Legislative Council

Wednesday, the 19th September, 1979

The PRESIDENT (the Hon. Clive Griffiths) took the Chair at 4.30 p.m., and read prayers.

QUESTIONS

Questions were taken at this stage.

LEAVE OF ABSENCE

On motion by the Hon. R. F. Claughton, leave of absence for three consecutive sittings of the House granted to the Hon. D. K. Dans (South Metropolitan—Leader of the Opposition) due to ill-health.

CRIMINAL CODE AMENDMENT BILL

Introduction and First Reading

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

BILLS (2): THIRD READING

1. West Australian Trustee Executor and Agency Company, Limited, Act Amendment Bill.
2. The Perpetual Executors, Trustees, and Agency Company (W.A.), Limited, Act Amendment Bill.

Bills read a third time on motions by the Hon. I. G. Medcalf (Attorney General), and transmitted to the Assembly.

ACTS AMENDMENT AND REPEAL (DISQUALIFICATION FOR PARLIAMENT) BILL

Second Reading

Debate resumed from the 18th September.

THE HON. R. F. CLAUGHTON (North Metropolitan) [4.43 p.m.]: I have been a little reluctant to get to my feet on this Bill because I have not done as much research as I would wish to do in order to offer a considered opinion about its contents. As the Attorney General has indicated, it is a matter which should concern all members of Parliament and, ideally, it is a matter on which there should be unanimity on all sides for it to become an amendment to our Constitution.

I support the remarks of the Hon. R. Hetherington when he suggested that further progress of the Bill should be deferred to enable more members to take a definite interest in the proposals, and to undertake further study of its contents. So, I must confess the remarks I make are superficial and not necessarily those I would make if I had given more time to the subject.

In the matter of contracts, I can see that there is a good deal of room for dispute or at least misunderstanding and, perhaps, the possibility of a member innocently being involved because when he was a shareholder of a public company action had been taken of which he was not aware. One of the important matters which this Parliament lacks is a register of pecuniary interests of members of Parliament which would, I think, enable us to deal with these matters more competently than we can do in the present situation. That is something which could be done without any change to the present Act and, again, it could place members, generally, in a better position to judge the worth of these proposals in respect of some of the authorities which are included in the schedules.

Members are aware that I served a period on the Museum Board, and I found that time spent there extremely valuable in getting a much better insight into how these bodies operate within the system of administration, and I believe that involvement improved my understanding of the conduct of Government. I would not like to think that what we are now passing will deprive other members of Parliament of a similar opportunity; an opportunity I believe to be valuable and an experience which they may not be able to obtain in any other way. In opposition to that argument I can well imagine a Government may feel uneasy about an Opposition member serving on such a board. While that attitude can be recognised, I think it is the responsibility of all members concerned to see that they conduct themselves responsibly in those positions.

So, from my own personal experience I have a reluctance to agree to all the boards and authorities being included in the schedule placed before us. On other occasions I have been asked to serve on councils which were to be established within Government institutions. My feeling on those occasions was that the form of assistance I could give would be much better were I not closely involved. That is a style I generally adopt. I dislike to be placed on committees; I much prefer to give advice in the areas in which I have some expertise, and leave other members to fill the permanent positions.

That is only a general approach to this sort of question. There are always those organisations in the community in which I get closely involved, and I am sure all members have been in the same position during their terms in this Parliament.

So for reasons like these, I feel reluctant to support that particular schedule listing all these bodies similar to the Museum.

It has been suggested also that the body known as the Privileges Committee should be revised to consider matters such as the role of members in Parliament. Mr Hetherington suggested that a Select Committee should be appointed to study this Bill, and a privileges committee, acting as a Select Committee, could undertake the task of examining the question generally.

The Attorney General referred to the Standing Order in the Legislative Assembly which prevents a member from voting on any matter in which he has a pecuniary interest, and he suggested that a similar Standing Order could be included in those under which this Chamber operates. It may seem somewhat odd that we do not have such a Standing Order, but the traditional view has been that this Chamber has no power over money Bills, and for that reason members of the Legislative Council do not have an effective vote on financial legislation.

I must say I am uncertain in my own mind about the general principle of removing the concept of office of profit. I would like to study the question further. Legislation such as this perhaps should be handled as some other Bills have been handled in the past; it should be presented to Parliament and then permitted to lapse so that we may examine the proposals as fully as possible. Unfortunately we are all busy people, and if we are not given a deadline, we may not make a firm decision on a matter such as this. However, I do not think it could be said that the matter has been before us for so long that we should make a decision straightaway. I would support the proposition that the Bill be permitted to remain on the notice paper and perhaps introduced again during the next Parliament when members have had more time to study its proposals.

THE HON. G. W. BERRY (Lower North) [4.54 p.m.]: I rise to support the Bill. To the best of my ability I have studied the measure and the notes furnished by the Attorney General and the Crown Law Department. On going through them I found some rather interesting features.

It is about time it is spelt out clearly just what is expected of members of Parliament, and the sort of circumstances which would disqualify a member from holding his seat.

The first part of the Bill relates to our Constitution, and in the notes supplied by the Crown Law Department, I was very interested in the reason for the amendment to section 6. The notes read as follows—

> The first paragraph has been redundant since 1893. However, there seems to be no reason why it should not be left in the Act as part of the historical record.

I then referred to section 6 of the Constitution, and the first paragraph reads as follows—

> Before the first meeting of the Legislative Council and Legislative Assembly the Governor in Council may, in Her Majesty's name, by instruments under the Public Seal of the Colony, summon to the Legislative Council such persons, to the number of fifteen, as he shall think fit, and thereafter may from time to time, as vacancies occur, in like manner summon to the Legislative Council such other persons as he shall think fit, and every person so summoned shall thereby become a member of the Legislative Council.

So that part has been made redundant. I looked further through the Constitution, and I believe members would be interested in section 71, which commences as follows—

> And whereas by the operation of this Act certain officers of the Government may lose their offices on political grounds, and it is just to compensate such officers for such loss, be it enacted that the sum set opposite to the names of the persons in Schedule D to this Act, who at present respectively hold the offices therein mentioned, shall be payable to them annually by way of retiring allowance—

Schedules A, B, and C have been repealed. Schedule D reads as follows—

	£	s.	d.
Sir Malcolm Fraser, K.C.M.G., Colonial Secretary	700	0	0
Charles Nicholas Warton, Esq., Attorney General	333	6	8
Anthony O'Grady Lefroy, C.M.G., Colonial Treasurer	550	0	0
John Forrest, C.M.G., Surveyor General and Commissioner of Crown Lands	500	0	0
	£2083	6	8

So we see that other sections have been left in the Constitution for historical reasons, although they have no present-day application.

The fact that the concept of an office of profit in the Crown is removed—

The Hon. R. Hetherington: It has not happened yet.

The Hon. G. W. BERRY: —is commendable. No doubt it was necessary to consider such matters back in the days when a good deal of shenanigan went on.

The Hon. R. Hetherington: No doubt about that.

The Hon. G. W. BERRY: Mr Hetherington agrees with me. However, today we should spell out the actual disqualifications. Under certain circumstances a member should be able to trade with the Crown without being liable to disqualification.

The notes supplied by the Crown Law Department explain the different amendments in the Bill. The Attorney General had this to say—

> The Bill now presented aims to do away with the old "office of profit" concept and to remove the disqualifying provisions relating to government contracts. At the same time the oppdrtunity has been taken to consolidate the various provisions with a compact group of sections.

The group of sections is not as compact as I would like it to be. However, if one follows through with the notes, one realises the intention of the legislation. The Attorney General went on to say—

> The Bill itself is a fairly technical document and as most members would regard the subject as a complicated one, I have asked the Parliamentary Counsel who prepared the Bill to furnish explanatory notes on the various clauses. I am making these explanatory notes available to assist members who desire to study the Bill in detail or any particular aspect of it.

That was most essential because without the explanatory notes it would be impossible for any member to make a coherent contribution to the debate.

Further, he said—

> The Government intends to leave the Bill on the notice paper until later this year and, during that period, it is hoped that members will take the opportunity to consider the problems and proposed methods of solving them.

It is quite obvious that not very many members have taken the opportunity of availing themselves of that offer. I believe members should have taken the opportunity to examine this matter because it may concern them at some future date. It will not concern me because, as members probably are well aware, this is my last session in Parliament; however, I have always been interested in just what debarred a member from taking his place in Parliament, and I decided to take an interest in this legislation.

The Attorney General continued—

> This is intended to make it clear that the old "office of profit" doctrine no longer applies and that any question as to whether the holding of an office or place debars a person from membership of Parliament is to be determined solely in accordance with the new provisions of the Constitution Acts Amendment Act.

Then, of course, it sets out very clearly—although not in the consolidated form I would like— the conditions which would debar a member from taking his seat in Parliament, and which would disqualify a member. The Attorney General continued—

> It was felt by the Government that to aid public and parliamentary scrutiny of the Bill the list of bodies in part 3 should be as comprehensive as possible.

A glance at part 3 of the Bill reveals just how comprehensive this list is; it contains no fewer than 188 boards, authorities and goodness knows what else!

The Attorney General continued—

> However, if a case can be made for the deletion of a body from the list the Government will be quite prepared to give consideration to that action during the passage of the legislation, subject to a consideration by Parliament of proper principles.

It really makes the mind boggle to read the list contained in part 3 and to realise that a member is debarred from taking his place on any one of those 188 bodies. My examination of the list reveals that at least one of the organisations named has been disbanded; I refer to the Western Australian Onion Marketing Board.

The Attorney General has an amendment on the notice paper relating to division 3 of the Bill. I wonder why these bodies are not included in part 3 of the schedule, rather than in division 3. The amendment refers to the Western Australian Museum, the Library Board of Western Australia, the Western Australian Alcohol and Drug Authority, and the Cancer Council of Western Australia. I do not understand why those

bodies should be included in division 3, and not in part 3 of the Bill.

The Attorney General made the following statement in his second reading speech—

> The Alcohol and Drug Authority and Cancer Council are not included in the fifth schedule and the reference to qualification for Parliament in the respective Acts is no longer required.

The explanatory notes supplied by the Attorney General state that section 16 specifically permits members of Parliament to be appointed to the Alcohol and Drug Authority. It states that this provision is no longer needed, because the authority is not one of the bodies specified in part 3 of the proposed schedule V.

My understanding is that this will continue to be the case, because members will be debarred from taking their place on the Cancer Council.

The Hon. I. G. Medcalf: Only the officers of it.

The Hon. G. W. BERRY: Members have stated that one of the requirements of a member of Parliament should be the disclosure of personal interests. I disagree with any such suggestion; I believe the private interests of a member to be his own, personal business.

With those few remarks, I support the Bill.

THE HON. I. G. MEDCALF (Metropolitan —Attorney General) [5.07 p.m.]: There is no question but that this is a difficult Bill because it deals with difficult constitutional concepts. The concept of an office of profit under the Crown and the other concepts which are dealt with in the Bill are not easy to follow without a considerable amount of care and study.

However, most members in the course of their membership of this House become aware of these concepts. Indeed, many members necessarily become aware of them because they find they are in danger of offending against the provisions which are now in the Constitution Act. In the 11 or 12 years I have been in this House, many members have come to me from time to time with real problems; they thought they may be offending against the Constitution Act, or that some legislation before the House may cause them to offend. Something which the House itself was in process of passing might have made them offenders. Some were afraid that acceptance of offices back in their electorate about which perhaps they may not have thought too much might have caused them to offend.

This is a very serious matter, the consequences of which are fatal to a member: He loses his seat automatically. At the moment, he does not have any right of appeal such as we are now providing in this Bill; he can find he is expelled from the House by virtue of the fact he has accepted a particular office.

I am sure all members realise and appreciate the difficulty of this situation. Therefore, although these are difficult concepts, their consequences are well understood by all members of this House and the other House.

Yesterday I listened with great care to the comments of the Hon. Robert Hetherington; he carefully considered his remarks. I also listened to the speech made by Mr Claughton; no doubt he also studied the matter carefully. I have had the opportunity of going through the various points of objection raised by Mr Hetherington in order to try to give an answer to the queries he raised in a serious and careful manner, because I believe they deserve the same kind of serious and careful response.

Mr Hetherington might pardon me for saying I felt he found himself in a difficult position. He did not really say anything against the principles of the Bill. He was really speaking about some of the peripheral matters and also the way he felt the Government was going about amending the legislation. However, he did not really appear to object to the principles of what the Government was trying to do in abolishing this ancient concept which has plagued members of this House and many other Houses of Parliament for a long time.

I would be right in saying Mr Hetherington was in favour of some initiative being taken in relation to changing the Constitution; he made it clear that he was not an advocate of leaving in the Constitution matters which he believed were outmoded. Whilst he argued his case very effectively, without actually saying so, he indicated he was not personally against the principles of the legislation. Of course, he did not say so because he faithfully kept to his argument.

Mr Hetherington appreciated that something must be done about the problems of our existing Constitution to clear up the confusion which is created in the minds not only of members, but also of the public. The holding of an office of profit or the mere threat of it is something which could endanger the reputation of a member who is quite innocently affected.

Mr Hetherington also made it quite clear he was aware of the uncertainty which exists, because he quoted the report of the then Law Reform Committee which pointed out some of the confusing problems of a legal nature. This uncertainty plagues the minds of members of Parliament, because they do not know where they

stand. Of course they do not know the meaning of these terms. There have been quite a lot of cases involving these restrictions, and Erskine May has a lot to say on the matter.

However, generally speaking, the average member remains uncertain as to where he stands in relation to Government contracts, in relation to having his property resumed by the Crown, or in relation to selling some land to the Crown. Indeed, he is even in doubt when he enters into an ordinary insurance contract with the State Government Insurance Office.

My own car is insured with the SGIO. I have never given it a thought that that contract might render me to be disqualified from Parliament. What a shocking situation! How much longer can we tolerate this sort of situation? I hasten to add that is not the reason I am bringing in this Bill; I could easily have made other arrangements, and I will take on anyone who disputes that statement.

On the other hand, the then Law Reform Committee report referred to the possible illegality of a contract of insurance with the State Government Insurance Office. Is that a contract with the Crown?

Mr Claughton referred to the Museum Board, of which he was a member for a number of years and from which he indicated quite properly he had gained considerable benefit. He thought it would be a good idea for other members to have the opportunity to serve on bodies such as this.

We have excluded the Museum Board and other educational and cultural organisations so that members can take part in their activities. However, at the moment, I think members would be in grave danger if they were members of the Museum Board because the Act provides that they can receive allowances. If members read the then Law Reform Committee report they will see that the refusal of allowances does not exonerate them. The situation could arise if a member of Parliament were a member of the Museum Board that a common informer could cause him to forfeit his seat in Parliament and pay $400 to the common informer. That is a pretty serious situation to face just as a result of being a member of the Museum Board.

This Bill will rectify this matter. If it becomes law, any member of the House will be able to join the Museum Board; that is, if he is appointed by whoever appoints members. The same will apply to educational institutions generally, as they are outside the schedule. In other words, educational and cultural bodies are outside the schedule, but, generally speaking, most bodies listed are those in regard to which fees are paid as distinct from mere allowances. That is not so in all cases, but, generally speaking, it applies to many of them; for example, the Art Gallery Board members may receive fees whereas fees are not paid to members of the Museum Board. It is felt that members of Parliament should not be on outside boards in regard to which fees are paid.

Likewise this applies to boards which require a great deal of time. A member of Parliament has a job to do not only in this House, but also in the electorate he represents. In spite of what some members would say, most members would agree with me that a member who does his job properly will find the job very demanding and time consuming.

It is not desirable that members be encouraged to join some boards. These boards have been vetted very carefully by all the Ministers and departments involved. Careful consideration has been given to those which it is considered ought not to be, for one reason or another, subject to Government patronage by appointment of members of Parliament.

I have mentioned some of the pitfalls which confront members of Parliament under our existing Constitution and the Hon. Robert Hetherington referred to the unfairness of our Constitution in allowing members of Parliament quite innocently to be caught out in this way. If we fail to rectify this matter; if we fail to change these ancient words in the Constitution when we have the opportunity to do so, we might find we may not have the opportunity again.

The question Mr Hetherington raised was, "How do we go about changing this?" He felt we were being too hurried; he felt we were moving too hastily and that our action was too precipitate properly to consider the consequences of our actions. He put forward a very reasonable argument; his points were well made. I shall deal with them one by one and I am sorry I must disagree with certain points he made. I think it is proper that I should say why I disagree with him.

The Hon. R. Hetherington: Of course, I am not surprised.

The Hon. I. G. MEDCALF: One point he made was that we should not have all this detail in the Constitution; all these positions listed in the schedule; all these offices that are held by different people; or all these names of public officers. I can appreciate the force of this argument; but where on earth else are we to put them? After all, they will appear in an Act of Parliament; the Constitution itself is an Act of Parliament which we can change, as we are asking the House to change it now.

The great virtue in putting this list in front of everyone is that we are putting it in the most important Act of Parliament for members and prospective members to see. They can all look at it and decide whether or not they can accept certain positions. If the position is not mentioned in the list a member can say, "Yes, I can accept it." He will be able to see that the Egg Marketing Board is mentioned and therefore he will realise he cannot be a member of it. The Local Government Boundaries Commission is mentioned and he will be able to see that he cannot accept a position on that commission unless he is prepared to forfeit his seat in Parliament.

It seems desirable to set out these positions in this manner. This is not only the view of the then Law Reform Commission, but also the view put forward by the House of Commons.

The Hon. R. Hetherington: The House of Commons does not have a Constitution Act.

The Hon. I. G. MEDCALF: No, but they are set out in an Act, and so should these offices be set out in some prominent position for members to see.

The Hon. R. Hetherington: I would not necessarily disagree with that, but I think it could be done in another way.

The Hon. I. G. MEDCALF: I cannot think of any more convenient place to do this. Mr Hetherington felt there ought to be some rearrangement of some of the people in the categories listed. These categories have been very carefully considered, although I suppose it is possible to shift someone from part one to part two—it is merely a matter of opinion. We have worked on the basis of the recommendations of the then Law Reform Committee. All these categories have been carefully vetted by all the Ministers and departments. Comments have been made and we have acted in accordance with advice received. So it is not just one man's effort; it is a very solid effort right through the Public Service and the Ministry.

It was suggested that members of Parliament could sit on some committees with advantage. Perhaps they could, but I do not know which committees. It is open to all members—as was said in the second reading speech—to suggest which bodies they believe members of Parliament could sit on. We have left out the educational and cultural bodies with the exception of one or two where fees are paid, but by and large these have all been examined with that object in view. Is it right that a member of Parliament should sit on the Potato Board? The consensus we have received to date would indicate the answer is, "No". It has been suggested that it would not be right for a member of Parliament to be on the Local Boundaries Commission. I suppose it is pretty obvious why not.

Looking through the list it may be that members might have a different view with respect to some bodies, but they have been carefully examined. We have left out quite a few bodies which could have been included. For example, the Alcohol and Drug Authority was mentioned by the Hon. G. W. Berry and that is not on the list.

The Hon. John Williams was a member of that authority and in fact the governing Act specifically provided that a member of Parliament could be a member of that authority. Had it not provided that, the Hon. John Williams would not have been able to accept a position on it, or he would have forfeited his seat in Parliament. This applies to other bodies. The Cancer Council legislation contained a special provision which enabled members of Parliament to be members of that council. This body has been excluded from the list, making it possible for a member of Parliament to be a member of it.

No doubt there are differences of opinion on these matters. It is only to be expected that there would be differences of opinion. If every member thought alike on this subject I would be most surprised. On the other hand, there has been a very honest and careful assessment made of all the bodies mentioned in the schedule. If members believe there should be a change made to the list they should say so. Any alteration suggested would be examined.

It was suggested by Mr Hetherington that there should be further consideration of this matter by a Select Committee for a period of up to 12 months. I confess that I have thought about this matter, because it was mentioned in the report of the then Law Reform Committee. However, when that committee reported to Mr Bertram in 1971, it was facing a rather different situation compared with that which we face today in the sense that eight years have passed and no comment has been made on this matter. If Mr Bertram has said anything, I have not heard about it; nor have I seen any comment made by anyone with any special interest or concern in this matter. In other words, this report has been published for a long time without any comment having been made by any member of Parliament and without any attempt having been made to do anything about it.

The Law Reform Commission has been asking me each year since I have been Attorney

General—a period approaching four years—what I am going to do about the report. It asks me about all its reports at the beginning of each year when we have a meeting during which we go through a list of the reports it has made and the action taken.

This is one of those reports on which no action has been taken to date. The Government has been trying to implement the commission's reports. We have implemented successfully quite a few as members would be aware. Members have heard me speaking on some of the commission's reports until they have probably been bored stiff, because some of them are on quite dry subjects. The Government has attempted to implement the good reports; there are some which are better than others and I believe this is one of the better reports.

The report was based on the work of two Select Committees of the House of Commons. The commission's recommendations are in line with the legislation passed 22 years ago in the House of Commons. Our Constitution Act incorporates the concepts which were in force in the United Kingdom up to 1957, when the British Government changed them. It does not seem to me that we have anything to gain by leaving this matter for another 12 months. Indeed, one could well ask the question, "What would come out of that Select Committee?" Is it not a dangerous suggestion that we have a Select Committee to consider this matter all over again, because we have had examples before of committees which cannot or do not agree?

We had a joint Government and Opposition committee some years ago which was set up by Mr John Tonkin to discuss the matters of the pecuniary interests of members of Parliament and the "office of profit" concept. I was a member of that committee which held two or three meetings and I feel it is regrettable that there was a walk-out following disagreement on the first question. The committee never got around to discussing the second matter of "office of profit". I felt the subject should have been discussed by the committee.

However, I am afraid the same thing could happen all over again, much as I regret to say so. I do not know what a committee could achieve. It might end up agreeing with the Government's action—personally I cannot see how it could not. It would come back to the same conclusion that these concepts are good, because they have been tested in the United Kingdom.

If the committee came to the conclusion that the concepts were good, what would it do? It might recommend a few slight variations, but we would end up with the same thing. Admittedly, one Government can be influenced in a slightly different way from another Government, whether or not they be of the same parties; but the matter would end up the same way if the committee was successful.

However, I am afraid it might be unsuccessful. Then where are we? We are back with the situation we had previously when we had a common informer provision in our Constitution; wherein a common informer could bring proceedings against a member of Parliament and claim a penalty from it. This could result in the member of Parliament's disqualification without any right of appeal. However, we are providing a kind of right of appeal. We are giving Parliament a right to have a final say or consultation should a member be disqualified in some unacceptable manner.

So, I suggest that we proceed with this now. The matter has been before us for quite a few months—it came before the House last April or May.

The Hon. R. F. Claughton: It was the 17th May.

The Hon. I. G. MEDCALF: It has been before the House for over four months and I had hoped that we could resume our discussion as soon as the session resumed. Unfortunately it did not appear that members were ready to proceed and I do not think that very much more work would be done. It might even be left for another five years and we would be in a worse situation than the one we are in now. If one gets a reforming breeze one might as well set one's sail and go with it because one may not get such an opportunity again. Politics are not like that; the unexpected happens all the time; and to say as Mr Hetherington has—and I add I say this with respect to him—that he hopes no member will offend before this comes before the House again is indeed a pious wish. Who knows what is around the corner?

I am not saying that the honourable member will do anything which is unacceptable, I am asking: who knows that there will not be changes; and who knows that the situation will again be favourable with regard to an amendment of this quality? I must say that the amendment has been very carefully vetted by Parliamentary Counsel. It has also been submitted to independent counsel outside the Crown Law Department for his views and suggestions with regard to the amendments of a technical or legal nature. We have a good Bill here.

The honourable member did suggest that an unscrupulous Government in the future might hand out contracts to members. I believe that was the purpose of his comment. I suppose this is possible, but the public would not stand for this type of thing in our community. I know we may not always have this type of community. But in an evil community one could have all the legislation in the world without its making any difference. Legislation can be swept away by people who are not prepared to abide by the consitutional democratic process. Publicly, this is not on; politically, it is not on; in the type of community we have. The ultimate sanctions of what we do in this Parliament are political, not constitutional. The Government is attempting to improve the position generally and this is an opportunity which should be taken. The opportunity has been eight years in coming and the circumstances may not be favourable again for another 10 years.

Then there is the question that there should be a register of members' interests. The Hon. George Berry has expressed his views on this matter and he does not favour such a register. Some members do and some do not. That is another matter which should be dealt with separately. If that issue were introduced it would make quite a difference and complicate this issue. This is one piece of the jigsaw and if we try to bring too much into the one exercise, the exercise can be fouled up. The question of members' interests is a matter which has been before various Parliaments in Australia for quite some time. The Government has indicated it is prepared to look at this; but hopefully it will be dealt with on an Australia-wide basis. It should not be brought in to foul up this exercise.

The honourable member stated that if we have a register of interests it will tend to stop the hand-out of Government favours. I do not see how that could stop it at all. For example, if it appeared on the register that I had an interest in David Jones, this would not stop the Government giving me a hand-out. If the Government wishes to give me a contract, the fact that I am a shareholder in David Jones would not make any difference. It is a matter of opinion whether that would have any effect on hand-outs. Government hand-outs are something which will be dealt with politically. They must be dealt with politically.

The honourable member also stated that there should be less secrecy in government. Well, we would all like that, but it will not really affect the position of the register of interests. Of course this would mean that a member must act very carefully because everyone would be aware of what he was doing.

The question of a register of interests is an entirely separate one. If it were brought into the exercise now we would never get to the bottom of this particular argument. It should be dealt with entirely separately at another time or in another place; but not necessarily in connection with this Bill. This constitutional amendment to the Bill does not have anything to do with the register of interests and if it were brought in now it would only foul up our consideration of this issue.

I think I have dealt sufficiently with the question of the law reform and the reference by the then Law Reform Committee to a Select Committee. There were two Select Committees of the House of Commons; and the report of the Law Reform Committee—now the Law Reform Commission—has been public since it was first published eight years ago and there has been no problem raised of any noticeable kind. The United Kingdom Parliament has been functioning successfully under this system for over 22 years. It had a system identical to ours prior to the change. Therefore I do not believe anything could be achieved by a Select Committee except to possibly cause another stalemate. I therefore commend the Bill to members.

Question put.

The PRESIDENT: This Bill requires the concurrence of an absolute majority in accordance with Standing Order No. 311.

Division taken with the following result—

Ayes 19

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

Noes 8

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

The PRESIDENT: The motion is carried with the concurrence of an absolute majority and the Bill will be now read a second time.

Question thus passed.

Bill read a second time.

GOVERNMENT EMPLOYEES (PROMOTIONS APPEAL BOARD) ACT AMENDMENT BILL

Second Reading

Debate resumed from the 13th September.

THE HON. D. W. COOLEY (North-East Metropolitan) [5.42 p.m.]: A Bill to establish a promotions appeal Act was first sponsored in 1944. It was introduced by the Labor Government in the Legislative Assembly by the then Minister for Works (the Hon. A. R. G. Hawke). In the latter part of 1944 the Bill was rejected by the upper House and it was again introduced in another place in 1945. In that year it received the approbation of the upper House and became law. When reading briefly through the Ministers' second reading speeches of those two years I found it was clearly spelt out that this was a measure designed to assist employees in Government service. According to the Minister, until that time there had been considerable complaints emanating from the Public Service with regard to favouritism with respect to the employment of certain officers in the Public Service.

It was decided, therefore, that a Bill should be enacted in order to allow Government officers, under certain circumstances, to appeal to an authority against the decisions of a recommending authority. Therefore, in that sense I think it ill-becomes the Government of this House in 1979 when dealing with an employees' Act to have had so little consultation with the people who will be affected by amendments to such an Act.

According to my information, the Under Secretary of the Department of Labour and Industry sent out to all the relevant organisations a communication dated the 13th September, 1978, enclosing 22 proposed amendments to the Government Employees (Promotions Appeal Board) Act. The under secretary apologised to the organisations for the short notice he was giving them of the proposals and the limited time available to them to forward their comments to the department. The unions were requested to reply before the 30th September, 1978. That was all the notice the unions were given—a bald letter indicating what the Government intended to do and asking the unions to reply. It is now the 18th September, 1979, and the Bill still has not been passed. From my reading of the 22 proposals sent out by the Department of Labour and Industry on the 13th September, 1978, it appears they have been incorporated in the Bill we have before us this evening.

The Government has demonstrated rather poor industrial relations in the way it has conducted consultations of this nature with responsible organisations. I do not know whether the Government believes that is consultation, but it is not what I regard as consultation. In my opinion, the proper method of consultation would have been to send out the letter, invite comments on the proposals, and arrange discussion in the event of an adverse response. But that was not done. The unions and associations were simply advised of what the Government intended to do, and the Government said, "That is how the Act will be amended."

The failure to have proper consultation is one ground on which we believe the Bill should be opposed. However, I will point to two provisions which cut across the very principle of promotions appeal. The most contentious one from the point of view of the unions and the associations is the discarding of the grounds of appeal of equal efficiency and seniority.

I do not know whether members are aware of the procedures which are followed in the Public Service in respect of promotion. I believe the fallacy is abroad that if one is a public servant all one has to do is sit in one's chair and grow old, and in time one obtains promotion.

At no time in my experience with appointments in the Public Service has seniority been the prime consideration. Efficiency has been the determining factor in respect of promotion ever since this Act was proclaimed. The only time seniority is taken into consideration, either by the promoting authority or by the appeal board, is when efficiency is equal. In these circumstances, seniority has been regarded in the past as what may be termed the tie breaker. If two people have equal efficiency, the tie breaker is seniority. As I understand it, seniority does not relate to the number of years of service in a particular job; it relates to years of service in a particular grade.

I would like to read to members a response to the letter from the Under Secretary of the Department of Labour and Industry from the Civil Service Association, over the signature of the assistant secretary, which points out very clearly the position in respect of efficency. In regard to seniority, he said—

> The Association believes that this move, analogous but not entirely consistent with one already taken in relation to the public service, is unnecessary and undesirable. Unnecessary because the first ground for selection is at present "superior efficiency" and that overrides all consideration of

seniority. Those who wish to represent the matter otherwise are either incapable of understanding plain language or mischief makers who are intent on portraying the public service and its associated bodies as inefficient.

The proposal is undesirable because seniority is a reasonable and equitable tie breaker when two persons are judged equally efficient. The proposal will force the Board into giving relative weight to factors which otherwise may have been deemed equal. The Association believes seniority should remain as a useful means of separating candidates of equal efficiency on an aggregate basis. If a study is made of the decision thus far, it will be seen that it is a factor which is used infrequently but when it has been used it must be assumed that it was with good reason. In all those decisions where a decision has been made on the grounds of equal efficiency, the Board will now be required to search for superior efficiency.

A situation existed in the past, when an appellant who could prove equal efficiency and seniority was appointed to the position. As one who has had considerable experience in industrial matters, I believe seniority as a means of determining promotion is one of the most important aspects of good industrial relations.

In private industry we find that where the determining factor when all other things are equal is seniority—or years of employment in the industry—superior industrial relations prevail. If the factor of seniority is removed, it will leave the way open for favourites or pets to be promoted or given preferment and will encourage such people as pimps who will perform favours in order to keep their jobs or obtain promotion. To remove from the Act a provision which has existed since 1945 and has stood the test very well, in relation to the Promotions Appeal Board and the recommending authority, is to take away from employees something which they value highly. I do not think it should be snatched away from them simply by sending to the respective unions and associations a letter stating that was to be done.

That is not the only situation which is causing some concern among employees and officers of the Public Service. In his second reading speech the Minister said—

> Acting experience in a vacant position prior to its occurring will be recognised and will be admissible in evidence in an appeal.

In a general sense, acting experience has never before been considered to be admissible in evidence in an appeal. The promoting authority, as it is to be called, will now have an opportunity to place a person in an acting situation in a position which is to become vacant, giving that person experience in the job and making him almost unassailable in regard to appeal. If another person has that prior experience it will be virtually impossible for an appellant to prove superior efficiency, as will be necessary with the passing of this Bill.

The present situation is that an appellant must prove equal efficiency and seniority. In future, people with senior service will be prevented from appealing if the promoting authority has already given acting experience to the person it wants to appoint to the permanent position. Again, that is not fair.

Of course, the Bill will not be changed whatever Mr McKenzie and I say, but we must point out in this place the unfairness of the proposed amendments. These objections have been echoed in a number of letters sent to the Department of Labour and Industry protesting about the Government's proposals in respect of this Bill. I think it would be fair to say all the 22 amendments of which the unions were advised on the 13th September, 1978, are incorporated in the Bill, despite the letters of protest which were sent in the intervening period, particularly in relation to seniority and acting time.

What the Government is now doing will destroy the whole purpose of the Act which has existed since 1945. It will take away many of the advantages which have been conferred upon employees in that time as a consequence of a large number of complaints about promotion which had been received from public servants. Probably the clock will be turned back in that respect and we will find these provisions creating further disturbance and unhappiness in the Public Service and breaking down the highly valued object of harmonious industrial relations.

Sitting suspended from 6.00 to 7.30 p.m.

The Hon. D. W. COOLEY: Mr McKenzie dealt in great detail with the Bill. He is well qualified to do that because he has had much experience of Government employment.

I wish to raise a matter which was touched on by Mr McKenzie. It is the question of what might be termed the Government's policy of preference to non-unionists. An examination of clause 6 of the Bill, which is amending section 5 of the Act, reveals that it provides that a person who holds a certificate of exemption may appeal against a

recommended appointment, but it precludes union members from so appealing.

"Relevant union" is well defined in the Act. If a person is not a member of a "relevant union"—that is, the union to which the recommended person belongs—an appeal does not lie. If a railway officer, for argument's sake, were appointed to a position that would preclude members of the Railway Officers Union from appealing against that appointment because they were not members of the relevant union. Proposed section 5(1)(b) will provide—

> (b) where in respect of the vacancy or new office there is a relevant union, an employee applicant has the right of appeal under this section—
>
> (i) if he was, at the time he made his application for promotion to the vacancy or new office, a member of the relevant union;—

That qualifies members of the Railway Officers Union, in the case I am quoting. The provision will continue—

> (ii) if he was not, at that time, a member of the relevant union but is employed in the department in which the vacancy or new office occurs and all the other applicants for promotion to the vacancy or new office were not, at that time, members of the relevant union; or—

In the case I am quoting, Mr McKenzie's members would not be members of the relevant union. There is a right of appeal as follows—

> (iii) if, at that time, he was not a member of the relevant union but held a certificate of exemption issued under the provisions of section 61B of the Industrial Arbitration Act, 1912 or section 144A of the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth or any Act in substitution for that Act, as amended from time to time—

Under this provision a person who is not a member of the union and holds a certificate could appeal. Other members of the union would not be able to appeal. That seems to be grossly unfair. If there were a provision, then if a person held a certificate of exemption from that particular relevant union, it would clarify the position; but it does not say that. It says he only has to hold an exemption certificate, and he has the right to appeal whereas the people who may be members of the union do not have the right to appeal.

That does not seem to be in accordance with the principles laid down when exemptions from union membership were introduced. I think that was only to cover some conscientious believers if they did not want to belong to a union, or they did not want to pay their subscriptions and have the benefit of what the unions provided for them. I do not think we ought to be giving preference for non-union members because, after all, the Act was designed in the beginning to give some protection to members of unions.

That part of the Bill should be given further consideration. In all fairness there should be an amendment to that clause.

There are two other matters which cause me concern. In this modern age we have a sophisticated tape recording service for industrial proceedings. A transcript of all these hearings should be provided. If the transcripts were made, there would be fewer appeals. If a person could refer to the transcripts in other cases, it might deter him from appealing when he sees the reasons and the arguments put forward by the respective advocates and the people who are defending.

Finally, I believe that the persons sitting on the board, and particularly the chairman, should be called upon to give reasons for their decisions. I have appeared before appeal tribunals when the case has continued all day and sometimes into the next day. Eventually the adjudicators leave the room. They may make a decision while the parties are still in the court, or they may make a decision on another day. However, when they return to the court they simply say, "The appeal is upheld", or "The appeal is dismissed", and that is the end of it.

The appellants and, in fact, the recommended applicants if appeals are upheld should be entitled to reasons for the decisions.

They are some of the reasons we oppose the Bill in its present form. It takes away a condition which has stood the test of time since 1945, and has led to a fair amount of harmony in the Civil Service.

I point out to members that such appeals are very hard to win. When I was in union circles I made a survey of Civil Service Association appeals. If one appeal in 10 was upheld, they were doing very well indeed.

The decisions of the authorities are considered very carefully by the boards hearing these appeals. I do not think we have much hope of changing what is contained in the Bill because,

firstly, we have not the numbers to win; and, secondly, the Government is not disposed traditionally to listen to what we have to say. We have a duty to say these things if we believe a situation is wrong; but I am not asking the Government to change, because it will not do so.

In fairness to the people who are in Government employment, another look should be taken at the provisions of this Bill, particularly with respect to seniority. Seniority should be the determining factor.

I could say a lot more in respect of a number of matters contained in the Bill, but Mr McKenzie covered them very well when he was leading the debate. I am sure that we will have further discussion on his attitude when we reach the Committee stage.

We must oppose the Bill in its present form.

THE HON. G. C. MacKINNON (South-West—Leader of the House) [7.40 p.m.]: I thank the two members who have contributed to this debate. I will deal with Mr Cooley's comments later, but as he is very concerned about seniority, I would remind him that in his second reading speech the Attorney General said—

> A second ground of appeal now applicable, "Equal efficiency and seniority", is to be discarded, although it is within the prerogative of the promoting authority to consider seniority in the process of establishing superior efficiency.

The idea of seniority is not entirely discarded, as the honourable member has reiterated; but it is given a more rightful place. We went through a stage in our society when most people in the community thought that seniority was everything—quite wrongly, as it happened. It had to be spelt out that it was not everything. It has been given its rightful place. The Attorney General made that point in the second reading speech, and it has been made previously in debate.

In passing, I would mention the argument about whether reasons should be given for the dismissal of an appeal. That argument has been raised every year or two in this House. However, it has been proved satisfactorily in my opinion, and in the opinion of the majority of members, that it would be quite cruel to have to give reasons. By giving reasons one could damn absolutely an unsuccessful applicant forever. On balance, we are better off under the system which, as the member has pointed out, has applied since 1945. Reasons have never been given. No Government has seen fit to suggest that reasons ought to be given. Apparently that is a personal theory of Mr Cooley's, because Mr Hawke did not include it in the Bill which he introduced in 1945, and no other Labor Minister in charge of the Act has included such a provision, or tried to include such a provision.

The member for East Metropolitan Province (Mr McKenzie), made a very thorough examination of the Bill. He asked many questions, to which he requested answers; so I will do my best to provide them.

Amendments to this legislation were requested some time ago by various concerns including the Civil Service Association, the board chairman for administrative purposes, and various departments which had occasion to use the facilities of the tribunal. Some criticism had been made by legal officers that the drafting techniques used in the Act were not appropriate for a clear interpretation of some sections of the Act. As the Act had not been reviewed totally since it was originally passed in 1945, there were benefits to be gained by a review. Indeed, I would hazard a guess that if members were told an Act had not been touched for that length of time, they would suggest it ought to be looked at.

The Hon. F. E. McKenzie: How many challenges have there been to these sections of the Act that have not been considered before?

The Hon. G. C. MacKINNON: It was for this reason that the senior industrial officers in various departments and instrumentalities, as an advisory committee, were allocated the task of making final recommendations to the Minister controlling the Act. The resulting Bill improves many areas, making for easier administration and clarity to the individual concerned in promotional appeals. It will still give a person the right he had previously to appeal in person before a tribunal. Some systems in other States, which were studied by the advisory committee, have taken away this privilege. In those places, appeals can be dealt with only on written submission, without the opportunity to appear in person.

The opportunity for an appeal in person will also prevail with a board appointed on the same lines as before.

A substantial change which has occurred, and which does not seem to me to be agreed to by Mr McKenzie, is the deletion of seniority as one of the grounds of appeal. It did not meet with the approval of Mr Cooley, either. The arguments put forward by the Opposition lead one to believe that it does not want a Government system to operate with efficient servants.

Great play has been made of equal efficiency and, in that case, the use of seniority.

The Hon. F. E. McKenzie: What has been wrong with it up to the present time?

The Hon. G. C. MacKINNON: All persons from employing departments and Government instrumentalities who appeared at the committee meetings were firmly of the opinion that it was practicable to determine in all cases and at all levels of work, the most efficient person amongst applicants to perform a job to the standard desired.

There is sufficient criteria to assist in the assessment, such as experience, energy, initiative, ability to communicate, attitude, control, willingness, and so on. It is my firm belief that that is the way it has always been and seniority was used only in very occasional cases; but the general public did not believe that. There was the belief that seniority was everything.

Although criticism was made of the time limitation of the 30th September, 1978 on the submissions to be made to the Department of Labour and Industry from unions in relation to proposed alterations, it can be said that this was somewhat flexible and some submissions were received well into October and were still taken into consideration.

The Hon. F. E. McKenzie: How come there were no changes?

The Hon. G. C. MacKINNON: The submissions were not good enough. I always remember the case where Mr Beazley wrote to me and said, "In accord with the requirement of the Act I am taking you now into consultation with regard to the appointment of a member to this board and the man who will be appointed is ...". He then stated the name of the man. That was a rather rough type of consultation. However, in this case all the submissions were examined carefully and they were found to be unacceptable. It is as simple as that. Mr McKenzie does not give his children everything they want.

The Hon. F. E. McKenzie: I try to be reasonable.

The Hon. G. C. MacKINNON: Of course Mr McKenzie is reasonable, as was the department in this case. The comment made by Mr McKenzie that the amendments are a recipe for industrial disputation must have been uttered with tongue in cheek. This Bill will give a worker, when aggrieved, the same rights to appeal against a promotion he had before, but will place upon him the obligation to prove superior efficiency.

Surely the basis of an efficient and successful organisation is to have the most able workers within the organisation promoted to the more responsible positions.

I should like to refer to some more points which were raised by Mr McKenzie. A great deal was said about the definition of a "relevant union". A relevant union is one which is party to the award which covers the vacancy. Of course, there may be several unions which are party to the award; therefore, all are relevant unions. Members of those unions possess an unconditional right of appeal—such as members of the Railway Officers Union—for a vacancy covered by the State railway officers' award.

Proposed new paragraph (b) of section 5(1)—in clause 6—states that other applicants have a right of appeal, even if not a member of a relevant union, but if employed in Westrail, and all other applicants at the time of the vacancy were not members of the relevant union.

The position under the Bill has not changed in that respect from the situation which exists under the Act. However, promotion of a wages man to a salaried position is still practicable.

The Hon. D. W. Cooley: The main thing is the appeal is not there.

The Hon. G. C. MacKINNON: All the positions are appealable.

The Hon. O. N. B. Oliver: It is all based on performance.

The Hon. D. W. Cooley: If he is not a member of a relevant union he cannot appeal.

The Hon. G. C. MacKINNON: It is stated in proposed new paragraph (b) of section 5(1) that other applicants have a right of appeal even if not members of a relevant union, but if employed in Westrail and all the other applicants were not members of the relevant union at the time of the vacancy. I do not know what one has to do to make the Hon. Don Cooley happy.

The Hon. D. W. Cooley: You never will.

The Hon. G. C. MacKINNON: No-one in this place is more one-eyed with regard to unions than the Hon. Don Cooley. Even on this occasion when we were having a friendly discussion, he used terms such as "pimp", "informer", and other similar expressions in relation to the right of appeal.

I am not sure of the situation in the case of three members of a board. It seems to me to be totally inconceivable that that would happen. However, here we give a preference to unionists which I would expect members of the Liberal Party and National Country Party to be objecting to vociferously—

The Hon. R. T. Leeson: But they are told not to.

The Hon. G. C. MacKINNON: —but it is not those members who are objecting; it is Mr Cooley, a one-time President of the Trades and Labor Council. He is objecting to a clause which gives preference to a member of a union!

The Hon. D. W. Cooley: It gives preference to non-unionists. If you look at clause 5 you will see that.

The Hon. A. A. Lewis: It gives equal rights.

The Hon. G. C. MacKINNON: Even the unions accept that, if a man has a bona fide exemption, he is, before the law, exactly equal with a unionist. Even union people believe in that. Surely the Hon. Don Cooley is not so rabid as to fail to accept that.

Mr McKenzie stated that if an applicant was a member of the Australian Railways Union and all other applicants came from the Railway Officers Union, for a vacancy covered by the latter officers' award, the ARU person would not have a right of appeal. That is the case as it currently stands, and it is the situation under the Bill.

The Hon. F. E. McKenzie: That is not how it will operate.

The Hon. G. C. MacKINNON: That is how it stands under the Bill. Because there are many exemption holders under the Industrial Arbitration Act, provision has been made to put these persons in a category similar to the others. The exemption certificate states specifically the name of the union from which the person is exempt. Where it was a relevant union, the person falls within proposed paragraph (b)(i) and otherwise within proposed paragraph (b)(ii) of section 5(1).

It was stated also by Mr McKenzie that Westrail has separate and district branches; that is, mechanical, civil engineering, and traffic. These are treated as such under the Act, because the definition of "department" in section 3 of the Act allows it to be so. This will not change and each will continue to be regarded as a separate department. The basis of promotion as shown in this clause in the Bill is that it should be promotion to both the person placed in the vacancy and the appellant. As long as this is the case, appeal rights remain. I trust that makes that particular clause clear to the honourable member.

It is a fact that the amending Bill will give the relevant union, being a party to the award which covers a vacancy, the right to appoint the employee representative to the board. This is a more equitable arrangement as the representative is to be appointed from the union which has industrial coverage of the vacancy. It is with that union that the person can become a member.

The current provisions have been criticised by legal officers and the change has merit. It provides more for justice being seen to be done. Where the recommended applicant and appellant are members of different unions, discrimination may appear to be inevitable. Also it could be that either applicant, both applicants, or neither applicant could be a member of the relevant union.

The Railway Officers Union claimed the employees' representative is the appellant's representative and the change would give the appointee two representatives on the board. However, this is considered to be a somewhat one-sided version and is not seen in the same perspective by others. Therefore, it has been disregarded.

Clause 12 deletes section 11 of the Act which deals with remuneration of board members. However, it is substituted with a section to allow Public Service procedure to be followed in respect of payment of members of statutory boards. Currently the Act requires the regulations to prescribe the rates, but this is unnecessary as a Government committee reviews fees from time to time and, when approved at Government level, these are implemented through the Public Service Board. The amendment will provide for these fees to operate at the Minister's direction.

When Mr McKenzie was talking about this I almost interjected. But I should like to point out that they are all dealt with on the one basis now and the situation is much better. We will not have different boards with different fees.

I am dealing in a detailed fashion with the matters raised, because the member asked questions on all these matters and wished them to be answered during the second reading debate. I am doing as he requested.

It is intended that regulation 43 will be altered and will include provision to remunerate union officials and part-time secretaries, under circumstances described by Mr McKenzie, for their services as representatives on the board. This will be done by allowing the board chairman discretion to authorise payment where a penalty would otherwise occur.

The Hon. F. E. McKenzie: That is an improvement.

The Hon. G. C. MacKINNON: Whenever we amend a Bill, the situation is improved considerably. I am glad the member realises that.

It is not intended that unions should profit from the hearing of appeals by the Promotions Appeal Board.

I should like to turn now to clause 15. The need for the amendment in this clause emanated from the chairman of the board, because of difficulty and disputation experienced in determining the position under section 14(1) of the Act. Regulation 9(2) makes provision already for persons inconvenienced in remote areas or temporarily absent from the usual place of employment. I believe Mr McKenzie will remember raising this particular matter.

"Delivery" also takes in delivery by hand or by post or other means and is the date it is actually received at the board office. It is only in this way that disputation can be averted and will make the closing date for appeals more definite.

Proof of despatch in most cases is hard to produce and even more difficult to determine. It is a sore point, and that is accepted. It is appreciated that some oddity may occur, but the change in deleting the word "despatched" will erase much confusion which has existed.

The Hon. F. E. McKenzie: It is not to the benefit of the appellant.

The Hon. G. C. MacKINNON: Of course it is to the benefit of the appellant.

The Hon. F. E. McKenzie: If it is never delivered, then how does he establish the right to be heard? If it is never delivered, how does he establish that right in the future?

The Hon. G. C. MacKINNON: As we say, proof of despatch, in most cases, is hard to produce and even more difficult to determine. It is a sore point. That is accepted. If he went to the trouble of proving despatch, he would be covered. He could go to a justice of the peace and get him to write a note about it. In that case he would be covered, but it is a sore point.

The Hon. F. E. McKenzie: How will that be provided for in the regulations?

The Hon. G. C. MacKINNON: There is no way we can overcome totally the situation.

The Hon. F. E. McKenzie: If it is going to be provided for in the regulations, that is fair enough; but it is not provided for currently and these things tend to be applied in accordance with the law.

The Hon. G. C. MacKINNON: Delivery is to be made to the board. At least that is an improvement.

I should like to refer to section 14(4) (a) of the Act under which acting service in the office to be filled can be recognised only when the vacancy is one covered by an award or industrial agreement to which the Civil Service Association is a party. However, the amending Bill will extend this to all areas of coverage by award or industrial agreement.

The desire to delete consideration of acting service in a vacancy prior to its occurring is not justified fully. Acting duty can reveal two sides to a worker; that is, the ability to perform or not to perform to a higher capacity.

It is not unusual to find that acting experience has shown a worker to be unsuited to perform more responsible duties to the required standard and consequently unsuited for promotion to a vacancy when it arises. Its deletion could mean that there are periods of employment which are inadmissible in evidence.

Departmentally also it may be inconvenient, both economically and otherwise, to arrange short-term transfers on acting service between country towns unless particular circumstances required it.

The Hon. F. E. McKenzie: Now you are going to cause industrial disputation.

The Hon. G. C. MacKINNON: I do not know why Mr McKenzie threatens industrial disputation at every drop of the hat.

This provision is made in very realistic terms which I have stated in what seems to me to be a very explicit proposition. Members opposite should not disregard it because it could work both ways. A man could be unsuitable for a job, but the member opposite claims that should not be taken into account.

The Hon. F. E. McKenzie: He cannot appeal now. People who are in line for the job because of seniority will not have an opportunity.

The Hon. G. C. MacKINNON: Let us take the personal case about which we all know. Laurie Goonan has been the Acting General Manager of the Metropolitan Water Board for a period of two years. If he was an applicant for a job, is the member opposite claiming we should not be able to take into consideration the two years he has worked as acting general manager?

The Hon. F. E. McKenzie: He was probably the man in line for the job.

The Hon. G. C. MacKINNON: He was not an applicant, and in the main he would normally not take the job. However, if he had applied when Mr Glover was appointed, the member opposite is saying he should not have been allowed to mention the two year's work he had done in an acting capacity. That is an absurd proposition.

The member opposite raised a matter with regard to section 15 of the Act. Although section 15 is deleted it is a machinery provision which will be taken into the amending regulations. In

doing so it is intended that the amended regulation will require the secretary of the board to give 14 days' notice of the date the appeal is to be heard to all parties with the chairman having discretion to shorten the time. In some circumstances and with the agreement of all parties, it is preferable to bring a case on for hearing earlier than 14 days and the regulation will allow this to happen. It is a more flexible and practicable working arrangement to benefit all parties and particularly appellants, where they so desire it.

With regard to age restrictions, it is not practice to insert unnecessary provisions into legislation as one realises that Statutes can be sufficiently voluminous with only relevant material. Age is a sensitive and discriminatory area and its omission means it has no legislative impact if used in promotional areas. The Government also discourages its use as a restriction in advertisements or setting of qualifications for occupations or employment unless particular circumstances demanded it. There was a second recommendation for filling a vacancy from the original list of applicants. It will be recalled that these are the applicants whom Mr McKenzie mentioned with regard to the railway officers.

It is believed that a promoting authority should be allowed flexibility in respect of this matter and not be bound by the Act. It is a normal occurrence, when a person promoted relinquishes or withdraws from the promotion, for the promoting authority to review the promotion from the original list of applicants. However, it may be that a lengthy period elapses between the first advertisement and the need for a review appointment and in this case the promoting authority should be allowed the opportunity to re-advertise if applicants in the original list do not measure up to the desired standard. Consequently, it is not intended to make provision for this in the Act. Once again the purpose is to seek efficiency in selection.

A third recommendation was with regard to make-up pay entitlements for work-caused injury to relate to seniority. As seniority will not be a substantive ground for appeal, the point raised loses its significance. If as a result of work-caused injury an employee is placed in a lower grade position it would not prevent that employee from gaining promotion to a higher grade position where the injury did not affect his efficiency.

The whole thrust of the amending legislation is efficiency. If an employee is efficient any incapacity he may suffer, whether work caused or not, would not prevent his promotion.

A fourth recommendation referred to the paucity of magistrates to hear appeals. In May, 1975, the Act was amended by Act No. 26 of 1975 so that section 6(2a) provided for the appointment of stipendiary magistrates as assistant chairmen of the board. This enabled several magistrates to be appointed and used instead of only one as permitted in the Act before then. It has been possible to keep appeal hearings generally within a reasonable time span.

A fifth recommendation was that there should be a transcript of proceedings at all hearings. This recommendation was put forward by Mr Cooley. This would be a time-consuming procedure and costly to operate. Its benefits do not warrant such expenditure. The circumstances in each appeal are different and the evidence on many aspects of the appeal could not be used as a precedent. In cases where a vital principle or a point of law is to be determined, the chairman has arranged to transcript the case. This is considered to be sufficient for the purpose. In other words, a transcript was made of the sections which are relevant.

The sixth recommendation was that the chairman, or assistant chairman, should give written reasons for decisions. Again, this matter was raised by Mr Cooley. Written reasons for decisions have been given over the years in a somewhat abbreviated form, but more recently the chairman has elaborated on these to some extent. However, it is not possible to develop a body of precedent in this way for use by a promoting authority or appellant in future cases. The circumstances surrounding each appeal and the individual employees concerned are different and the use of past cases is not going to be helpful in this regard. Because of this no requirement is to be inserted in the Act to cause the chairman to be more descriptive in the written decision. At present he has the flexibility to write a decision which is considered to be appropriate to the result.

The seventh recommendation was that the industrial unions should have representation on the examining committee. It was unnecessary for the unions to be represented on this committee. Those unions mainly concerned in the promotion appeal system were given the chance to make submissions for amendments to which some of them responded. Many of the points included had been aired on previous occasions and union officials in most cases had the opportunity to discuss such points with officers from employing departments who comprised the advisory committee. The issues of concern were well known to committee members and were carefully

discussed in arriving at a decision to recommend their inclusion or not. The benefits to be derived by employees from changes now in the Bill were of prime importance and received just as careful consideration as those to benefit employers. The Bill represents a fair compromise and will still provide adequate appeal means where an employee has something substantive to put to the tribunal.

In dealing with the questions raised by the honourable member I had to rely on an uncorrected copy of the *Hansard* report. However, I hope I have dealt with the main issues raised, and that I have satisfied him. I believe I also have dealt with the questions raised by the Hon. Don Cooley because, in the main, he repeated the more salient points which were raised by Mr McKenzie, apart from one or two matters which he mentions on all such occasions.

I thank members for their interest in the Bill. If there are some matters I have not answered, I am sure members will raise them during the Committee stage. I commend the second reading.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (the Hon. T. Knight) in the Chair; the Hon. G. C. MacKinnon (Leader of the House) in charge of the Bill.

Clauses 1 to 5 put and passed.

Clause 6: Section 5 amended—

The Hon. F. E. McKENZIE: The Minister said there had been no change in respect of the provision applying to appellants from the Australian Railways Union when a vacancy is advertised, and when it is a classification covered by the Railway Officers Union. They are two distinct unions with two distinct awards. The Railway Officers Union applies to those people in salaried positions whereas the Australian Railways Union covers the wages classifications.

Previously, a wages man in the Australian Railways Union had the right of appeal against a salaried officer, and quite often that right of appeal was exercised. As I read the clause it states that an employee will have the right of appeal if he was, at that time, a member of the relevant union. Of course, at the time he will not be a member of the relevant union.

I would like an assurance from the Minister that if an employee had the right of appeal previously, he will have that same right of appeal in the future.

The Hon. O. N. B. Oliver: Is the member referring to the right of appeal of a union member against a non-union member?

The Hon. F. E. McKENZIE: No, that is a different section.

The Hon. G. C. MacKINNON: The old provision in the Act, as set out in section 5(1)(b), reads—

> (b) where the terms and conditions of employment appertaining to the vacancy or new office are or will be regulated by the provisions of an award or industrial agreement in force under the Industrial Arbitration Act, 1912 or the Public Service Arbitration Act, 1966, an employee applicant has the right of appeal under this section—
>
> (i) if he was, when he made application for appointment to or employment in the vacancy or new office, a member of an industrial union which is a party to that award or industrial agreement;

The new provision will provide that in respect of a vacancy where there is a relevant union, an employee applicant has the right of appeal under this section. The definition of a relevant union means a union that is a party to an award or industrial agreement. So, there is no difference and that is what I said previously.

If under the old provisions positions were appealed against by railway workers, then I am suggesting that both unions, under their relevant awards, were in breach of the Act.

The Hon. F. E. McKenzie: It is quite possible they could have been. A new meaning is not introduced.

The Hon. G. C. MacKINNON: The Bill contains the following definition—

> "Relevant union" means a union that is a party to an award or industrial agreement whereby the terms and conditions of employment appertaining to the vacancy or new office are or will be regulated.

The Act provides for a person who, at the time of the appointment for employment in the vacancy or new office, is a member of an industrial union which is a party to that award or industrial agreement. In other words, that is exactly the same as the relevant union.

The Hon. F. E. McKENZIE: I am confused about the change which has taken place in regard to the definition of a union. I accept what the Leader of the House says, but I wish to ensure that people who had the right of appeal previously

will have that same right in the future. If I can obtain that assurance I will not need to proceed any further.

The Hon. G. C. MacKinnon: You have it.

Clause put and passed.

Clauses 7 to 14 put and passed.

Clause 15: Section 14 substituted—

The Hon. D. W. COOLEY: We object to the provision in the clause that a person's service in an acting capacity will be taken into account. The Minister drew an analogy; he said that the person who had been the acting head of the Metropolitan Water Board ought to have that service taken into account when the actual appointment is made. I believe that is so at that level, but the Act does not go that far.

The Hon. G. C MacKinnon: I am fully aware of that, but I gave that instance as a glaring example.

The Hon. D. W. COOLEY: The legislation has some limitations in regard to the level of positions where appeal is possible.

Let us consider the situation where the head of a department knows that a vacancy will occur in the future because of a retirement or for some other reason. If he wishes to have a certain person appointed to that vacancy, he can appoint him in an acting capacity to give him experience in that job. When the vacancy occurs, the head of the department recommends the person he has chosen. If another person in the department is aggrieved at the appointment, it will not do him much good to say that he is of equal efficiency to the appointee when the appointee has had the experience of doing the job in an acting capacity.

Under the provisions of the parent Act, a person's service in an acting capacity was not taken into account. That provision has been in the Act since 1947. The Promotions Appeal Board was set up to avoid disputation.

The Hon. O. N. B. Oliver: I can appreciate that.

The Hon. D. W. COOLEY: We are in the Committee stage and the honourable member can talk about it if he wishes to.

The Hon. O. N. B. Oliver: I will talk about it. I can appreciate the statement you are making. You are saying that because a person is in that vacancy—

The DEPUTY CHAIRMAN (the Hon. T. Knight): Order! The Hon. Don Cooley.

The Hon. D. W. COOLEY: I am not saying that at all. The Bill before us provides that where a person has filled a position in an acting capacity before the final appointment is made, that service should be regarded when determining efficiency. It seems to destroy the whole purpose of the legislation to allow the promoting authority to have regard to that acting service. As the Leader of the House said, a person could fill a position in an acting capacity for two years, and no-one else would have the opportunity of promotion to that position when a vacancy occurred.

The Hon. G. C. MacKINNON: I would like to refer the honourable member to the Act. Subsection (3) of section 14 commences—

> (3) For the purposes of subsection (2) of this section, "efficiency" means special qualifications and aptitude for the discharge of the duties of the office to be filled, together with merit, diligence and good conduct, but in considering efficiency the recommending authority and the Board shall disregard service in such office in an acting capacity by applicants for the office to be filled.
>
> Provided that in assessing the efficiency of an employee the recommending authority and the Board shall have regard to any service in an acting capacity by that employee in the office to be filled—

So the parent Act provides that the chairman would have regard for experience gained in a job prior to a vacancy being advertised. Once a vacancy was advertised—that is, when the original incumbent discontinued his employment—and a person was appointed in an acting capacity, that service did not count. Let us look at the provision in the Bill before us. Proposed new subsection (4) reads as follows—

> For the purposes of subsection (3) of this section, "efficiency" means special qualifications and aptitude for the discharge of the duties of the office to be filled, together with merit, diligence and good conduct, and in assessing the efficiency of an employee—
>
> (a) the promoting authority and the Board shall have regard to any service in an acting capacity by that employee in the office to be filled if that service was had prior to the occurring of the vacancy then being filled;—

In fact, the provision is exactly the same. There will be no change in the Act at all in this regard.

The Hon. F. E. McKENZIE: I wish to deal firstly with proposed new subsection (1).

The Hon. G. C. MacKinnon: I think you should ask the Deputy Chairman about that. We have already dealt with proposed subsection (4). I objected to this the other day.

The DEPUTY CHAIRMAN (the Hon. T. Knight): Order! We are discussing clause 15.

Point of Order

The Hon. G. C. MacKINNON: I rise on a point of order, Sir. My understanding is that subclauses will be taken in order. It is an entirely new concept to me that we can go backwards and forwards in a clause. If that is so, obviously I misunderstood the situation for the six years I was a Deputy Chairman.

The DEPUTY CHAIRMAN (the Hon. T. Knight): My opinion is that we are discussing the whole of clause 15. Certainly we cannot go back to a previous clause.

The Hon. G. C. MacKINNON: Can you quote the Standing Order, sir?

Deputy Chairman's Ruling

The DEPUTY CHAIRMAN: I am giving a ruling. We are discussing a clause in total which means we can discuss any part of that clause. I would rule it out of order if a member wished to go back to a previous clause.

The Hon. F. E. McKENZIE: Thank you for ruling, sir. In this case, Mr Cooley was first to his feet when the clause was announced, and he elected to deal with proposed subsection (4). If we followed the course suggested by the Leader of the House, a member who wished to speak to an earlier part of the clause would have to be first to his feet.

The Hon. G. C. MacKinnon: I assure you that for most of the 24 years I have been here that has been the case.

The Hon. R. F. Claughton: That is not true. You are talking about amendments.

The DEPUTY CHAIRMAN: I would like the Hon. F. E. McKenzie to continue.

Debate Resumed

The Hon. F. E. McKENZIE: Thank you, sir.

I wish to refer again to this matter of despatch of an appeal. The Leader of the House said the position will be the same. If an appellant signs a statutory declaration before a justice of the peace to the effect that he sent an appeal to the board and that for some reason beyond his control it was not delivered, the circumstances will be examined by the board and an opportunity given to the appellant to substantiate the fact that he had despatched his appeal.

The DEPUTY CHAIRMAN (the Hon. T. Knight): The question is that the clause be agreed to. For the information of the Leader of the House, Standing Order No. 262 reads as follows—

> Discussion shall be confined to the clause or amendment before the Committee.

I take that to be the total clause.

The Hon. G. C. MacKINNON: It is just as well to have it clear, Sir, because your ruling is in contradistinction to that of the man I learnt from (Mr Bill Hall) who was the Chairman of Committees when I entered this Chamber. Really the Committee stage discussion is a prelude to an amendment, and it behoves a member to ensure that he gets to his feet in time. That was the doctrine which Mr Hall espoused. I am quite prepared to live with your ruling.

The DEPUTY CHAIRMAN: I made the same ruling several months ago and the Leader of the House knows full well the action he can take to dispute my ruling.

The Hon. R. F. Claughton: And quite correct, too.

The Hon. G. C. MacKINNON: We may be in some trouble if an amendment is to be moved.

At present the Act provides that every appeal is required to be in writing within 14 clear days of the date of notice of promotion served to all applicants by the recommending authority. Because of various factors, including mailing aspects, this requirement has caused disputation in determining with certainty the closing date for appeal. The word "despatch" will be deleted so that the appeal notice will have to be delivered to the secretary of the board within the 14 days mentioned and this will make the closing date for lodging appeals more definite.

It could happen that an employee is fulfilling his duties in a remote area, and he would not be able to prove he has despatched an appeal. There are always complaints about letters not having been received.

The Hon F. E. McKenzie: That is right.

The Hon G. C. MacKINNON: How is a person to prove that a letter was despatched?

The Hon. F. E. McKenzie: Previously the board has listened to evidence from the appellants in such cases. When an appellant says that he has in fact despatched an appeal, the board has made a decision and it has said either that it will hear the appeal or that it will not. Sometimes an

employer says that an appeal should not be heard because the employer did not receive a copy of it.

The Hon. G. C. MacKINNON: The regulation makes separate provision for persons inconvenienced in remote areas, or temporarily absent from their general place of employment. It has gone about as far as it can go. It is believed by those who have framed this clause that it represents a considerable improvement in that it gets rid of areas of possible disputation.

The Hon. F. E. McKenzie: As far as they are concerned.

The Hon. G. C. MacKINNON: No, this Bill has been written with only one group of people in mind; namely, the employees who make an appeal.

The Hon. F. E. McKenzie: Initially, but it is being watered down.

The Hon. G. C. MacKINNON: No, it is not; it is being made fairer. The honourable member himself said that the old "despatch" provision occasioned a great deal of disputation.

The Hon. F. E. McKenzie: Never from the employer, but sometimes from the employees' appellant.

The Hon. G. C. MacKINNON: He is an employee; they are both appellants; there might be half a dozen of them. It is to be made easier for the person making an appeal, and that is what the legislation is all about; namely, appeals. If we do not look after people making appeals, why bother with the Act?

The Hon. D. W. COOLEY: I hope the Minister now will pick up the Act and read it, as he told me to do, and I hope he will then apologise to the Committee. I do not say he did it deliberately, but he misled the Committee in respect of acting capacity.

The Hon. O. N. B. Oliver: He did not mislead the Committee.

The Hon. D. W. COOLEY: Mr Oliver should be quiet for a minute. The Leader of the House categorically stated the wording of the Bill did not differ from the Act in respect of acting capacity.

The Hon. G. C. MacKinnon: I said no such thing. I said there was no difference in that particular clause.

The Hon. D. W. COOLEY: The Leader of the House said that acting capacity was regarded under the present Act.

The Hon. G. C. MacKinnon: I said it will operate in the future as it has operated previously.

The Hon. D. W. COOLEY: The Leader of the House should read the Act.

The Hon. G. C. MacKinnon: I just read that section of the Act into the record.

The Hon. D. W. COOLEY: Yes, but the Minister did not read it all. Section 14 states as follows—

> Provided that in assessing the efficiency of an employee the recommending authority and the Board shall have regard to any service in an acting capacity by that employee in the office to be filled if—
>
> (a) that service was had prior to the occurring of the vacancy then being filled; and—

That is where the Minister stopped; however, the section goes on to state—

> (b) the terms and conditions of employment appertaining to the vacancy then being filled are regulated by the provisions of an award or industrial agreement in force under the Industrial Arbitration Act, 1912 or the Public Service Arbitration Act, 1966, to which the Civil Service Association of Western Australia, Incorporated is a party.

The Hon. G. C. MacKinnon: That has nothing to do with it.

The Hon. D. W. COOLEY: It does. Mr McKenzie's union is not covered by that section because it is not a party to any award to which the Civil Service Association is a party, and acting capacity is not counted in assessing efficiency in this case.

If the Civil Service Association is a party to an award or agreement, acting capacity shall be admissible in any board hearing; however, if a union is not a party to the Civil Service Association award, acting capacity will not be regarded. It is quite clearly stated in the Act.

The Hon. O. N. B. Oliver: Could you tell me exactly where that situation arises? Where does it say no regard shall be had for the performance of acting capacity.

The Hon. D. W. COOLEY: I have just read it to the Committee. Proposed new section 14(4) (a) states as follows—

> the promoting authority and the Board shall have regard to any service in an acting capacity by that employee in the office to be filled if that service was had prior to the occurring of the vacancy then being filled;—

However, the Act relates only to agreements to which the Civil Service Association is a party.

The Hon. G. C. MacKINNON: I hope the point has now come home to the Chamber. We skipped proposed subsection (1) and moved to proposed subsection (4). We then returned to (1), and now we are back on (4). There is a reason for taking these matters in order. I have rapidly become confused as to which portion of this fairly long and involved proposed new section we are dealing with. I take it we have now left Mr McKenzie's argument regarding proposed subsection (1) and are now dealing with (4). Irrespective of what Mr Cooley might say, it means exactly the same thing.

The Hon. D. W. COOLEY: The Minister is not correct in that respect. If a union, not a party to the Civil Service Association award, takes an appeal before the board, the advocate is not allowed to introduce the matter of acting time. The Civil Service Association pointed out that this Act will make every other union uniform with the Civil Service Association in respect of acting capacity, because it is taken into consideration in the Civil Service Association, but not in the office of the railways, the MTT, the port authority, or any other group of Government workers not party to an award or agreement to which the Civil Service Association is a party.

The Hon. F. E. McKENZIE: I am afraid I do wish to return to proposed subsection (1); Mr Cooley entered the debate before I had concluded my remarks. However, before I return to that matter, I support what Mr Cooley said. In the Act, acting work is taken into account in Civil Service Association appeals; however, it is not taken into account in every other award covered by the legislation. So, there is to be a change.

If I am working in Albany and I am senior man, and acting work becomes available in Northam, I would ask my union to insist I be sent to Northam, because when a promotion opportunity arises at some later date, I would want to use that acting work to help me win the promotion. If I were not appointed to that acting position, naturally my prospects of future promotion to the senior position would be seriously affected.

To date, no account is taken of acting capacity. It was quite simple for the Railways Commission to put someone into the job in Northam and give him the acting work. This is how the Government service operates. However, some regard must be given to period of service in a particular grade. A person must be on the same rate of pay to establish seniority. If a person has been given a particular job for 10 years longer than anyone else, surely that is worth something. This is where disputation is likely to occur.

The Hon. O. N. B. OLIVER: The debate is getting out of hand. I believe there is a lack of understanding between performance and seniority. If a person has given long and faithful service, obviously he must be given due regard for a senior position.

The Hon. G. C. MacKinnon: The board would have regard for that service.

The Hon. O. N. B. OLIVER: I see this clause as being almost consequential to the Public Service Bill which recently passed through this place. I do not have a great deal of experience with the Public Service. However, in private enterprise, the important factors one looks for in an employee are performance, service, and the ability to perform in the future. A person may have high academic qualifications which no doubt the Public Service Board would take into account; however, it all boils down to the basic matter of performance.

The Public Service comes in for a great deal of criticism throughout the community. We need to place it on a plane where it is respected, because I believe it needs that respect. However, we will not engender respect for the Public Service if we promote people simply on seniority, having no regard for performance.

The Hon. F. E. McKenzie: That is what we are saying; we are not arguing about that.

The Hon. O. N. B. OLIVER: The honourable member has been arguing this point. I refer members to the provisions of the Commonwealth defence forces legislation. A person may be the best looking guy around the place and may have passed the most difficult examinations and performed extremely well. However, if he has blotted his copy book at any time, he will not be promoted and he will not have the right of appeal because, in the defence forces, lives are at stake.

I do not believe that just because a person joins the Public Service at 18 years of age, obtains a few academic or technical qualifications thanks to the indulgence of the Government of the day and, through the natural attrition of staff, gains seniority, he should necessarily be promoted to a senior position.

I cannot believe the Opposition is arguing the case on the basis of seniority rather than performance. The whole crux of the matter is that there should be a balance. Seniority is important, but so is present and future ability.

The Hon. F. E. McKenzie: I could not agree with you more.

The Hon. D. W. COOLEY: What Mr Oliver said demonstrates how little he understands the

Act. He is the type of person to whom the Civil Service Association made reference in its letter. It said the first ground for selection is, at the present time, superior efficiency. That is written in the Act and it overrides all other things such as seniority. The association indicated that those who wished to represent the matter otherwise were either incapable of understanding plain English or were mischief-makers who were intent on portraying the Public Service and associated bodies as inefficient. This is what the Civil Service is complaining about.

The Hon. O. N. B. Oliver interjected.

The DEPUTY CHAIRMAN (the Hon. T. Knight): Order! There are too many interjections. All members have an opportunity to speak during the Committee stage.

The Hon. D. W. COOLEY: An appeal may be made on the grounds of superior or equal efficiency and seniority to the employee promoted. Mr Oliver said that if a person had given long and loyal service with the Civil Service that person would be automatically promoted. That is not the case. A person has to have efficiency. A person cannot say he has sat on his backside in a clerical position for 20 years and that therefore he will get promoted over a chap who has been promoted to a grade 6 position. That is not on if he is not efficient or at least equally efficient.

It does not matter if we debate this matter until 6.00 o'clock tomorrow morning, but it should be said—

The Hon. O. N. B. Oliver: I do not mind listening as I value your opinion.

The DEPUTY CHAIRMAN: Order! In that case, the member should remain silent and listen.

The Hon. D. W. COOLEY: We are not saying the senior man should get the position in every situation. We are saying that when there is a tie, the man with the senior service should get the position, as is provided for in the Act at present.

The Hon. R. Hetherington: Seniority is the tie-breaker.

The Hon. D. W. COOLEY: Yes. This applies in private industry where fair employers are involved. Where two men are equal, a position will go to the senior man. There is nothing further from the truth than for people to say that we advocate the idea that inefficient people should be appointed and should receive the protection of the board. Superior or equal efficiency has to be demonstrated.

The Hon. G. C. MacKINNON: I hope members will note that so far as previous experience is concerned, the verbiage is the same under the Bill as under the Act. The change is that now there is a limiting condition in the Act which has been left out. The general principle operates in the same way.

So far as specific unions are concerned, there might be a difference. The major difference in the debate is that Mr McKenzie is arguing on the basis of a specific union—his dearly beloved railway union—and I am arguing the Bill in general terms. I believe clause 15 is perfectly all right as it is.

The Hon. F. E. McKENZIE: I wish to quote from a letter from the Department of Labour and Industry which was sent to the various unions in respect of work in an acting capacity. It reads as follows—

> To delete paragraph (b) in the first proviso to Section 14(3). This will allow acting experience in the vacant item prior to it occurring to be admissible in all areas of employment in an appeal case, not only in those areas under awards and industrial agreements to which the Civil Service Association is a party, as at present.

The Hon. G. C. MacKinnon: That is right.

The Hon. F. E. McKENZIE: Previously under the railway employees' award or any other wages awards—

The Hon. G. C. MacKinnon: There is no need to go any further; there is no argument.

The Hon. F. E. McKENZIE: I get back to what I said earlier: If I am down in Albany and a position falls vacant in Northam which I would like to fill, I will want to get to Northam. If I am not permitted to do so, there may well be an industrial dispute.

The Hon. G. C. MacKinnon: The fact remains that all the argument until the last five minutes has been that there has been a change in principle about acting service. The principle has been changed in that it has been extended.

The Hon. F. E. McKENZIE: I refer to proposed section 14(1) dealing with the despatch of appeals. In the past, applicants always have been allowed to appeal. Previously with the word, "despatch" or "deliver", the appellant had the opportunity to maintain in his dealings with the board that he had despatched his appeal. That provision is gone. So in future there would be no disputation before the board, but there could be disputation in the Industrial Commission or elsewhere because a dispute exists as a result of appeals not being received by the board.

This right has obtained for a long time. To take away this right is a retrograde step. This provision has acted as a safety valve to prevent disputation. The provision is now to be taken out unless something is put in the regulations to give a hopeful would-be appellant an opportunity to appeal. I do not care how the provision is replaced. It could be done by statutory declaration so that he is given an opportunity to go before the board to establish that he had posted his appeal. At present, any would-be appellant would be at a disadvantage.

Clause put and a division taken with the following result—

Ayes 16

Hon. N. E. Baxter	Hon. O. N. B. Oliver
Hon. G. W. Berry	Hon. W. M. Piesse
Hon. V. J. Ferry	Hon. I. G. Pratt
Hon. H. W. Gayfer	Hon. J. C. Tozer
Hon. A. A. Lewis	Hon. R. J. L. Williams
Hon. G. C. MacKinnon	Hon. W. R. Withers
Hon. Margaret McAleer	Hon. D. J. Wordsworth
Hon. N. McNeill	Hon. G. E. Masters *(Teller)*

Noes 5

Hon. D. W. Cooley	Hon. R. T. Leeson
Hon. Lyla Elliott	Hon. F. E. McKenzie
Hon. R. Hetherington	*(Teller)*

Pairs

Ayes	Noes
Hon. N. F. Moore	Hon. D. K. Dans
Hon. R. G. Pike	Hon. R. F. Claughton
Hon. I. G. Medcalf	Hon. R. H. C. Stubbs

Clause thus passed.

Clause 16: Section 15 repealed—

The Hon. F. E. McKENZIE: This clause relates to the repeal of that section of the Act dealing with the subpoena of witnesses. There is nothing left in the Act in this respect although it is possible this will be covered by the regulations. I would like the Leader of the House to explain how this situation will be handled in the future.

The Hon. G. C. MacKINNON: This is a machinery provision which will be taken into the regulations and it will be possible to enlarge upon it.

Clause put and passed.

Clauses 17 to 20 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

STAMP ACT AMENDMENT BILL

In Committee

The Chairman of Committees (the Hon. V. J. Ferry) in the Chair; the Hon. G. C. MacKinnon (Leader of the House) in charge of the Bill.

Clauses 1 to 6 put and passed.

Clause 7: Section 7 repealed and sections 7 and 7A substituted—

The Hon. O. N. B. OLIVER: Proposed section 7A(2) deals with the fact that the commissioner by notice in writing may require information or evidence to be given on oath, either orally or in writing, or by statutory declaration; and may for that purpose administer an oath. Subsection (3) indicates that failure to comply with this requirement constitutes an offence.

I was somewhat surprised that other members did not bring this particular provision to the attention of members. I was particularly surprised that Mr Hetherington did not do so. The provision is rather strange because to me it is a little like using a sledgehammer to crack a walnut.

The Hon. G. C. MacKINNON: I am not quite sure what the member wants to know. He concluded by making a statement of fact regarding the use of a sledgehammer to crack peanuts. In a legal situation that sometimes is necessary; particularly in connection with taxation measures because information is necessary. However, I am not quite sure what comment the honourable member wants.

The Hon. O. N. B. OLIVER: A person may have evidence to which the commissioner rightly should have access. However, having gained that access, he then requires the person concerned to provide the information under oath, without choice. I find this rather strange.

The Hon. G. C. MacKINNON: Perhaps I could recount an instance of which I am aware involving a man in an industry which no longer exists. He wished to sell and arranged for people to pay in quite a considerable amount of revenue. His books were perfectly correct; he paid his taxes, stamp duty and other expenses on these things and an examination of the books indicated a certain level of profitability. It was totally false. The people who purchased the business believing it was a profitable going concern are wishing to this day that they had the power to verify the evidence under oath.

Clause put and passed.

Clauses 8 to 16 put and passed.

Clause 17: Section 20 repealed and substituted—

The Hon. O. N. B. OLIVER: I am concerned that there is a period of only one calendar month allowed in which to stamp a document. There could be problems associated with this and the fine which is applicable is 10 per cent of that duty or a fine of $2; whichever is the greater amount. Whilst this is in the original legislation the new rates are a little harsh.

The Hon. G. C. MacKINNON: The parent Act allowed 28 days, but for simplicity one month is now the period involved. This could be a little more than it used to be. The old provision of 28 days has worked fairly well and it is considered a month would make the calculation easier.

Clause put and passed.

Clauses 18 to 37 put and passed.

Clause 38: Section 52 repealed and substituted—

The Hon. R. HETHERINGTON: Year after year I expect stamp duty to be raised to 10c from 8c. However, that is not my point. I wonder whether stamp duty on cheques is becoming an anachronism. I wonder whether the Government is considering this in the light of the use of Bankcard which is charged only on the number of transactions. So, stamp duty on cheques is, in one sense, becoming an impost on a person who writes a series of small cheques and a person without a good credit rating. This is happening because people use other forms of credit and thus stamp duty has become a sort of fine because one does not have a credit rating. Of course the next step will be where one will have a card to place into a cash register and there will be an automatic transfer of funds from a bank account. I wonder whether the Government is giving consideration to the fact that credit cards are replacing cheques to a large extent. If it is not, I hope it will do so.

The Hon. G. C. MacKINNON: I am quite sure that when the revenue in that section drops the Under Treasurer will give consideration to it. I know the automatic debiting is feasible. Indeed, I think it has been done in an experimental way in some areas where we have the automatic transfer of funds. I am one who uses credit cards, so I have escaped a certain amount of stamp duty on cheques by the simple procedure of writing one at the end of the month.

The Hon. R. Hetherington: I am one who uses cheques.

The Hon. G. C. MacKINNON: Despite what Mr Cooley said, the comments of members are noted. Indeed, many members will have received letters referring to comments they have made. In case the Treasury has missed one possible avenue of funding, I will draw it to attention.

The Hon. G. W. BERRY: In relation to the words "Stamp Duty Paid", I thought in this legislation we were repealing stamp duty and that the expression should be "duty".

Clause put and passed.

Clauses 39 to 42 put and passed.

Clause 43: Section 67 amended—

The Hon. G. C. MacKINNON: As this is a money Bill we in this Chamber have not the right to amend it. I therefore move—

> That the Assembly be requested to make the following amendment—
>
> > Page 30, lines 3 to 18—Delete the proposed new subsection (2) of section 67 and substitute the following subsection—
> >
> > > (2) When any instrument chargeable with *ad valorem* duty under subsection (1) of section seventy-four of this Act (in this subsection called "the main instrument") or any instrument or contractual arrangement, whether oral or in writing, executed or made in connexion with the main instrument contains any provision for the vendor or transferor of the property concerned or an associate of that vendor or transferor to erect on that property any improvements and the purchaser of that property is not entitled to have that property conveyed to him—
> > >
> > > (a) at the time of entering into the contract or agreement concerned; or
> > >
> > > (b) at any time prior to the commencement of the erection of the improvements,
> > >
> > > *ad valorem* duty is chargeable on both the value of that property and the value of the improvements.

The Hon. O. N. B. OLIVER: I do not believe the proposed subsection (2) contained in the Bill was in accordance with the Government's intention. It would have had serious ramifications in the sale of land, particularly for the erection of new homes. Even though the land transaction had been completed and a title had been transferred, the property would still have attracted *ad valorem* duty as though the improvements had taken place. The *ad valorem* duty would have applied not only

to the land, but also to the proposed improvements. When I read that clause it caused me some concern, as I know that was not the Government's intention and I commend the Government on accepting this amendment, which I strongly support.

The Hon. R. HETHERINGTON: Representations on this proposed amendment have been made to me and I merely put them to the Minister for consideration, without pressing them particularly hard at this stage. It has been argued that even with the amendment the provision can be deleterious to young people buying a home for the first time in a package deal. It has been suggested that I request the Minister and the Government to consider whether people buying houses for the first time, even under the conditions of the amended provision, can be relieved of the duty on the improvements on the property as an encouragement to young people, who feel the pinch, to buy houses.

In other words, it has been suggested to me that even the amended provision will fall with some harshness on young people who find great difficulty in buying houses and land at present and who do package deals. I ask the Leader of the House to request the Minister in another place to consider the matter.

The Hon. G. C. MacKinnon: It will be examined.

The Hon. O. N. B. OLIVER: What the Hon. Robert Hetherington is putting forward is not quite in the area of this clause. I believe he is proposing that first home buyers be exempt from stamp duty. I am uncertain whether his proposal is that stamp duty on conveyancing and mortgages to first home buyers be set aside. I would be interested to hear his comments in that regard.

The Hon. R. HETHERINGTON: I am not very familiar with what I am dealing with, and the Minister knows that. I am given to understand the housing industry has sent a letter to the Chamber of Commerce and the Minister for Housing regarding *ad valorem* stamp duty on house and land package deals; so the correspondence will be available. I said I would bring the matter to the Minister's attention and I am quite sure he will cause inquiries to be made to see whether the representations made to the Government can be acceded to as far as first home buyers are concerned. I am not trying to argue the fine detail, which I do not understand. I am bringing the principle to attention.

The Hon. G. C. MacKINNON: The point is well made by the honourable member and I am quite sure the comments he and the Hon. O. N. B. Oliver have made will be examined.

Question put and passed.

Clause put and passed, subject to the requested amendment being made by the Assembly.

Clauses 44 to 49 put and passed.

Clause 50: Section 74 repealed and substituted—

The Hon. G. C. MacKINNON: I move—

That the Assembly be requested to make the following amendment—

Clause 50.

Page 34, line 25—Insert after the words "property concerned" the passage, "otherwise than as lessee or licensee and whether or not any rent or fee is paid or payable,".

Question put and passed.

Clause put and passed, subject to the requested amendment being made by the Assembly.

Clauses 51 to 62 put and passed.

Clause 63: Section 83 amended—

The Hon. G. C. MacKINNON: I move—

That the Assembly be requested to make the following amendments—

Page 49, line 7—Insert after the words "amount is made" the words "or the indebtedness thereby secured is increased".

Page 49, lines 10 and 11—Delete all words and substitute the words "excess or increase and the additional advance or loan or indebtedness is deemed to be a new and separate".

Page 49, line 14—Insert after the word "made" the words "or that indebtedness is increased".

Page 49, line 21—Insert after the words "advance or loan" the words "or indebtedness".

Page 49, line 28—Insert after the words "loans are made" the words "or as indebtedness is further increased".

Question put and passed.

Clause put and passed, subject to the requested amendments being made by the Assembly.

Clauses 64 to 75 put and passed.

Clause 76: Section 104 repealed and substituted—

The Hon. G. W. BERRY: Subclause (2) refers to "W.A. Stamp Duty Paid"; yet clause 24 deletes the words "stamp duty" wherever they appear.

The Hon. G. C. MacKINNON: In this clause we are referring to the passage, "W.A. Stamp Duty Paid", which shall be printed on betting tickets. The Act will not refer to stamp duty, only the betting tickets will.

Clause put and passed.

Clauses 77 to 86 put and passed.

Clause 87: Section 112I amended—

The Hon. O. N. B. OLIVER: I seek from the Minister an assurance that he will examine this clause. It refers to the splitting of loans in order to avoid transaction duty as a tax avoidance scheme. Once an interest rate exceeds 14 per cent it attracts transaction duty which is currently approximately 1.5 per cent, making the effective interest rate 15.5 per cent. Currently financial institutions do not make funds available at 14 per cent; the ruling rate is approximately 15 or 16 per cent. Once transaction duty is added, the effective rate of interest is 16.5 to 17.5 per cent. I feel that is totally undesirable.

This clause is directed at the splitting of loans. This is done in order to avoid transaction duty; so that a loan of $50 000 may be split into a loan of $25 000 at 12 per cent, and another loan of $25 000 at 16 per cent, thereby avoiding transaction duty. I commend the Government for closing this loophole.

The point I wish to make is that there is so much association today between banks and affiliated finance companies that there is a tendency to use a finance company which attracts the transaction duty of 1.5 per cent. The ruling rate of interest varies between 15 and 16 per cent, and when transaction duty is added it rises to between 16.5 and 17.5 per cent.

One might say in respect of borrowing that the rich get richer and the poor get poorer. I do not accept that philosophy. The Government is committed to lowering interest rates, and I would like to see it examine this provision to minimise the imposition of this duty.

The Hon. G. C. MacKINNON: While this matter is not strictly relevant to the Bill, I will ensure that the honourable member's comments are forwarded to the Treasurer for detailed examination.

Clause put and passed.

Clauses 88 to 99 put and passed.

Clause 100: New section 112V inserted in Part V—

The Hon. G. W. BERRY: Subclause (8) again refers to the passage "W.A. Stamp Duty Paid". I thought we were disposing of the words "stamp duty" and using the word "duty".

The Hon. G. C. MacKinnon: I thank the member for drawing the matter to the attention of the Committee. I will draw it to the attention of the responsible Minister.

Clause put and passed.

Clauses 101 to 107 put and passed.

Clause 108: Second Schedule repealed and substituted—

The Hon. G. C. MacKINNON: I move—

That the Assembly be requested to make the following amendment—

Page 98, line 26 to foot of page, and page 99, lines 1 to 19—Delete subitem (2) of item 19 of the proposed new Second Schedule and substitute the following subitem—

See item 4 of this Schedule (2) On the amount or value of property referred to in subitem (1) of this item, the same duty as that set out in item 4 of this Schedule, references to consideration in that item being construed for the purposes of this item as references to the amount or value of the property concerned.

Question put and passed.

Clause put and passed, subject to the requested amendment being made by the Assembly.

Clause 109: Third Schedule repealed and substituted—

The Hon. G. C. MacKINNON: I move—

That the Assembly be requested to make the following amendment—

Page 100, line 10—Insert after the words "time amended," in the last line of paragraph (b) of subitem (4) of item 1 of the proposed new Third Schedule, the passage "or with the Savings Bank Division of the Rural Department of The Rural and Industries Bank of Western Australia constituted under the Rural and Industries Bank Act, 1944".

Question put and passed.

Clause put and passed, subject to the requested amendment being made by the Assembly.

Report

The Chairman reported that the Committee had considered the Bill and had agreed to return it to the Assembly with the request that amendments agreed to by the Committee be made; and that the Committee asked leave to sit again on receipt of a message in reply from the Assembly.

Report adopted, a message accordingly returned to the Assembly, and leave given to sit again.

STOCK (BRANDS AND MOVEMENT) ACT AMENDMENT BILL

Second Reading

Debate resumed from the 18th September.

THE HON. R. T. LEESON (South-East) [9.45 p.m.]: This important Bill before the House will allow the people who breed trotting horses or pacing horses to brand them with a system called the Alpha-Angle system in lieu of the present method. At present, the horses must have brands of both the old letters-and-numerals type and the Alpha-Angle type. The horses must look like the show-jumping horses which are fancifully dressed, rather than the champion, money-earning pacers that most of them are. Some members like to go to the trots to see the horses in action, and they like to have a little fling.

The Western Australian Trotting Association has asked for this amendment. We can see no reason to oppose it. We therefore support the Bill.

THE HON. N. E. BAXTER (Central) [9.47 p.m.]: As stated by the Minister in his second reading speech, and as stated by Mr Leeson, this Bill is here because of an approach by the Western Australian Trotting Association. Perhaps some members are wondering what the Alpha-Angle method of branding is, because mostly one associates the branding of animals with a series of letters and numbers. That is not so with this system.

In Alpha-Angle branding what may be called a broad V is placed in various positions to represent the numbers 2 to 9. For the numbers 0 and 1, use is made of two lines, horizontally for 0 and vertically for 1. This system is designed to identify horses within a State represented by a number. The system will be identical to the systems used in other States. The number is followed with an indication of the year of foaling. For instance—

The PRESIDENT: Order! There is far too much audible conversation behind the dais. I ask members to refrain from carrying on conversations.

The Hon. N. E. BAXTER: Breeders start with the year 0, which is at the end of each span of 10 years. That year is indicated by using the two horizontal lines in the brand. The following years, 1 to 9, are represented by using the alpha angles. This is done by putting the broad V in different positions to represent a number for each year. When the breeder comes to the year 0 again, he uses the horizontal lines.

I have in my hand a pamphlet issued by the Western Australian Trotting Association. It explains the Alpha-Angle system of branding. It is also an introduction to freeze branding, and it says, "Freeze branding begins in Western Australia on 1st August, 1977." Of course, this is not the introduction of freeze branding in Western Australia. I have been using freeze branding on my horses since 1975, and other breeders were using it before I did.

I received from other breeders the idea that freeze branding would be beneficial in a number of ways. Firstly, it is not as much of a shock to the young horse as is a hot brand. One of the main points about freeze branding is that it destroys the hair follicles, and the horse finishes up with completely white hairs indicating the brand.

When a zero is branded on the animal, there is a completely white zero showing. The same applies to the numbers 1 to 9. My brand is "Lazy C N7", and it shows completely in white hairs.

The Western Australian Trotting Association and members of the trotting industry have had a lot of difficulty in identifying horses. The thoroughbred industry, as opposed to what is called the standard-bred industry, for many years has had the Australian Stud Book and a register of race horses located at Randwick Race Course in Sydney. A person running a thoroughbred stud tries to have, as far as possible, what are called Australian stud book horses. Those horses have to be registered. The mares and their foals have to be registered each year. A form is filled out showing the name of the mare and her sire and dam. The breeder has to pay $8 a year for the registration of each mare. The mares are registered in the Australian Stud Book from the first time they are served in the beginning of the year. The same applies with stallions, but there is no fee for the registration of a thoroughbred stallion.

Thoroughbred yearling horses have to be branded before the end of May. After the branding, the breeder has to lodge with the keeper of the Australian Stud Book a foaling card which shows the brands of the thoroughbreds. The stock brand is placed on the near shoulder, and the numbers are placed on the off-shoulder. The number refers to the first foal born on the stud. That is indicated by a number 1. In a similar manner the 0 is used for the 10th year. Breeders may finish up with horses branded $\frac{24}{9}$ or $\frac{28}{8}$, or even $\frac{32}{8}$; or it is possible to have $\frac{1}{0}$, etc.

For identification purposes, on the foaling card and the brand register one must show all the white marks, all scars, all whorls, and any other identifying marks on the horse. The colour of the horse is also shown.

If all these details are not included in the Australian Stud Book, the horse is removed from

the stud book and cannot be returned except in unusual circumstances. The breeder has to pay a heavy fee to have the animal placed back in the stud book. The information given in the Australian Stud Book makes it easy to identify a horse.

In addition to that, when a horse is registered with the register of race horses in Sydney there is a similar procedure on the registration form. The breeder has to show all the brands and markings on the horse. If it is an Australian Stud Book registered horse, it has to be identical to that shown on the registration certificate.

This document refers to freeze branding. It creates a white brand on the horse. There are two methods of freeze branding. In one method, the person uses dry ice and alcohol which create a temperature of minus 75 degrees centigrade. Normally the alcohol used with the dry ice is methylated spirits. The dry ice and the methylated spirits are placed in a foam container, and the mixture bubbles and boils. When it starts to settle down, the brand is placed into the container, and whether it is an iron brand, or a copper brand, or a brass brand, the combination of chemicals will bubble and boil again. When it starts to settle down, the handle of the brand is frosted and the brand is ready to use.

This document refers to freeze branding being painless. It is not exactly painless, although many people think it is painless. However, there is not a lot of pain attached to it. When the brand is first placed on the animal, it does not worry very much; but once the brand has been on for about half a minute, the cold starts to bite into the horse's shoulder or neck and it starts to wiggle after a while. I tell members that the horses feel the brand on them. Young thoroughbreds react in particular when the brand is placed on the shoulder.

The Western Australian Trotting Association has proposed that horses be branded on the neck. I do not know how breeders will get on, hanging on to horses six months' old or slightly younger, trying to brand them on the neck. I know I have had a great deal of trouble branding my youngsters on the shoulder. I had a particularly bad one recently, and it took four of us to put the first brand on him. He played up, because he did not like it at all. I did not know whether we would get out of it with whole skins. After about half an hour I put the brand on him, but it was a very difficult situation. I could not imagine myself branding the neck of a young horse, even with the freezing branding method.

The Western Australian Trotting Association considers it is a good method. It is a method that is easy to understand by those who are looking at the identity of horses. People have to know the angle of the broad V to understand the system. It is outlined in the document I have and members can refer to it.

I believe this method will be of advantage to the Western Australian Trotting Association and to trotting generally in Australia. It will be possible to identify horses. So far there has not been a system within the trotting industry for identifying horses. It would be confusing if the system in the Australian Stud Book for the registration of thoroughbreds was duplicated in the standard-bred industry.

There must be identification of standard-bred mares and thoroughbred mares. This is a good system, and it will assist in this to a great degree. It will provide a method of identification which is most necessary. If any member likes to have a look at this document, he may do so. I will leave it on the Table of the House so that members may see how the branding is carried out.

THE HON. D. J. WORDSWORTH (South—Minister for Lands) [10.01 p.m.]: I thank members for their support of this legislation and, in particular, Mr Baxter for his explanation of angle branding. It is certainly a complicated procedure. I read the document which has been issued to trotting horse owners.

I was interested in the amount of fraud that used to occur under the old branding system. It was reported that American authorities had detected six horses which raced under 12 identities in at least 41 races at 12 tracks in nine States. It looks as if the Americans are good at that sort of thing; but I am sure that would not happen in Australia.

Question put and passed.

Bill read a second time.

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

Third Reading

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

House adjourned at 10.04 p.m.

QUESTIONS ON NOTICE

MINING: IRON ORE

Mt. Newman Mining Co. Pty. Ltd.

210. The Hon. D. W. COOLEY, to the Attorney General representing the Minister for Housing:

Will any capital loss associated with the sale of a company house at Mt. Newman be deductible so far as the company is concerned?

The Hon. I. G. MEDCALF replied:

This is a matter for the Commonwealth Commissioner of Taxation whose decision would be made on the merits of the case and taking into account all of the circumstances involved.

The State Government's involvement in Commonwealth income tax matters on this issue was to assist the company to protect the taxation interests of the employees.

DISCRIMINATORY PRACTICES

Legislation

213. The Hon. R. HETHERINGTON, to the Attorney General:

(1) Has the Attorney General yet received the reports of the various State Government departments on discriminatory practices in accordance with the Premier's request of February, 1978?

(2) Has the Attorney General yet submitted a co-ordinated report to Cabinet?

(3) When is it expected that Cabinet will consider the co-ordinated report—or submission?

(4) (a) Is it expected that some action will be taken on the matters in the report; and

(b) if so, what kind of action, and when?

(5) Can the Attorney General advise that anti-discrimination legislation either may or will not be brought down in this session of Parliament?

The Hon. I. G. MEDCALF replied:

(1) Yes.

(2) Yes.

(3) to (5) The matter is still under consideration.

SMALL BUSINESSES

Suburban Shopping Centres

214. The Hon. Margaret McALEER, to the Attorney General representing the Minister for Industrial Development:

(1) (a) Is the Minister aware of the many difficulties confronting small businesses located in suburban shopping centres;

(b) if so, is it considered these difficulties are partly caused by—

(i) high variable rents;

(ii) the inability of the proprietors to re-negotiate the terms of their leases in major changes of circumstances, such as the proliferation of shopping complexes in close proximity; and

(iii) lack of access to reasonable long-term finance?

(2) Is the Minister aware that a number of these small businesses are facing bankruptcy because of the pressing difficulties?

(3) Can the Minister advise in what way these problems may be overcome?

The Hon. I. G. MEDCALF replied:

(1) (a) Yes.

(b) (i) Yes.

(ii) Yes.

(iii) Yes. I would not consider that small businesses located in suburban shopping centres are experiencing any greater difficulties than other small businesses through lack of access to reasonably long-term finance.

However, initial under capitalisation is often caused by inadequate research and/or poor management.

(2) As indicated above in the answer to question (1) (a), I am aware of pressing difficulties, but I do not know how many of the small businesses located in suburban shopping centres would be actually facing bankruptcy.

(3) This subject is currently under discussion and is being investigated by the Small Business Council.

OIL AND GAS

Wells

215. The Hon. R. F. CLAUGHTON, to the Attorney General representing the Minister for Mines:

(1) Is the Minister aware of a report in *The West Australian* of the 17th September, 1979, which states "The vast structure that makes up the (Exmouth) plateau has yielded few signs of encouragement to the exploration teams, and from a rating of highly prospective last year the area is slipping further as each dry hole is reported."?

(2) Would the Minister advise the location and assessed production of all wells judged commercial in the area referred to?

The Hon. I. G. MEDCALF replied:

(1) Yes.

(2) No commercial discoveries of petroleum have yet been made in the Exmouth Plateau area.

RAILWAYS: WESTRAIL

Capital Loan Expenditure

216. The Hon. F. E. McKENZIE, to the Minister for Lands representing the Minister for Transport:

What has been the capital loan expenditure allocations to Westrail for the 1977-78, 1978-79 and 1979-80 financial years?

The Hon. D. J. WORDSWORTH replied:

Total expenditure allocations for railway capital works were—

1977-78	$17.84 million
1978-79	$21.706 million
1979-80	$29.385 million.

HEALTH: NOISE

Herdsman Lake

217. The Hon. R. F. CLAUGHTON, to the Minister for Lands representing the Minister for Health:

(1) Is the Minister aware that machinery is being continuously operated on Herdsman Lake and is causing a disturbance at night to nearby residents?

(2) Have complaints been received by relevant Government departments about this disturbance?

(3) Will the Minister have investigated the possibility of ameliorating this disturbance?

The Hon. D. J. WORDSWORTH replied:

(1) Yes.

(2) No. The complaints have been investigated by officers of the City of Perth, which is the responsible local authority. Action to reduce the noise level, including prohibiting dredging between 10.00 p.m. and 6.00 a.m., has been implemented.

(3) Yes, if it appears necessary.

RAILWAYS

Iron Ore Wagons

218. The Hon. F. E. McKENZIE, to the Minister for Lands representing the Minister for Transport:

(1) Are there 30 partly constructed iron ore wagons being allowed to rust away at the Midland workshops?

(2) If so, will the Minister advise why this is so?

(3) When will these wagons be completed?

The Hon. D. J. WORDSWORTH replied:

(1) The number of partly constructed iron ore wagons stored at the workshops is 20.

(2) Westrail's planning, based on the best information available, indicated in 1974 that the future traffic task for the movement of iron ore would be greater than the capacity of the then existing wagon fleet.

Construction of 20 wagons was planned during the period 1975 to 1976. However, in August 1975, a decline within the industry became evident and construction was halted.

At this stage five bodies had been completed and the material for the remaining 15 was on hand. The bodies and material cut to size have been stored at the workshops with associated components such as wheels, brake gear, etc. being used on other wagon construction programmes.

(3) The wagons will be completed when the demand for iron ore haulage exceeds Westrail's current capacity of the wagon fleet.