primary schools. In regard to canteens and libraries, the subsidy has been increased from 33⅓ per cent. to 50 per cent., with the maximum grant moving from $4,000 to $5,000.

Overseas there is a great degree of parental involvement in education through the provision of television sets and other equipment. I have not time to mention those in detail, but in the United Kingdom, the Soviet Union, the U.S.A., Canada, and many other parts of the world the requirements for parents to share in a partnership in education have been much more demanding than they have been in Western Australia in the last few years, and more demanding than they will be when the 1970-71 Budget provisions come into operation.

The 1970-71 Budget reflects the impact of soundly based policies for economic activities and the general welfare of the State. They are policies that have set the standard of Budgets since 1959. They are policies that have put this State where it is today—which is, broadly and firmly speaking, on the road which gives us the right track for our future development.

Looking back at the Budgets over the last 10 years, noting the steady increase in the provisions for education, year after year, and all other aspects of social welfare, and noting that again this year the Budget is of the same calibre and nature —which could well be the pattern for future Budgets—I have much pleasure in supporting the 1970-71 Budget.

Debate adjourned, on motion by Mr. Burke.

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 5)

Receipt and First Reading

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

BILLS (3): RETURNED

1. Painters' Registration Act Amendment Bill.
2. Government Railways Act Amendment Bill.
3. Traffic Act Amendment Bill.

Bills returned from the Council without amendment.

House adjourned at 9.48 p.m.

Legislative Council

Tuesday, the 27th October, 1970

The PRESIDENT (The Hon. L. C. Diver) took the Chair at 4.30 p.m., and read prayers.

QUESTIONS (4): ON NOTICE

1. TRAFFIC

Motor Drivers' Licenses and Accidents

The Hon. J. DOLAN, to the Minister for Mines:

(1) How many motor drivers' licences were issued in 1969 to people in the age groups—
  (a) 17 years to 25 years inclusive;
  (b) over 25 years?

(2) Of the motor vehicles involved in accidents in 1969, how many were being driven by those in the age groups—
  (a) 17 years to 25 years inclusive;
  (b) over 25 years?

(3) Of those fatally injured in motor vehicle accidents in 1969 how many were—
  (a) in the age group 17 years to 25 years inclusive;
  (b) over 25 years;
  (c) drivers of the vehicles involved; and
  (d) passengers?

(4) Are statistics available to indicate how many of those in (a), (b), (c) and (d) of (3), were wearing seatbelts?

The Hon. A. F. GRIFFITH replied:

(1) Figures are for the twelve months ended the 30th June, 1970, as details are not available for the twelve months ended the 31st December, 1969, and include all types of driving licences issued:—
  (a) New 25,571 Renewals 74,981
  (b) New 19,325 Renewals 311,712

(2) (a) 1,204
  (b) 1,772

(3) Figures supplied are inclusive of motor cycle licences as separate figures are not available:—
  (a) 96
  (b) 169
  (c) 142
  (d) 87

(4) Not available.

2. TRAFFIC

Motorcycle Licenses and Accidents

The Hon. J. DOLAN, to the Minister for Mines:

(1) How many motor cycle drivers' licences were issued in 1969 to people in the age groups—
  (a) 17 years to 25 years inclusive;
  (b) over 25 years?

(2) Of the motor cycles involved in accidents in 1969, how many were being driven by people in the age groups—
  (a) 17 years to 25 years inclusive;
  (b) over 25 years?

(3) How many of those drivers in the age groups referred to in (2) were carrying pillion passengers?

(4) Of the motor cyclists (including pillion passengers) injured in accidents in 1969—

(a) how many were wearing safety helmets; and

(b) of these, how many received head injuries?

(5) Of the motor cyclists fatally injured in 1969 how many were:—

(a) drivers; and

(b) pillion passengers?

(6) How many in each of the groups (a) and (b) of (5) were wearing safety helmets?

The Hon. A. F. GRIFFITH replied:

(1) Figures not available.

(2) (a) 191

(b) 147

(3) Information not available.

(4) Information not available.

(5) (a) 18

(b) 3

(6) Information not available.

3. LAMB MARKETING AUTHORITY

Establishment: Referendum

The Hon. N. McNEILL, to the Minister for Mines:

Referring to the proposals for the holding of a referendum on the establishment of a statutory Lamb Marketing Authority—

(a) what is the total number of eligible producers who have applied for enrolment;

(b) what proportion of the total number of lamb producers in the State does this number represent;

(c) what proportion of the total lamb producers are required to enrol in order to warrant the holding of a referendum;

(d) if a referendum is to be held when will this take place; and

(e) prior to the holding of a referendum is it intended to hold discussions with representatives of all sections of the industry in order to define the functions of any proposed Authority?

The Hon. A. F. GRIFFITH replied:

(a) to (c) Full details on numbers enrolled and voting information will be released when notice of the poll is announced.

(d) A referendum will be held before the end of this year.

(e) No.

4. NATIVES

Sacred Sites

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

What studies or surveys of Aboriginal sacred sites are at present being undertaken in Western Australia—

(a) by or on behalf of any Government department;

(b) any other organisation?

The Hon. A. F. GRIFFITH replied:

(a) The Western Australian Museum is at present studying information relating to all known sites in Western Australia, and classifying these so that appropriate action can be taken.

Sites recommended for reservation are referred by the Advisory Panel to the Minister.

(b) Other organisations or individuals working on Aboriginal sites are:

(i) The University of Western Australia, Department of Anthropology. The information which they gather relating to sites is forwarded to the Registrar of Aboriginal Sites at the Museum.

(ii) The Australian Institute of Aboriginal Studies sponsors individual field study projects. The majority of these individuals forward their information relating to sites, together with recommendations for their protection, to the Registrar of Aboriginal Sites.

WESTERN AUSTRALIAN MARINE ACT AMENDMENT BILL

Third Reading

Bill read a third time, on motion by The Hon. G. C. MacKinnon (Minister for Health), and passed.

BUSH FIRES ACT AMENDMENT BILL

Recommittal

Bill recommitted, on motion by The Hon. G. C. MacKinnon (Minister for Health), for the further consideration of clause 2, which was deleted by a previous Committee.

In Committee

The Deputy Chairman of Committees (The Hon. F. D. Willmott) in the Chair; The Hon. G. C. MacKinnon (Minister for Health) in charge of the Bill.

Clause 2: Amendment to section 25—

The Hon. G. C. MacKINNON: If I assess the situation correctly, members have some sympathy towards the reinsertion of this clause. As I understand the position, the desire of the previous Committee was not so much to leave the Act as it stands, but to strengthen further the provision in clause 2. I believe a more proper assessment of the feelings of members is that the clause should be retained. I therefore move an amendment—

> Page 2—Reinsert clause 2 in lines 1 to 6 deleted by a previous Committee

The DEPUTY CHAIRMAN: The clause which was deleted by a previous Committee read as follows:—

> 2. Subsection (1) of section 25 of the principal Act is amended by adding after the word "place" being the last word in subparagraph (iv) of paragraph (c), the words "and to a bush fire control officer of the local authority for the district in which the fire is to be lit".

Amendment put and passed.

Clause reinserted.

Bill again reported, with a further amendment.

TOURIST ACT AMENDMENT BILL

In Committee

Resumed from the 22nd October. The Deputy Chairman of Committees (The Hon. F. D. Willmott) in the Chair; The Hon. G. C. MacKinnon (Minister for Health) in charge of the Bill.

Clause 2: Amendment to section 10A—

The DEPUTY CHAIRMAN: Progress was reported after the clause had been partly considered.

The Hon. G. C. MacKINNON: It will be recalled that progress was reported after Mr. Willesee had raised several points to which he desired further consideration to be given. At the time I said that this would be attended to. Since then the matters he raised have been considered further.

I would like to take the Committee back a little in order that members may view the whole matter in perspective. I hope that I can persuade the Committee to the line of thought as set out in the Bill. Section 10A of the Tourist Act complements the hotel grading legislation, which was introduced through the Licensing Court. Had the authority not been granted the right to borrow money for the purpose of making loans to hotelkeepers to enable them to achieve the upgrading of their hotels, the standard of the older hotels outside the metropolitan area would have declined. The reason for the possibility of a decline in the standard is the lack of interest by private investors in this type of lending. When the relevant Bills were before the House, this aspect was stressed. Tourist growth outside the metropolitan area would be inhibited by the lack of reasonable and modern accommodation.

It is believed that the Tourist Development Authority should continue its lending policy to assist in the upgrading of the older type of hotel accommodation. Country members will be aware that there is a fair amount of this type of accommodation in some country towns.

It must be stressed that the Tourist Development Authority loans are not made to metropolitan hotels, which are infinitely better propositions, and really do not have any difficulty in attracting private finance.

I have also obtained for the information of members the procedures that are associated with the granting of loans; and this question is not as easy as Mr. Willesee has suggested. Before the authority considers an application for a loan the hotelkeeper must receive from the Licensing Court a certificate issued in accordance with the Liquor Act.

Before granting the certificate the court must approve the plan and satisfy itself that the applicant has endeavoured to borrow money from private sources, and has been unable to do so. Only after that investigation has been completed is the certificate issued.

On presentation of the certificate to the Tourist Development Authority another thorough investigation is carried out by that body and the application is either refused or approved. The double financial investigation does not leave any easy loophole. It just does not happen that a bank advises an applicant to approach the Tourist Development Authority, under the auspices of the Treasurer, and money is made available. People working in this field know the availability of finance for this type of investment. As I have said, an application for finance is subject to check by two organisations, both of which are aware of the difficulties involved.

Mr. Willesee also sought information on how a shire could cope with an influx of tourists when it did not have the conveniences to cater for them. The facilities to cater for tourists can be provided by shire councils, with assistance from the Tourist Development Authority. Funds are voted annually for this purpose, and last year those funds totalled $200,000. That sum was distributed to shire councils in the form of non-repayable grants for the provision of tourist facilities, the construction of which received prior approval from the Tourist Development Authority. In the metropolitan area the Tourist Development Authority subscribes on a dollar for dollar basis, and in country areas the subscription is on a two dollar for one dollar basis.

A total sum of $1,765,579 has been made available, which has enabled tourist development work costing $2,560,000 to be

undertaken. It is necessary to look at the Bill which is now under discussion in its proper context in relation to other activities. Most of the grants have been spent on the provision of caravan parks, ocean and river beach changerooms and toilets, boat launching ramps, cave and park development, and historical exhibitions. It is necessary to consider all those things as a total plan in tourist development and not consider each item in isolation.

The Tourist Development Authority is taking steps to get well balanced development along very sound lines. This particular industry, of course, is regarded as the world's fastest growing industry and many developing countries—and developed countries—take great care in attempting to obtain a bigger share in this lucrative field. The United Kingdom, Canada, Central America, and South America all regard tourism as being among the top earners of export capital.

As is known, Australia has established its own Tourist Commission, and each State is supporting its individual body from State funds in a number of ways. Members might be interested to know that the visitors' survey of the north-west region of Western Australia, carried out by the Tourist Development Authority, showed that visitors travelling by car spend an average of $25 daily on accommodation, meals, and car running expenses. The total spent in the survey area was approximately $5,000,000 for one year. That return is certainly dwarfed by the income from minerals, nevertheless it does support a number of small business people in the area.

Mr. Willesee also mentioned the raising of money from the superannuation fund and the Motor Vehicle Insurance Trust. I have explained that that is a straight-out investment proposition. The amount of money which can be advanced by the Tourist Development Authority is limited to $300,000, and that amount will not be sufficient this year. A sum of $100,000 is proposed to be spent on the Port Hotel at Carnarvon, $60,000 on the Esplanade Hotel at Busselton, and subject to the availability of funds the application from the Commercial Hotel at Kojonup will probably be resubmitted.

Rather than change the amount specified in the Act each year, we should have the opportunity to leave it open, as is the case with some other Acts, I am informed. I hope the explanation I have given will satisfy the Committee that this move is worth while, and that it is sufficiently safeguarded. I trust the Bill will proceed.

The Hon. F. J. S. WISE: There are two aspects of the matter which are affected by clause 4 of this Bill which I shall refer to specifically. Section 9A of the parent Act, which I think was referred to by the Minister, gives the complete answer to the inability of a licensee to obtain money from other than Government sources. I feel that this field of investment by the Government under the Tourist Act, using funds which are accumulated by the Government for very different purposes, is a case of usurping rights as well as invading the field of operation of other institutions.

The breweries have a big interest in hotels, including tourist hotels, and the finance is derived from bank overdrafts and finance institutions. Therefore, rather than the Government use part of the superannuation fund trust account or funds from the Motor Vehicle Insurance Trust for the purpose of tourist hotels, I think it would be a sounder proposition for the Government to be the guarantor for structural development in this field. I think the Government is either usurping the responsibility of the financing authorities, or invading the field of such funds unnecessarily.

There is a very serious limit to the amount of money available to the Government from trust funds, which are at times used by the Government—quite properly—to cushion the effects of investment in electricity loans and other kindred loans, when the Government makes sure that the amounts applied for are fully met. I do not think it is right to remove the limit entirely, because the Government could become embarrassed if it should require moneys at short notice and the funds are not available. There is no person present who would say that, in the best of good faith, the Treasurer of the State, through the Tourist Development Authority, would not be acting in accordance with the law.

If we pass this Bill with clause 2 as it stands, there will be no limit to the amount that may be drawn from the funds in trust accounts which are available to the Government for these purposes. It would be far better for the Government to guarantee the account to any institution that has funds available, because the risk would be very small. If there were a risk, it would be a proper risk for the Government to take under such an Act as the Tourist Act. I think it would be preferable for the Government to give a guarantee for such funds as are required through the agency section of its own bank.

There is no reason why this Act should not come before Parliament year after year. That is not a good excuse, and certainly not a good reason, for removing the limit. If there were to be an alteration at Loan Council level, or any other level, this Act could be just as easily amended as any other Act. I move an amendment—

> Page 2, line 7—Delete all words after the word "aggregate" and substitute the words "the sum of five hundred thousand dollars".

In so moving, I would say that this is the sort of finance which, if it is to be limitless, can first of all exhaust any fund available to the Government; but if it is not to be limitless, that sum would spread over several opportunities, as the past has shown us. The largest amount that has so far been made available to any one hotel is $200,000—and I think that was to the Victoria Hotel, Roebourne. Another sum was made available to the Continental Hotel, Broome, which is now owned by the Swan Brewery.

I stress the point that hotels which are patronised by tourists and are on tourist routes are wonderful securities. There is a privately-owned hotel at Kununurra which is worth an enormous sum of money and could raise more than $500,000 as a security. So it is with most hotels, even those which are, in the words of the Minister, "hotels of older type." All the hotels of older type which are now being patronised by tourists are excellent securities for any investors, whether they be banks or breweries.

The Hon. G. C. MacKINNON: May I first of all answer the question that Mr. Wise posed when he spoke initially. He asked whether section 9A of the Act was the reason why money for some of these types of hotels, as an investment, was not as readily available as one might imagine it should be. The answer is, "No." If members will cast their minds back to the introduction of this Bill, the explanation for this clause was the difficulty that was being experienced in securing investment money for the type of development required.

One certainly could not disagree with anything else that Mr. Wise mentioned. Many hotels are excellent risks, and those are the hotels that attract money from other sources. It is obvious that the $200,000 has not covered all of this sort of building that has been carried out in this State over the last few years. Most of the development in the hotel field has been carried out by private investment.

However, in a complete plan of development there are times when it is desirable to carry out work on a hotel that is not in a position to attract investment capital, perhaps because it is not in a situation where it will make a great profit. I should not imagine that Kojonup is the greatest stopover town in Western Australia—and I mean no disrespect to the town that is represented by such distinguished members. The hotel at Kojonup is probably not the best return on investment but it is believed by the Tourist Development Authority to be desirable that some money should be spent on it.

There are safeguards on our Treasury officers and on the Treasurer, whoever he may be, and whatever accidents may befall. The men who occupy the positions of Treasurer and Under-Treasurer, and all the other people down the line, are sufficiently trustworthy, and I believe it is preferable to leave the clause as it is. One could pluck out of the air a figure—and $500,000 could well be it—beyond which it is unlikely that any money would be required. If it happens to be a certain figure in one year, that is it; if it happens to be below that figure in another year, that is also it. I cannot see that there is much difference in taking money from one source or another source. It is investment money that will go from one investment to another. It can be moved around; it is variable within the framework of the various Acts. I do not think it is a matter that is worth a great amount of bother.

I oppose the amendment because I think there will be years when $500,000 will be far more than adequate, and it is possible that it may not be adequate in other years. Indeed, if travel becomes so much more popular that all the hotels become very profitable ventures on the house side —I am not speaking about the bar trade— it may be desirable to put this legislation away in a bottom drawer to get dusty, in effect. With all the safeguards that are in the Bill, I cannot see the point in adding another one by way of an amount.

The Hon. F. J. S. WISE: Let me remind the Minister that the use of moneys from accounts is a matter of great moment, particularly in regard to moneys from trust accounts. The Minister was not very interested in politics at a time when a Government was defeated because the opponents of the Government drew attention to the fact that the trust funds of the State were in a parlously depleted condition. This is a very serious matter, and not one to be cast aside lightly.

The new angle raised by the Minister, in regard to the difficulties with finance, was not mentioned by him when he introduced the Bill. Places like Kojonup and Woodanilling have some tourist potential; but have they sufficient tourist possibilities to warrant the intervention of the Tourist Development Authority if finance cannot be obtained from any other source? I think that approach is quite wrong. The Government has the ability to guarantee any account, if hotels do not have good business relationships with those who finance them from month to month, or if there is some diffidence or doubt about the security on the part of a bank or some other institution. The Government is now able to guarantee such accounts.

The Hon. A. F. Griffith: What happened to the guarantee that the Government gave on Canterbury Court?

The Hon. F. J. S. WISE: I am not sure. I do not know.

The Hon. A. F. Griffith: If my memory serves me correctly, we had to introduce a validating Bill on that occasion.

The Hon. F. J. S. WISE: That is very likely. What happened to the account the Government guaranteed in the case of Chamberlain's?

The Hon. A. F. Griffith: That was turned into a public company.

The Hon. F. J. S. WISE: Indeed it was, and a most profitable one. If a bank or any other institution is not interested in a proposition—whether it is at Broome, Kojonup, Port Hedland, Roebourne, Carnarvon, or anywhere in the goldfields—the Government has it in its hands to guarantee the money to any organisation that is willing to finance it.

The Hon. G. C. MacKINNON: I made it quite clear that the reason for section 9A was the difficulty in getting money privately for this purpose.

After having scratched my bald head, and thinking back over past years, I can only say that if the Government transgression with regard to trust funds was before my interest in politics, it was a long time ago, and it would indicate that this is not a problem we have to face frequently.

As regards the type of hotels that might be financed under the provisions of this measure, let me say that I do not believe the Tourist Development Authority would spend money on a hotel unless there was good reason to do so. From my understanding of a guarantee, there are fairly severe limitations on what accounts a Government can guarantee and, as Mr. Griffith pointed out, the guarantee in regard to Canterbury Court was given in perfectly good faith. It was a guarantee to a business.

The Hon. F. J. S. Wise: Do you know what Act that was under?

The Hon. G. C. MacKINNON: It was not under any Act.

The Hon. F. J. S. Wise: Yes, it was. It was covered by an amendment to the Industries Assistance Act.

The Hon. G. C. MacKINNON: That is so. We had to amend the Industries Assistance Act.

The Hon. F. J. S. Wise: That was nothing to do with the suggestion about using agency money.

The Hon. G. C. MacKINNON: We had to amend the Act because the lawyers believed that the guarantee which was given in good faith had been incorrectly given. They believed that the Act ought to be amended in order to validate the guarantee. However, I still hope the Committee will leave the Bill in its printed form.

Amendment put and a division called for.

Bells rung and the Committee divided.

The DEPUTY CHAIRMAN (The Hon. F. D. Willmott): Before the tellers tell, I give my vote with the noes.

Division resulted as follows:—

Ayes—12.

Hon. N. E. Baxter	Hon. T. O. Perry
Hon. R. F. Claughton	Hon. R. Thompson
Hon. J. Dolan	Hon. J. M. Thomson
Hon. J. J. Garrigan	Hon. F. R. White
Hon. R. F. Hutchison	Hon. F. J. S. Wise
Hon. F. R. H. Lavery	Hon. R. H. C. Stubbs (*Teller*)

Noes—13.

Hon. C. R. Abbey	Hon. G. C. MacKinnon
Hon. G. W. Berry	Hon. N. McNeill
Hon. G. E. D. Brand	Hon. I. G. Medcalf
Hon. A. F. Griffith	Hon. S. T. J. Thompson
Hon. Clive Griffiths	Hon. F. D. Willmott
Hon. J. G. Hislop	Hon. J. Heitman (*Teller*)
Hon. L. A. Logan	

Pairs

Ayes	Noes
Hon. W. F. Willesee	Hon. V. J. Ferry
Hon. H. C. Strickland	Hon. E. C. House

Amendment thus negatived.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

CRIMINAL INJURIES (COMPENSATION) BILL

Second Reading

Debate resumed from the 21st October.

THE HON. R. THOMPSON (South Metropolitan) [5.22 p.m.]: When the Minister introduced this legislation last week, he said that so far as Western Australia was concerned it was breaking new ground. It is breaking new ground with social legislation in this State and I intend to support the measure although, I trust in a constructive manner, I shall offer some criticism of its provisions compared with those in the New South Wales Act, the New Zealand Act, and the Act that has operated in the United Kingdom for some years. In all respects the Acts in operation in those countries are more comprehensive in regard to the definitions and interpretations, and I believe this Bill is sadly lacking in that respect.

The only reference to the definitions one can find in our legislation appears on page 2, in clause 3, which sets out definitions for "injury," "offence," "section," and "Under Secretary." However, when we turn to the New Zealand Act we find the whole position spelt out on page 875 of that Act. There are 27 interpretations respecting what a person can claim for, or what his dependants can claim for.

The Hon. A. F. Griffith: Did you say page 875 of the New Zealand Act?

The Hon. R. THOMPSON: Yes. Apparently it is a book of Acts and the pages simply run on from one Act to the other.

The Hon. A. F. Griffith: It must be a bound volume.

The Hon. R. THOMPSON: Yes. It is Act No. 134 of 1963, and the page number is 875.

The offences for which claims can be made are—

Rape
Attempt to commit rape.
Sexual intercourse with girl under 12.
Indecency with girl under 12.
Indecent assault on girl between 12 and 16.
Indecent assault on woman or girl.
Indecent assault on boy.
Indecent assault on a male.
Murder.
Attempt to murder.
Manslaughter.
Wounding with intent.
Injuring with intent.
Injuring by unlawful act.
Aggravated wounding or injury.
Aggravated assault.
Assault with intent to injure.
Assault on a child, or by a male on a female.
Common assault.
Disabling.
Discharging firearm or doing dangerous act with intent.
Acid throwing.
Poisoning with intent.
Infecting with disease.
Endangering transport.
Abduction of woman or girl.
Kidnapping.

That makes a total of 27. However, I shall come back and discuss that legislation a little later on.

When we look at the New South Wales Law Reform (Miscellaneous Provisions) Act we find set out the people who can make a claim. Section 4 of that Act states—

> The liability of any person in respect of injury caused after the commencement of this Act by an act, neglect or default by which any other person is killed, injured or put in peril, shall extend to include liability for injury arising wholly or in part from mental or nervous shock sustained by—
>
> (a) a parent or the husband or wife of the person so killed, injured or put in peril; or
>
> (b) any other member of the family of the person so killed, injured or put in peril where such person was killed, injured or put in peril within the sight or hearing of such member of the family.

The Hon. A. F. Griffith: Without putting all that stuff in our legislation, "offence" means a crime, misdemeanour, or simple offence, all of which are defined in other Acts.

The Hon. R. THOMPSON: If I can make my point; I think members will see what I am trying to establish when I read the next section of the New South Wales Act. It lists the dependants and this is a provision which is sadly lacking in our legislation. The section reads as follows:—

> (4) Any action in respect of a liability arising by operation of subsection one of this section shall be taken in the Supreme Court.
>
> (5) In this section—
>
> "Member of the family" means the husband, wife, parent, child, brother, sister, half-brother or half-sister of the person in relation to whom the expression is used.
>
> "Parent" includes father, mother, grandfather, grandmother, stepfather, stepmother and any person standing in *loco parentis* to another.
>
> "Child" includes son, daughter, grandson, granddaughter, stepson, stepdaughter and any person to whom another stands in *loco parentis*.

I realise this is the first time we have attempted to introduce such legislation in Western Australia, and my criticisms are intended to be constructive. However, I believe we will place the judiciary, and even magistrates in summary courts, in a rather awkward position when they have to try to determine what Parliament meant by this legislation. If we look at our Bill we see that clause 4 reads as follows:—

> 4. (1) Where a person is convicted of an offence, the court by which, or the judge before whom, the person was tried may, at any time after his conviction on the application of a person who has suffered injury in consequence of the commission of the offence, order that a sum, not exceeding two thousand dollars if the offence is an indictable offence, or not exceeding three hundred dollars if the offence is a simple offence, be paid by the person convicted out of his property to such other person, by way of compensation for injury suffered by that other person by reason of the commission of the offence.

It is necessary to go back to the definition of injury which states—

> "injury" means bodily harm and includes pregnancy, mental shock and nervous shock;

But the definition does not say to whom. The other Acts spell this out in detail. I cannot speak about South Australia because I have not seen the legislation in that State, but in the case of New South Wales and New Zealand there are other people who can claim.

The Hon. A. F. Griffith: Do you not think the words "on application of a person who has suffered injury," mean anything?

The Hon. R. THOMPSON: The Minister has raised a very interesting point. I looked at this matter closely and I think my criticism of it is valid, inasmuch as we are leaving the matter for somebody else to determine when—as in the case of our workers' compensation legislation—we could define this dependency clause in the Bill before us so that the judges, magistrates, and the aggrieved person would know exactly what was meant by the legislation.

At the present time we could have, perhaps, half a dozen interpretations of it and I feel that even solicitors and lawyers, however good they might be, could look at the legislation and have some doubt as to whether they would succeed in claiming on behalf of someone other than the injured party. That is the point we must bear in mind. I am referring to the person other than the injured party at the moment.

I feel we are a little over-cautious at this time, because we have before us the experience of what has taken place in New South Wales, in New Zealand from 1963, and in the United Kingdom for a long time. We will find that the Police Assistance Compensation Act—which was brought before the House in 1964—spells this out and mentions that people who assist the police when requested to do so are entitled to be paid compensation when injured. The relevant section states in effect that the dependants of a person so injured are entitled to be paid compensation as provided in that section.

It can be seen, therefore, that provision is made in that Act for a certain class of person or his dependants—as is the case in the Workers' Compensation Act—to claim and be paid compensation. I have not had time to check this fact, but I believe the Fatal Accidents Act is another Act which offers a form of compensation to people who might be injured.

In that connection I would point out that there is an excellent article which appears in *The Australian Law Journal*, vol. 41, published on the 31st May, 1967. The article is headed, "Compensating Australian Victims of Violent Crime." It is written by Duncan Chappell, B.A., LL.B. (Tasmania), Ph.D. (Cantab.), lecturer in law at the Institute of Criminology at the University of Sydney. In this 11-page document he summarises the three Acts I have mentioned.

I do not propose to read all that is written here, nor do I wish to mislead the House by extracting sections of it from their context. Wherever possible I will start at a new paragraph where there is a heading. Page 5 of the article states—

> The Major Problems to be Faced
>
> It would appear from the United Kingdom and New Zealand experience in this field that there are at least four major problems which must be solved before any scheme of compensation for victims of crimes of violence can be established. These problems, briefly stated, are as follows:
>
> (1) Justifying the provision of compensation by the State.
>
> (2) Providing an effective method of distinguishing crimes for which compensation will be paid from those for which it will not.
>
> (3) Providing a fair and effective method of distinguishing the deserving claimant from the undeserving or fraudulent claimant.
>
> (4) Determining the basis of the compensation to be paid to deserving claimants.

Another paragraph states—

> Really, little would seem to be achieved by searching for some abstruse legal or social peg upon which to hang a crime compensation scheme. The most satisfactory justification for such a scheme is a purely pragmatic one—that on humanitarian grounds the State should provide assistance to victims of crimes of violence, just as it helps the victims of other forms of misfortune. It is on this basis that the United Kingdom compensation scheme has been established. While recognizing that the victims of crimes of violence should be eligible for some compensation at public expense, it has not been accepted "that the State is liable for injuries caused to people by the acts of others. The public does, however, feel a sense of responsibility for and sympathy with the innocent victim, and it is right that this feeling should find practical expression in the provision of compensation on behalf of the community."

It is further stated on page 6—

> In practice, it seems to matter little to the victim of a crime of violence in New South Wales whether he receives assistance from the State as of right, or of grace. What is important is that he, and others like him throughout Australia, should, as soon as possible, receive compensation of some type.

From those three pages it will be seen that the magistrates and the judges will have a very difficult job in the first instance in establishing whether or not compensation should be paid; they would not be sure whether or not somebody was putting it over them and being fraudulent; or whether it was an exercise to try to rob the State of money.

I have the utmost faith in our judiciary and I am sure its members will act wisely in this respect. A look at our own Bill, however, will show that, generally, certain things are left out. The way I read the provision is that if there is no court case and a person has not been brought to book, no award is made and therefore the legislation is inoperative, inasmuch as if someone is not apprehended for the violent crime no award will be made unless, of course, the magistrate awards a sum of up to $300 or the judge awards a sum of up to $2,000. That is provided for in clause 4 of the Bill.

Clause 5 states, in part—

> the person in whose favour the order has been made may make application in writing to the Under Secretary for payment to him of the sum, or so much thereof as is payable pursuant to this Act, out of the Consolidated Revenue Fund.

The way I read this is that it is all right if someone is apprehended, brought to court, and an order made; but if no person is apprehended it does not matter how serious the injury—and even death may occur—under the legislation as it stands no payment can be awarded even though an act of violence may have been committed.

The Minister said *ex gratia* payments could still be made; but that does not remedy the situation, because there is nothing to say that *ex gratia* payments will be made. I feel that the New South Wales legislation and the New Zealand legislation are much better. The New Zealand system works on a tribunal basis where, although legal representation is allowed, it does not depend upon a claimant being legally represented.

The Hon. J. M. Thomson: Would not clause 6 cover the point you raise?

The Hon. R. THOMPSON: I will return to that later. As I said, the person concerned has no need to be legally represented before the tribunal. He can state his case, produce medical evidence, or his dependants can produce a death certificate, and they can be awarded compensation.

Returning to the point raised by Mr. Jack Thomson, clause 6 merely states, "On the acquittal of a person accused of an offence . . ." If no-one is apprehended or charged before a court, there can be no acquittal. A person must be charged before a court before any compensation can be awarded.

Reverting to clause 3; I would like the Minister to state each and every person who is entitled to compensation in the event of his suffering injury, either mental or nervous, as is done in the interpretations contained in the New South Wales and the New Zealand Acts. I think this is a serious omission from our Bill.

Getting back to clause 5 of the Bill which stipulates that an application must be made to the under-secretary for payment from Consolidated Revenue, another query I have is whether, if the court order has been made and the applicant dies before lodging the claim, will this amount be paid to his dependants; or whether, if he dies after submitting a claim, but before the Under-Treasurer has made payment of compensation, will the compensation be paid to the dependants? In other words, will death in either instance be a bar to compensation being paid to the dependants? We should know these facts because I cannot find anywhere in the Bill a provision for payment to be made other than to the claimant. A person could be awarded the maximum by the judge; he could write out his application to the under-secretary, as specified in clause 6; and then he could die before payment is made to him. The Bill does not provide for that amount to be paid to the dependants.

The Hon. F. R. H. Lavery: To his estate.

The Hon. R. THOMPSON: The Bill does not provide that it will be paid to his estate. The person concerned could die even before he had sufficient time to write out an application. This is a matter in regard to which I would like the Minister to enlighten me. On page 7 of *The Australian Law Journal* is the following:—

> Information has already been released by the United Kingdom Criminal Injuries Compensation Board about the types of offence for which compensation has been paid. During its first twenty months of existence, the Board received 3,006 applications for compensation. The table below shows the eleven main classes into which these applications fell and the percentage of the total in each class.
>
> | | % |
> |---|---|
> | 1. Assaults by strangers in the street .... | 24 |
> | 2. Assaults in furtherance of theft .... | 17 |
> | 3. Assaults by relatives, friends or acquaintances | 13 |
> | 4. Assault in or connected with Licensed Premises | 11 |
> | 5. Assaults by strangers in Private Premises .. .... | 6 |
> | 6. Assaults connected with Public Transport .. .... | 5 |

7. Injuries inflicted by Children and Young Persons	3
8. Murder and Manslaughter	1
9. Rape	1
10. Indecent assaults on females	1
11. Law Enforcement Cases:	
(a) attempting to prevent the commission of a criminal offence, or arresting a suspected offender or keeping him in custody	18
(b) voluntary act of aiding police	—

So it can be seen that in 20 months in the United Kingdom not a great number of claims were made under this type of legislation. It would therefore be reasonable to expect that Western Australia will not be involved in a large sum of money to finance this scheme. I think it is the type of law which is needed but we could be possibly a little more liberal with the amounts.

The Hon. A. F. Griffith: It would be a desirable state of affairs if no compensation were to be paid at all because we would at least know that no one citizen was interfering with the liberties of another.

The Hon. R. THOMPSON: I could not agree with the Minister more. The article continues, referring to the New South Wales Act—

> The Act provides for the *ex gratia* payment of compensation for certain injuries resulting from the commission of any felony, misdemeanour, or other offence. In this respect, the New South Wales scheme is broader in its scope than the New Zealand scheme. However, unlike both the New Zealand and the United Kingdom schemes, a compensation payment will only be made in New South Wales if the offence from which injury resulted is the subject of criminal proceedings.

I am quoting this because the Minister said that in the main notice was taken of the New South Wales Act when our legislation was drafted.

The Hon. A. F. Griffith: Yes.

The Hon. R. THOMPSON: I would emphasise the last few words I just quoted. They read "if the offence from which injury resulted is the subject of criminal proceedings." This is the point I answered a while ago following interjections. It can be seen that under our legislation criminal proceedings will have to be taken before compensation will be paid.

The Hon. A. F. Griffith: But the New South Wales legislation provides for *ex gratia* payment in the same way as our legislation does.

The Hon. R. THOMPSON: The legislation before us does not provide for it; but another Act does.

The Hon. A. F. Griffith: New South Wales has found the *ex gratia* system operates quite efficiently.

The Hon. R. THOMPSON: I think ours is in line with the law in New South Wales. The article continues—

> It does not matter if these proceedings lead to the acquittal of, or dismissal of an information against, a person accused of such offence. But criminal proceedings of some sort there must be. This means that the only victims who may, by grace, receive compensation in New South Wales, are those injured in a crime in which the offender is apprehended, and brought before a criminal court. If, as is quite often the case, the offender remains undetected, the unfortunate victim will be no better off than he was without a State compensation scheme.
>
> This seems to be a serious weakness in the New South Wales scheme. Another weakness is that compensation will not be paid for injuries caused by someone who, because of age or insanity, or other conditions, could not be held responsible under the criminal law. It has already been seen that this particular weakness was overcome by administrative direction in the United Kingdom, and by legislative direction in New Zealand.

So it can be seen that we have copied some of what I consider are the bad points of the New South Wales legislation. To further quote, the following is found on page 8:—

> It will be realised from this brief outline of the nature and function of the Crimes Compensation Tribunal that the payment of compensation to victims of crime in New Zealand takes place within a formal statutory framework. The tribunal appears to operate in a legal atmosphere and its approach to its duties and responsibilities is similar to that of a Workers' Compensation Court. In the United Kingdom, on the other hand, compensation payments are made within a far less formal structure. The compensation scheme is administered by a Criminal Injuries Compensation Board.
>
> The Board will entertain applications for compensation only in those cases where—
>
> (i) there has been appreciable degree of injury (an injury giving rise to at least three

weeks loss of earnings or, alternatively, an injury for which not less than £50stg. compensation would be awarded) directly attributable either to a criminal offence involving the use of force or to an attempt by the victim, acting as a member of the public, to apprehend a criminal;

(ii) the circumstances of the injury have been reported to the police without delay or have been the subject of criminal proceedings in the courts.

(iii) the applicant is prepared to submit to such medical examination as the Board may require.

I make that point because further on Mr. Chappell draws some conclusions. Mr. Chappell continues—

> In the absence of more detailed information, it is not possible to draw any firm conclusions as to the relative merits of the New Zealand and United Kingdom methods of determining eligibility for compensation. It may be argued that the New Zealand requirement of a formal hearing of each application for compensation is more likely to discourage, or detect, fraudulent claims than the United Kingdom system of dealing with most applications without a hearing. It may also be suggested that a formal public hearing of claims for compensation, which is the normal New Zealand practice, is more likely to appear manifestly fair than the United Kingdom practice of deciding upon applications in private. But the informality of this United Kingdom practice may well result in a considerable saving in the cost of administering the compensation scheme —an attractive advantage.

On page 9 the article continues—

> The effect of this somewhat involved process seems to be that the principal decision as to eligibility for, and amount of, compensation, will rest under the New South Wales scheme upon the criminal courts, subject to the Treasurer's overriding discretion to make or withhold payment of any compensation awarded. In reaching their decision, the criminal courts are required to have regard to any behaviour of the victim which directly or indirectly contributed to his injury, and to such other circumstances as are thought to be relevant.
>
> By placing upon the criminal courts what amount to responsibilities of a civil nature, there does appear to be some danger that the administration of criminal justice will be impeded. For instance, in reaching their decision whether or not to award compensation, the courts will in many cases be largely dependent upon medical evidence as to the type and extent of victims' injuries. However, such medical evidence may not be available for some considerable time after the commission of an offence. This could lead to the postponement of a trial until the evidence was available—a delay which would clearly prejudice the rights of the accused. The accused might also be prejudiced by evidence, not strictly relevant to the issue of determining his guilt or innocence, led by the prosecution at his trial concerning the injuries of any victim. A jury, in particular, might not only be confused by evidence of this type, but also permit sympathy for the victim to cloud their judgment on other matters.
>
> It is conceivable that the prosecution could be placed in the invidious position of both presenting the Crown's case against the offender in relation to the offence with which he is charged, and against the victim in relation to certain injuries which the State disputed were attributable to that offence. This might lead to disparaging questioning of the victim by the prosecution, whether on re-examination, or even as a hostile witness. Such questioning could result in the impression being given to a jury that the State was unsympathetic to victims of crime and concerned to minimize the guilt of offenders—an impression which might, in turn, wrongly influence the jury in reaching a verdict.
>
> There are a number of further arguments which might be advanced against combining criminal and civil proceedings in this way. However, it is hoped that enough has been said to demonstrate that New South Wales' solution to the problem of determining eligibility for compensation is far less satisfactory than the solutions adopted in New Zealand and the United Kingdom.

Another short comment reads—

> In New Zealand, compensation may be awarded for any one or more of the following types of loss or injury:—
>
> (i) Expenses actually and reasonably incurred as a result of the victim's injury or death.
>
> (ii) Pecuniary loss to the victim as a result of total or partial incapacity for work, or to dependants as a result of the victim's death.
>
> (iii) Other pecuniary loss resulting from the victim's injury, and any expenses reasonably incurred.
>
> (iv) Pain and suffering of the victim.

I will not bore the House by quoting the next comment fully. It says that there is no set pattern in New Zealand as to the way in which the sum of money is awarded. It is awarded in the same way as it will be under our legislation but at the discretion of the magistrate or judge, as the case may be, who determines how much money should be paid. In New South Wales the position is a little different.

Page 11 of *The Australian Law Journal* says, in respect of case A267, that the amount awarded under the New South Wales scheme would doubtless be $2,000. In the United Kingdom it would be £1,000 sterling, and only 7 per cent. of the awards in the United Kingdom are over £1,000 sterling.

I notice I have missed one part of the article which says—

> The total amount of compensation victims may receive from each of the three schemes discussed obviously varies enormously. In Case No. A267, mentioned at the beginning of this article, the United Kingdom Criminal Injuries Compensation Board awarded the victim £15,580 sterling compensation. The same victim would probably have received slightly less than half this sum from the New Zealand Crimes Compensation Tribunal. In New South Wales, this victim would no doubt be awarded the maximum amount payable, namely, $2,000.

Members will see that the United Kingdom and New Zealand schemes are far in advance of ours. In conclusion the article says—

> "Has not the injured individual rather slipped out of the mind of the criminal court?" More than fifteen years have now passed since Margery Fry first posed this challenging question during which time there has been an ever increasing awareness of the need to provide compensation to victims of violent crime. Now, some three years after the introduction of schemes to meet this need in New Zealand and the United Kingdom, we in Australia are also moving towards the stage when our victims of violent crime will receive compensation. There is really nothing revolutionary in this movement for, as we have seen, restitution to victims of crime was commonplace among our barbarian ancestors. Even so, the re-introduction of this humane principle is a significant victory in the field of social reform.
>
> New South Wales is to be congratulated for taking the initiative in this field in Australia. If this article is critical of the compensation scheme in that State, it is only because, in the writer's opinion, the problems confronting the New South Wales Government in establishing the scheme might well have been solved in a much more satisfactory way. That they are complex and difficult problems is not denied. But practical experience gained from the New Zealand and United Kingdom schemes indicates that they can be adequately overcome.
>
> Perhaps political and economic factors prevented the implementation, *in toto*, of either the New Zealand or United Kingdom schemes in New South Wales. Certainly either scheme would impose greater financial burdens on the State than the one adopted. Yet the additional cost involved in establishing and maintaining a scheme similar to that of New Zealand is likely to amount to only a fraction of the sum spent annually on other facets of social welfare. The total cost of the most expensive scheme, that of the United Kingdom, during its first twenty months of operation, was less than £500,000stg.
>
> The realities of our Federal system of government make it most improbable that agreement can be reached on a national scheme to compensate victims of violent crime, no matter how beneficial such a scheme would be. Instead, we must now wait and see how long it takes before other States, and the Commonwealth, follow New South Wales' lead and end the victim's role as the Cinderella of Australian criminal law.

I had intended to go more deeply into the New Zealand Act. However, I do not think I would be able to point out anything to which departmental officers and Ministers, too, for that matter, would not have access. I do not think I could teach them anything because copies of the legislation are available.

I support the measure before us, but I do not think it is the end. I consider the legislation should be subject to review in the light of some of the comments from *The Australian Law Journal* which I have made. Consideration should also be given to the question of dependants as well as to definitions and interpretations in other Acts. To my mind this is a starting point.

The Minister expressed the wish that no claims would be made. I trust that this will be the case, because I certainly do not want to see any claims made. I do not want to jump onto any bandwagon by referring to the case which happened only last weekend. In that instance there could have been claims if the situation had become more ugly than it was. These people would have been men of straw, as the Minister said in his notes.

The Hon. A. F. Griffith: It was ugly enough as it was.

The Hon. R. THOMPSON: It was too ugly, I quite agree. These are things that can and do happen. As a matter of fact, the increase in America is something like 103 per cent.

Sitting suspended from 6.07 to 7.30 p.m.

The Hon. R. THOMPSON: Prior to the tea suspension I was about to mention the ugly incident that occurred last weekend in which people could have been seriously injured. Let us say, for instance, that a half-dozen people had been seriously injured. That is quite feasible because I understand that some 200 or 300 people were throwing chairs around and it was a very wild scene. It is quite apparent that those people who were convicted would not have the wherewithal to withstand any civil action for damages and any amount subsequently awarded against them.

However, as I understand it, under this legislation the maximum any judge could have ordered—provided it was an indictable offence—would be $2,000. That does not seem to me to be a reasonable amount. If six people were injured they would receive only approximately $300 each—which is equivalent to what a magistrate of a local court may award in cases considered to be not serious.

I think this is another matter that should be examined with a view to providing some enlightenment and, possibly, with a view to discretion being given to the judge or the magistrate as the case may be. The people concerned in the incident I mentioned were charged before a magistrate. I know that probably this is one of those cases I should not quote; nevertheless it could happen again. It was the most serious incident of its type we have ever seen in Western Australia, with the possible exception of the riots which took place in Kalgoorlie during the depression years. The persons concerned were not charged with an indictable offence, although they might have been had serious injuries resulted. I do not think we are giving a sufficient latitude to the judges to enable them to exercise some discretion.

Clause 7 of the Bill refers to the payment of compensation by the Treasurer to the applicant. It states that the undersecretary, after receiving an application, shall forward a statement to the Treasurer of the State giving particulars of the application. Under clause 7 (1) (b), the undersecretary must specify—

> any amounts that, in the opinion of the Under Secretary, the applicant has received, or would, if he had exhausted all relevant right of action and other legal remedies available to him, receive, independently of this Act, by reason of the injury to which the application relates.

A person could find himself in the position where he was entitled to workers' compensation, which would possibly cover him to the maximum. Therefore he would not be entitled to anything under this Bill. However, if he was not entitled to any payments from any other funds—such as workers' compensation—he might not be in a position to exhaust all relevant rights of action and other legal remedies available to him, as stated in the paragraph I have just quoted. His financial position or his physical or mental condition might be such as to prevent him from exhausting his rights. But he could be told to take civil action to recover compensation from the person who assaulted him.

Then we come to the instance of the recent bank hold-up. Let us use that as a hypothetical case. If a woman—let us say she was pregnant—was in a bank and a person came in and held up the bank, causing the woman to suffer considerably as a result of shock, under this legislation she would not be entitled to compensation unless the criminal was apprehended and convicted in a court. I realise that by this Bill we are doing something, but I feel we are offering only a token. It is a token that people might look upon and accept as being something of substance whereas, in actual fact, it is not—unless we broaden the scope of the legislation. I do not think it will cost the State a great deal next year or the year after, taking into consideration the various matters that have been pointed out in respect of other Acts.

In *The Sunday Times* of the 3rd May, 1970, under the headline, "Shock Report: Violence spreading rapidly" the following article appeared:—

> Crimes of violence in the United States have risen 10 times as fast as population in the past 10 years.
>
> This shock finding was disclosed in a survey by the authoritative news weekly US News And World Reporter.

I do not intend to read the whole article. Under the heading, "A symbol" the following was stated:—

> The survey showed that since 1960 murders rose by 66 per cent., rapes by 115 per cent., robberies by 180 per cent. and aggravated assaults by 103 per cent.
>
> This averages out at an overall increase of 131 per cent., while the population rose by only 13 per cent. during the decade.

I think the final paragraphs are worth quoting—

> Washington's police chief, Jerry Wilson, said: "The narcotics problem is adding considerably to the problem of crime."
>
> Police Chief Joseph P. Kimble, of Beverley Hills, California, believes there is a direct link between crime in the streets and social conditions.
>
> "For millions," he said "there is poverty in the midst of plenty, substandard housing, inferior education and a lack of promising jobs."
>
> He described poverty as a "sewer" out of which the only ladder available was money, "and more often than not there's a temptation to turn to crime to get the money."

Fortunately we do not have those conditions in Australia at present, and I think we can be thankful for that. However, changes in American patterns of social behaviour, and even changes in the economic climate do not reach us until some four to six years after they actually occur —apart from the economic position of some States in America which have high unemployment figures. I know that we are vigilant about narcotics, etc., and have even been criticised to a certain extent about some of our laws. However, I think we can expect that the American pattern will ultimately reach Australia and possibly spread throughout the world, because we seem to follow America's pattern and so do other countries.

The Hon. A. F. Griffith: You are not suggesting our women are five years behind the times? I do not think that is the case.

The Hon. R. THOMPSON: I do not think so, either. The Minister said it! I regret that I did not finish my speech prior to the tea suspension, as I was just about to conclude. In conclusion, I would recommend that the Minister and other members in the House study in detail the points I consider necessary in legislation of this type. I recommend that the New Zealand Act, in particular, be studied because it lists the amounts of compensation, the method by which they shall be paid—whether by weekly payments with a maximum of six years, or in a lump sum—and it also contains an interpretation and definition of the word "dependants." Section 19 of that Act covers two full pages. It states who shall be paid and includes every ramification which is necessary to cover what I consider to be a most comprehensive Statute. I think the draftsmen in New Zealand should be complimented because I can think of nothing that has been left out in respect of definitions and interpretations. I support the Bill.

THE HON. I. G. MEDCALF (Metropolitan) [7.42 p.m.]: I support the Bill, and I suppose how much one supports it —in other words, how strongly one supports it—would depend upon how much one regards it as the obligation of the State to underwrite all the ills which take place in the community in relation to civil claims offences, and crimes. I suppose we have to draw the line somewhere. If we were to say that the type of injuries which should be covered by a Bill of this sort should extend beyond bodily injuries into such other matters as general damages, loss of employment, pain and suffering, and actions by relatives who may happen to be affected as a result of the criminal offence or as a result of the bodily injury which was suffered by the accused, then we would have to ask ourselves why we were drawing the line there, and why we stopped at that point.

Why should we not take the principle further into other aspects of life and decide we will underwrite all the accidents which occur—not only criminal acts, but also accidents on the roads? For example, with regard to road accidents—and I believe this is germane to the discussion—we penalise only those against whom we can prove negligence or fault. Apart from the traffic law, we do not penalise those who cause an accident without negligence or without default. There is no way of recovering against them, either civilly—say, through the State—or criminally.

There is a school of thought which believes that we should extend this underwriting by the State—and this is a Bill of underwriting by the State—to all aspects of all the accidental happenings which occur in civil life, not only on the roads but also the accidents which occur to individuals in the course of going about their ordinary life and work.

The Hon. A. F. Griffith: And do away entirely with the proving of negligence?

The Hon. I. G. MEDCALF: Yes, do away entirely with the proving of negligence and do away entirely with any suggestion that one conduct one's own affairs and that people are responsible for the ills which they do to one, because the State would underwrite all those things.

I know it could be suggested that this is going much too far, but I mention it to illustrate the problem of where does the State stop when it underwrites matters of this sort.

I believe this is a most worth-while Bill because it takes the first step, within very defined limitations as has been well pointed out by Mr. Ron Thompson.

There are definite limitations on the step which we are prepared to authorise the State to take at this stage; that is, to underwrite any criminal acts committed against some of the citizens of the State. What, in effect, the Legislature, if it passes this Bill, will say is that when some citizen of the State commits a criminal act as a result of which another person suffers injury as defined in the Bill, the State must accept responsibility within the limits set out in the Bill. This is a very significant departure from our previous practice.

Previously when a person went voluntarily to the assistance of the police in a fracas, a brawl, or during some violent incident, he had no guarantee from the State that he would receive any compensation.

The Hon. A. F. Griffith: Until a couple of years ago when I introduced a Bill to provide for that.

The Hon. I. G. MEDCALF: Even then, such a person had no guarantee he would be recompensed unless it were shown,

without a shadow of a doubt, that the circumstances were such that they came within the scope of the legislation.

The Hon. F. J. S. Wise: There is a very small limit on that, is there not?

The Hon. I. G. MEDCALF: There are limits.

The Hon. R. Thompson: Workers' compensation is applicable, I think.

The Hon. I. G. MEDCALF: This is a different matter from workers' compensation. We there get into a broader field. Until this Bill was introduced no real attempt had been made to make the State accept liability in regard to criminal actions. The State had declined to accept liability, and I think a very good argument has been advanced that, in certain cases—particularly flagrant cases involving personal loss—the State should accept responsibility where it seeks to provide law enforcement and fails to do so. This does not mean, of course, that I am blaming the State for the acts of violence which occur in the community; that would be absurd. But by providing the Police Force, and by making laws, we are saying that we are attempting to enforce the law and it is assumed we are attempting to give a guarantee that people can go about their business safely and without molestation.

Now we are saying that if a person is attacked, or if he suffers some injury of a certain type as a result of criminal acts, within the limits of the Bill he will receive compensation. As I say, it is a matter of attitude; it is a matter of how far we think the State should go that will determine our view of this Bill. I personally believe that this is a significant step forward and we should walk before we try to run. The fact that we are putting this Bill through Parliament represents quite a milestone in Western Australia.

I think the article written by Mr. Chappell for *The Australian Law Journal*, which was quoted by Mr. Ron Thompson, is very searching; I listened with considerable interest to the extracts the honourable member quoted. Mr. Chappell raised some interesting and deep problems which illustrated very well the limits which apply to this subject, all of which limits have been dealt with in this Bill in one way or another. They had to be dealt with by the draftsman of this Bill.

If I may now turn to the measure itself I would like to refer to the definition of "injury." The definition in the Bill reads—

> "injury" means bodily harm and includes pregnancy, mental shock and nervous shock.

In other words, it means personal injury; an injury of a personal kind to the body or mind of the person who suffers it. As Mr. Ron Thompson clearly pointed out, it does not include all those other things which can happen; the things which are taken into account by a court when assessing damage, such as the loss of employment, the loss of profits from a business, the deprivation of personal liberty, and perhaps even pain and suffering.

For many years in legal circles there has been argument as to whether injury includes pain and suffering. I could not say what the latest opinion is on this subject but I know it is quite common for pain and suffering to be disregarded and, of course, it has been specifically disregarded in the 1961 Law Reform (Miscellaneous Provisions) Act where, on the death of a person, pain and suffering is not one of the elements to be taken into account in assessing compensation to be paid to the estate of that person. So therefore the definition of injury is restricted, and I believe that, at this stage of our history, it is quite sound for us to start off on this basis.

The definition of "offence," however, includes practically every offence one can think of. The various offences do not have to be spelt out, because the definition includes crimes, misdemeanours, and simple offences and covers the lot. Therefore, as I have said, the various types of offences do not have to be spelt out; we do not have to go any further than that. As I see it, only the person who suffers personal injury can lay a claim. I cannot see that the right goes beyond the person who actually suffers the injury. Further, I believe that person must make a claim during the course of the trial. I do not know that it would be essential that the claim should be absolutely and categorically itemised or set down during the course of the trial, because it may not be possible to do so; but, clearly, the claim must be made—in round terms, at any rate—as clearly and as particularly as possible. But I do not believe a person would be debarred from making a claim because the full particulars of the claim were unknown at the time the trial took place.

I do believe, however, that a claim is only open where proceedings are taken against an accused person. It is only when criminal proceedings are instituted that a claim is available. In other words, if a criminal is unapprehended and hence no proceedings are taken, I would say clearly there is no claim provided in the Bill, although the Minister has mentioned that in such circumstances compensation would be paid. Of course, there is nothing in the Bill which covers that. It merely deals with a case where proceedings are taken.

I believe the measure, albeit a simple one, is very logically framed, and I believe the draftsman has done an extremely good job on it. In clause 4 he has set out the method by which the order for compensation is made by the court or the judge and clause 5 provides for an application to be

made and for the amount certified in the order to be paid out of the Consolidated Revenue Fund. Clause 6 goes on to deal with the case of acquittal and, in such a case, it is specifically provided that application may still be made by the person who is aggrieved, and still be paid out of the Consolidated Revenue Fund, as set out in clause 7.

However, it is made quite clear that the amount of any compensation to be paid is to be reduced by the amount the aggrieved person has claimed, is entitled to claim, and could obtain if he took proceedings of any sort against the person who committed the offence. This means, of course, all proceedings, including civil proceedings, or any other proceedings that are open to him, and all legal remedies must be exhausted before the Crown is required to make any payment. This is reasonable enough because clearly the Crown cannot be expected to pay if the accused person is in a position to pay. Clearly it is the accused person who caused the damage, and not the State, and the State is only coming in as an underwriter, so to speak, if a claim cannot be made against the accused person.

Therefore, all steps have to be taken before there is any claim and the under-secretary, under clause 8, may defer forwarding this application for payment until such time as he is satisfied that all possible action has been taken. Finally, after he makes the payment, in accordance with the provisions in clause 9, he is subrogated to the rights which the aggrieved person had against the accused. In other words, the under-secretary—having paid the aggrieved person—is entitled to all the rights of the aggrieved person if the accused subsequently acquires property or assets and to take proceedings and refund to the Treasury the amount he has been required to pay out.

So I feel the Bill is well presented and set out in very logical form and in a way that is easy to understand. I commend the draftsman for the work he has done and the Government for introducing the measure. Finally, I would like to say that I believe we are in for a much greater defiance of the law than we have experienced in the past. Mr. Ron Thompson referred to what has happened in the United States of America and from the reports I have received from persons who have recently visited New York, that city appears to be almost in a state of civil anarchy by our Western Australian standards. I understand there are telephone boxes on almost every street corner marked "Direct line to police" and, in general, it is becoming a very unhealthy place for people to walk about in, particularly at night.

The Hon. N. E. Baxter: It is not only in New York.

The Hon. I. G. MEDCALF: That is right. In the last few years also in the United Kingdom there has been a tremendous increase in crime, and I think we have every reason to believe it is a world-wide disease and that it will spread here. Whilst expressing the same views that have already been mentioned by the Minister and Mr. Ron Thompson, I hope that under the provisions of this Bill there will not be much call made upon the Crown. Nevertheless, one cannot but feel that calls will be made upon the Crown and the time may come when it is necessary for the provisions of the legislation to be extended. I have no doubt that if and when that time does come the Government will get the message and take the matter further. However, as it stands, this is a very progressive piece of legislation and I support it.

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

BILLS (2): RECEIPT AND FIRST READING

1. National Trust of Australia (W.A.) Act Amendment Bill.
2. Betting Investment Tax Act Repeal Bill.

Bills received from the Assembly; and, on motions by The Hon. A. F. Griffith (Minister for Mines), read a first time.

House adjourned at 8.01 p.m.

Legislative Assembly

Tuesday, the 27th October, 1970

The SPEAKER (Mr. Guthrie) took the Chair at 4.30 p.m., and read prayers.

QUESTIONS (23): ON NOTICE

1. MINING

Porongorups National Park

Mr. MITCHELL, to the Minister representing the Minister for Mines:

(1) What licenses to mine or prospect have been issued in regard to the Porongorups National Park area?

(2) If any permits have been issued, for what minerals?

(3) Has any mining been carried out on this reserve up to the present date?

(4) Has he seen a press statement saying that the Porongorups National Park had already been spoilt by mining activities?

Mr. BOVELL replied:

(1) None.

(2) and (3) Answered by (1).

(4) No.