I would not press the point.

I draw attention to another matter in the same clause 9, but appearing on page 6 of the Bill. I refer to proposed new paragraph (e)(iii) which refers to the date when interest commences. It is a new provision and states—

> and the interest shall be payable—
>
> (iii) either from the date of the service of the claim on the respondent to the date of settlement of the claim;

I think it could be more appropriate to pay interest from the date of the resumption rather than the date of the service of the claim.

As I say, this, too, is a minor point in terms of the time of this Parliament. I merely raise the matter so that I may hear what the Minister has to say at a later stage.

Debate adjourned, on motion by The Hon. R. Thompson.

ABORIGINAL HERITAGE BILL

Second Reading

Debate resumed from the 20th April.

THE HON. L. A. LOGAN (Upper West) [2.58 p.m.]: When one accepts the principle contained in the title of the measure, I think the rest becomes purely a machinery matter.

We can say, without doubt, the Bill has a worthy purpose because I am sure we all agree that the culture of Aboriginal people which goes back a good many years is something which ought to be preserved for all time so far as Western Australia—and, I should say, Australia—is concerned. Consequently I have no quarrel with the principle which is enunciated by this measure.

There is no need to dwell upon the Bill as a whole with the exception of a few clauses upon which I would like the Minister's clarification; if he is in the position of being able to give it.

Firstly, I hope and trust the Museum committee and also the committee which is to be set up under this measure will use some common sense in determining where Aboriginal areas are located.

My mind goes back to the confusion that existed in the area in which the Weebo stones were discovered. Had somebody been given his head the amount of land that would have been reserved in that case would have been five times larger than was necessary.

I point this out because I think it is essential that these people keep their feet on the ground; that they be prevented from expanding areas when there is no need for them to do so.

Clause 28 of the Bill makes provision for the appointment of an Aboriginal cultural material committee. However, I cannot find in this provision the number of members who will comprise the committee. Clause 28 states—

> 28. (1) For the purposes of this Act there is hereby established a body by the name of the Aboriginal Cultural Material Committee.
>
> (2) The membership of the Committee consists of—
>
> (a) appointed members, each of whom shall hold and vacate office in accordance with the terms of the instrument under which he is appointed; and
>
> (b) *ex-officio* members.

Clause 29 certainly does say who the *ex-officio* members shall be and clause 32 makes provision for a quorum and states—

> 32. (1) The quorum to constitute a meeting of the Committee shall be such as the Committee may from time to time determine but shall not be less than five persons of whom two shall be *ex-officio* members.

I cannot, however, find anywhere in this part of the Bill the actual number that will comprise the committee or whether it is a maximum or a minimum. There may be some reason for this omission though I have no idea what that reason may be.

Clause 38 sets up a registrar of all the Aboriginal sites. To my mind this is a very worthy part of the Bill. I do hope and trust that the committee to be set up under this Bill and the museum committee will work in conjunction with the Tourist Bureau to ensure the preservation of the environment in these areas. I am quite sure that it would be a great advantage if we could use some of these areas for tourist purposes. The matter, however, must be handled in the right way otherwise it could lose some of its significance, and it is also possible that vandalism might play an unfortunate part in the destruction of these areas, unless the matter is handled correctly.

Clause 43 states—

> 43. (1) A person shall not—
>
> (a) sell, exchange or otherwise dispose of;
>
> (b) take, or cause or permit to be taken, out of the State; or
>
> (c) wilfully damage, destroy, or conceal,

any object that is classified as Aboriginal cultural material unless—

(d) he is a person of Aboriginal descent acting in a manner sanctioned by relevant Aboriginal custom; or

I think this provision may be a little wide open because it could permit Aborigines to take out of the State something which ought to be left in Western Australia, even though it might be sanctioned by Aboriginal custom. It is my belief that the Aborigines concerned should go back to the committee, or to the trustees, and seek permission to take out any object which might be classified as Aboriginal cultural material. As the provision now stands it seems to leave it wide open for unscrupulous Aborigines to take advantage of the position and use it to their own advantage.

I would like some further clarification of clause 46 (7) on page 28 which says—

(7) For the purposes of any proceedings under this Act it is hereby declared—

(a) that an object shall be deemed to have been lawfully in the possession of a person prior to the day of the coming into operation of this Act if, before that day, he had reduced the object to his possession and was on that day exercising complete control of the use and physical location of the object; and

This would be pretty difficult. To continue—

(b) that an object shall not be regarded as having been lawfully in the possession of a person prior to the day of the coming into operation of this Act by reason only of the fact that, on that day, it was in or on land or premises owned or occupied by him.

It seems to me from the reading of this provision that unless an owner of an area on which something is found takes that object into his immediate possession on the day on which it is declared he loses the right to it. I do think we need a little more explanation as to how this provision will work, because it could be a little difficult to operate in some cases and would certainly be most unfair on the owners of the objects in the first place.

Apart from those comments I have none other to make on this Bill which has been brought down by the Leader of the House. I support the second reading.

THE HON. W. F. WILLESEE (North-East Metropolitan—Leader of the House) [3.06 p.m.]: The notes I intend to read to the House are set out comprehensively clause by clause in an endeavour to answer the queries raised by Mr. MacKinnon and Mr. Withers.

If it is agreeable to Mr. Logan I would like to go into Committee on this Bill because I think we have agreement on the points that have been raised. As I read these notes the position will become obvious and at the third reading stage I will give a reply to the two points raised by Mr. Logan in regard to clauses 28 and 46.

It is fortunate that I have in the House a gentleman who is very closely associated with the Bill and he has heard Mr. Logan's comments at first hand.

Speaking generally to the matters raised by Mr. MacKinnon and Mr. Withers it is certainly not the intention of the Government to interfere with the tourist trade in copies of artifacts. The Bill excludes this class of item from its sphere of interest. Thus clause 6 (1) clearly restricts application of the Act to purposes connected with the traditional cultural life of the Aboriginal people.

As a further safeguard clause 6 (3) states that the provisions of that part of the Act dealing with Aboriginal objects, do not apply to an object made for the purpose of sale. It is considered by the Government that the various interests concerned with the legitimate trade of this type of object are fully protected.

Mr. MacKinnon has pointed out that no Australian Aboriginal artifacts have value as a result of the material from which they are made. Thus, there are none made of gold or other precious metal. However, they have great value to the people who use them in a traditional way.

Aboriginal objects may also have considerable monetary value as curios or works of "primitive" art. There is a ready market for some types of artifact, including traditional sacred boards, and the traditional security given to these objects by concealment in the bush is now inadequate to protect them.

The Bill gives protection to such artifacts not only because they are valuable to the State as museum items but because they are in danger of being stolen from their original Aboriginal owners because of their curio value.

Clause 16 (2): Mr. Withers has raised the question of involving greater Aboriginal participation in decisions made under clause 16 (2).

The Government has made provisions in clause 9 (1) of the Bill so that bodies of Aborigines may be given the delegated authority of the trustees in respect of places or objects which have traditional and current importance to that body. I do not think that there is any need to provide a separate mention in clause 16 (2).

However, I would point out that clause 16 (2) has the primary pupose of controlling archaeological excavations by persons other than the trustees.

The judgment as to the desirability of such an excavation is a professional matter which would have to be exercised by a competent authority. I do not believe that any purpose would be achieved by causing the legislation to require people—such as a group of laymen, irrespective of whether they are Aborigines or not—to make a decision on a matter on which they could not be expected to make a valid judgment.

In this connection, I would point out that the decision to permit an excavation is necessarily based on more than the appreciation of the site itself. The trustees would certainly be expected to seek local Aboriginal opinion before permitting an excavation, but the judgment would also depend upon such factors as the professional standing of the institution supporting the work, and the professional competence and character of the individuals who will carry out the excavation.

Archaeological sites are a limited commodity and represent a declining resource of our cultural heritage. I hope that the House will agree with me not to press for an amendment to this clause.

I was interested in Mr. Withers' comments about his experiences in relation to a cave at Hidden Valley, near Kununurra. The problem of policing is one which gives very much concern to the trustees of the Museum and the Government. It should be pointed out that one of the advantages of declaring a site protected in the manner laid down in the proposed legislation—as compared with the creation of a reserve under the Land Act—is that in special cases the knowledge of the whereabouts of the site can be kept confidential. It need not become publicised, which would lead potential vandals to it. By this means, the site will retain much of the protection which has always been provided through the secrecy applied to it by Aboriginal people.

In raising this issue Mr. Withers has drawn attention to a major problem and one which has, in part, given rise to the Bill which we have before us.

The House may be interested to know about the case referred to by Mr. Withers. This is the occasion on which he objected to a reserve being made to protect a site because he held that this action would cause desecration. This has been supported by the Museum. Following Mr. Withers' objection, Mr. Dix, who is Registrar of Aboriginal Sites, visited the area and discussed the matter with local Aborigines.

Acting upon the advice which the registrar received from Mr. Withers and the local Aborigines, the Museum discarded the idea of setting aside a reserve under the Land Act and the Native Welfare Act. It has held the matter over in anticipation that this new legislation before us will be a more efficient way to solve the problem. Mr. Withers will be pleased to hear this.

Clause 18: Both Mr. MacKinnon and Mr. Withers have drawn attention to problems which they see in clause 18. It is clear that this clause must be looked at carefully to see whether it should be improved. As the clause stands, where the owner of any land on which an Aboriginal site is located requires to use the land, he must notify the trustees of his intention. The trustees, in turn, may consent to the owner's use of the land, or must decide to recommend to the Governor-in-Council the declaration of the site as a protected area.

Some thought has been applied to the subject of what constitutes a reasonable period of time within which the trustees could be expected to act upon such a notification and make a recommendation to the Governor and it is this matter, and how the work may be accelerated, which is causing concern.

It might be considered that six months would be a reasonable period; but one can visualise the problems for the trustees if notification of a site in the Kimberley is given at the onset of the northern wet season, when a survey might be quite impracticable. On the other hand, a week might be an unreasonably long time for a firm to be held up over a burial site unearthed during developmental work in the metropolitan area.

Therefore, paragraph (a) of clause 18 (2) of the Bill as printed employs the term "reasonable" rather than specifying a period of time. It leaves it to a local court to decide whether the trustees have acted unreasonably.

In practical terms of deciding how soon a job can be done, it must be recognised that there will almost always be competing claims upon the time of the registrar, or other professional staff of the Museum. There will often be several applications to have surveys made or excavations completed so that owners may proceed with their work. The Government recognises this but also recognises that an owner should be able, if he wishes to accelerate the work, to offer to pay to have it done.

If the House is worried about the provision that the owner may agree with the trustees to expedite the work by paying for it, then I would be agreeable to delete paragraph (b) of clause 18 (2) because its absence from the Act would still not prevent the owner from going to the trustees and saying that he would like to expedite the work by providing money for such things as fares or facilities.

In reply to Mr. MacKinnon's question as to whether a notice given under paragraph (d) of clause 18 (2) would have the force of law, I do not think that there is any problem with this paragraph because all it does is empower the trustees to tell the owner that he may proceed to use the land in the way that he wishes.

By giving this consent the trustees are exercising the powers given them in subclause (6) of clause 18 and the last three lines of subclause (5). The giving of the consent by the trustees excludes the site, or part of it, from the provisions of the Act.

Clause 21: I have closely studied Mr. MacKinnon's comments with reference to clause 21. The Minister already has the powers that Mr. MacKinnon desires under subclause (2) of clause 11. However, in order to remove misunderstanding I think it desirable that I explain the purpose of clause 21 and I intend to move an amendment which will remove some ambiguity.

Briefly, it is a clause which gives to a person who is aggrieved by the declaration by the Governor-in-Council of an Aboriginal site as a protected area, or by a recommendation or proposal likely to lead the Governor to make such a declaration, an opportunity to take his case to the Minister.

It is then intended that if the Minister is satisfied that the complaint contains matters showing reasonable cause why the person's interest should be taken into consideration by the Governor, the Minister may direct the trustees to report on the representations so that the Governor-in-Council may then confirm or review the decision, or a proposal before him, to declare the site a protected area.

This declaration is made by the Governor, not by the trustees, and the clause ensures that the Governor is informed of the objection and any arguments which the trustees may have. However, to remove ambiguity, I will propose an amendment to clause 21.

Clause 22: I do not think that there is any disagreement over clause 22. The provisions of the Public Works Act, 1902 are introduced here because these contain the appropriate procedures and safeguards.

Clause 24: In clause 24 Mr. MacKinnon has suggested that we should insert the words "of which he is aware" after the word "area" in line 9. I believe that persons required to notify the trustees of these matters are adequately protected in the manner sought by Mr. MacKinnon under the provisions of clause 63.

Clause 26: Mr. MacKinnon has drawn attention to the power of the Governor to make regulations prohibiting or imposing conditions or restrictions upon persons or livestock entering or remaining within the area. The purpose of this clause is to enable the trustees to prevent entry into areas where actual damage can be done as the result of such entry. If the trustees were to ask the Governor to make such a regulation it would be reasonable to insist that the trustees take steps to ensure that stock are kept out.

Clause 26 (a): I am proposing an amendment to clause 26 to deal with this matter.

Clause 28 (4): Mr. Withers has commented that subclause (4) of clause 28 makes no mention of qualifications of members of the committee but I would hope that the House would not press the matter of an amendment to this clause.

It is the Government's intention that the committee will have among its members a wide range of special knowledge, experience and responsibility. Academic qualifications will be included among the factors to be considered by the Minister.

I think that the selection of any particular piece of information in the Statute in respect of members of the committee is to place undue importance upon that matter.

Clause 37 (3): In respect of subclause (3) of clause 37, Mr. Withers has raised the issue that the Bill may cause duplication of effort by creating multiple files. I am satisfied that the provision does not create this problem because the Registrar is operating within the framework of the Museum, not outside it, so that there is only one set of files.

The arrangement proposed would, it is hoped, minimise this type of problem, and in fact provide for the maximum efficiency in expediting the requirements of the Act. This is clarified in clause 37(2) which makes the registrar the principal executive officer of the committee, and directly responsible to the director.

Clause 42: In commenting on clause 42(1) Mr. Withers has drawn attention to a possible ambiguity in line 37 on page 23 where the word "produced" might be construed as referring to the maker of the object.

In this clause the word "produced" must be referred back to the use of the word in line 22 of the same clause and in clause 41 which clearly refers to the person who produces the object to the trustees.

Clause 51(1): I am asked to consider deleting the words "or an Honorary Warden" appearing in line 22 on page 30. I agree to this amendment.

Mr. MacKinnon has also suggested that in respect of the same clause, the power to enter premises should be restricted and should not extend to premises which are private dwellings. I agree to an amendment, but wish to retain the power for an officer of the Museum to examine such things as the stocks held in shops and

warehouses for export and similar situations. I will introduce the words "other than premises used exclusively as a private dwelling."

Mr. Withers has suggested that this clause should also include the words "pursuant to the provisions of the Aboriginal Affairs Planning Authority Act." I do not see that the matter in this clause is one with which the Aboriginal Affairs Planning Authority Act is concerned, and it is hoped that the accepted amendment above will satisfy the concern expressed by Mr. Withers.

Clause 55: Mr. MacKinnon has referred to the need for the legislation to respect the right of secrecy of Aboriginal people in connection with the requirement in clause 55 that persons shall give information.

It was with this matter in mind that subclause 7(1)(b) was drafted. It expressly exempts Aborigines living subject to Aboriginal customary law from having to disclose information. I do not think there is any need to amend clause 55.

Clause 58: In regard to this clause, the question of penalties has been raised and I would like to make the following points because I believe that wilful destruction of these sites and other offences of the sort dealt with in this Bill are serious matters.

They are particularly serious when a court has become satisfied that they have been committed knowingly, for the purposes of gain, and with intent to defeat the purposes of the Bill.

The nature of the penalties adopted in the Bill have been set for the following reasons:—

(a) The destruction or dispersal of relics involves irreplaceable material. Damage to sites, many of them many thousands of years old, can never be wholly repaired.

(b) The maximum fine and imprisonment must be sufficiently large to make it not worth a person's while to destroy an area rather than to put up with the inconvenience and delay caused by the provisions requiring investigation and report; or to sell an object overseas and pay a small fine. A relatively small fine would be meaningful to, say, a prospector, but would be no deterrent at all to a company which might respond differently from a larger fine or imprisonment.

(c) The costs involved in inspecting sites and administering reserves and protected areas will be high. In order to prosecute in a case of destruction of an Aboriginal site in, say, the Pilbara, the registrar or other officer would have to visit the area. In conjunction with local policemen it would be necessary to interview witnesses and collect evidence. The time involved might amount to several weeks, followed by court proceedings.

In view of the Government's expenditure to successfully prosecute a case of an offence from one of these remote areas, the penalty should not be so low that it is not an effective deterrent. In the case of the Kimberley and the Western Desert the costs would be even greater.

Mr. Withers has raised the wide scope of the Act and he points out that it can be applied to objects which appear to be absurd, such as a jam tin formerly used to carry ochre. However, many items of European cultural origin have merged with traditional Aboriginal life, one of the earliest, as pointed out by Mr. Withers, being bottle glass which was worked like stone. These days sacred boards may be made with file and rasp, but the product is no less sacred to the maker.

It is difficult to imagine the administrators of the Act invoking the provisions of the Act in respect of a jam tin, because they themselves would not wish the Act to be brought into ridicule which it certainly would in such a case.

Mr. President, I desire to thank honourable members who have spoken and I appreciate the interest which has been taken in this legislation.

I would like to add, in answer to Mr. Logan, that if, at the third reading stage of the Bill, there is any necessity to recommit it we can do so at that point in time.

Question put and passed.

Bill read a second time.

In Committee

The Chairman of Committees (The Hon. N. E. Baxter) in the Chair; The Hon. W. F. Willesee (Leader of the House) in charge of the Bill.

Clauses 1 to 17 put and passed.

Clause 18: Aboriginal sites required for other purposes—

The Hon. W. F. WILLESEE: In the reply I have just made I have already foreshadowed the amendment I am about to move. I do not think the Committee needs any further explanation and therefore I move an amendment—

Page 9, lines 28 to 33—Delete the passage commencing with the word "shall" and ending with the passage "investigation," and substitute the words "shall within a reasonable time thereafter".

The Hon. G. C. MacKINNON: I thank the Leader of the House for putting this amendment on the notice paper. It satisfies me and I agree with the remarks he

made in regard to it when replying to the second reading. It does remove the possibility that this provision can be used as a lever to obtain money from the authority. It removes the temptation about which I spoke in the second reading debate.

The Hon. D. J. WORDSWORTH: Can the Leader of the House tell the Committee if it is intended that these places shall be marked with a sign to indicate what they are? There must be a certain amount of uncertainty as to where these places are situated. A list of them would be kept in a register so that people would be able to locate them, but when one discovers a place such as this in the bush, how does one know when, in actual fact, it was discovered previously?

The Hon. W. F. WILLESEE: Briefly, in general a sign will be erected, but if an Aboriginal sacred site is involved, a sign will not be erected. That is the line of demarkation.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 19 and 20 put and passed.

Clause 21: Objections to declaration—

The Hon. W. F. WILLESEE: I dealt at length in my second reading speech with this amendment which I move—

> Page 12, lines 19 to 21—Delete all words commencing with the word "shall" down to and including the word "Council," and substitute a new passage as follows:—
>
> shall—
>
> (a) consider the representations made; and
>
> (b) report on these representations to the Governor in Council.

Again, this amendment satisfies me, because I believe it will make clause 21 even clearer.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 22 and 23 put and passed.

Clause 24: Notification of changes, etc.—

The Hon. G. C. MacKINNON: Clause 63 reads—

> 63. In proceedings for an offence against this Act it is a defence for the person charged to prove that he did not know and could not reasonably be expected to have known, that the place or object to which the charge relates was a place or object to which this Act applies.

The words, "and could not reasonably be expected to have known" worry me. The clause exempts the fellow when he does not know of the area and could not reasonably be expected to know of the area itself. However, clause 24 (a) refers to a change in condition of the protected area. I am not altogether sure that clause 63 would, in fact, be an adequate defence for a person charged because he could not possibly claim he did not know and he should not reasonably be expected to know the place was one to which the Act applies. On many occasions he could not know of a change in the condition and so I suggest that we should insert after the word "area" in line 9 the words "of which he is aware".

The Hon. W. F. WILLESEE: I have no objection to the proposed amendment. If we find in the course of time that it is not necessary, we can always delete it.

The Hon. G. C. MacKINNON: I move an amendment—

> Page 14, line 9—Insert after the word "area" the words "of which he is aware".

The Hon. R. F. CLAUGHTON: I just want to clarify the situation. The person who becomes the owner would appear to be the Crown, if it is a protected area. The person who was the prior owner would have to be aware of it in order that the change of ownership might be made. Those are my thoughts.

The Hon. G. C. MacKINNON: I think Mr. Claughton is quite right. This is why I believe clause 63 could not be used as a defence and why the words "of which he is aware" are essential.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 25 put and passed.

Clause 26: Regulations as to protected areas—

The Hon. W. F. WILLESEE: I move an amendment—

> Page 14, line 21—Delete the words "or livestock"

Amendment put and passed.

The Hon. W. F. WILLESEE: I move an amendment—

> Page 14—Add after paragraph (c) the following new paragraph to stand as paragraph (d):—
>
> (d) livestock entering or remaining within an area where the Trustees have taken reasonable measures to protect the area from damage by livestock.

The Hon. G. C. MacKINNON: The amendment proposed by the Minister satisfies me and I think it is perfectly reasonable, because the trustees will take some steps actually to ensure that livestock cannot stray onto a protected area. The objections I raised have been answered by this amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 27 put and passed.

Clause 28: Aboriginal Cultural Material Committee—

The Hon. L. A. LOGAN: I thought the Minister may be able to answer the question I asked now his adviser is sitting beside him.

The Hon. W. F. WILLESEE: We have been discussing this and, in fact, it is not yet known what the composition of the committee will be. It is not known whether one representative from mining will be sufficient or whether there should be two. This will be worked out on a practical basis beforehand, but it will tend to be an effervescent committee with people coming and going frequently.

The Hon. L. A. LOGAN: I appreciate the point made by the Leader of the House, but I point out that the quorum is set out on the next page. I think it would be entirely wrong for a quorum to comprise only five members from a committee of 15. The quorum is set at three members plus two *ex officio* members. I think it is wrong to set a quorum before fixing the committee. Perhaps we could leave this point until after afternoon tea.

The Hon. W. F. WILLESEE: I cannot see that it is wrong to set a quorum. Surely it is a matter of what we set the quorum at. It is possible to set a quorum at one-third of the total number plus one, or half the total number plus one. To write in a quorum figure does not affect the ultimate total of the committee.

Clause put and passed.

Sitting suspended from 3.44 to 4.05 p.m.

Clauses 29 to 50 put and passed.

Clause 51: Powers of inspection—

The Hon. W. F. WILLESEE: I dealt with this clause during the second reading debate. I move an amendment—

> Page 30, lines 21 and 22—Delete the passage ", or an honorary warden duly authorised," .

The Hon. G. C. MacKINNON: The Committee will recall that I thought an honorary warden who was not subject to the normal disciplines of employment by the university should not be given this rather sweeping authority, and I thank the Leader of the House for his agreement.

Amendment put and passed.

The Hon. W. F. WILLESEE: I move an amendment—

> Page 30, line 24—Insert after the word "premises" the passage ", other than premises used exclusively as a private dwelling," .

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 52 and 53 put and passed.

Clause 54: Reward for information as to offences—

The Hon. G. C. MacKINNON: I regret that I did not bring this matter to the attention of the Leader of the House during my second reading speech. I would like to do so now. It has been brought to my notice that this provision will, in effect, encourage informing. The trustees may offer and pay a reward to anyone who gives information which leads to the conviction of a person who commits an offence. Further than that, subclause (2) provides that on the conviction of a person under this clause that person can be ordered to pay to the trustees on account of any reward they have paid or are liable to pay the amount of the reward or $200, whichever is the lesser.

It is somewhat unusual to find in a measure a clause that encourages the common informer, as it were. I would like the Leader of the House to tell us whether this is essential to the Bill. I fail to see how it can be.

The Hon. W. F. WILLESEE: I am advised that this provision has been written into the Bill because of the experience with the *Tryall*. It was as a result of information supplied that it was discovered the misdemeanours had been committed.

The Hon. W. R. WITHERS: I agree with Mr. MacKinnon that this is an obnoxious clause. However, I am firmly convinced this is the only way we can protect these sites. I mentioned earlier that I have been concerned in the policing of sites. It has been pointed out by the Minister that this is a source of worry to the Museum, and it is possible that in the future these sites could be damaged. If a clause such as this is included in the legislation I think it will lessen the likelihood of damage being done to the sites. It will make people think twice before doing damage. I agree it is an obnoxious provision but I think it is the only thing that can be done.

The Hon. G. C. MacKINNON: I wish to pursue the reason given by the Leader of the House. I cannot see the connection with the *Tryall*. As I understand it, the location of the *Tryall* was rather widely publicised. I recall Mr. Medcalf speaking about this during the debate on a Bill dealing with historic wrecks. Perhaps the Minister could be a little more explicit.

The Hon. W. F. WILLESEE: I, too, do not know very much about the *Tryall*, but, as I understand it, information was given by someone who knew what was happening to the wreck and the prosecution was hinddered because of inability to use the information. Had the information been available, it would have strengthened the proscecution.

The Hon. G. C. MacKINNON: I think an opportunity should be given for expression of opinions about this. I am somewhat loath to see a provision such as this

—which appears to encourage informing—go through without an expression of opinion by the Committee. To test the feeling of the Committee, I suggest we might delete this clause. I have not placed an amendment to this effect on the notice paper. Members will vote for or against it as they wish. Therefore, I give notice that I will vote against this clause in order to test the feeling of the Committee.

The Hon. I. G. MEDCALF: I share the feelings of Mr. MacKinnon, as would I am sure most members, in respect of common informers. The phrase "common informer" is a most unfortunate one and has a sinister connotation of people who act as pimps. We are accustomed to hearing the phrase accompanied by expressions of detestation. However, as much as one may regret the situation, there are circumstances in which it may be that this is the only way information will come to hand.

Mr. MacKinnon referred to some remarks I made on the wreck of the *Tryall*. At that time I told the House that it seemed to be impossible for the police effectively to supervise the control of that wreck, and I suggested that they might make use of the helicopter owned by Wapet and stationed, I think, at Barrow Island. There are many other wrecks which are in equally parlous condition. I refer to the *Zuytdorp* and the *Batavia*. Eventually one or two men were posted on Beacon Island to keep a constant watch over the *Batavia* as a result of the pillaging which was going on. However, it was beyond the resources of the Police Department to keep watch over the wreck.

I asked the former Government why it was not taking action to prosecute certain people as a result of information which had been provided in Yanchep Inn. The Government, probably quite rightly, said it was unable to sheet home the information. The people concerned might well have been common informers, and might well have come forward to give information. Much as I detest the use of common informers, I think we must appreciate that in our far-flung State it is impossible to keep Aboriginal and other relics under constant surveillance, and we must rely on any information we can get.

The wreck of the *Tryall* was a priceless relic. It was an English ship, and it was wrecked 66 years before the first Englishman, Dampier, came to Australia. The *Tryall* was blown up last year whilst nobody was keeping an eye on it. I do not suggest that a provision such as this would have prevented that, but I do ask the honourable member to give further thought to this matter.

The Hon. J. L. HUNT: This clause mentions the payment of a reward to any person. I do not know whether a common informer would actually be in this category. Probably an Aboriginal would be concerned. Most of these areas are isolated and the only chance we would have of receiving information would be from an Aboriginal who inhabits the area. I agree that the phrase "common informer" does not go down well.

The Hon. A. F. GRIFFITH: "Any person" could mean an Aboriginal person or any other person. The clause is not aimed at anything of that nature. What I do not like about the clause is that the offence is not necessarily limited to that of damaging; it may be any offence under this Act. Frankly, this cuts against the grain, not only under this Bill but under any other Bill. It also cuts against the grain to have one person informing on another. I suppose the police obtain their information from informers. However, the conception of a common informer is not one which the average person takes to easily.

The Hon. W. F. Willesee: True.

The Hon. A. F. GRIFFITH: Clauses 50 and 51 concern the appointment of wardens who are to have certain powers. They may make such examinations, inquiries, and requests as they may consider necessary or desirable. In a prosecution against a person, is it not possible that the wardens would use as evidence in a court any information they received from an informer or which they gathered themselves?

We could also have the extraordinary situation of the trustees saying, "We will offer $500 reward for information about such-and-such." The trustees would know that they would receive $200 of that amount back if a person were convicted, because the court may order payment of the fine of $200 or the reward, whichever is the lesser amount. The trustees may become conscious of the fact that they have more or less an expense account in relation to getting information.

Whilst I realise the importance of protecting traditional objects, I cannot agree with the concept of a common informer, and with encouraging common informers under this measure or any other measure. This takes me back to the days when some legislation was introduced under which if one committed an offence one was compelled to hang in one's shop window a sign saying, "I have been convicted." I do not think this Bill would be inoperable without this clause. I would feel much better about this if the fellow who informs does so out of a spirit of good citizenship rather than seeking monetary reward.

If I were to see something within the terms of this legislation being desecrated, I would react and I would inform the trustees out of a sense of public duty; but I would be unwilling as a citizen to collect $200 for my trouble. The Minister is

offering an incentive to people to inform on others, instead of acting out of a sense of citizenship.

The Hon. R. Thompson: Was not that done a few years ago in relation to S.P. bookies?

The Hon. A. F. GRIFFITH: Is the honourable member asking me or telling me?

The Hon. R. Thompson: I am trying to cast my mind back. I think we passed legislation some years ago which permitted the police to have informers.

The Hon. A. F. GRIFFITH: In the old days—

The Hon. R. Thompson: This is not in the old days, it is about four or five years ago.

The Hon. A. F. GRIFFITH: —of S.P. bookmaking a fellow would keep a book in a back lane. He would be caught as a result of common information, but he would be charged with the obstruction of traffic because there was no other offence with which to charge him.

The Hon. R. Thompson: I think three or four years ago we amended the Act to allow the police to have informers in regard to S.P. bookmaking.

The Hon. A. F. GRIFFITH: Did we provide for a reward to be paid to the informers?

The Hon. J. Dolan: I do not think so. I think it still happens in connection with inquiries, but I do not think there is any reward.

The Hon. A. F. GRIFFITH: I am wondering whether it is provided in some Statute that such a person would receive a reward.

The Hon. R. Thompson: He wouldn't do it for nothing.

The Hon. A. F. GRIFFITH: I do not think the two situations are comparable.

The Hon. R. Thompson: He is still an informer.

The Hon. A. F. GRIFFITH: I do not think the two situations are comparable. I have not much time for the fellow who keeps an illegal book, nor have I much time for the fellow who informs on him. Certainly I would not like to see the informer receive a reward. However, this is a different case and I think people should accept their responsibility as citizens and report any offence they see.

The Hon. R. Thompson: I think you introduced that legislation.

The Hon. A. F. GRIFFITH: I know the honourable member would be glad to nail me with it if he could. Even if I did so, I still think this situation is different. I do not like this clause.

The Hon. W. R. WITHERS: I do not think many of us would disagree with Mr. Griffith on the point that informing is obnoxious. However, I would like to point out that his thinking would be correct and I would agree with it if the situation which applies in the city and closely settled country towns also applied in the areas to which we are referring. The areas to which we are referring are mainly isolated. An Aboriginal site could be a long way from a town. A dogger or a fencing contractor could discover that there has been desecration of that site, but that dogger or fencer is working a long way away from the town.

If this person is working 80 miles away from a town and finds that an Aboriginal site has been desecrated in the past 24 hours, I am sure he will be prepared to stop work to go into town and report the incident, where money is offered as a reward for giving information. I am not arguing on the morality of this matter.

The Hon. A. F. Griffith: In the days of the American Wild West these people were known as bounty hunters.

The Hon. W. R. WITHERS: I suppose the people I am referring to can be regarded in the same light. A person who is prepared to lose two day's work to make a report should be given some reward. If no money is offered for giving information then I am sure few, if any, would be prepared to make the sacrifice of going into town to report such incidents, as an act of good citizenship. On that basis I agree with the clause, even though I do so reluctantly.

The Hon. V. J. FERRY: I find the wording of the provision troublesome. If the intention of the clause is applied in other directions we will move into the dark ages. This sort of power will be sought very dearly by other authorities in Western Australia, if it is agreed to in this case. If it is good enough for one authority to have that power it is good enough for the others to have it.

In this respect I give the example of the Potato Marketing Board which has the power to appoint inspectors. Their duties include the control of the growing and marketing of potatoes outside the licensing system. When offenders are apprehended and fined, the money is paid into Consolidated Revenue, and not to the board. The board and the inspectors experience great difficulty in their attempts to stamp out blackmarketing. If the board were given the authority proposed in clause 54 of the Bill before us then I am sure blackmarketing of potatoes would disappear in a short time, because there would be very many informers seeking to give information on the blackmarketing of potatoes in order to obtain the reward.

I would not like to see the power set out in the clause to appear in any Act. I appreciate the difficulties of controlling a

State as vast as Western Australia; I realise it is a great problem; but a question of principle is also involved. If we agree to this clause we will perpetrate an injustice on the people. In principle it is wrong to do that.

The Hon. G. C. MacKINNON: It is obvious that none of us are wrapped up with this clause. A couple of the comments made by members have impressed me. Both Mr. Withers and Mr. Hunt who represent an area which is most likely to be affected by this clause are in agreement that it is necessary; and this view has been reinforced by Mr. Medcalf who gave us a dissertation on the legal aspects.

These two factors, taken conjointly, have impressed me to the point that I am prepared to agree to the clause, but I agree to it reluctantly.

Clause put and passed.

Clauses 55 to 69 put and passed.

Title put and passed.

Report

Bill reported, with amendments, and the report adopted.

BILLS (2): RECEIPT AND FIRST READING

1. Hospitals Act Amendment Bill.

   Bill received from the Assembly; and, on motion by The Hon. J. Dolan (Minister for Police), read a first time.

2. Judges' Salaries and Pensions Act Amendment Bill.

   Bill received from the Assembly; and, on motion by The Hon. W. F. Willesee (Leader of the House), read a first time.

CONTRACEPTIVES ACT AMENDMENT BILL

In Committee

The Deputy Chairman of Committees (The Hon. F. D. Willmott) in the Chair; The Hon. R. F. Claughton in charge of the Bill.

Clause 1 put and passed.

Clause 2: Section 2 amended—

The Hon. G. C. MacKINNON: I have indicated on the notice paper that it is my intention to oppose the clause, there being no need to move for its deletion. The underlying principle is that whilst there may be argument in favour of widening the display and the advertising of contraceptives, it is a separate argument from that submitted by Mr. Claughton. If that is the real purpose of the Bill then it should be brought down with that purpose stated clearly; that is, to make the advertising and the display of contraceptives far wider than is permitted at present.

My understanding of the speech made by Mr. Claughton is that the purpose of the Bill is to make it possible for family planning clinics to operate, and to enable the clinics to advertise the day and night sessions, and like matters. With this objective I am fully in agreement. It may be that I am also in accord with the other proposition that I have put forward. However, if the honourable member espouses the proposition relating to family planning clinics then it should be clearly enunciated in the measure.

It has been suggested that family planning clinics will not be able to take advantage of this legislation, because the membership would vary from time to time. I have checked this with the Parliamentary Draftsman who agreed with me, although he enunciated the problem with which we would be confronted.

I believe that clause 2 should be opposed, because I do not think that under a proposal to enable family planning clinics to make statements and to advertise we should also widen the scope of other people to advertise contraceptives. I repeat that if the purpose of the Bill is to make it possible to advertise contraceptives, then it should be clearly stated.

The bulk of Mr. Claughton's speech dealt with family planning clinics and the difficulties under which they labour. I believe that the proposition which I have put forward will eliminate those difficulties. I believe this is a simple method to achieve the objective which Mr. Claughton desires.

The Hon. R. F. CLAUGHTON: I am pleased to know that the principle involved in the Bill has the support of members. I am sorry Mr. MacKinnon did not read my speech a little more closely and because of that I think it is necessary for me to explain, again, the necessity for my first amendment. Clause 2 of my Bill reads as follows:—

> 2. Section 2 of the principal Act is amended by adding after the word "access" being the last word in the interpretation "Public place" the passage ", but does not include or apply to a pharmacy registered under the provisions of the Pharmacy Act, 1964." .

The definition in the Act of a public place includes a great number of places, but my amendment will provide that it does not include a pharmacy.

Section 5 of the Act deals with the sale and display of contraceptives. If we believe that pharmacies have the power to sell contraceptives they should also have the power to display contraceptives. If that is what is understood at present then what I am attempting to have included in the Act will not change that understanding.

The information which I have quoted sets out that a public place would include a chemist shop and, in fact, any shop. If a shop, or a chemist shop or a pharmacy, is a public place it cannot sell contraceptives. If we believe that pharmacies can sell contraceptives then the inclusion of my definition will not change the situation. I ask members of the Committee to allow the clause in my Bill to stand.

The Hon. W. R. WITHERS: I wonder who could be responsible for setting up and staffing family planning clinics in country towns. It is all very well to set up such clinics in large towns and cities. But what about the many small towns in this State? We probably have a greater percentage of small towns than any other State in Australia. Many such towns need the services associated with the sale of contraceptives. We should not deny small towns this facility. To allow family clinics, only, to display and sell contraceptives would be very wrong because the facility would not be available to all Western Australians.

The Hon. G. C. MacKINNON: Contraceptives can be obtained in small country towns through public nurses and the like, provided the service is acceptable to them, and their consciences. Returning to Mr. Claughton's argument a pharmacy will no longer be a public place under his proposed amendment. Section 5 of the Act states that pharmacists shall not exhibit contraceptives in view of persons who are in any public place.

I am not bitterly opposed to this provision; I am saying it is not necessary for the proper working of family planning clinics. I have seen contraceptives on display in barber shops, overseas, and I did not find them repulsive. I believe the purpose of the amendment is to make it possible for family planning clinics to operate. Apparently even an advertisement stating that a family planning clinic was open would permit the sale or disposal of contraceptives.

The purpose of this Bill is to allow family planning clinics to operate without breaking the law. Twelve months ago I said that family planning clinics ought to be available throughout the country, looking after the very matters mentioned by Mr. Withers.

The Hon. R. F. CLAUGHTON: The Contraceptives Act contains a definition of a public place and my amendment seeks to exclude a chemist shop or a pharmacy. It does not refer to any other type of shop. Whatever restrictions apply now will continue to apply if my amendment is accepted, except that pharmacies will not be public places. If section 5 of the Act applies then chemists and pharmacies cannot legally sell contraceptives at this time. It is as simple as that.

The Hon. G. C. MacKinnon: The pharmacists' board does not agree. That board considers that the shops can sell contraceptives.

The Hon. R. F. CLAUGHTON: I assume that the board has received legal opinion. It is a matter of different legal opinions.

The Hon. G. C. MacKinnon: That is why judges are so busy.

The Hon. R. F. CLAUGHTON: I ask the Committee to accept my amendment.

The Hon. W. R. WITHERS: Let us view the Contraceptives Act and consider what Mr. MacKinnon and Mr. Claughton said. Mr. MacKinnon said the interpretation permits pharmacists to sell contraceptives and Mr. Claughton disagrees. After considering the Act, if we accept as correct what Mr. MacKinnon has said on the advice of the pharmacists it could be assumed that any shop is able to sell contraceptives, with the possible exception of garages, and a few others. I agree with Mr. Claughton that according to the Pharmacists Act pharmacists cannot sell.

The Hon. R. THOMPSON: Mr. Claughton was quite clear when he introduced his Bill and said it was introduced for a specific purpose; to remove any doubt as to the sale of contraceptives by chemists and that if it were so desired a special display counter of contraceptives could be set up in the chemist's shop.

I was in a North-West town a few years ago and there was no chemist readily available. There was, however, a supermarket with a special area set aside for the sale of contraceptives.

The Hon. G. C. MacKinnon: They were breaking the law but the police took no action.

The Hon. R. THOMPSON: The manager of the supermarket said that he had to sell his products to the chemist.

The Hon. A. F. Griffith: Was this pharmaceutical portion able to dispense prescriptions? Did it have a chemist on the premises?

The Hon. R. THOMPSON: The answer is no to both questions. It is possible to obtain Irish Moss and similar commodities from a corner store. If any doubt does exist in the minds of Mr. MacKinnon and Mr. Claughton the amendment will remove that doubt. All it does is to make it lawful for a chemist to now sell contraceptives because it takes the chemist's shop out of the interpretation of a public place. It is as simple as that.

The Hon. A. F. GRIFFITH: There are two questions I would like to pose to the sponsor of the Bill. Firstly, is it not a fact that a member of the public desiring to purchase contraceptive aids can now do so from a chemist, if the chemist is a vendor of those aids? Some chemists will not sell them. The second question

is, that in view of the answer given by the Minister for Police to a question asked in this Chamber when the Minister said the police considered the Bill unnecessary, is there any object in the honourable member persisting with the Bill?

The Hon. R. F. CLAUGHTON: Chemists in this State sell contraceptives in the belief that they are doing so lawfully. They have done so since 1939. It is only recently that some doubt has been raised.

The Hon. A. F. Griffith: Has there been, or is there likely to be, any prosecutions?

The Hon. R. F. CLAUGHTON: I do not think there is any likelihood of that. Section 5 of the Act deals with the sale and display of contraceptives and says—

> Every person who—
>
> (a) exhibits or causes to be exhibited any contraceptive in view of persons who are in any public place;
>
> (b) goes from house to house hawking, selling, or offering or exposing for sale any contraceptive.

To those who are objecting on the ground that my amendment will permit the display of contraceptives I say that if a chemist is allowed to sell them he should be allowed to display them. My proposal does not change the situation. It makes it clear and lawful. If the amendment is accepted no single person can challenge a chemist.

The Hon. J. Dolan: What do you mean by a single person?

The Hon. R. F. CLAUGHTON: An individual person.

The Hon. G. C. MacKinnon: You are not referring to the marital status?

The Hon. R. F. CLAUGHTON: No. Does my explanation satisfy the Leader of the Opposition?

The Hon. A. F. Griffith: You are concerned that under the principal Act a chemist shop is a public place.

The Hon. R. F. CLAUGHTON: It is my opinion.

The Hon. A. F. Griffith: I am blowed if I think that. You have not answered the second question.

The Hon. R. F. CLAUGHTON: My answer to the first question provides an answer to the second. The amendment does not change the existing situation, it simply makes the action of the chemist clear and legal.

The Hon. A. F. GRIFFITH: This adds confusion to my already confused mind. I am quite sure that a chemist's shop is not included in the interpretation of a public place and Mr. Claughton wishes to make sure it is not included. The police are satisfied that a chemist shop is not a public place.

The Hon. R. F. Claughton: Their dissatisfaction could be related to clause 3.

The Hon. A. F. GRIFFITH: The Minister for Police can tell us whether any prosecutions have taken place or are ensuing.

The Hon. J. Dolan: I do not know of any.

The Hon. A. F. GRIFFITH: The sale of contraceptives takes place every day in many chemist shops, though there are some which do not sell them. Mr. MacKinnon's motion gets to the crux of the matter which is family planning, and I would go along with this. I do not agree that a chemist should display contraceptives in a shop window or counter. There should be some decorum in the marketing and sale of contraceptives.

The Hon. W. R. WITHERS: I would like to take this rare opportunity to indicate that my leader is incorrect in his interpretation. I am sure I will not get the opportunity to do so again!

The Hon. A. F. Griffith: You know as well as I do that the Liberal Party is as free as the wind in all matters.

The Hon. W. R. WITHERS: I would refer members to the interpretation contained in section 2 (q) of the principal Act which says that a public place is an open space which a person can enter with or without payment. When a chemist opens his doors his shop is an open place and when we walk into the shop we are in a public place. This refers to any shop, not merely to a pharmacy, and I must agree with Mr. Claughton's interpretation of it.

The Hon. CLIVE GRIFFITHS: Section 5 of the Act seems to be causing all the confusion. We should bear in mind the answer given by the Minister for Police when he was asked whether or not the police thought the Bill was necessary. There appears to be some doubt as to whether or not a chemist shop is a public place. Perhaps Mr. Claughton is right and it is possible the point of view of the police is being adopted, because while chemists are at present openly selling contraceptives they are, in fact, not displaying them. So we have a half-way position in connection with what is actually happening at the moment as compared with what could happen if a chemist shop were a public place. The Committee must decide whether in addition to giving chemists the power to sell contraceptives we should also give them the power to display these goods. Mr. Claughton's amendment would permit a chemist to legally sell and display contraceptives while Mr. MacKinnon's suggestion will permit the *status quo* to prevail whereby the police would be happy with the situation if the chemist did not display the goods in question. I would like some comment on this aspect.

The Hon. W. R. WITHERS: The Hon. Clive Griffiths referred to the sale and display of contraceptives, but I understand the provision deals with the sale of contraceptives and not with their display.

The Hon. R. F. CLAUGHTON: If we are to permit chemists to sell contraceptives they should be permitted to display them.

The Hon. Clive Griffiths: Except that they do not.

The Hon. R. F. CLAUGHTON: That is an important point that members should remember. During my second reading speech I referred to South Australia where no such legislation exists. In other words chemists and anybody else can sell, display, and advertise contraceptives to their hearts content.

No undesirable practices have resulted because the chemists have their own ethical code as they do here. The publishers also have an ethical code and they adopt a responsible attitude towards matters of this kind. It would seem there is no real concern about the effect of the lifting of the restrictions.

Certainly the economic situation which prevailed at the time of the introduction of the Act is no longer current. People today are a little more sophisticated and responsible. I believe nothing untoward will result from this legislation. The chemists will be in the position in which they believe themselves to be in now. In other words, the chemists believe they are able to sell and display contraceptives. They do not display them and this situation will continue.

The Hon. J. L. HUNT: I do not see that a chemist shop is a public place. It appears to me that people visiting a pharmacy are very serious in their intentions. I see no reason why contraceptives should not be advertised or displayed. They are separately wrapped—it is not as though they are like potatoes in a plastic bag.

The Hon. A. F. Griffith: I think your analogy is magnificent.

The Hon. J. L. HUNT: The sale of contraceptives by the chemist goes hand in hand with family planning. I propose to support the measure.

Clause put and a division taken with the following result:—

Ayes—12

Hon. N. E. Baxter	Hon. R. T. Leeson
Hon. R. F. Claughton	Hon. R. H. C. Stubbs
Hon. S. J. Dellar	Hon. W. F. Willesee
Hon. J. Dolan	Hon. W. R. Withers
Hon. Lyla Elliott	Hon. D. J. Wordsworth
Hon. J. L. Hunt	Hon. R. Thompson *(Teller)*

Noes—10

Hon. G. W. Berry	Hon. N. McNeill
Hon. V. J. Ferry	Hon. I. G. Medcalf
Hon. A. F. Griffith	Hon. S. T. J. Thompson
Hon. J. Heitman	Hon. R. J. L. Williams
Hon. G. C. MacKinnon	Hon. Clive Griffiths *(Teller)*

Pair.

Aye	No
Hon. D. K. Dans	Hon. C. R. Abbey

Clause thus passed.

Clause 3: Section 4 repealed—

The Hon. G. C. MacKINNON: We now come to the deletion of section 4 of the parent Act, which has the marginal note, "Publication, etc., of advertisements relating to contraceptives an offence."

The provisions of this clause make it impossible for family planning clinics to advertise in newspapers and other publications. We have heard all the arguments for publication, but I am still of the opinion that it is undesirable to permit the advertisement of contraceptives. I consider this is purely and simply a matter of courtesy and decorum.

My suggestion is that the provision contained in section 4 of the parent Act should not apply to any statement issued by a family planning clinic approved by the Minister for Health. Although the sale of contraceptives is under the jurisdiction of the Minister for Police, as these clinics are operated by medical practitioners, registered nursing sisters, and social workers, I believe it should be under the control of the Minister for Health.

All the arguments have now been canvassed and I do not believe the merits of my amendment are in any way altered by the recent vote of the Committee. I move an amendment—

> Page 2, line 7—Delete the word "repealed" and substitute the passage—
>
> amended by inserting after paragraph (d) in subsection (7), a new paragraph to stand as paragraph (e) as follows:—
>
> ; or
>
> (e) any statement issued by a Family Planning Clinic approved by the Minister for Health.

The Hon. R. F. CLAUGHTON: I really must oppose the amendment suggested by Mr. MacKinnon. I know he believes that the amendment will achieve the desired end for the association. However, I feel he views the activity of the association in a far too restricted sense. Amongst other things the Act itself provides that there shall be no advertising and publishers can be penalised for offending against the Act. Although the clinic would be exempt, the publishers could still be penalised.

The Hon. G. C. MacKinnon: No.

The Hon. R. F. CLAUGHTON: Probably notices could be displayed in the clinic itself, but the other objections to the amendment still remain.

This would mean that whenever a new clinic was established it would have to be incorporated and this could become expensive. I do not know what the exact amount is likely to be but it could probably be $60 to $80 for each clinic, and I do not know how many clinics we will eventually establish. I suppose there would be additional cost involved if the membership of the trust were altered, and it would involve most unwieldy procedures.

The aims of the association are wider than just to advertise the clinic itself. It wishes to inform and educate people, and earlier I gave examples of the way the clinics work. We have not seen one of these clinics in operation in Australia because of the restriction which exists.

The other question is the effect of this amending legislation. Here again I refer to the situation as it exists in South Australia where there are no restrictions, and no undesirable practices have resulted. The Act here provides that no-one can hawk these contraceptives around public places.

It is so essential that people can obtain this advice and information that I believe members should support the Bill. It is important that the association can use the means of communication presently available—such as radio and television.

The Hon. G. C. MacKinnon: You are making so many points it is very difficult for anyone to answer you. I do not know whether this is a tactic or not. Give us a chance to answer you.

The Hon. R. F. CLAUGHTON: Perhaps the member can put it down to my lack of experience. I will sit down and let him have a go.

The Hon. W. R. WITHERS: If Mr. MacKinnon had put forward this amendment six months ago I probably would have voted for it, because it certainly would improve the Act, but after looking at the Bill introduced by Mr. Claughton, I believe that the Bill as printed is better than the amendment before the Committee.

I participate in a free enterprise society and, in doing so, I believe in advertising. I even participate in advertising. I have used, I do use, and I hope in the future I am in a condition still to use, contraceptives. As I live in a free enterprise society and believe in advertising, in taking part in advertising, and in believing in the use of contraceptives, I would be a hypocrite of the greatest order if I did not vote for Mr. Claughton's Bill as it stands.

The Hon. J. DOLAN: I feel I should read to the Committee the police view on the Bill, without expressing my own personal view. This statement, handed to me by the Commissioner of Police, reads as follows:—

> The Police view on the Bill introduced by the Hon. R. F. Claughton, to amend the Contraceptives Act, 1939, is against the amendment.
>
> In December 1970, the Royal College of Obstetricians and Gynaecologists (W.A.), moved towards the abolition of the preventing of advertising for sale of contraceptives in Western Australia. My predecessor Mr. Napier, in late 1971, reported that in his view, the existing West Australian law incorporated in the Contraceptives Act, No. 11 of 39, concerning prohibition of contraceptive advertising should not be repealed, and I concur with that view. There may be some merit in the thought that the ready availability of contraceptives may lead to some reduction in the need for termination of unwanted pregnancies.
>
> However, I believe any projected advantage which may be obtained from repealing our existing legislation relating to prohibition of advertising of contraceptives, is offset by anticipated disadvantages. I am of the view the community is sufficiently sophisticated to be possessed of an awareness already that contraceptives are available from particular sources, especially Chemist Shops. Therefore, procuration thereof is scarcely likely to be facilitated by public advertising.

The Hon. W. R. Withers: Why do you have "police" signs on police stations?

The Hon. J. DOLAN: I am reading the statement by the Commissioner of Police. I merely ask the honourable member to listen to it. I am not suggesting that he should agree with it or otherwise.

The Hon. A. F. Griffith: The answer to that question, of course, is that you do not place "W.C." on police stations.

The Hon. J. DOLAN: This statement continues—

> Today's advertising through the channels of news dissemination, where applicable, typifies sensual undertones, particularly in the area of female underwear, noted in newspaper and television advertising and in consequence, one may well be apprehensive of the nature of contraceptive advertising and project there would be an outcry from many sections of the community.
>
> In support of this view, most other States and Commonwealth legislations have retained a prohibition on contraceptive advertising.

The commissioner then mentioned that he had enclosed copies of a number of Bills from the Commonwealth and other sources, and continued as follows:—

> The Bill in its proposed form would open an avenue of objection and resentment from certain people in the community. A few years ago a number of dispensers of contraceptives watched the birth notices published in newspapers and where addresses were available through the telephone

directory or other channel, forthright contraceptive brochures were being received in the mail by mothers of new born children, even before they had departed the Maternity Hospital. This led to a large number of hostile complaints being received from the recipients of such materials.

A. L. M. WEDD,
Commissioner of Police.

The Hon. G. C. MacKINNON: For the first time since he entered this Chamber I am pleased to say that I agree with Mr. Claughton on this matter, because to date he has at least spoken some logic. However the tosh that my good friend and colleague, Mr. Withers, went on with, and the utter nonsense that my friend, the Minister for Police, went on with, leave me aghast.

If the police are to give an expression of opinion on the Contraceptives Act, which opinion has been taken, word for word from the 1939 *Hansard*—if members do not belive me they can read it for themselves—then heaven protect us! In this particular concept, where the police find themselves almost virtually in charge of the Contraceptives Act, the people who should have been approached to advise the Minister should have been the health authorities; officers such as Dr. Snow or Dr. Davidson, so that we could have listened to their advice with authority.

The Minister for Police has read a statement from the Commissioner of Police within 20 minutes of voting for a Bill which the police say they do not want, and I think this is probably true.

The Hon. J. Dolan: This relates to advertising, the previous one did not.

The Hon. G. C. MacKINNON: I think the Minister would probably be right in disregarding the advice of the police. If I had known that that was the advice the Minister had received when I spoke the other day, I would not have said that I agree with the police on that aspect, because I think their reasoning is crazy. What happened in 1939 is history. Between 1939 and the present day—a period of 33 years—the technological advances that have been made would be about the same as those that were made between approximately the year 1600 and 1920, so rapid has been our progress in the last 30-odd years.

In those days people could speak with basic authority, and in this *Hansard* I have before me are words which have been spoken about the absolute necessity to populate this country. There are now many people—and I am one of them—who believe in zero population and the theories of Professor Erlich. Indeed, there are many people who are pessimistic about the future of mankind unless something serious is done to reduce the population, and again I am one of these. This is the difference. Yet we have the Commissioner of Police in this day and age advising his Minister along the lines that have been quoted to the Committee. Therefore I strongly recommend that the Committee take no notice of that statement whatsoever.

Let us deal with this matter on entirely different grounds. Mr. Withers has said that he believes in a free enterprise society, in advertisements, and all the rest of it. Surely to goodness, as a liberal, I do not have to espouse that philosophy. But it wipes aside all democracy by courtesy and by politeness. I believe in honesty, but I do not go up to every woman I meet and tell her what I think of the hat she is wearing.

The reason for not putting a police sign on a police station has been precisely stated by Mr. A. F. Griffith; namely, for the same reason that one does not put the sign "W.C." on a police station. Let us return to Mr. Claughton's arguments which at least had some semblance of logic. I believe the honourable member is going too far. He mentioned radio and television, and I do not think, at this stage, we should in fact allow advertisements to appear on radio and television.

The Hon. R. Thompson: Did he not say that they would be for the family planning service?

The Hon. G. C. MacKINNON: I am inclined to think the honourable member did mention this. Mr. Claughton's emphasis is not on family planning clinics that are operating successfully. He was talking about the Family Planning Association which happens to conduct one struggling clinic, I think. I am talking on the basis of what I believe ought to arise from this. That is, family planning clinics under the auspices of the Health Department, based on regional hospitals, mobile clinics and the like, which have a schedule of arrangements and a schedule of trips, during which they stop at nursing posts or similar places throughout the State. I think a family planning clinic should be under the control of some medical authority. I do not believe that any group of people, no matter how well meaning they may be, should set up these clinics.

This is where Mr. Claughton and I differ; he was talking almost entirely about the Family Planning Association. So I believe my amendment is desirable, and I hope this is the last time I have to speak in support of it.

The Hon. R. F. CLAUGHTON: Mr. MacKinnon rather surprised me with the views he expressed in his last statement, because I gathered the impression he was very much in favour of the work done by voluntary organisations.

The Hon. G. C. MacKinnon: Do not let us start that.

The Hon. R. F. CLAUGHTON: I am surprised that he should make an exception in the case of the Family Planning Association. In the United States, and in the United Kingdom particularly, it has been found that the voluntary organisation has proved to be most effective. In the United Kingdom there is a dual system and the Government of that country granted about $2,000,000 to the Family Planning Association. However, the Government also directs authority to the local authorities to set up clinics should they desire to do so.

The Hon. G. C. MacKinnon: That is quite commonplace.

The Hon. R. F. CLAUGHTON: A similar system could perhaps be instituted here. At King Edward Memorial Hospital a clinic is conducted by the hospital staff, although there has been some suggestion that it should be conducted by the Family Planning Association.

In regard to the literature that was issued to mothers at that time, the medical superintendent told me that this would be no problem at this stage. In any case, the mothers are advised of the clinic at the hospital so that they can make use of it.

Therefore, the situation today is quite different from that which existed in 1939. The association, of course, does want power to advertise the times that clinics are being held. It desires this power to place advertisements in the Press. I drew attention to this when we first started to discuss the amendment, by pointing out that a problem could arise in this regard.

Mr. Withers believes this is a free enterprise system, but are we to believe that everyone is irresponsible? The chemists, the manufacturers, and others have shown us that they are responsible people as also are the members of the association. I would like to mention all their names, but I do not have the list with me. However, they include Dr. Rees from King Edward Memorial Hospital, Professor McDonald from the university, Dr. Clark—

THE DEPUTY CHAIRMAN (The Hon. F. D. Willmott): Order! I draw the attention of the honourable member to Standing Order 89 and ask him to observe it.

The Hon. R. F. CLAUGHTON: I am not aware of the contents of Standing Order 89.

The Hon. A. F. Griffith: It says that when you have made a century, you know about it.

The Hon. G. C. MacKinnon: When in front, knock off.

The Hon. R. F. CLAUGHTON: I did want to correct some of the remarks made by Mr. MacKinnon. I have here some information headed "Follow-up of patients referred for termination of pregnancy" which has been reprinted from *The Lancet* of the 28th March, 1970, pages 635 to 638. It reveals that 136 consecutive patients were questioned about the contraceptive methods they used. Of these only 6 per cent. had ever used a cap or contraceptive pill. The majority of people in that group had no knowledge of what contraceptives to use and this is indicative of the problem facing the association.

I could quote from other sources too, but I would be needlessly delaying the Committee. I repeat that I believe my amendment is the best one and a real need exists for it. Therefore, I hope the Committee will support it.

The Hon. D. J. WORDSWORTH: I am somewhat surprised, too, at the statement of the Minister for Police regarding the enlightened educated world in which people no longer require advertising.

The Hon. J. Dolan: Would you correct that? It was not my statement I read.

The Hon. D. J. WORDSWORTH: I will correct that and refer to the statement read by the Minister.

The Hon. J. Dolan: There is a difference.

The Hon. D. J. WORDSWORTH: I do not blame the Minister for disassociating himself from it.

The Hon. J. Dolan: I did not say that at all.

The Hon. D. J. WORDSWORTH: Although it is true that the majority of people fit into that category, those most in need of family planning do not, and they rely very heavily upon advertising. We now live in a competitive world in advertising and I believe family planning clinics and other organisations should have the full use of the media in this respect. Some groups of people lack education. It is for this reason so many Bills concerning Aborigines have been introduced and many of the Aborigines fit into the category which requires the help offered by this Bill. Other ways exist to control advertising if it is felt it is not necessary.

The Hon. J. Heitman: Don't you think they should be spelled out in this Bill?

The Hon. D. J. WORDSWORTH: No, because we do not spell out the controls in connection with other items. For instance, we do not control advertising by night clubs which openly state that their shows feature nude women.

The Hon. J. Heitman: It is as well we have given the Main Roads Department power to police signs on roads or we would, when approaching the city, see signs to tell us we should not come into the town.

The Hon. D. J. WORDSWORTH: Obviously Mr. Heitman has not read the full advertisement. For the reasons I have stated I support Mr. Claughton's Bill.

The Hon. R. J. L. WILLIAMS: I just want to cross swords with Mr. Wordsworth on advertising. He believes that it is all nice. I listened to Mr. Claughton's nice words on advertising when he told us about the glossy magazines advertising vaginal deodorant sprays. He said advertising is well controlled.

The Hon. R. Thompson: Have you been reading *The King's Cross Whisper?*

The Hon. R. J. L. WILLIAMS: I will not open it here, because ladies are present in the Chamber and I have some propriety. If the honourable member calls that well-controlled advertising, I do not, and the same type of advertising will occur in connection with contraceptives because they will be advertised in a filthy rag like this.

Amendment put and a division taken with the following result:—

Ayes—10

Hon. G. W. Berry	Hon. N. McNeill
Hon. A. F. Griffith	Hon. I. G. Medcalf
Hon. Clive Griffiths	Hon. S. T. J. Thompson
Hon. J. Heitman	Hon. R. J. L. Williams
Hon. G. C. MacKinnon	Hon. V. J. Ferry *(Teller)*

Noes—12

Hon. N. E. Baxter	Hon. R. T. Leeson
Hon. R. F. Claughton	Hon. R. H. C. Stubbs
Hon. S. J. Dellar	Hon. W. F. Willesee
Hon. J. Dolan	Hon. W. R. Withers
Hon. Lyla Elliott	Hon. D. J. Wordsworth
Hon. J. L. Hunt	Hon. R. Thompson *(Teller)*

Pair

Aye	No
Hon. C. R. Abbey	Hon. D. K. Dans

Amendment thus negatived.

Clause put and passed.

Title—

The Hon. A. F. GRIFFITH: I just want to make a very brief comment. This has been an interesting debate and I have been quite fascinated by the freedom with which members voted on the Bill; and members know what I mean by that.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by The Hon. R. F. Claughton, and transmitted to the Assembly.

WOOD DISTILLATION AND CHARCOAL IRON AND STEEL INDUSTRY ACT AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by The Hon. W. F. Willesee (Leader of the House), read a first time.

House adjourned at 5.58 p.m.

Legislative Assembly

Thursday, the 4th May, 1972

The SPEAKER (Mr. Norton) took the Chair at 11.00 a.m., and read prayers.

CRIMINAL CODE AMENDMENT BILL (No. 2)

Introduction and First Reading

Bill introduced, on motion by Mr. T. D. Evans (Attorney-General), and read a first time.

Second Reading

MR. T. D. EVANS (Kalgoorlie—Attorney General) [11.04 a.m.]: I move—

That the Bill be now read a second time.

This Bill has become necessary by reason of the deletion of the amendment to section 322, which section was regrettably omitted from the long title of the Bill recently dealt with by this House.

There does not appear any need to delay matters by a further explanation of the provision, except to inform members that it was one of the sections of the Criminal Code recommended by the Law Reform Committee for amendment.

The opportunity has been taken to include two other matters which have arisen since the previous Bill was drafted.

During 1969, an amendment was made to provide for an offence of obtaining or procuring the delivery of anything or obtaining credit by wilfully false promises. Prior to that amendment the offence of false pretences related only to matters past or present and did not extend to anything that might happen in the future. The incidence of goods and credit being obtained by means of false promises was becoming more prevalent at that time. Those members who are associated with trade and commerce will agree there has been no diminution of this type of offence.

The 1969 amendment repealed and re-enacted section 409 to follow section 427 of the Criminal Code, but in doing so the consequential change to section 426 of the Code in this State did not follow precisely the equivalent provision of section 443 of the Queensland Code.

I might mention, for the benefit of those members who do not know—and I am sure there would not be many—that the Queensland Criminal Code is recognised as being the parent of the Western Australian Criminal Code.

Attention has been directed to difficulties being experienced in effectively controlling the offence of obtaining goods or credit by means of wilful false promises.