

Legislative Council

Wednesday, the 18th October, 1961

| QUESTIONS ON NOTICE— | Page |
|--|------|
| Kununurra Swimming Pool : Estimated Cost and Government's Share | 1721 |
| Railway Maintenance Workshop : Establishment at Coolgardie | 1721 |

BILLS—

| | |
|---|------|
| Bulk Handling Act Amendment Bill : Receipt ; 1r. | 1727 |
| Criminal Code Amendment Bill— | |
| 2r. | 1732 |
| Com. ; report | 1744 |
| Entertainments Tax and Assessment Acts Repeal Bill : 2r. | 1722 |
| Fisheries Act Amendment Bill : 3r. | 1721 |
| Iron Ore (Scott River) Agreement Bill : 2r. | 1723 |
| Juries Act Amendment Bill : Com. ; report | 1744 |
| Justices Act Amendment Bill : Com. ; report | 1744 |
| Medical Act Amendment Bill : 2r. | 1721 |
| Metropolitan Region Improvement Tax Act Amendment Bill : 2r. | 1745 |
| Public Moneys Investment Bill : 3r. | 1721 |
| Railway Standardisation Agreement Bill : Receipt ; 1r. | 1727 |
| Railways (Standard Gauge) Construction Bill : Receipt ; 1r. | 1727 |
| Registration of Births, Deaths and Marriages Bill : Assembly's Message | 1727 |
| Stamp Act Amendment Bill— | |
| 2r. | 1744 |
| Com. | 1745 |
| Report | 1745 |
| State Housing Act Amendment Bill : Receipt ; 1r. | 1727 |
| Welfare and Assistance Bill— | |
| 2r. | 1727 |
| Com. | 1730 |
| Report | 1731 |

| | |
|----------------------------|------|
| ADJOURNMENT OF THE HOUSE : | |
| SPECIAL | 1753 |

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

QUESTIONS ON NOTICE

KUNUNURRA SWIMMING POOL

Estimated Cost and Government's Share

- The Hon. H. C. STRICKLAND asked the Minister for Mines:
 - What is the estimated cost of the swimming pool to be constructed at Kununurra?
 - What proportion of the cost is to be met by the Government?
 - To which fund is the cost to be charged?

The Hon. A. F. GRIFFITH replied:

- (1) to (3) The construction of a swimming pool at Kununurra is only under consideration by the local community. No definite proposals have been submitted.

RAILWAY MAINTENANCE WORKSHOP

Establishment at Coolgardie

- The Hon. J. J. GARRIGAN asked the Minister for Mines:

When the standard gauge railway is completed, is it the intention to establish a maintenance workshop at Coolgardie to service the small diesel locomotives used on the Esperance line?

The Hon. A. F. GRIFFITH replied:

The establishment of a maintenance workshop at Coolgardie is not envisaged under present planning.

BILLS (2): THIRD READING

- Public Moneys Investment Bill.

- Fisheries Act Amendment Bill.

Bills read a third time, on motions by The Hon. L. A. Logan (Minister for Local Government), and passed.

MEDICAL ACT AMENDMENT BILL

Second Reading

THE HON. L. A. LOGAN (Midland—Minister for Local Government) [4.37 p.m.]: I move—

That the Bill be now read a second time.

The Medical Board and members of the profession often wish skilled medical practitioners, who are visiting the State, to make their services available in a lecturing and demonstrative capacity. There is, however, no provision for members of the medical profession—and at times quite eminent members of the profession visit the State—to obtain temporary registration.

The absence of such a provision places this State at a distinct disadvantage, and prevents unregistered practitioners from demonstrating; consequently their services may be availed of for lecturing only, with the result that the science of medicine is disadvantaged in Western Australia. The position is, of course, brought about by the lack of reciprocity of registration between countries.

The amendment to the parent Act, as set out in clause 2, is directed towards overcoming this difficulty. Its passing would resolve the problem of medical practitioners invited to come here, and those coming to reside temporarily in our midst.

This Bill provides for reciprocal arrangements similar to those already existing in most of the other States of Australia.

The passing of the Bill will permit acceptable persons with qualifications approved by the board, who desire to engage in teaching or research in medicine or surgery under the direction and control of a teaching or research institution, to be registered for such work.

Registration as a medical practitioner under the Medical Act will be subject, in respect of these persons, to an intention to make this work a sole professional occupation. The registration would be for the period of appointment or engagement, and its issuance subject to the discretion and approval of the Minister. The Minister would be empowered to give such approval if he considered it to be desirable in the interests of the community of the State.

A teaching or research institution is defined in the second paragraph on page 3 of the Bill as—

Any university, college or school of medicine or surgery, research institute, hospital, clinic or other like institution which is engaged in this State in teaching or research in medicine or surgery and which is approved by the board.

I emphasise that the registration is for teaching and research, and not for practising. The provisions of this measure could be applied to a scholarship holder, for instance, visiting here to expand his knowledge in a certain direction in which he has a special skill or particular qualification, or a bent in some other direction. This amendment would permit his demonstrating while here for the benefit of local practitioners or for pursuing research for the general benefit of the profession.

The second amendment arises from a conference of Medical Board representatives held in Canberra earlier in the year. It was suggested at this conference that States legislate for the registration of armed services and Commonwealth medical officers, whose appointments often necessitate the crossing of State borders. These medical officers at present become liable for the renewal of registration fees and annual practising fees upon entering each new State. The board considers this duplication, etc., of fees is not warranted, and the amendment which appears under new paragraph (c) of subsection (2) of section 11, is introduced to obviate the need to charge such fees.

The amendment consequently provides in respect of these persons that the Minister may, in his discretion, effect registration without the payment of any practising fee during such time as the member of the profession continues to fulfil the requirements of his appointment as a Commonwealth medical officer or a medical officer of the armed services.

Debate adjourned until Tuesday, the 24th October, on motion by The Hon. J. G. Hislop.

ENTERTAINMENTS TAX AND ASSESSMENT ACTS REPEAL BILL

Second Reading

THE HON. A. F. GRIFFITH (Suburban—Minister for Mines) [4.42 p.m.]: I move—

That the Bill be now read a second time.

I desire to state that the purpose of the Bill is to do away with the entertainments tax. As members will know, the parent Act was introduced in 1925, and continued in force as effective State legislation until the formulation of the Commonwealth scheme with respect to income tax, usually referred to as the uniform tax scheme, and later to be extended to include entertainments tax.

With the passing of Act No. 4 of 1942, the provisions of the relevant sections of the Entertainments Tax Act of 1925, and its subsequent amendments, were deemed to have been suspended from the 1st October, 1942, and the period of extension persisted until the Commonwealth abolished the tax as a Federal measure in 1953. The abolition of the Commonwealth legislation permitted the States to reintroduce entertainments tax without prejudicing their rights to income tax reimbursement. Since that time, entertainments in New South Wales, Queensland, and South Australia have been tax-free.

Western Australia, together with Victoria and Tasmania, continued entertainments tax collections under State statute, but when the tax was reimposed here, certain concessions not granted under the Federal law were made in respect of "live shows." Such entertainments provided a high measure of employment to artists and musicians, and the concessions were extended under the provisions of Act No. 14 of 1956.

Further amendments were passed by Parliament in 1959. These were introduced to reduce the incidence of the tax, and also to grant full exemption in respect of "live shows," and all entertainments where the proceeds were being raised for the benefit of public, philanthropic, religious, or charitable purposes.

The main reason why this measure has been brought to Parliament lies in the acute difficulties—one might almost say the hazardous conditions—existing at present in the cinema industry, resulting from the steep decline in attendances. Admissions have declined from a figure of 8,976,000 during the year ended the 30th June, 1959, to 6,217,000 during the last financial year ended the 30th June, 1961. It is considered that a main contributory factor in this decline has been the advent of television; and there are also the free shows at many of our suburban hotels.

Measures were taken in July, 1960, to alleviate the position in the cinema industry, to the extent of refunding to proprietors of picture theatres all tax collections which did not exceed £20 per week. Where tax collections exceeded £20 per week, then a refund of this amount was granted. The maximum refund was raised to £30 per week last January. The effect of these refunds was to give an exemption from entertainments tax to proprietors of the smaller picture theatres, and to reduce the incidence of the tax in respect of the larger theatres.

Mention is sometimes made when explaining Bills being introduced into this Chamber that this State is following a lead given by other States. It is accordingly of interest to record that in both the States of Victoria and Tasmania our example has been followed in respect of entertainments tax refunds, the schemes adopted in those States being very similar to that initiated in Western Australia.

Members will appreciate that the field for the collection of entertainments tax in this State has become severely limited. It is levied now only in respect of picture theatres, horse-racing, dancing, and professional sport. Collections from these sources during the last financial year amounted to £139,000, of which £99,000 was paid by picture theatre patrons—this being the net figure after deducting refunds. Horse-racing contributed £22,000; dances £16,000; and professional sport £2,000.

It has been estimated that the cost to Consolidated Revenue would approximate £70,000 if all entertainments tax were abolished as from the 1st January next. The intention of this Bill is to give effect to the abolition of the tax as from that date. Reference was made to this when the State Budget was introduced a few nights ago in another place, and I am advised that allowance has been made in the Budget accordingly.

The object of the Bill is very clearly set out in its brief provisions—specifically contained in clause 3—which repeal the Entertainments Tax Assessment Act of 1925-59 and the Entertainments Tax Act of 1925-59.

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

IRON ORE (SCOTT RIVER) AGREEMENT BILL

Second Reading

THE HON. A. F. GRIFFITH (Suburban—Minister for Mines) [4.48 p.m.]: I move—

That the Bill be now read a second time.

The purpose of this Bill is to ratify an agreement dated the 9th March, 1961, reached between the State, the firm known as Mineral Mining and Exports (W.A.)

Pty. Ltd., and Heine Brothers (Australasia) Pty. Ltd. The explanation that will follow, to detail to members what the agreement between the State and the other parties means, is, of necessity, quite a lengthy one.

The main company to the transaction is Mineral Mining and Exports (W.A.) Pty. Ltd. with Heine Brothers (Australasia) Pty. Ltd. as party to the agreement as a guarantor. The guarantor is obligated to the extent defined in clause 30 of the agreement. This clause provides "that the Company shall duly perform all the covenants, agreements and conditions on its part contained in the within agreement to be performed up to the notice date." The agreement which provides for the proving of deposits of low grade iron ore, the upgrading of such ore and the establishment of satisfactory markets for the processed ore, is drawn up in two distinct parts.

The first part makes provision for the proving and processing, and the second part for the shipping and marketing of the processed product. I mention these facts as they have an important bearing upon the notice date. Upon completion by the company of its obligations in connection with the first phase of the agreement, the company is required to give detailed notice to the Government. The State is then obliged to examine the notice; and, if satisfied, it shall give notice accordingly to the company. The date on which the State gives this notice to the company is known as the notice date for the purposes of the agreement.

In this respect, the company is required to give notice to the State by the 31st December, 1962, or by a later date mutually to be agreed upon, that it has performed a specified number of obligations—

- (1) Satisfied itself that the iron ore areas contain iron ore of tonnages and grades suitable for the company's purposes under the agreement.
- (2) Satisfied itself as to the best location of the wharf-site and the design and methods of construction of the wharf and associated wharf works, in accordance with the advice and recommendation of Maunsell and Partners, or other reputable consultants, in consultation with the engineer of the Public Works Department.
- (3) Decided upon the method of producing processed iron ore from the factory to be provided under the terms of the agreement.
- (4) Arranged for all finance necessary for the discharge of the company's obligations.
- (5) Established its ability and willingness to proceed with the discharge of the company's obligations under the agreement.

The details required to accompany this notice are set out in clause 4. Supporting statements must be substantiated by proof. It is of importance to note that if the company does not give this notice by the prescribed time, its rights cease and determine.

The notice date is particularly significant, because it indicates the termination of the exploratory and organisational period whether they be successful or otherwise. It is on the decisions then made that the operation of the second stage depends. Consequently, the terms of the agreement are drawn up in such a manner as to prevent the State being unreasonable in its attitude towards giving notice to the company. There is an obligation on the State to act with reasonable despatch. Should the company doubt that the State is giving due attention and due credit for its actions, as substantiated in its notice to the Government, there is provision for such doubts to be resolved by arbitration.

It is widely known that the Government is anxious to give all encouragement possible, and has done so with a view to ensuring the company's successful processing of low-grade ore which would otherwise have little or no prospect of export.

The company, for its part, deserves the highest praise. Its persistent investigation of low-grade ore deposits and the development of the project has cost a substantial sum up to date, and when we consider that this is a very speculative field for investment, its firm resolve to succeed is highly commendable.

The Government is particularly interested in the success of the venture for several good reasons. In the first place, this is seen as a means of establishing an industry for an area that has little or no secondary industry. It could be a means of obtaining in that part of the State further good overseas shipping facilities for other products as well. The success of the venture would necessarily increase the amenities and services available in the area to meet the needs of the increased population which such development would require.

The iron ore deposits are situated in close proximity to the coast, and the adjacent works site is located just a few miles from the likely port site, as is also the projected town site. Having examined this area from the point of view of industry which will be brought about by the mining of the iron ore, and having examined the possible port site, I must point out that the location of the deposit is rather unique. I only wish that more of the mineral deposits in Western Australia were not concealed by nature in out-of-way places.

Members will appreciate the importance which these short distances indicate in the cost of transport of both low-grade and up-graded ores.

One of the important objects of the agreement, as far as the company is concerned, is the establishment of the company's rights to mineral leases, works sites, harbour facilities, and power, which are necessary in order that it might substantiate its prospects of raising funds and of interesting those with technical know-how of this type of venture. Members may be interested to know that the company has already expended in excess of £55,000 from its cash resources in the course of exploratory work.

The cost of the ultimate project is £10,000,000, with two main objectives—firstly, the establishment by the 31st November, 1964, of a factory with a designed capacity in production of not less than 250,000 tons of processed iron ore a year. That stage is estimated to cost £5,500,000.

It may be beneficial to digress at this stage in order that members may have a better appreciation of what this processing implies. The iron ore at Scott River will probably contain somewhere between 35 per cent. and 42 per cent. of iron, as compared with Koolyanobbing ore which is 62 per cent., approximately. The purpose of the up-grading is to bring this low-grade ore up to a figure within the 60-65 per cent. bracket.

The second objective is for the extension of the factory facilities to make provision for a capacity to produce a total of not less than 500,000 tons of processed iron ore a year at a cost of not less than £10,000,000. That figure includes the previous amount of £5,500,000.

It is hoped that the ore may be up-graded by mechanical means in substantial quantities to a stage where its export would be warranted. This would be of assistance to the company in the financing and installation of the complex plant and equipment required for producing processed iron ore which has the better prospect for long-term export contracts.

In the event of the company developing a better process which will enable it to establish a plant at a lower cost than £5,500,000, it would be competent for the Government to approve of the installation of such a process upon being satisfied as to the type of project to be established.

The necessity for this will be appreciated, because by the time the intention of the company on the type of plant to be installed is known, research might have found a better method to treat the ore than the best method being practised today.

The royalty to be paid for the low-grade ore will be 9d. per ton, and for higher-grade ore, 1s. 6d. per ton. This is considered quite satisfactory, bearing in mind the limited value hitherto placed on low-grade iron ore in this category.

Royalties will be subject to variation in accordance with royalties payable or agreed to be paid by steel manufacturers in Western Australia, and are also subject to arbitration in the event of dispute. If it had not been for the enterprise of this company, these iron ore deposits might have continued to remain in a latent state. I hasten to add that the project is as yet in the planning stage, but I hope it will reach the point of fruition.

The mining leases, provisions for which are clearly set out in clause 5, form a very important part of the agreement because they are the basis of the industry. The right to these leases is tied to the active use of them in accordance with the agreement. Provisions for the registration of mineral claims within the temporary reserves, are clearly set out.

The obligation of the company to work the leases is stated in clause 5 (8) to the effect that if, by the 31st December, 1967, the company has not mined from the iron ore areas and processed at the factory at least 500,000 tons of iron ore in the preceding twelve months, the State may give written notice of cancellation, and determine the mineral claims and the rights and interests of the company in respect of the iron ore areas and of the wharf site.

It will be appreciated, therefore, that the company is tied not only by the timetable but also by a volume of output, if it is to preserve its rights under the agreement.

There is a further provision which states that if during any three consecutive years after the year ending the 30th June, 1968, the company fails to mine from the iron ore areas and to process at the factory at least an average of 500,000 tons of iron ore a year, the State may give written notice to the company of its intention to cancel the agreement; and the rights of the company in respect of the mineral claims, the iron ore areas, and the wharf site would be forfeited.

Agreement has been reached in respect of these dates in order to allow the company sufficient time to build, plan, and bring into operation its undertaking designed for the maintenance of the handling of the required tonnage.

Clause 25 provides the customary means by which the Government may, in the making of its decision regarding the serving of such notices, take into account certain specified delays.

The works site shown on Plan "A" will cover approximately 867 acres of land.

The Hon. F. J. S. Wise: Will you be tabling that plan?

The Hon. A. F. GRIFFITH: Yes; realising, of course, that the plans may not come to this point of fruition when the House is in session. They may be available when the House is not in session, and they may be seen at the appropriate time.

This area will be made available free of cost to the company as soon as the Government is satisfied that it is ready to proceed with the project. There will be a further area of approximately 50 acres of Crown or other land, in reasonably close proximity to Augusta and Flinders Bay, made available to the industry for consequential industrial development. This particular area is that referred to in clause 10.

It will be seen that the works site is on the Scott River close to the deposits, and the 50 acres of industrial area close to the settlements of Augusta and Flinders Bay. While the ordinary effluent which one might expect from this type of production does not present any problem, the industry, because of its nature, could produce a dust nuisance were it located in a town site. Accordingly, every endeavour has been made to guard against that eventuality, as the works site is situated from five to six miles from the residential town of Augusta.

It is not intended that there will be any heavy traffic of iron ore and processed iron ore through the main town site; and particular importance is placed on the necessity for keeping the wharf site, including the project, away from the residential area, just as the works site will be several miles away from the town site. The methods which the company proposes for mining will keep the actual dust within the industry itself down to the absolute minimum, so far as the workmen are concerned; and, furthermore, it is envisaged that the main work force will live in the vicinity of Augusta.

The wharf and harbour facilities will constitute an important part of the project. The company is to develop, at its own cost, the wharf approaches and related loading appliances suitable for handling vessels of 20,000 tons, or greater, on a basis of at least 10,000 tons loading capacity a day, for the export of processed iron ore.

The wharf would be operated as a private wharf by the company, although it will remain the property of the State, except in respect of plant, equipment, and removable buildings. The company would be responsible also for the maintenance of the wharf site in good repair and condition during the currency of the agreement.

In the event of the company choosing a port site in a slightly different position to that suitable to the Government, the ultimate decision would need to be negotiated; and in making that decision, the Minister would have some regard for any unfair burden imposed on the company, bearing in mind that it would be an economic waste to have a port with provision for bulk-handling facilities only when it could service the surrounding district with inward and outward general cargoes.

It will, accordingly, be appreciated that the final decision in this matter rests with the Minister, as this decision would most likely be based on a decision by the Government to better service the district as distinct from meeting the company's requirements under the agreement. In effect, then, the provision is that we have to have a suitable type of port which is to be the result of consultation with the Public Works Department engineers.

It will be the responsibility of the company as to how it arranges the finance, and so on. The company has, in fact, to demonstrate that it can do it. The company is left a free choice under the terms of clause 11 as to the means of transport between the works site and the wharf site.

There is provision for the road transport of char from Collie to the works site, should the company so desire, and should char be the fuel finally decided on. The alternatives for fuel under consideration are char produced from Collie coal, and charcoal from forests within a reasonable distance of the works site. The decision naturally rests with the company.

There is provision for the company to be given access to the required supplies of firewood within a radius of 50 miles of the works site for charcoal purposes—up to 1,000,000 tons a year of firewood at a royalty to be agreed, but not exceeding 1s. per ton. That is subject to variation. The company is obliged to draw supplies of firewood from private property to the fullest extent possible. It is made clear under subclause (4) of clause 11 that the company will not be entitled to cut or obtain and use any timber of milling quality, or which may be utilised for the purpose of poles, piles, paper pulp, or fibre board.

Only such wood as may be approved by the Forests Department may be taken. In other words, the company will not have access to any timber which has another commercial value. The arrangements present definite advantages from the forester's point of view, in that it puts to economic use the waste timbers of the forest.

As regards electricity, there are circumstances under which it would suit the State Electricity Commission, particularly during the construction phase, for the company to supply its own power. The agreement provides for the supply of power by the State Electricity Commission to the works site and to the wharf site, both during construction, and in the operational stage. The company, as indicated earlier, is entitled to generate its own power for its own use, provided however, that, after the State Electricity Commission has constructed its mains and is ready and willing to supply, the company will not thereafter generate or use its own power without the consent of the commission.

There are suitable provisions in respect of roads between the mining claims and the works site, and between the works site and the wharf site. Though the crossing of the Blackwood River to service the wharf site would not arise were the wharf to be built inside the mouth of the river, a crossing may be required for other purposes. This is one of the matters which will be negotiated by the company with the Commissioner of Main Roads.

Needless to say, it is not the responsibility of the Main Roads Department to construct roads regardless, but only in accordance with traffic requirements. As stated previously, road planning is based on trying to by-pass the townsite with heavy road transport from the works, if practicable. The keeping of the works site away from Augusta and the heavy traffic out of the town site will obviate a great number of problems.

The State is not committed to any expenditure until the certainty of the industry has been established. The State will be committed, when the need arises, for up to 160 houses. Housing requirements beyond that number are to be left to the discretion of the State, though it is not expected that many more than that number would be required. The company accepts the responsibility for housing its senior executives, employees who are not married, and the company's caretakers on the works site.

The Government will make available, free of charge, on a freehold basis, not more than twenty blocks of a reasonable area of Crown or other land within or near the townsite of Augusta for the purpose of senior executive housing, and single employees.

The houses provided by the State will be leased to the company on a basis to recoup the State its capital outlay over a period of 30 years, the company being responsible for all rates, maintenance, insurances, etc. I, as Minister for Housing, am always pleased to see that sort of an arrangement included in an agreement. Letting will be for a period of not less than 30 years, with provision for renewal for periods of not less than five years. The company will be responsible for the management and control of these houses, including the collection of rents.

Though the Government is committed to the extent of 160 houses, the company has agreed that it will use its best endeavours to arrange finance for its own housing scheme, which the Government would much prefer. It will be in the Government's interest to encourage the company to arrange its own finance for housing. The Government is prepared to give the company, on a freehold basis, free of charge, Crown or other land not exceeding 50 acres for the erection of housing for married employees. To the extent to which the State provides this land, the State is relieved of its obligation for the provision of housing.

I desire to let members know a little of the detail of progress made up to date. Though no official report has been made to the Government by Maunsell & Partners, under the terms of the agreement, this firm has kept the Government advised to the extent that either inside or outside harbour facilities could be constructed.

The Government has received advice from the company that an area within 60 miles radius of the proposed port has been prospected, and iron ore occurrences have been tested by scout drilling. An area of approximately 20,000 acres of limonitic iron ore has been selected as suitable for processing at the proposed plant at Scott River. The findings of four authorities which have sampled and assessed the ore reserves indicate the likelihood of there being 35,000,000 tons of ore averaging 35 per cent. of acid-soluble iron in a 2,500-acre area adjacent to the proposed plant site.

It is common knowledge, I think, that fairly large trial samples of ore have been shipped overseas to Germany, the United Kingdom, and Japan. The company is satisfied as to the adequacy of both salt and fresh water available at the site of the works. The ore occurs conveniently in poor sandy country on which there is very little timber, and certainly none of commercial value. This is a Bill which I commend wholeheartedly to the House.

I have stated, and repeat again, that we all have reservations about the success of this project because as yet it has not been totally proved. However it is necessary to ask Parliament to ratify this agreement; and I feel sure that a project of this nature can do nothing but receive the support of members; and in giving their support they will, I am certain, share the hopes the Government has for the success of this industry in this part of the State.

Debate adjourned, on motion by The Hon. F. J. S. Wise.

REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES BILL

Assembly's Message

Message from the Assembly received and read notifying that it had agreed to the amendment made by the Council.

BILLS (4): RECEIPT AND FIRST READING

1. State Housing Act Amendment Bill.

Bill received from the Assembly; and, on motion by The Hon. A. F. Griffith (Minister for Housing), read a first time.

2. Bulk Handling Act Amendment Bill.

Bill received from the Assembly; and, on motion by The Hon. L. A. Logan (Minister for Local Government), read a first time.

3. Railway Standardisation Agreement Bill.

4. Railways (Standard Gauge) Construction Bill.

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

WELFARE AND ASSISTANCE BILL

Second Reading

Debate resumed from the 17th October.

THE HON. R. F. HUTCHISON (Suburban) [5.18 p.m.]: I rise to support the Bill. Unfortunately the notes I had prepared for the second reading of this Bill have been left in my room, but I would like to get an assurance from the Minister in regard to one point only. I would like him to assure me that when a woman with children, who owes the department a sum of money, receives the total that is due to her in a lump sum from her defaulting husband, the case will be presented to a senior officer before the department decides to take out of this lump sum the money that she owes the department.

I have known of women who have been placed in this position and, when the money has been taken out, they have been left badly off. Because they have been waiting for some weeks for the order to take effect they have had to obtain money from the department—in some cases quite a few pounds are involved—and when this money has been taken out of the lump sum due, these women find that they have little or nothing left. But in the meantime the children have to be fed and clothed. Their shoes wear out and other articles of clothing have to be purchased. They might wait for some weeks before the order takes effect and during that time they might have borrowed quite a large sum from the department, even though the sum the department allows will permit them to live only in a frugal way. Of course, they cannot expect anything else when they are appealing for public money.

However, I would like an assurance from the Minister that when these hardship cases are being dealt with some senior official will have to authorise the deduction of the amount due to the department before effect is given to it. Some years ago a woman who was in this position approached me. She had received the sum of £40. She had four children and the department deducted from that sum the amount she owed. This left her with only about £10 or so—I am not sure of the figure—and she said, "What can I do? Where am I? I have to get a pair of shoes and I have to do this, that, and the other thing." That is why I want to make sure that these cases will receive every sympathy when this legislation is passed.

I quite agree that the department cannot give public money away without a reasonable chance of recovering it; but in the cases I have in mind the amounts involved are so small, because in almost every case the department is dealing with near-destitute people—women with children—that I think some leniency in the direction I have mentioned could be given. If there is any sickness in the family it means added expense; and a woman with a defaulting husband and a family to look after is placed in a very awkward position. I would like to see women like that protected to the utmost because of the hardships they undergo. The Minister, when introducing the Bill, said that in 1959-60 the department had advanced £270,992 and, although there was a prospect of recovering only about £50,000, representing 18 per cent. of the total advanced; the amount actually collected was only £25,000, which meant that the recovery was less than 10 per cent. of the total.

I agree that the department should be able to recover money granted for funeral expenses, and other expenses like that; but I am concerned with these deserted wives with children, and in those cases I would not like to see them dealt with on a sort of over-the-counter basis; I would not like to see the man behind the counter make the decision. I would like the decision to be made either by the Director of Child Welfare or some other senior officer in the department. He could make a thorough investigation into her circumstances to ensure that she was treated fairly.

The Bill is mainly for the recovery of money expended by the department and no-one with a fair mind would object to that. It deals with recovery of burial expenses and other forms of relief that have been extended, and I cannot see anything to quibble about with that. However, I repeat: I would like the Minister to make sure that in these hardship cases the department does not arbitrarily deduct the money owing from the lump sum payments; but that these cases will be dealt with by a senior officer who, after thoroughly investigating the cases will give a decision. After all, people do not apply to the department for money unless they are suffering acute hardship. With those few words I support the Bill, and I hope the Minister will give me an answer to my query when he replies to the debate.

THE HON. J. G. HISLOP (Metropolitan) [5.26 p.m.]: This is a most interesting Bill because it allows the department to endeavour to recoup expenses which have been incurred in assisting hardship cases. Unfortunately I have not had the length of time I would have liked in order to make a complete study of the Bill as well as its impact on the individuals concerned. However, there is one clause in it which does give me a certain amount of concern, shall I say, because of the impact that it might have on the individual.

If members look at clause 19 on page 11 they will find that where a person is entitled to receive compensation or damages or the proceeds of a policy of insurance, or life assurance, the Minister may demand from the source from which it is to come the amount which has already been paid out by the department to the individual concerned. If the individual is receiving a fairly large sum, I see no objection to the Government's asking for a full refund of what has been given; but if the individual is to go on receiving from the department the same help as has been given in the past, and she is going to incur further expense, I think it would do her personality much more good if she were left with that sum of money as her own, and the money that is paid to her by the department reduced in proportion to what she received by way of a lump sum. Simply to take away the lump sum she received, because she owes the money to the department, still makes her completely dependent on the department.

The Hon. R. F. Hutchison: That is my point.

The Hon. J. G. HISLOP: It would have a destructive effect on the psychology and mind of the mother concerned. Any woman who has a small bank account behind her has a feeling of security which she cannot otherwise get. If this individual has been looking forward to the time when she is to receive a sum of money from her parents, or someone else, in the hope that it will make life easier for her, and she suddenly finds that the money is taken away, because she is in debt to the department through no fault of her own, but through the fault of a defaulting husband, it seems to me to be particularly hard.

In this regard I looked at the Commonwealth regulations whereby, if an individual has some assets, the amount of pension paid by the department is reduced according to the amount that the individual has. A person is allowed to have a certain amount; and I wonder whether the Minister could look at clause 19 again to see whether some different approach might be made in regard to it.

If we look at this clause very carefully we will find that an individual might obtain a legacy from a father or mother; it might be a small amount, but she could lose it because the department requests that that money should go to the department rather than to her. I admit I have not had sufficient time to go through the Bill as carefully as I would like to do, but it would seem to me that if a person were to win a lottery she could keep the money. That appears to happen in more or less a number of instances.

For example, in the case of an age pensioner who wins a lottery, any assistance she might be receiving from the Commonwealth Government ceases; but it is not

necessary for her to return the money. One must realise that the people concerned and the children of the woman concerned will be living, as the Minister has said, on the necessities of life. It seems to me that it would be a good deal better for the State to forget it has a debt and to say to the individual, "You can look after yourself, or have a lesser amount of help from the State."

We must look at these things not so much from the money angle, but from the angle of the effect on the individual. I am sorry I do not know the Bill and its impacts as completely as I would like to, but this clause impressed me with its effect on the human being, and I would ask the Minister whether there is any justice in my claim.

THE HON. G. BENNETTS (South-East) [5.32 p.m.]: I can see that each year we will have a bigger struggle to keep the Child Welfare Department going, because there is no doubt that year by year we will require more money for the department to meet its obligations, particularly when one considers the number of separations, desertions and divorces that seem to be taking place. The indications are that these separations, etc., are on the increase.

It is not only the women who are affected; many of the husbands are also affected. Very often we find the womenfolk deserting their husbands, with the result that the husbands have to find somebody else to look after the children; which, of course, is not an easy matter these days. I have seen a lot of this happening lately, and there is no doubt the Child Welfare Department will have a hard job to keep going. It will certainly require more money to pay its officers.

These separations and desertions are to my mind generally the result of the parents spending too much time drinking and playing darts at hotels. Because of this we find the children are left unattended outside the hotels, and the outcome is that the family generally breaks up.

The Hon. F. R. H. Lavery: A very small percentage.

The Hon. G. BENNETTS: Not at all. I have seen this happen in the hotels in the country, and I know that a good deal of it takes place. Our child welfare officers are busy people, but they are certainly doing a good job. As Dr. Hislop mentioned, one provision of the Bill would make the parents of a female wonder what would be the best way to divide any estate they might have. If the estate were to be left to, say, a deserted widow with children, and that money became available as a result of her death, and the department proposed to take that money, the parents no doubt would feel that it would be better to adjust the will in such a way that the money would not be left to the widow; and accordingly she would be deprived of the benefits.

In my opinion it would be better if the department were to allow the person concerned to have the money and let her carry on from there on her own. It might be as well to accept Dr. Hislop's suggestion that the amount of relief be reduced to enable the person to maintain a decent standard of living. It is most difficult for people who are at bedrock to meet expenses incurred for clothing and other commodities. I do not think there is much difference between the price of footwear for children and footwear for adults.

The Minister appears to have some problem when it comes to recovering these moneys. To my mind the Bill appears to be all right with the exception of that one provision. I would ask the Minister to inform me whether there is an increase in the funds from year to year. From what I can see in my area, the necessity for this department is growing, and it will definitely need a lot more money if it is to fulfil the function for which it has been established.

THE HON. L. A. LOGAN (Midland—Minister for Child Welfare) [5.36 p.m.]: First of all, may I remind members that this Bill does not alter the set-up of the Child Welfare Department or the payments it makes. What has happened in the past is that all the money paid out by the department has been paid out without authorisation. The purpose of the Bill is to correct this anomaly and to make it easier in certain circumstances for the department to recover money which it might pay out.

I can assure Mrs. Hutchison that any money paid out to families will be dealt with by senior officers, in the event of the maintenance of those families coming good; or if there happens to be a credit balance in their favour. Quite apart from the fact that the senior officers would deal with the matter, if the person concerned does not get satisfaction he or she always has the right to approach the Minister. As I have said before, the door to the Minister's office is always open.

The Hon. R. F. Hutchison: Some people do not know that.

The Hon. L. A. LOGAN: I have discussed this matter with the department this morning and I have an assurance that cases such as those I have mentioned will be dealt with by senior officers of the department.

The question raised by Dr. Hislop with reference to clause 19 is one which was included in the Bill, because very often we are given an order by the person concerned for a claim against their compensation, or whatever the case may be. It could be a third party claim, or a compensation claim. Even though they might have given an order against such claim, we do find that by the time the money is paid out and the claim happens to come good, our department is often left out—everybody else

seems to get their cut but us. So the purpose of this is more or less to tighten up matters.

I think we can leave this in the hands of the Child Welfare Department and depend on its officers to temper their decisions with mercy and justice. I have had enough experience of the officers of that department to know that they will err on the side of consideration rather than show a degree of toughness. At the same time, however, we have a number of people who do not deserve to be shown any mercy.

The Hon. H. C. Strickland: It is in the hands of the Minister, as I see it.

The Hon. L. A. LOGAN: That is so. I would point out that there are some married people who are practically living on the Child Welfare Department; and when we know that a man and his wife and six children can today earn £17 a week for about four hours' work, it will be seen just how great the imbalance is; particularly when we relate this to the worker who is doing a 40-hour week and is receiving only the basic wage.

The Hon. G. Bennetts: And he prepares no taxation return.

The Hon. L. A. LOGAN: This does not apply to the same extent to a family of two or three, but it certainly does apply to parents who have six children. I appreciate the point raised by Mr. Bennetts in regard to *de facto* husbands and wives adding to the responsibilities of the department. He also said that these responsibilities were increased by husbands and wives who happened to desert. We must realise, however, that as a State we are penalised by the Grants Commission because we are too generous. It will be appreciated that we are doing much better in this State than any of the other States in Australia. Mr. Clohessy of the department who recently attended a meeting in Adelaide went through all the ramifications there, and from his report it can be seen that the conditions here are far superior to the set-up which exists in South Australia.

There is, of course, always the case of the husband who will shoot through, after which the deserted wife approaches the department and says that her husband has shot through and asks for some assistance because she has nothing to live on. Naturally we give it to her. We would never let anybody starve. While the husband has been away for a month, however, I have had reason to suspect that, in a number of cases he has continued to pay his just dues to his wife for housekeeping, etc.; which of course means that the wife has not only received this amount from her husband, but has also lived off the department for that period.

We must not lose sight of the fact that this is public money which we are making available, and we must show some care in its distribution. If it is possible for the

people to pay in certain circumstances then I feel it is only right and proper that we should see that this is done in the proper manner; and I assure members that the officers of the department will temper their decisions with mercy and justice. Those who know anything about the ramifications of the Child Welfare Department will be aware that we are pretty liberal in the assistance we give.

Very often, however, we find people coming and saying that they have a claim against third party insurance. Of course we do not know whether they have or not. In any event these matters take as long as two years to finalise on occasion; and during that period it is necessary for the department to look after the family in question; only to be informed by the third party insurance trust at the end of that time that no liability is admitted. The State is seldom able to recover any of the money it has expended on the family concerned, and the amount is generally written off as a bad debt. I have known one such debt to be as large as £1,520—and this in regard to one family. This assistance has been given to the family in the hope that over a period of time we might be able to get the husband back to work to enable him to pay his maintenance.

Invariably, however, just as we get him back to work he shoots through again and changes his address; very often he leaves the State. By the time we get the police or the Child Welfare Department in other States into action in an endeavour to catch up with him we find that we have spent more money and the chances of recovery are impossible; and because of this we decide to write the amount off as a bad debt. I write off amounts up to £1,500 which have been paid to assist families in this State. I think members will appreciate that by passing this legislation no embarrassment will be caused to any mother with children.

I thank members for the interest they have shown in this measure. The problem with which we are dealing is a human one—one in which we all have to take an interest. This Bill will simply make the position clear and will help the department to do what it has been doing for a long time.

Question put and passed.

Bill read a second time.

In Committee

The Chairman of Committees (The Hon. W. R. Hall) in the Chair; The Hon. L. A. Logan (Minister for Child Welfare) in charge of the Bill.

Clauses 1 to 7 put and passed.

Clause 8: Minister may make advances—

The Hon. F. R. H. LAVERY: Some considerable time ago—maybe 18 months—an investigation was carried out in regard to 11 families who were receiving payments

from the Commonwealth Social Services as well as the State; and the head of one of those families was receiving the maximum, which gave him about £2 10s. per week more than he received when he was watering trees for the East Fremantle Council. Because of this that man refused to work again for the council. Mr. Mather, who has now retired, was concerned in this matter and he approached the Federal authorities to see whether way and means could be found whereby the two departments could cover the situation. I was wondering whether the Minister could tell us the result of that inquiry.

The Hon. L. A. LOGAN: I do not know the actual circumstances, but the Child Welfare Department is in close contact with the Commonwealth Social Services Department in the great majority of these problems.

The Hon. F. R. H. LAVERY: Despite the close contact which the Minister has just mentioned, I think the Federal authorities are getting away with something they should not be. This State is paying out money because the Federal authorities have taken people off social services when they have not submitted a report from the six firms to which they have applied for work over the period of a fortnight.

The Hon. L. A. LOGAN: I agree. In certain circumstances I believe we are paying out money which should rightly be paid by the Commonwealth. Through the department, I submitted a case to the Treasurer for submission to the Grants Commission regarding this problem, because the Grants Commission was penalising this State to the extent of £200,000 per annum. I considered we should point out to the Grants Commission that we were paying out money to cases which belonged in the sphere of the Commonwealth.

The Grants Commission, in my opinion, is wrong in stating that this State is above the average States. In my view, we are not above the average; the other States are below the standard. We are only up to a standard; but we have hard-headed boys to battle against. I can assure the honourable member that these points have all been raised with plenty of emphasis.

Clause put and passed.

Clauses 9 to 15 put and passed.

Clause 16: Application of moneys recovered by Minister—

The Hon. R. F. HUTCHISON: I am not opposing this clause but I would like to know whether it covers the points about which I was speaking.

The Hon. L. A. Logan: Yes.

The Hon. R. F. HUTCHISON: That is all I wanted to know.

Clause put and passed.

Clauses 17 and 18 put and passed.

Clause 19: Provision where person assisted entitled to compensation, etc.—

The Hon. J. G. HISLOP: I would like to thank the Minister for his explanation of this clause. I agree with him that these things do occur; but from my experience of handling human beings I realise that at times if a person who is literally down and out has a feeling of substance, that person can be elevated. On the other hand, I also agree that if the Minister were in all cases simply to say, "We will disregard what has been given to you and you can have this sum of money after we reduce it by the amount of sustenance we have given you from the department," it could be that within a week or so the whole of the capital would be gone.

An individual with some assets develops a sense of responsibility. Therefore, I wonder whether in the future we could consider the question of giving the Minister the right to put such moneys as are due into a trust account. I am not speaking in regard to a woman with a husband; I am speaking of a woman who has been left alone with children. I would like to see her given a feeling of some sense of security. In a time of need the woman could apply to the Minister to get some money back from that trust account.

I would like the Minister to think this over. If he allows this money to be received by the individual, we as a Parliament can give him the right to put it into a trust account, and the income would be paid to the woman, and the amount paid by the department lessened. However, if a rainy day came along and this woman wanted something urgently, the amount in trust could be reduced by the Minister to meet the needs of the woman.

The Hon. L. A. LOGAN: This suggestion appears to have some merit, particularly with regard to some specific cases. I would like to say that even at the moment we do not attempt to get back all of the money unless circumstances warrant this action being taken. Usually the department only requires a percentage of the money back.

The Hon. J. G. Hislop: Put it into a trust account.

The Hon. L. A. LOGAN: We will follow that up.

Clause put and passed.

Clauses 20 to 33 put and passed.

First Schedule put and passed.

Title put and passed.

Report

Bill reported without amendment, and the report adopted.

CRIMINAL CODE AMENDMENT BILL

Second Reading

Debate resumed from the 17th October.

THE HON. J. G. HISLOP (Metropolitan) [6.0 p.m.]: I am not ready to support a measure of this sort, because I am not entirely sure that we should, at this stage of our social life, completely do away, as some of my colleagues would do, with the death sentence. I am not convinced in my mind that every murderer can be regarded as insane. I think we might regard a murderer as being intensely jealous of a person and so he commits murder; but I would not regard the jealousy that led to that murder as being a degree of insanity.

I think one could say that such an individual was anti-social, but I do not think one could say that the individual was insane. I think there is always a certain amount of difficulty on this question of insanity in relation to an individual who commits a murder; and whilst I must bow to my colleagues in the profession to which I belong, I find it very difficult to believe that an individual can be regarded as insane at the moment of an act and sane for the rest of the period of his existence.

Whether it is believed, of course, that the act is committed on the spur of the moment and that the intensity of his reactions have caused a transient change in brain activity which allows a person to be temporarily insane, is a matter which only those who are well versed in mental diseases can answer. But to the ordinary man it seems rather a difficult situation to encompass. There are so many grades of murder that I do not think one can really classify them properly under the two headings as they appear here. There are some murders that are callously committed without any thought whatever for the human being who is attacked.

The Hon. W. F. Willesee: Does that reflect, in your opinion, a normal mind?

The Hon. J. G. HISLOP: I thought I had already explained the question as to whether an individual can be sane for most of his days and insane for a few moments—and that is the only claim one can make in order to say that the man is insane.

The Hon. W. F. Willesee: What about an infuriated man?

The Hon. J. G. HISLOP: Is an infuriated man insane? I would not think so. I would want a deeper explanation of insanity than intense fury. If we are going to change our stand and say that acute and intense emotion can be regarded as something that mitigates the offence of murder, then we are dealing with a different proposition; but if we are going to stick to the word insanity, we have to establish that there is some actual brain damage, or faulty action on the part of

the brain of that individual at the moment the act took place. If we are going to class all these words such as "fury" and "emotion" into that scheme of things, we make it extremely difficult.

However, there are some murders that are so callous, and have so little regard for the individual, or for human life at all, that I am afraid one cannot regard the act, in each case, as anything other than murder which is punishable by a sentence.

With regard to premeditated murder, one might consider that the premeditation—the harbouring of a feeling of offence against an individual over a period of time—may lead to an insane state of mind. I suppose that in some people it could be regarded as an insane condition; but, again, in some it may be a question of avarice that would induce such action.

I think we must know more about the working of the brain. Tremendous strides have been made into the question of mental disorders. Before long we may be able to state that the act of murder is committed as a result of a chemical change, and we may then be perfectly correct in regarding momentary insanity as being the result of a momentary change in the chemical content of a portion of the brain. At a later date I might discuss in the House some of these changes in mental health, because I presume that a Bill on mental health will be brought down before the end of the session.

This is not the time to stress these points. I would, however, make it clear that the time may come when we will know so much more about the reasons for the actions of certain individuals that we will be able to deal with the question of wilful murder on the basis that we know the cause and origin of the condition.

There is another aspect—quite apart from what appears in this Bill—which brings to mind what used to be discussed frequently in this House by **The Hon. Hubert Parker** on the question of "not guilty but insane."

This problem was brought up in this House previously, and is not dealt with in this question of punishment. If an individual is not guilty but insane, and at a later date some people regard this individual as being perfectly sane, then there seems no reason why that person should not be liberated from custody. It seems to me that the correct way to deal with the problem, as **Mr. Parker** so often insisted, is to regard the individual as guilty and insane. Then, later, when the question arises whether the individual is regarded as sane, and no longer insane, he still faces the question of having been guilty in the past of an offence while insane. We may, at some later date, discuss the question of whether such a person should be liberated, having regained his

sanity and expiated his crime, as it were, which was committed during a lengthy period of insanity rather than on the spur of the moment. This brings up problems which might well arise when the mental health Bill is before us.

I think the question of the finding of "not guilty but insane" is one which could have been looked at when arranging this Bill, because it determines considerably the effect that it has upon any decision that is made regarding an individual, particularly where it says that a person who has been sentenced must stay in custody for a lengthy period—I think it is 15 years. Yet if that individual is now regarded as no longer insane, and the verdict is not guilty, he should be a free individual long before that period of 15 years; that is, if we think that the return to sanity is enough to justify liberation and no further charge or penalty should be imposed on that individual for the act he committed when he was regarded as insane. Here is a problem which is extremely difficult to decide.

One thing that impresses me with regard to this Bill is that when the brutal attack was made on that small girl, not one single voice of those who were mentioned by Mr. Willesee was raised against the decision of the court.

The Hon. L. A. Logan: And knowing the circumstances, nobody will, either.

The Hon. J. G. HISLOP: Knowing the circumstances, as the Minister says, nobody will do so. So we do come to a clear decision regarding a definition between these two headings. Those people who desired that we should abolish entirely the death penalty did not raise their voice when this most horrible act was committed in our midst. They must have been of the opinion that either they had no foundation for making the claim that the law should not take its course, or they felt they would receive no response from the public. If I remember rightly, not one voice of those people was raised against the death penalty in that particular case. Therefore, it does seem that we are not yet ready to dispense entirely with the death penalty and that this Bill does, at the present time, fulfil what is in the minds of the people. Later, when we know more and have a different outlook on mental disorders, we may present a Bill which no longer asks for the death penalty.

The Hon. W. F. Willesee: Before you sit down, do you really believe that justice was done by killing the individual concerned?

The Hon. J. G. HISLOP: I think I have answered that already.

Adjournment of Debate

THE HON. R. F. HUTCHISON (Suburban) [6.12 p.m.]: I move—

That the debate be adjourned.

The PRESIDENT (The Hon. L. C. Diver): The question is that the debate be adjourned until the next sitting of the House.

The Hon. A. F. Griffith: No!

The PRESIDENT (The Hon. L. C. Diver): I think the Noes have it.

Motion thus negatived.

The Hon. R. F. Hutchison: I am surprised at that decision. I thought that everyone had the right, in the cause of justice, to seek an adjournment.

Sitting suspended from 6.14 to 7.30 p.m.

Debate Resumed.

THE HON. R. F. HUTCHISON (Suburban) [7.30 p.m.]: Before the tea suspension I moved for the adjournment of the debate because I have been very busy and have not had time to do what I wanted; so I do not think it would have hurt the Minister to permit the adjournment of the debate. It almost seems as though I am being told that I should do something or other. The courtesy of an adjournment might have been extended on this occasion.

The PRESIDENT (The Hon. L. C. Diver): The honourable member must not reflect on a decision of this House.

The Hon. R. F. HUTCHISON: I am going to oppose the Bill. It has some merit; and it is a measure on which we should probably take every opportunity to include some provisions that will ameliorate, to some extent, what is now the law; and I refer to capital punishment.

I abhor the law as it is, and I see glimmerings that the Government is beginning to think that at some time in the future—probably not far distant—it will be forced by public opinion to alter its present way of thinking and come into line with modern concepts of justice and mercy.

The Liberal Government in New Zealand has recently abolished capital punishment. I think that would have come as a shock to our Attorney-General. The Liberal Government of New Zealand also abolished the Legislative Council, so I think the members of that Government must be very progressive people. There is an analogy between those two actions, because in this House many things get murdered.

My objection to capital punishment—the hanging of a man as we carry it out now—is that apart from taking a human life, and apart from every other consideration, it does nothing whatever to uplift society as a whole. It does nothing towards enlightening society. It would be a brave and bold man who would say that we live in an age when we do not want to be enlightened in regard to the hidden things that accrue to human life.

I have been studying the subjects of sociology and mental health, and I have found that some very eminent people and leaders in connection with neurological diseases, who have spent their lives dealing with these things, have arrived at some surprising conclusions.

In my opinion, anyone who commits murder, whether it is premeditated or wilful—I do not know where the difference comes in; it is murder just the same in each case—is not sane at the time. I cannot think that a person could take the life of another person and at the same time be in a normal state of mind. Therefore, instead of just taking a life in the dreadful way that we do—in plain language it is taken by garrotting—we should try to find out the cause. If I had my way I would make the Ministers of a Government which ordered hanging to be present at the hanging; and I make bold to say that the punishment of hanging would not last too long. I would make the Ministers look at the awful deed being carried out so that they could see what it was like.

We talk glibly about the great discoveries that are made to uplift human society, but if we troubled to put first things first and deal with the basic needs of disease; of human life; and of the brain, especially, we would accomplish more than we have and we would not live as we are, in a world of fear because of what might happen at any moment.

It takes a lot of patience and endeavour for me to try to understand the workings of a man's mind so that he can risk a holocaust such as we might have at any moment in the world, and to realise the little effort that is made to avert such a happening. If a man or woman commits the crime of killing another person, we should put the killer under medical care and try by research and scientific means to find out the cause of the crime.

The treatment of mental health is taking an absolute leap forward throughout the world. It has suddenly come to doctors, scientists, and other leaders that there is something missing in the world. Until we know what is missing, we have no right to add to the loss of human life.

It is dreadful and sad enough to realise that one person has killed another; but because a life has been taken, it does not make it right for us to take another life. I say that for the reason that life is one thing that we cannot restore.

I am not pleading, in a maudlin way, for a criminal or anyone else who has committed this deed. I am looking at this quite sensibly, and I say that two wrongs do not make a right; and one dreadful wrong is committed when a murder is done, and another dreadful wrong is committed if a further life is taken; and should a person convicted of murder be subsequently proved innocent—and some

have been proved innocent—nothing can be done to restore the life that was taken. We should not put ourselves in that position.

I hope that when Labor again takes office as the Government—and I hope it will not be very long before it does—we will see a measure brought forward to deal with this matter, and then I will tackle the subject; and then if a Bill for capital punishment is defeated in this House, I say we should call for a referendum on the subject.

When I was in England I was present at the House of Lords—and the House was well stacked—when a Bill dealing with capital punishment was debated. It had to be admitted in England that the abolition of capital punishment had made no difference whatever to the position with regard to murder. In the short time I was in England—a month—there were three murders—dreadful ones—that were proved to have been committed by mentally unfit people.

The Bill before us also deals with the question of sentences, and it provides that a man must serve 15 years before he can be released or be considered for release. People should be more realistic in connection with prison reform. For the sake of posterity we should introduce up-to-date methods of reform so that those methods shall apply to people who commit crimes. If we did that, we would be doing much more than wasting our time in bringing down legislation of this kind.

I am not in favour of capital punishment; and I do not favour a reduction of the Governor's prerogative. That prerogative should be retained in full.

I support the Labor policy of the abolition of capital punishment; and I hope that in the very near future I will see it brought about. It looks as though the present law is becoming repugnant; and I hope that very shortly a real effort will be made to find out the cause of human behaviour. I oppose the Bill.

THE HON. G. C. MacKINNON (South-West) [7.44 p.m.]: Most people who oppose capital punishment—and that seems to be the main subject of debate on the Bill, although it is not the only one dealt with in the measure—argue that killing is completely abhorrent to a human being.

Basically a human being is defined as an animal, as we all know; and we have only to read the paper to learn of tribes and peoples in a natural or wild state to know quite well that mankind is, in fact, a killing animal. In his natural condition he is wild, uneducated, and uncivilised, and he lives by killing because he kills animals to eat and to get their fur to make into clothes; and he kills his enemies so that he himself may thrive and prosper.

Of course, education and a gradual improvement in the civilisation of man has changed our former mode of living to a

marked extent. However, there are still people in our midst who do not find killing so completely abhorrent as many of us would imagine. Some of us have just listened to an extremely interesting talk tonight dealing with the Army which trains and educates men in the killing of the enemy. Any of us who have been through such a phase know that one can kill other people and not worry unduly about it at a later date. However, gradually one is educated beyond that phase.

Nevertheless, I would point out that, as most members know, there was a stage in the history of England when extreme penalties were meted out for what we regard as being very ordinary crimes: such as the crime of stealing a loaf of bread, for which the offender was deported overseas. But those who have studied the history of England would know that at that time England came very close to being a complete anarchy. The fact remains that crime was the order of the day in those times and one could not poke one's head out the door without being in danger; and so extreme penalties had to be meted out in extreme times. The penalties that were imposed in those days for the crimes committed seem to us in these enlightened days to be terrible, but they achieved the result of once more establishing law and order.

The principle of taking a life by executing a person who committed the crime of murder was adopted, and is still adopted, to shoot home in a very salutary manner, of course, that people must abide by the ordinary civilised rules of living; or, in other words, that they must not kill. It is quite useless, even today, to take some people and put them in gaol for a particular offence. I will quote an example. In Singapore, we, as prisoners of war, were sometimes housed in a magnificent gaol. That was erected there to house criminals throughout Malaya—mainly those in Singapore, but criminals were sent to this gaol from other places.

At that time the gaol was found to be completely useless because, in the main, the persons who were committed there had a different philosophy to ourselves. They had been educated to believe that quiet contemplation led to great merit, and to be put away in a place where they were fed, housed, and well looked after, and permitted to sit and contemplate for a period of three, six, or more months, suited them down to the ground.

That was no punishment to them. To us, however, it would be regarded as being a great punishment; to them it did not matter in the least. Whilst they were confined in the gaol their families were looked after, and they were able to contemplate good thoughts or whatever other thoughts they had in mind. Following their release from gaol they resumed their ordinary avocations.

There is no doubt that the greatest punishment that can be inflicted on any man is to take his life. As all members are aware, I have been in certain situations where most fellows came to realise that. I do not care how hungry one is, or how sick one is, until one reaches that stage where one has no interest whatsoever in life, one hangs on to life while there is still breath left in one's body. So there is no doubt that the greatest deterrent against committing a crime, especially that of murder, is the threat of losing one's life. If we were to revert, say, to dealing with a completely savage group of people I do not think there would be any doubt that the only deterrent against murder would be the knowledge: "If you kill him, I will kill you."

There is no doubt that the time will come when we will abolish the death penalty as such; but as Dr. Hislop has said it must come gradually. We no longer flog people for committing all sorts of crimes and offences; we no longer inflict all the terrible punishments that used to be inflicted; and this Bill is changing the law to a degree in respect to the punishment meted out for murder. The time will come in, say 50 or 100 years, when people will have sufficient knowledge, to compare those of us who are sitting in this Chamber tonight with themselves; and they will probably regard us as being an ignorant sort of people because the general standard of knowledge and ability will probably have reached a high peak by that time; because, as we know, our standard of education and general knowledge are increasing all the time.

I will refer again to what Dr. Hislop has said—and he ought to know—when he expressed the opinion that the time will come when we will be able to accomplish our objective in this way by psychiatric treatment or other methods of treatment; the time will come when we will be able to educate a person and handle him in a proper manner. However, to imagine that a person is mad when he kills someone else is something I cannot comprehend. I have some very good friends who killed men and who rubbed their hands in glee when they did so. I think most of us have friends who have done the same thing. Certainly the men they killed might have been of a different colour, or belonged to another country, because at that time they were our enemies. But they killed them all right! Make no mistake about that! They shot men in cold blood, and we know some men—

The Hon. R. F. HUTCHISON: There is no need to skite about it.

The Hon. G. C. MACKINNON: I am not skiting about it! No-one skites about war. No-one does that who knows anything about the horror of war.

The PRESIDENT (The Hon. L. C. DIVER): Order! Will Mrs. Hutchison please refrain from interjecting? She has

made her speech and I would like her to permit Mr. MacKinnon to make his without any interruption.

The Hon. G. C. MacKINNON: If fear can be whipped up in one set of circumstances there is no doubt it can be whipped up in any other. A person might be goaded by fear to kill another person because of a certain set of circumstances. There are many of us today who have passed through different phases of our lives—through two world wars—who know that can happen in such circumstances; and who also know that it can happen under other circumstances. We must have a deterrent, and the strongest deterrent possible.

There is an unfortunate aspect of this subject, and that is that it has now reached the stage where it has certain political connotations. When a Government of one colour is in office it is a fair bet that a murderer will serve a gaol sentence, but when a Government of another colour is in office, he would have a reasonable chance of being hanged by the neck.

I have always thought that perhaps a better solution would be for a trial to take its normal course, as it does today, but that on the death sentence being pronounced the case should then be referred to the Full Court, with the judges sitting in review of the sentence and the evidence of the case; and three final judges could then decide whether the man was deserving of a reprieve or whether the sentence imposed on him should be carried out.

The Hon. A. F. Griffith: You get some manner of that by way of appeal.

The Hon. G. C. MacKINNON: Yes, I know. There would be an appeal, but the Full Court should sit in judgment on the sentence, and its decision handed to three final judges who, purely and simply, would review the evidence of the case and decide whether the sentence should be carried out.

The Hon. A. F. Griffith: The judge would then be performing the duties of the jury.

The Hon. G. C. MacKINNON: No; I am afraid I have not made myself clear. After the complete case is heard I think it would be better for the judges to do the job that is now carried out by Executive Council. At the moment, Executive Council meets and either grants a stay of execution so that the man serves a gaol sentence, or else—

The Hon. R. Thompson: You want them to review the sentence that is made?

The Hon. G. C. MacKINNON: In fact, does not Executive Council do that now? When the jury brings in a verdict of guilty, the judge prescribes the stock sentence and Executive Council then considers it and grants either a stay of execution or decides that the sentence shall be carried out.

The Hon. A. F. Griffith: Executive Council decides on the recommendations that are made by the jury in many cases.

The Hon. G. C. MacKINNON: Yes, very often that is the case. But if my suggestion were agreed to, the matter would be taken out of the realms of politics, and the Full Court would consider the recommendations of the jury and any other evidence that had a bearing on the case, and the judges, not Executive Council, would make a final recommendation as to the implementation of the sentence.

The Hon. A. F. Griffith: Executive Council certainly does not order hangings.

The Hon. G. C. MacKINNON: No, but it can prevent a hanging from taking place. To say that if any Cabinet Minister saw a hanging, it would deter him from making a decision that a man should be hanged, is something with which I cannot agree, because it is not a reasonable argument. For example, I would not like to watch a gall bladder operation because I am quite sure I would faint, but that is no argument why we should stop all gall bladder operations. I do not even like watching anyone having a boil lanced, but that is no argument why boils should not be lanced. Therefore, to say that if a man witnessed a hanging he would not permit hangings in the future does not seem to me to be a valid argument. I wanted to express the thoughts I had in mind on this subject.

I am, of course, supporting the Bill because I think it is a step towards the ultimate abolition of capital punishment. I would like to go a little further and express the hope that perhaps one day our society might be able to do without prisoners in the same way as we might be able to do without chest hospitals and insane hospitals and all those other establishments which our present state of progress renders necessary. However, until the day is reached when we will not have tuberculosis, heart disease, and insanity in our midst, and men killing each other, I am afraid we will have to keep these institutions and, in some cases, retain the means of deterring people from committing those crimes which at the moment they desire to commit.

THE HON. C. H. SIMPSON (Midland) [7.59 p.m.]: This Bill seeks to amend several sections of the Criminal Code, but the particular clause on which we are focussing our attention is that which seeks to clarify the position in regard to the imposition of the death penalty.

Most of us have considered this question very seriously at one time or another, and have read the opinions expressed by those who favour the abolition of capital punishment; and we have also read the thoughtful observations of people who have considered all aspects of this matter and reached the conclusion that in respect of some types of offences against our social order, the penalty of death is necessary—if only to remind people of the duty they

owe to society, and of the dangers which can be encountered by flouting the laws of humanity.

In reading some of the dissertations of abolitionists, I have become somewhat sceptical of the claims which have been made from time to time that the imposition of the death penalty is not a deterrent to potential murderers, because I have read opposite opinions expressed by people—and those opinions were founded on carefully compiled statistics, which show that when the death penalty was imposed and carried out, it had some effect on the incidence of those crimes.

The Hon. R. F. Hutchison: How do you know that? That has not been proved.

The Hon. C. H. SIMPSON: We cannot say there is definite proof one way or the other. When one side claims that the abolition of the death penalty has had no effect in reducing crimes of this nature, another section of the people can claim equally that in some cases the imposition of the death penalty has had a deterrent effect.

The Hon. R. F. Hutchison: You are making an assertion without proof.

The Hon. C. H. SIMPSON: Over the centuries the penalty of death as a punishment has been part of the law of the land in practically all countries. In some countries the death penalty was abolished, only to be reintroduced, and then to be abolished again.

The method of carrying out this penalty varies from country to country. In Australia and Great Britain the method of execution is by hanging. In the United States the method varies from State to State; in one the electric chair is used and in another the gas chamber is used. In France the instrument of execution was, and I think still is, the guillotine. In Japan among some sections of society, execution is carried out by the sword. If we were to go back sufficiently far in history we would find that a common means of inflicting the death penalty for the crime of murder was by crucifixion.

Some years ago a Bill for the abolition of the death penalty was introduced in the House of Commons in England. A considerable amount of debate took place on the measure. Finally, when the vote was taken, a small majority in a fairly big vote was in favour of abolition. One extraordinary feature was that a substantial proportion of members refrained from voting.

The Bill was sent to the House of Lords, and sundry threats were levelled against members in that House in respect of their approach to the measure. One threat was that if members of the House of Lords did not toe the line and agree to the verdict expressed by the House of Commons, the time would be ripe for agitation

for the abolition of the House of Lords. The members there, a large number of whom were eminent legal men, rightly ignored those threats.

The House of Lords considered the Bill at length and the members made a great number of recommendations. They refused to pass the Bill in the existing form, and it was returned to the House of Commons. When the Bill was brought up in the House of Commons in the following year, the recommendations made by the House of Lords—which are practically in line with the clauses in the Bill before us—were accepted and passed by a very big majority.

At various times in England, Gallup polls on capital punishment were conducted to sound public opinion on the retention of hanging. These polls posed a variety of questions. Those who expressed an opinion showed by a marked majority that the retention of the death penalty in certain cases was desirable.

In the opinion of one who is interested in the history of crime and punishment, and who has read of the circumstances when these atrocious acts were perpetrated, the death penalty was probably the only fitting punishment. It is recognised in the Bill before us that there are degrees of murder. The crime is divided into categories. Wilful murder is defined as an act callously planned, premeditated, and carried out to the advantage of the murderer, without any thought for the consequences of his act on the lives of other people. Such a crime rightly comes under the category of those punishable by death.

Sometimes the crime of taking the life of another person is committed under the influence of strong emotion without any premeditation, and without any thought of the consequences of the act. Such a deed warrants consideration for the imposition of a lesser penalty than the death penalty.

Under our system of justice when a person is accused of murder he has the right to engage competent counsel to defend him, and he receives all the consideration which the State can possibly provide so that he will have the best possible legal defence. He has the right of appeal, and this is very often exercised. Every possible consideration is given to such malefactors, and their cases are considered very thoroughly.

Some of those who object to the death penalty under any circumstances are inclined to overlook the plight of the victims or of their relatives, such as the children left fatherless or widows left without husbands. One cannot be too careful in taking steps to prevent crimes of this nature, by making the punishment fit the crime. Sometimes we are so emotionally influenced by the plight of the victim or the murderer, as the case may be, that we are apt to overlook the plight of the

dependants of those persons. The dependants might be deprived of their bread-winners.

The Hon. R. F. HUTCHISON: Two wrongs do not make a right.

The Hon. C. H. SIMPSON: Sometimes we are apt to treat lightly the reports of the large number of persons who are killed in motor accidents, simply because something sensational, such as a murder, has captured the headlines. The Government has made a genuine attempt to distinguish between wilful murder and other categories of murder, and to clarify the position so as to make it easier for the judges trying these cases.

THE HON. F. R. H. LAVERY (West) [8.10 p.m.]: I have been goaded into making a contribution to this debate. I intended to cast a silent vote.

The Hon. A. F. GRIFFITH: Was that why you got the adjournment of the debate last night?

The Hon. F. R. H. LAVERY: I got the adjournment because I believed that a Bill of this nature should receive reasonable debate in this House.

The Hon. A. F. GRIFFITH: So do I.

The Hon. F. R. H. LAVERY: I always understood that this House was a House of review, but in my 10 years here I have found it to be a poor House of review. It has been more of a party House. It is of no use for the Minister to deny that fact.

When I sought the adjournment of the debate last night there had been only one speaker. I thought that some other members wished to speak so I moved for an adjournment. This evening four members have already spoken in the debate and I am the fifth; so, I did the right thing in seeking the adjournment.

I have always had a confused view as to whether or not we should agree to the abolition of capital punishment. With the passing of the years, and as I grew older and a little more staid and less emotional than in my younger days, and as I mixed with the learned gentlemen in this House, I began to think that the time was ripe when a Bill such as the one before us would be a slight advance. I make no hesitation in saying that I do not believe in capital punishment.

There are times when the crime of murder is committed and we have a doubt as to the sanity of the perpetrator, and as to the fairness of the death penalty. Dr. Hislop has mentioned one case, but I would like to refer to another—the case of Thomas who was the last person to be hanged in this State.

The Hon. J. M. THOMSON: There was another subsequently.

The Hon. F. R. H. LAVERY: I was out of the State at the time, and I was not aware of that. I pay a tribute to Dr. Hislop

for his analysis of the mental make up of the the women who were placed in destitute circumstances and who received aid from the Child Welfare Department.

In the case of Thomas, if the truth of his experiences in his family life had been made known to the court, he might not have been hanged. I know quite a lot about his family. The rest of the members of that family are very fine citizens. This young man, who was hanged because he took the lives of three persons, was goaded into crime. By keeping company with others who were drinking at the National Hotel at Fremantle, a challenge was made to him. He went to the eastern side of the city, obtained a rifle and committed the crimes. He had just been released from prison. I would have liked psychiatrists, Dr. Hislop, and other qualified people to have a few weeks to study the mentality of this person, to find out whether he was or was not sane at the time of the crimes.

I was goaded into making a contribution to this debate after I listened to the remarks of Mr. Simpson. He used the analogy which I do not think counts. He tried to tell us that hanging is a deterrent to wrongdoers. I believe that since Thomas was hanged—and of course in the meantime Fallows has also been hanged—there have been 11 murders in this State, two during this week. That fact I think proves that Mr. Simpson is not right.

I intend to support the Bill because of the advancement it makes, little though it be. However, I want to make it perfectly clear that as far as life and death are concerned politics play no part in my opinion. If a man commits a crime and the law says he must hang, it is my job to do what I can to have that law changed and provide a punishment more fitting. After all is said and done, life on this earth is short and once we have passed it by there is no coming back. If a person is hanged, he evades the real punishment he would have received had he been imprisoned for 15 or 20 years. Very often death is a great relief.

I am pleased I asked for an adjournment last night because it has given others as well as me an opportunity to discuss the Bill. I say again that irrespective of politics I am not in favour of the taking of a human life.

THE HON. R. THOMPSON (West) [8.18 p.m.]: There is very little in this Bill which anyone in this Chamber can be called upon to support. We know that up to date little concern has been expressed in connection with the traffic portion of it.

In regard to the death penalty, according to the information I have been given there has been one person in 50 years who has been convicted and hanged on a charge of murder. So I do not know why there has been such a play on words by

members. Evidently they have not gone to the trouble to find out how many hangings have taken place as a result of murder. The one case to which I have referred was in 1952. Yet people have told us that this legislation is a step forward. To what is it a step forward? One person in 50 years has been hanged for murder—not wilful murder—and in the next 50 years no-one might be hanged.

If the Bill dispensed with capital punishment for wilful murder instead of just murder, the House and the sponsors of this legislation would be taking a step in the right direction. I do not think any person in his right senses in this year of 1961 honestly and truthfully believes in capital punishment.

The Hon. L. A. Logan: You speak for yourself.

The Hon. R. THOMPSON: The Minister believes in it, does he? Well he had better speak for himself.

The Hon. L. A. Logan: I have.

The Hon. A. F. Griffith: You made a statement you know.

The Hon. R. THOMPSON: I said I did not think there was anyone who still believed in the barbaric act of capital punishment; and I am alarmed to find out that there are still people who believe along those lines.

This Bill is merely a play on words to fool the people who read the comments in the Press. Nothing of any consequence will result from it.

I could not understand Mr. MacKinnon's point of view when he said he did not believe in the jury system in Western Australia. Juries do not sentence people to death.

The Hon. G. C. MacKinnon: I did not say they did.

The Hon. N. E. Baxter: They bring in the verdicts.

The Hon. R. THOMPSON: The judiciary carries out the sentences.

The Hon. G. C. MacKinnon: No they do not; the hangmen do.

The Hon. R. THOMPSON: Mr. MacKinnon wants a review of a decision which a jury has made.

The Hon. G. C. MacKinnon: I want a transfer of the Royal prerogative to the Full Court. That is what I said.

The Hon. R. THOMPSON: The member refers to the Royal prerogative. If he studies the Bill he will find that the Royal prerogative can only be exercised under certain circumstances. That provision is taking something away rather than giving it. At the moment the Royal prerogative can be exercised at any given time, but under this Bill it can only be exercised—apart from special circumstances—after the person convicted has served 15 years.

It has been said that there is a political flavour in respect of hanging and that people jump on band wagons—that was not the term used, but it was implied—in respect of capital punishment. However, to know this is not true, we have only to realise that there are people from all stations of life and in various churches throughout the world who have no political ideas but who condemn capital punishment. People who preach God's word openly condemn it. We say prayers in this Chamber every day and although those who preach in churches are against capital punishment, we in this Chamber are still going to allow it to be carried out.

I have never believed in hanging people and my view has not been flavoured by any political taint or opinion. A person should be guided by his conscience in this matter. I wonder what people would think if they found that one of their relatives had committed a crime and was therefore to be hanged.

Murderers have a lot to learn in life. There have been many of them sentenced to life imprisonment who have been released and have subsequently become jolly good citizens.

The Hon. N. E. Baxter: What is your opinion of the death penalty for treason?

The Hon. R. THOMPSON: I am not speaking on that particular aspect of the matter.

The Hon. A. F. Griffith: Why not?

The Hon. R. THOMPSON: I think it is a little above me to decide what action should be taken when the welfare of a nation is at stake. I do not believe that any other person in this Chamber should have the right to decide.

During the regime of Labor Governments in Western Australia I do not think that any person has ever been hanged for murder, and I sincerely hope that in the future, no hanging will take place while a Labor Government is in office. If there are any more hangings in Western Australia, I hope that those responsible for them will remember them for many years to come.

During the Address-in-Reply debate I pointed out that if a step were to be made in the right direction, the conditions at the Fremantle gaol should be improved. If this were done a step would certainly be taken in the right direction, which is not the case under this legislation.

THE HON. N. E. BAXTER (Central) [8.30 p.m.]: I have listened with interest to some of the debate on this matter, and with particular interest to those who have expressed their disapproval of capital punishment. One has heard the remark that it cannot be proved that the institution of capital punishment is a deterrent to murder; but, on the other hand, that cannot be disproved. None of us can tell

whether or not it is a deterrent, but one has the right to one's own beliefs that capital punishment could be a deterrent to a lot of people who would commit wilful murder if it were not in existence. I believe there are a lot of people in this world who, if it were not for the fear of capital punishment, would not hesitate to commit murder.

We have only to look at what happens in countries outside of Australia, and even in Australia, with the gang warfare that goes on. Some of those gang leaders think nothing of ordering not one but many murders; they do it cold-bloodedly, because another person's life means nothing to them. One can imagine what the position would be if there were no such thing as capital punishment; and yet some members of this Chamber say that that type of person should be left free, or just interned in gaol, even though he may have killed, or been the cause of killing, many people.

Under our system of justice a person gets a fair trial. It is the Crown's job to prove without doubt that the person charged has committed murder, or wilful murder, as the case may be; it is the jury's job to decide whether or not the person charged has committed wilful murder, murder, or murder under extreme provocation, and to bring in a verdict accordingly; and naturally, of course, it is the job of the judge to pronounce the sentence. Even in this country we have given a person who has been found guilty a further opportunity of having his case referred to Executive Council before a final decision is made in regard to the death penalty. Could there be any fairer system of justice than that? Of course there could not.

As regards the remarks that this Bill is merely playing with words, I would like to say it is not playing with words at all. Mr. Ron Thompson mentioned that only one person has suffered the death penalty for the crime of murder in 50 years. That may be so. But let us have a look at what has happened in those 50 years. During that time we have had a coalition Government for approximately 19 years, and for the balance we have had Labor Governments which do not believe in capital punishment.

The Hon. R. F. Hutchison: They could not get it through this House; you know that's the truth.

The PRESIDENT (The Hon. L. C. Diver): Order!

The Hon. N. E. BAXTER: There is the answer why, in cases of murder, the murderer has not paid the extreme penalty. I do not say in all cases, but in many cases over that period there may have been certain mitigating circumstances because of which the death penalty was not imposed. But it is no argument to say that over the last 50 years only one person

has been hanged for the crime of murder. Quite possibly there may have been others who could have been hanged.

Dealing further with the Bill, in regard to the Royal prerogative, I believe this is a move in the right direction. A person is found guilty by a jury and the sentence is pronounced by a judge. If a person is given life imprisonment in this country it means 20 years gaol; but the Bill lays down a period of 15 years before any remission of sentence can be considered, except in cases where there is a miscarriage of justice or the ill-health of the person concerned is a reason for his earlier release. We all know that unless those circumstances arise there is a very good reason why there should be no revision of the sentence.

After all, why should there be a review after five years, unless extreme circumstances are involved, and they are provided for in the Bill? In my view, the measure completely covers the position in that regard. It is a very fair provision and it will mean that pressure cannot be brought to bear on certain people in responsible positions to have them apply for a remission of sentence—a sentence which has been imposed by a judge after a jury has given its considered verdict. With those remarks I support the measure.

THE HON. A. F. GRIFFITH (Suburban—Minister for Mines) [8.37 p.m.]: In the first place I wish to state that I regret the necessity, when replying to this debate, to have to deal with the question of adjournments. However, as it was not I but the House which refused the adjournment of the debate tonight, I think it is appropriate that I should make a few remarks on the matter. We know that the practice in the Legislative Council is not to refuse adjournments where a reasonable request for them has been made. The adjournment of this Bill was sought by Mr. Lavery last night, and it was not refused.

The Hon. F. R. H. Lavery: That is correct.

The Hon. A. F. GRIFFITH: But the honourable member did not take the call when you called the order of the day tonight, Mr. President; it was taken by somebody else, and we have had a number of speeches on the subject since then. Perhaps those members who have contributed to the debate tonight would have done so last night had Mr. Lavery not sought an adjournment.

The Hon. F. R. H. Lavery: No; that is not correct.

The Hon. A. F. GRIFFITH: I do not know and neither does the honourable member.

The Hon. F. R. H. Lavery: Yes; you were about to rise.

The Hon. A. F. GRIFFITH: I am always ready to complete the debate, provided nobody else wants to speak.

The Hon. R. F. Hutchison: Except when it's me.

The Hon. A. F. GRIFFITH: I do not think that is a fair comment to make, but of course it is one we can expect from the honourable member. It is not a fair comment, and the honourable member knows full well that it is not. I have tried to carry out the job of Leader of the House in exactly the same way as my predecessor did. If I can emulate the job done by the late Hon. Gilbert Fraser, I will be very pleased.

The Bill was introduced into this House on the 12th October, six days ago; and surely six days is a reasonable time in which to study a matter of this nature, particularly when there is so much difference of opinion as to its importance. Mr. Ron Thompson said that it is not important; and Mr. Lavery said it is. Somebody else expressed a different opinion, but one thing is sure: From the debate on the matter this evening I am certain we have heard the individual views of people who have done some thinking about the matter and others who have not.

The Hon. R. F. Hutchison: Don't forget we have many things to think about.

The Hon. A. F. GRIFFITH: If the cap fits, the honourable member may wear it.

The Hon. R. F. Hutchison: No; the cap does not fit at all. Stop sneering.

The Hon. A. F. GRIFFITH: I might add the Bill was introduced into the Legislative Assembly on the 14th September; so to say that there has not been sufficient time to look at it is not right. However, I will let that go.

The Hon. F. R. H. Lavery: Six days is all we have had in this House since it was introduced.

The Hon. A. F. GRIFFITH: That is so.

The Hon. F. R. H. Lavery: It is nothing to do with the Legislative Assembly.

The Hon. A. F. GRIFFITH: I have known of many occasions when we have been in a position to go straight on with a Bill.

The Hon. F. R. H. Lavery: That is quite correct.

The Hon. A. F. GRIFFITH: And have completed it the same evening—

The Hon. F. R. H. Lavery: But not amendments to the Criminal Code.

The Hon. A. R. Jones: Such as the important one we had two or three nights ago.

The Hon. A. F. GRIFFITH: —if it suited our purpose.

The Hon. F. R. H. Lavery: That is so.

The Hon. A. F. GRIFFITH: Might I say this in respect of Bills being adjourned: No matter how insignificant a matter may be I am quite content, and I am sure my

colleague would be, to allow a member to adjourn a debate for a week so that he can be afforded an opportunity to study it. However, the debate on this Bill was adjourned for almost a week.

The Hon. H. C. Strickland: Do you mean week after week?

The Hon. A. F. GRIFFITH: No, a week, in order that the member concerned may be given an opportunity to make a study of it.

The Hon. L. A. Logan: That is when you have to do some research.

The Hon. A. F. GRIFFITH: But when that week's adjournment has been obtained, surely it is reasonable for us to expect more than one speech on the subject before there is another adjournment.

The Hon. H. K. Watson: I take it your remarks are qualified when we reach the end of the session?

The Hon. A. F. GRIFFITH: Of course; and if we reach the end of the session in this most complex state, we will never get home for Christmas.

The Hon. F. J. S. Wise: I think you will agree in general that the Opposition does endeavour to be co-operative.

The Hon. A. F. GRIFFITH: I do, and might I hasten to say that I am not directing these remarks at the Opposition; please do not think that.

The Hon. R. F. Hutchison: But you—

The PRESIDENT (The Hon. L. C. Diver): Order!

The Hon. A. F. GRIFFITH: And I am not directing them at the honourable member; I am merely trying to cover the position as a whole. I have no objection if members want a longer adjournment on a Bill; but let us get on with the job after they have taken advantage of it. Surely that is fair comment.

Having said that, let me turn to the Bill itself. I repeat: The contributions to the debate made by various members this evening were extremely interesting. Obviously some members have thought a great deal about the subject and some have had better opportunities than others to think about it. I will not point to any particular member in that respect, because some have had a better opportunity. With some people, personal experience sometimes brings this sort of thing much closer to the heart than is the case with other people who are hereby able to pass some opinions about a matter of this kind.

So far as the Government is concerned, I hasten to say that there is no political influence in this matter at all; the only political influence is that which has been shown by some members who have contributed to the debate. One member said that if a Bill was introduced into another place it would not pass the Legislative

Council. Of course, apart from casting an aspersion on the Legislative Council, which is so frequently done unnecessarily—

The Hon. F. R. H. Lavery: It has been done for 60 years.

The Hon. A. F. GRIFFITH: —there is no proof of it; because to the best of my knowledge a Bill has not been introduced by the Government to abolish capital punishment, or to go any part of the way, as Government policy. Members can correct me if I am wrong, but that is my recollection of the situation. Hundreds of Bills of all manner and description have been passed by this House during the six years of a Labor Government from 1953 to 1959, and during the 14 years of a Labor Government from 1933 to 1947; and they will continue to be passed by this House, I am sure.

The Hon. R. F. Hutchison: I am sure they will until we get two more members here, and then they will not.

The Hon. F. D. Willmott: Why don't you buy a tin whistle.

The Hon. A. F. GRIFFITH: I want to leave the election on one side, but, of course, I know it is constantly in Mrs. Hutchison's mind. However, I shall now deal with the Bill which is before us.

The Bill is not intended to abolish capital punishment. It is purely intended to revise the circumstances as they exist at the present time. I take very great exception to the remark that Ministers of the Crown order hangings. I take great exception to that because, of course, Ministers of the Crown do not order hangings; they merely take action in circumstances reported to Executive Council; and it is Executive Council that extends the power of mercy. According to the circumstances reported to them, the Ministers merely say that the law shall or shall not be carried out.

The Hon. R. F. Hutchison: They ought to make you go down and watch it.

The Hon. A. F. GRIFFITH: That is a catchcry I have heard in other places, and it is not worth while commenting upon, because it is not important to the issue. Mrs. Hutchison says she is going to vote against the Bill; she is going to leave things exactly as they are.

The Hon. R. F. Hutchison: It would be better than what is contained in the Bill.

The Hon. A. F. GRIFFITH: Mrs. Hutchison does not want the situation to improve in any way. Other members, of course, like Mr. Willesee, who made a well-reasoned speech on the subject, say that they will support the Bill. Mr. Willesee, together with the other members who support the measure, realises it is a step forward to what Mr. MacKinnon said one day could mean the absolute abolition of capital punishment.

It is quite wrong to say that steps forward in other countries are tending towards complete abolition of capital punishment, because they are not. Merely because one or two countries have abolished capital punishment does not mean it is being done all over the world. The Mother Country itself has found it necessary to reintroduce capital punishment after abolishing it. When we debate a question of this nature it appears to me that those who do not believe in capital punishment—and this is the way I interpret their view—appear to feel sorry for the man who commits the crime. The tendency is to say that the man had a mental disorder; that at the moment of committing the crime he was temporarily insane; that he did not know what he was doing and, because he did not know what he was doing, we should take him to a place where mental treatment can be given to him, after which treatment he can again be released on the community.

The Hon. R. F. Hutchison: They never let him go.

The Hon. A. F. GRIFFITH: Let us see what would happen next. There is a man at Fremantle gaol at the moment who was serving a sentence for the crime of murder. He was let out into the community; he then committed another murder and is now in Fremantle gaol for having committed this second murder. So it is no use making comments like that, because that is the situation which would obtain. In the opinion of the Government this Bill does take a step forward.

Mr. Ron Thompson says that it does not require any study because there is nothing much to it. That is contrary to the opinion of those people who think it ought to be studied very closely. I think all Bills should be studied closely. We should look at the concept of every Bill introduced into this House to see what it means.

When Mr. Ron Thompson was speaking, Mr. Baxter interjected, and asked him what he thought of the crime of treason. I suggest that Mr. Ron Thompson have a look at section 37 of the Criminal Code where he will find that the community in which we live still has on the statute book the crime of treason.

The Hon. R. Thompson: Do not get on to that.

The Hon. A. F. GRIFFITH: I will get on to what I like.

The Hon. R. Thompson: Stick to the truth. I was dealing with the wilful murder aspect of this Bill.

The Hon. A. F. GRIFFITH: The honourable member is misunderstanding my intention in this case. When he was speaking, Mr. Baxter interjected and asked him what he thought about treason. Mr. Thompson did not debate the matter, and I have no objection to that. I merely suggest that he have a look at section 37 of

the Criminal Code. If he wants to take exception to the Criminal Code that is another matter.

The Hon. R. Thompson: I said I, like other members of this Chamber, would not countenance treason.

The Hon. A. F. GRIFFITH: I was merely suggesting to the honourable member that he have a look at section 37 of the Criminal Code where he will find that for crimes with a lot less physical violence than murder the offence is punishable by death.

The Hon. W. F. Willesee: Treason would most likely be dealt with under the Crimes Act.

The Hon. A. F. GRIFFITH: It is dealt with in the Criminal Code. The Crimes Act is a Federal Act and I do not know the position that obtains there. But here it is in the Criminal Code.

The Hon. W. F. Willesee: The Attorney-General said it would be dealt with under the Crimes Act.

The Hon. A. F. GRIFFITH: I do not know about that. I looked up this matter of treason when Mr. Baxter made his interjection, and I found that the penalty of death is applicable to the offence of treason under section 37 of the Criminal Code. One does not have to kill for the offence to be punishable by death under the Criminal Code.

Last night Mr. Willesee raised quite a number of important points, and during the course of the debate I had a look at them and I would like to make some comment on his contribution to the debate. In the first place I point out that according to the severity of the crime the jury makes its finding and the judge passes sentence; and frequently a charge of greater magnitude—if I can use that word as a mere expression—can be a lesser charge. So a charge of wilful murder can be returned as one of murder. A person does not necessarily have to be found guilty or innocent of the particular charge.

To say that all murderers are insane or suffering from some complaint is something upon which I cannot express an opinion and I am not going to try; but I often wonder what goes through the mind of a man who would watch a little girl walking down the street and await an appropriate opportunity to invite, coax or encourage her into his house in some way, and then commit a dastardly crime upon her, and tie a stocking around her neck and choke her to death. In spite of this people are inclined to say, "The poor fellow was temporarily insane so you must not punish him according to the law. You must put him in some place where he can be treated." I do not profess to know the answer to that.

The Hon. H. C. Strickland: You are labouring the Bill.

The Hon. A. F. GRIFFITH: I am not; I am expressing a conscientious view, and I would ask the honourable member to be

as patient with me as he was when other members were speaking. I am expressing an opinion on a very important matter.

The Hon. H. C. Strickland: You have no opposition to it.

The Hon. A. F. GRIFFITH: That makes no difference. This is a matter which according to some people should be fully debated and considered, and I agree that it should. Whilst I do not know what goes on in the mind of a man when he commits a sex crime on a little girl, I do know what must go on in the minds of the people who constitute the little girl's family—her mother, her father, perhaps her brother or her sister.

The Hon. R. F. Hutchison: Why would you know that if you do not know the other?

The Hon. A. F. GRIFFITH: I know what must go on in their minds. I know how I would feel, and God forbid that it should ever happen to a child of mine. I do think in a great many cases, the fact that the death penalty is still on the statute book constitutes a deterrent to people who would commit crimes of that nature.

Mr. Willesee raised one or two other points with which I shall deal, and on which I will endeavour to give some explanation. He says that he thinks the death penalty causes reluctance on the part of juries to find a true verdict on the evidence. I disagree with that statement, because we have had the jury system over a long time. If my memory serves me correctly, Mr. Ron Thompson, when speaking, commended the jury system as one which has worked well for a long time. I think it has. Mistakes have been made, of course, but in the main it is a system which has worked well; and in a country such as ours—and other British-speaking countries—I do not know of a better system. I really do not think it is necessary for me to say any more.

In conclusion, I would commend the Bill to the House as an attempt by the Government to go at least some of the way. It is certainly not an attempt, I repeat, to remove from the statute book the death penalty for wilful murder.

The Hon. W. F. Willesee: Could you enlarge on the point of licenses being taken away from people?

The Hon. A. F. GRIFFITH: As I understand this, although I am not able to give a complete answer, a magistrate under the Traffic Act has certain authority in respect of licenses, but a judge has not under the Criminal Code as it is written at the moment. The Chief Justice expressed a view on this particular matter and brought to the notice of the Government the situation concerning the authority of judges of the Supreme Court when dealing with offences in which the use of a vehicle was an element of the crime.

The power in doubt is the one to suspend the driver's license or to disqualify the convicted person. The provision of clause 4 in the Bill which repeals and re-enacts section 668 of the Code will remove this doubt entirely. The passing of the Bill will authorise a judge to suspend a license, which is already held, for such period as he thinks fit; and he may declare the person disqualified.

The clause also provides that if a person does not hold a license, he may be disqualified from holding one. That means when he is released he may be disqualified from applying for a license. There is a section of the Traffic Act which contains a similar disqualification in the case of juveniles. I think for one crime the period is 12 months; for two crimes, two years, and so on. So the same principles will apply under the Criminal Code as now apply to the judiciary of a lesser authority under the Traffic Act. That is as far as I can explain the matter to the honourable member.

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.

JUSTICES ACT AMENDMENT BILL

In Committee, etc.

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

JURIES ACT AMENDMENT BILL

In Committee, etc.

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

STAMP ACT AMENDMENT BILL

Second Reading

Debate resumed from the 17th October.

THE HON. L. A. LOGAN (Midland—Minister for Local Government) [9.9 p.m.]: In introducing this measure to the House I said the reason was that this State was the only State in which stamp duty was applicable to short-term money investment, and that any transactions that took place on the short-term money market had to be dealt with in the other States and not in this State. For that reason, it was desired to take away the stamp duty on this type of investment so as to make it easier for dealers to have, within the State, the privilege of an office through which they could operate.

I also said that the State will not lose anything by passing this measure, because no stamp duty is being collected today.

However, investors have to go to the trouble of transacting their business in another State before it comes back here. I see no reason why this measure cannot be passed. I admit that the amount of 3d. on £100 is not very great; but if duty of 2s. 6d. in the £100 is added to the amount it becomes very substantial. We have to appreciate the fact that every time money is turned over there is a cost against it; and with the passing of the Public Moneys Act the Government will be able to invest its money quickly when the market is right; and there will be no need to go to the trouble of finding somebody in the Eastern States who will put the transaction through to avoid the stamp duty on it.

Mr. Watson rightly said that we should renew our legislation and alter it according to changed times and circumstances. That is just what we have done on this occasion, but Mr. Watson opposes it. That is exactly what we have done. We have brought our thinking into line with changed circumstances.

The Hon. H. K. Watson: Not all the way; only half way.

The Hon. L. A. LOGAN: I can appreciate that Mr. Watson would like to do away with the stamp duty altogether, as he would with a lot of other taxes. I do not know how any Government would get on if Mr. Watson had his way. I do not know what he charges his clients in his own business, but I imagine he does not do business with them for nothing. If he applied the same principles to his own business as he does to Government business, his own business could not function.

As I said before, Mr. Watson considers that we should look at our legislation and adjust it according to times and conditions. On this occasion, we have done that. All we will do, if this legislation is not passed, will be to make it a little more difficult for the investor with the money—and on this occasion it happens to the Government—because any transactions will have to take place outside the State with no benefit to anybody. We will not be losing anything, because we are not getting anything at the moment.

Having accomplished this much in regard to the Stamp Act, we might set a precedent which Mr. Watson could follow up and perhaps he may get some relief from another part of it. I commend the Bill to the House and trust members will give it earnest consideration.

Personal Explanation

The Hon. H. K. WATSON: I did not say I opposed this Bill. I did say that I stood by my previous assurance that I would support any Bill which reduced any tax at any time.

The Hon. L. A. Logan: I accept that explanation.

Debate Resumed

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

Ayes—12.

| | |
|---------------------|----------------------------------|
| Hon. N. E. Baxter | Hon. G. C. MacKinnon |
| Hon. A. F. Griffith | Hon. C. H. Simpson |
| Hon. J. G. Hislop | Hon. S. T. J. Thompson |
| Hon. A. R. Jones | Hon. J. M. Thomson |
| Hon. L. A. Logan | Hon. H. K. Watson |
| Hon. A. L. Loton | Hon. R. C. Mattiske (Teller.) |

Noes—9.

| | |
|-----------------------|-------------------------------|
| Hon. G. Bennetts | Hon. J. D. Teahan |
| Hon. W. R. Hall | Hon. W. F. Willesee |
| Hon. R. F. Hutchison | Hon. F. J. S. Wise |
| Hon. F. R. H. Lavery | Hon. R. Thompson (Teller.) |
| Hon. H. C. Strickland | |

*Pairs.**Ayes.*

| |
|---------------------|
| Hon. J. Cunningham |
| Hon. F. D. Willmott |
| Hon. C. R. Abbey |
| Hon. J. Murray |

Noes.

| |
|---------------------|
| Hon. E. M. Davies |
| Hon. E. M. Heenan |
| Hon. G. E. Jeffery |
| Hon. J. J. Garrigan |

Majority for—3.

Question thus passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (The Hon. G. C. MacKinnon) in the Chair; The Hon. L. A. Logan (Minister for Local Government) in charge of the Bill.

Clause 1 put and passed.

Clause 2: Section 16 amended—

The Hon. H. K. WATSON: I would like to correct one or two wrong impressions which were—no doubt unintentionally—conveyed by the Minister in his remarks. I made the point that the Stamp Act should be reviewed. This Bill is not a review; it deals only with one particular item. Last night I gave various illustrations; and I might also remind the Minister of one other glaring anomaly in this section of the Stamp Act.

Under the town planning legislation, where a person is subdividing land, the Town Planning Board makes it a condition that he shall give 10 acres or 20 acres to the Government for playing fields. Insult is added to injury by making him pay stamp duty on the value of the land which is confiscated from him. I will leave that point with the Minister. This Bill is a half-baked, half-witted Bill.

The Hon. F. J. S. Wise: I am surprised at your supporting it.

The Hon. H. K. WATSON: Half a loaf is better than none. The Bill does not go nearly as far as it ought.

Clause put and passed.

Title put and passed.

Report

Bill reported without amendment and the report adopted.

METROPOLITAN REGION IMPROVEMENT TAX ACT AMENDMENT BILL

Second Reading: Amendment to Motion

Debate resumed from the 11th October on the following motion by The Hon. L. A. Logan (Minister for Town Planning):—

That the Bill be now read a second time.

To which The Hon. H. C. Strickland (Leader of the Opposition) had moved an amendment—

Delete all words after the word "That" and substitute the words "as it is provided that the proposed tax will not be paid into the Consolidated Revenue Fund and thereafter appropriated as required by section sixty-four and other relevant provisions of the Constitution Act, 1889, in the opinion of this House this Bill is not proper to be given a second reading."

THE HON. H. K. WATSON (Metropolitan) [9.22 p.m.]: In my opinion Mr. Strickland's amendment raises a question of profound importance. It is really self-explanatory; and I have, in the time at my disposal, studied the various points that were made by Mr. Strickland and also the contribution to the debate by the Minister.

The Minister referred us to a Crown Law opinion which he also advanced as his own. Before I deal with the earlier parts of that opinion, I would like to refer to the following paragraph which says:—

Quite apart from the above, the Bill in question is designed merely to reduce a rate of tax and therefore does not itself conflict with section 64 of the Constitution Act.

The Hon. F. J. S. Wise: That is wholly wrong.

The Hon. H. K. WATSON: I agree with Mr. Wise; it is totally wrong in my opinion. If this Bill has nothing to do except reduce a tax, then if the House throws out the Bill the Minister will be provided with more money than he has today. We are told that the Bill does not impose a tax; that it simply reduces it. Therefore, if the Bill goes overboard, the Minister has lost nothing. If the Minister maintains that to be the position, for once in my life, despite what I said a few moments ago on the Stamp Act Amendment Bill, I would be prepared to allow the Minister to derive the full fruits of the increased tax which, according to this opinion, would accrue to him if the Bill were lost. I think we could test that particular argument by the proposition I have just advanced.

The Minister seemed to be on more plausible or more attractive ground when he referred us to the Privy Council's decision in the case of McCawley *versus* the King; and I have, to the best of my

ability, given very anxious consideration to the views which have been advanced and to the judgment in that particular case. But I cannot help feeling that if the McCawley case is studied we will find that the import of it is really little more than as set forth in section 73 of our Constitution Act of 1889, which reads as follows:—

The Legislature of the colony shall have full power and authority from time to time by any Act to repeal or alter any of the provisions of this Act.

That is quite clear; and no-one will deny the argument that Parliament has the power, by an Act of Parliament, to amend the Constitution. We have a very good example of that in Act No. 63 of 1950. In that case Parliament passed an Act to amend section 46 of the Constitution Acts Amendment Act. That was the title of the Bill. It was just an ordinary Bill which was brought down to amend section 46. In the same year we had the Acts Amendment (Increase in Number of Ministers of the Crown) Act. That is the title of the Act, and it is an Act which amends two Acts. It amends the Parliamentary Allowances Act, and it amends the Constitution; and it does so, clearly and expressly, and in the ordinary manner in which Parliament amends any law.

I suppose the two Acts that I have mentioned are a fair and reasonable illustration of what is implied and meant by section 73 of the Constitution. So long as the Act declares that it does amend the Constitution it matters not, in my opinion, whether the Act amends one Act, or whether it purports to amend and does amend various Acts such as this Act No. 2 of 1950 does.

By the same line of reasoning, I submit it is equally clear that there is nothing to stop Parliament from bringing down a Bill to declare that section 64 shall be amended. That section provides that all taxes and other revenue of the Crown, from whatever source arising over which the Legislature has power of appropriation, shall form one Consolidated Revenue Fund to be appropriated to the public service. I suggest there is nothing to stop that section being amended to provide something like this—

All taxes, except where otherwise provided, shall go into Consolidated Revenue.

But I do suggest that McCawley's case, like any other case, was decided on its own special facts; and, in my submission, it cannot be regarded as an authority for the general proposition that any law which is passed by our Parliament and which is inconsistent with the Constitution Act shall, *ipso facto*, be deemed to have repealed or altered or amended the Constitution Act to the extent of that inconsistency. And I submit that in this connection it is only necessary for me to point

out that if that were so, it would have been quite unnecessary for Parliament in 1950 to pass the validating Act No. 63 of 1950, which it passed on the recommendation of the Crown law authorities.

The Hon. F. J. S. Wise: There should not have been any need for it.

The Hon. H. K. WATSON: That is so. If an Act is passed and it is inconsistent with the Constitution and thereby of itself alters the Constitution, the principle applies to the whole Constitution. Therefore there would have been no necessity to pass the validating Act No. 63 of 1950.

If we turn to *Hansard* for the 5th December, 1950, we find, at page, 2,509, that the Attorney-General in moving the second reading of the Bill in the Legislative Assembly said this—

As members are aware, Subsection (8) of Section 46 of the Constitution Acts Amendment Act of Western Australia requires that—

A vote, resolution or Bill for the appropriation of revenues or money shall not be passed unless the purpose of the appropriation has in the same session been recommended by Messages from the Governor to the Legislative Assembly.

The Attorney-General referred to other subsections of section 46, and also to section 5 of the Colonial Laws Validity Act of 1865. Then he went on to explain, presumably, that notwithstanding McCawley's case, and certainly notwithstanding section 5 of the Colonial Laws Validity Act of 1865, the Crown Law authorities had grave doubts about the validity of several Acts which had been passed in contravention of the Constitution; and, as the consequences could be rather serious, he was, on the recommendation of Crown Law, bringing down a validating Bill. That measure was duly passed by Parliament, and it amended section 46 of the Constitution Acts Amendment Act; and the substance of it will be found on pages 136 and 137 of *The Standing Orders of the Legislative Council*.

I will not read the whole of that section of the Constitution but will point out that, among other things, it provides that the Legislative Council may not amend loan Bills or Bills imposing taxation, or Bills appropriating revenue or moneys for the ordinary annual services of the Government. It also provides that the Legislative Council may not amend any Bill so as to increase any proposed charge or burden on the people; and that a Bill which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation. The section also provides that a Bill imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Then we come to subsection (9) which contains this validating provision—

No infringement or non-observance of any provision of this section shall be held to affect the validity of any Act assented to by the Governor at any time prior to the thirty-first day of January, 1951.

So I suggest that if the decision of the Privy Council in McCawley's case has the wide application which is now claimed for it, the Act of 1950 would not have been necessary. Not only would it not have been necessary, but presumably if Parliament did do any of these things which the Constitution says shall not be done, and they were translated into law, they would be valid—which, to my mind, does seem a rather extraordinary state of affairs.

To illustrate my point, we can come very near home when I remind the Minister that if we recall the Metropolitan Region Town Planning Scheme Act of 1959, we will find that the Bill for that Act was introduced into this House in 1959 and was duly passed and transmitted to the Legislative Assembly.

The Hon. L. A. Logan: It was passed in the Assembly before it came here.

The Hon. H. K. WATSON: Pardon me; it was introduced here! The Minister cannot remember what happened to his own Bill. It was introduced into this House and passed, and transmitted to the Legislative Assembly, where it was queried on the ground that it infringed the section which I have just read—the section providing that Bills appropriating money shall not be introduced in the Legislative Council.

The measure was discontinued in the Legislative Assembly and a fresh Bill was brought down in the Assembly and was later brought up here. Again I say that if McCawley's case is an authority for the proposition that anything we do here, in so far as it is inconsistent with the Constitution, thereby overrides the Constitution, then the Bill, according to the proposition I have just mentioned, could have passed here, gone to the Assembly, and been made law. But that was not done; because when the Bill reached the Assembly, as I have just said, it was questioned, thrown out, and then re-drafted, technically, and then went through the whole parliamentary process again.

The Hon. F. J. S. Wise: It was challenged here on a point of order.

The Hon. H. K. WATSON: In McCawley's case, to which the Minister has referred, the point at issue was whether the Industrial Arbitration Act of Queensland was in conflict with the Queensland Constitution inasmuch as it purported to authorise the appointment of a judge for seven years only, whereas the Constitution Act provided that judges should hold office during their good behaviour. In

McCawley's case the Privy Council held that section 5 of the Colonial Laws Validity Act validated the authority for McCawley to be appointed as a judge for any tenure and on any grounds.

The reasoning in that judgment becomes rather apparent when we remember that it was the tenure of a judge which was being challenged, and when we recall that section 5 of the Colonial Laws Validity Act of 1865 of the United Kingdom provides as follows—and I am reading from page 2509 of *Hansard* for the 5th December, 1950:—

Every Colonial Legislature shall have and be deemed at all times to have had, full power within its jurisdiction to establish Courts of Judicature, and to abolish and reconstitute the same, and to alter the constitution thereof and to make provision for the administration of justice therein.

So it can be seen that so far as the appointment of a judge was concerned there was the express authority in section 5 of the Colonial Laws Validity Act, and it was really on that point that the judgment in McCawley's case turned, so far as I can see.

The Hon. G. C. MacKinnon: Did he state so?

The Hon. H. K. WATSON: From the judgment, that was the ground on which the Privy Council proceeded to arrive at its decision. It said that was the important consideration on the facts then in question.

Moreover, the Privy Council is not bound by its own decision, and from time to time it has varied them. My submission is that the critical and basic question raised by this amendment is not as to whether the Metropolitan Region Town Planning Authority shall or shall not be granted adequate funds for its purposes. That is not the question now at issue. I would respectfully suggest that members should be quite clear in their minds on that point. As I see it, the critical and basic question to be decided by our vote on this amendment is whether section 64 of the Constitution is to be flouted or observed. On that simple question I suggest there is no room for two opinions.

In my submission, Parliament must act according to the clear provisions of the Constitution. I need not dwell on the implications and results of unconstitutional legislation, except to say that I imagine they could be far-reaching and very serious for someone. That was the guiding thought of the Crown Law Department and of the then Attorney-General who instituted Act No. 63 of 1950.

As I read them, the provisions of section 64 of the Constitution Act, 1889, are clear and unambiguous. So also are sections 68 and 72. So also is section 2 of the Constitution Acts Amendment Act of 1921, which inserted the new section 46 into the Constitution Acts Amendment Act, 1899.

In order to ensure parliamentary control over revenue and expenditure, the sections I have mentioned, in effect say that all taxes, etc., must go into the Consolidated Revenue Fund and expenditure from taxes, etc., can be made by, but only by, an Act appropriating money from the Consolidated Revenue Fund.

I submit that that is a principle of Government finance and constitutional parliamentary practice which is basic and fundamental. I am surprised that we all overlooked it when the various metropolitan regional Bills were passed in 1959. However, now the question has been raised, I feel that we should retrace our steps as rapidly and as expeditiously as possible. It would be quite in order for us to pass an Act imposing a metropolitan region tax and for that tax to go into the Consolidated Revenue Fund. There is no argument about that; and it would be quite in order for an amount, equivalent to that tax, to be appropriated from the Consolidated Revenue Fund by the metropolitan regional town planning legislation or some other Act; or, with or without the enactment of a metropolitan region tax, it would be quite in order for us to pass an Act appropriating £150,000 or £200,000, or any other amount from the Consolidated Revenue Fund for the purposes of the Metropolitan Region Planning Authority.

However, I submit that so long as section 64 reads as it does, it is an infringement of that section for us to earmark any tax at the point of receipt. I submit we can earmark it only at the point of expenditure; that is, after it has gone into the Consolidated Revenue Fund. Yet the intention of this town planning legislation is that the tax shall not go into the Consolidated Revenue Fund as required by section 64 of the Constitution, but direct to the Metropolitan Region Planning Authority.

For the reasons I have given, such an arrangement is, in my opinion, unconstitutional, and those who operate it do so at their peril. The view which I have just expressed—namely, that a tax or any similar Crown revenue cannot be earmarked at the point of collection, but only by an Act appropriating moneys from the Consolidated Revenue Fund—is supported by authority.

The question is referred to by the High Court in what is commonly known as the uniform tax case; namely, *South Australia and others v. the Commonwealth and another* (1942, 65 *Commonwealth Law Reports*, 373). In the course of his judgment in that case, the learned Chief Justice (Sir John Latham), after referring to the various sections of the Commonwealth Constitution which correspond to section 64 and the other relevant sections of our State Constitution, said this—

Thus, no provision imposing taxation can be included in an Appropriation Act, and no appropriation of

money can be made by any Act imposing taxation. All taxation moneys must pass into the Consolidated Revenue Fund (Section 81) where their identity is lost and whence they can be taken only by an Appropriation Act.

The Hon. F. J. S. Wise: That was a long time after the McCawley case.

The Hon. H. K. WATSON: Continuing—

An Appropriation Act could provide that a sum measured by the receipts under a particular tax Act should be applied to a particular purpose, but this would mean only that the sum so fixed would be taken out of the general Consolidated Revenue. Thus there can be no earmarking in the ordinary sense, of any Commonwealth revenue.

In this case, however, no attempt has been made to provide that any moneys received under the Tax Act shall be applied towards meeting the payments under the Grants Act. Neither Act contains any such provision. The appropriation made by the Grants Act is made out of the Consolidated Revenue Fund. (Grants Act; Section 7).

That is what the Chief Justice of the High Court said in that case; and while I know our revenue provisions are virtually identical with the provisions of the Commonwealth Constitution, I also know that the Commonwealth Constitution expressly provides that it shall be altered only in the manner set forth in section 128 of the Constitution. But be that as it may, I consider the reasoning implicit in that judgment is applicable to the subject now before the Chair.

The Hon. A. F. Griffith: Where does this Bill make provision for the non-payment of the tax into Consolidated Revenue?

The Hon. H. K. WATSON: This Bill does not do that in express terms, but it is related to the Bill dealing with metropolitan town planning which, in section—

The Hon. A. F. Griffith: But we are not dealing with the Bill relating to metropolitan town planning at the moment.

The Hon. H. K. WATSON: No; but this Bill is to be read in conjunction with it.

The Hon. F. J. S. Wise: And that is what happens, in fact, when the tax is collected.

The Hon. A. F. Griffith: But that other Bill is not even before the House.

The Hon. H. K. WATSON: But this tax is for the purpose set forth in the other Bill.

The Hon. H. C. Strickland: It mentions this tax.

The Hon. H. K. WATSON: It cannot be denied that the two pieces of legislation are inseparable.

The Hon. A. F. Griffith: One is the taxing Act.

The Hon. H. K. WATSON: But this is a Bill which is earmarked at the source.

The Hon. A. F. Griffith: Is this Bill a piece of taxing legislation.

The Hon. H. K. WATSON: Yes; it is.

The Hon. A. F. Griffith: Where do you get the earmarking of the tax in the one that is not before the House?

The Hon. H. K. WATSON: The Government always has the power to tax. It can bring down a tax at any time; but it must be paid into the Consolidated Revenue Fund.

The Hon. H. C. Strickland: Go on; you are putting up a very good case.

The Hon. H. K. WATSON: For those reasons, and having regard to the general principle—even forgetting the legal aspect—as I have said, the basic principle of all Government finance is, first of all, that it shall be paid into the Consolidated Revenue Fund and then expended by appropriation. Even with the inclusion of the words “legally valid” I suggest that the whole principle is wrong and it should require our serious attention; otherwise we are going to be faced with this position: Normally, at the present time, a member who desires to find out what the Constitution provides, refers to the Constitution Act and its amendments. However, if we are going to have a position such as that contended for by the Minister, one may have to refer not to the Constitution Act, but to the 2,000 other Acts which are also in existence. I suggest that that would be an extraordinary state of affairs.

The Hon. A. F. Griffith: Can you think of some other Acts which we have passed that have not created funds at the Treasury?

The Hon. H. K. WATSON: I could not.

The Hon. A. F. Griffith: I will help you to recall them later.

The Hon. H. K. WATSON: I would say that if we do have such Acts I would put them in the same category as the Acts which were dealt with by the Act of 1950. I would say that, unintentionally, we have gone off the rails; and it is quite possible to go off the rails unintentionally.

Sitting suspended from 9.59 to 10.21 p.m.

The Hon. H. K. WATSON: For the reasons which I have stated I submit that it will be an extraordinary state of affairs if, having the Constitution, we blandly decide that anything we do contrary to the Constitution is thereby of itself an alteration of the Constitution.

I submit the proper course would be to bring down a Bill to amend the Metropolitan Region Authority Act either expressly

amending the Constitution, or preferably providing for that authority to be furnished with £150,000 or £200,000 to be appropriated from Consolidated Revenue; and, further, for the Bill which is under consideration to be left in abeyance pending the correction in the manner I have indicated.

THE HON. F. J. S. WISE (North) [10.23 p.m.]: I find myself in entire agreement with Mr. Watson except in one particular; that is, in connection with the 1959 Bill. That Bill was disallowed in this House because of a point of order taken by me, and following a request for your ruling, Mr. President. You ruled the Bill out of order, and that ruling affected the Constitution Act.

On all other points I support what has been said by Mr. Watson. I say clearly and definitely, in reply to one or two interjections during Mr. Watson's speech that we are debating this matter under the wrong Bill or Act, that that is sheer nonsense. We are debating a Bill which seeks to impose a tax and make collections for use by the Metropolitan Region Planning Authority. The provision in the Act which provides for the disbursement of the money collected is to be found in section 38. Part VI—Finance—makes very clear the sources to which the money is to be applied by the authority. It therefore gives not only an affinity between the Act I have referred to, but also a direct connection in that all moneys collected from the new tax—which this Bill proposes to impose—shall be paid into a separate fund at the Treasury, as is provided in that Act, to be disbursed for the purposes of that Act. I wish, first of all, to clarify the situation.

Dealing with the ruling of the Crown Law Department, which the Minister for Local Government outlined the other evening, it is obvious that the final opinion expressed by the Solicitor-General is entirely incorrect when he says that the Bill in question is designed merely to reduce a tax, and therefore it does not conflict with section 64 of the Constitution Act.

Of course the Bill is not designed for that purpose at all. It is designed for the purpose of striking a new rate of tax on a permanent basis. So the Bill does conflict with section 64 of the Constitution Act, as was pointed out by Mr. Strickland.

Much has been said about the case of *McCawley versus the King*, which was decided in 1920, and upon which the Solicitor-General completely bases his contention that this Bill is in order and does not conflict with either the Constitution Act, or the Constitution Acts Amendment Act.

If we commence from the beginning and consider all of the provisions regarding finance which are implicit in the Constitution Act, and in the Acts specifically

amending it, we will find that considerations of finance are almost paramount. With the exception of the dealings in finance, in and out of Consolidated Revenue, we have the other implications stated in the Constitution Act, dealing particularly with the franchise and with what might be done, without violating the Constitution Act and the legislation affecting either House of Parliament.

All of us know how implicitly we are bound to follow the provisions of the Constitution Act in those particulars, and are aware that no law which endeavours to amend the franchise is a valid law if it is in conflict with the Constitution Act. If we read, as Mr. Watson has read, what is distinctly stated in Section 64; and, in addition, what is stated in the various sections he quoted from the Constitution Acts Amendment Act, we must realise that we are not dealing with things that are implied but with things that are specific—just as specific as the following words found in section 64 of the Constitution Act:—

All taxes, imposts, rates and duties, and all territorial, casual, and other revenues of the Crown (including royalties) from whatever source arising within the Colony, over which the Legislature has power of appropriation, shall form one Consolidated Revenue Fund.

That principle—and I stress that principle—is bathed in antiquity. It is the very basis upon which the King quarrelled with his Parliament and the Parliament with its King; it is the very basis from which stemmed the decision that Parliament should assert its rights in spite of the Crown in regard to the handling of Crown revenue. And that is the principle that is implicitly followed, and has been through the ages, through the laws of England as well as the laws of this country. The Solicitor-General mentioned it in his ruling.

The High Court case of *Cooper v. the Commissioner of Income Tax* and the references in that case which dominated and held for so long the judgments in law regarding the validity of handling moneys through Consolidated Revenue Funds were commented upon by several learned men including Chief Justice Griffith, Mr. Justice Higgins, Mr. Justice Barton, and others. The Chief Justice at that time stated the following—and I quote from vol. 4, part 2, of the *Commonwealth Law Reports* at page 1313:—

The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

He goes on to say after that comment from the Commonwealth Constitution Acts—

The distinction between what are called in jurisprudence “fundamental laws” and other laws is no doubt unfamiliar to English lawyers.

But throughout the whole of the hearing in the case of *Cooper v. the Commissioner of Taxation*, the question of fundamental laws was raised. The law is implicit in British countries in regard to the financial management; and that is the paying of all revenues collected into the Consolidated Revenue Fund and the transference from that fund only to be possible through the introduction of an appropriation Act in Parliament or by a warrant under the Treasurer's hand. That is the situation which has obtained throughout British Parliaments everywhere.

To continue quoting Chief Justice Griffith—

The powers of the Queensland legislature, like those of the other Australian States, are derived from the grant contained in the Order in Council by which it was established. No doubt the Queensland legislature had power by virtue of paragraph II. of the Order in Council to make laws “in all cases whatsoever.” But these words must be read with the rest of the Order in Council, and clearly did not authorise the legislature, while the provisions of the Constitution remained unaltered, to make any law inconsistent with it. They referred to the scope of authority under the Constitution.

Those words clearly define how improper it is to act in defiance of the Constitution without, in that particular demand of the Constitution in relation to revenue, altering the provisions of the Constitution itself. At page 1315, he went on to say—

I think that, if the legislature desires to pass a law inconsistent with the existing Constitution, it must first amend the Constitution. This would be done by a Bill for that purpose, to which the attention of the legislature and the public would be called, and the passing of and assent to which would obviously depend upon considerations very different from those applicable to an ordinary law passed in the exercise of the plenary powers of the legislature under the existing Constitution.

For these reasons I am of opinion that the Constitution of Queensland for the time being has the force of an Act of the Imperial Parliament extending to the Colony, and that it is the duty of the Court to inquire whether any Act passed by the State legislature is repugnant to its provisions.

That is the point made by Mr. Strickland in the very text of his amendment—that the provision within this Bill is repugnant

to the provisions of the Constitution. In following this case through, such a learned man as Mr. Justice Barton had the following to say:—

... if the legislation questioned has not been preceded by a good exercise of such power, that is, if the charter or constitution has not *antecedently* been so altered within the authority given by that document itself. Hence an implied repeal is not within the power to alter or repeal, and is not valid because it is not an exercise of legislative power.

Therefore, nothing that is implied is good enough when we are dealing with matters which rest upon what I have referred to as the sanctity of the Constitution itself.

Is it not the first principle in regard to parliamentary drafting of any Bill which impinges upon anything which has reference to the Constitution Act for the Parliamentary Draftsman to first consider the constitutional aspect? All persons privileged to have been a Minister know that that is their first consideration; and once they have considered that and provided for it if necessary, or ignored it if it is not applicable, their drafting proceeds on any subject they may be contemplating for Parliament. It is so important that those who frame our laws should give consideration to the import of the words contained in the Constitution Act. Mr. Justice Higgins, on page 1331 of the same law report, said this—

I assume also that notwithstanding the exceptional wide and very peculiar powers contained in paragraph 22 of the Order in Council altering the Constitution, the Legislature of Queensland has no power to pass a law forbidden by the Constitution as it stands unless and until the Constitution has been definitely so altered with His Majesty's consent as to give the Legislature power to pass such a law.

That is the same principle exactly as enunciated by Chief Justice Sir John Latham and referred to by Mr. Watson.

Are we to say that these authorities are wholly wrong? Or are we to say that the Privy Council itself is bound by its own decisions when we know it is not; when we know that a Privy Council decision may be varied by that same august body from time to time? Or are we to regard it as the ultimate, and the ultimate only, from which there can be no altering or varying of opinions? I suggest we cannot.

Halsbury's Laws of England, the examination of which will stand any test, gives a very clear declaration on this question. *Halsbury's Laws of England*, third edition, vol. 33, deals with revenue. On this subject, dealing with it very briefly under the chapter, "Constitutional Control of Revenue," it states—

Revenue vested in the Crown . . . In its origin the revenue at the disposal of the Crown was derived from the

lands, prerogative rights, and privileges of the Sovereign, supplemented by aids granted by the Commons.

It goes on, in regard to parliamentary control, to say—

The effect of the Bill of Rights is that there can be no taxation without authority of Parliament expressed in formal enactment. The bulk of the revenue is therefore raised under specific enactment, but all revenue from whatever source is paid into the exchequer . . . The moneys so credited form one fund, known as the "Consolidated Fund," from which issues are made on legislative authority. The Consolidated Fund comes under review in the annual accounts of the revenue; it thus receives a measure of approval by Parliament, if the statutory or prerogative authority for its collection is not amended or repealed.

Halsbury's Laws of England states very clearly the responsibility within the Treasury for the handling of public revenues, and states very clearly that the control exercised by the Treasury rests not only upon specific enactments but also upon the constitutional practice that the Treasury is the instrument through which the Executive Government exercises central control in all matters affecting the revenue; that is, after all revenues have reached the Consolidated Revenue Fund.

I do not desire at this hour to weary the House with other firm quotations from *Halsbury's Laws of England*. But I would commend members to the consideration of vol. 7 of the third edition, which deals with the conflict of laws with constitutional law. It will be found in essence that the general principle is based on what was determined by Mr. Justice Griffith in the High Court when considering the Queensland case: that the fundamental laws such as those I have been quoting are the ones that matter, and the ones with which Parliament almost dare not come into conflict, unless there is specific alteration of the Constitution Act which governs their use.

We here have a simple case; namely, the case of a Bill designed to strike a rate of tax on a permanent basis. There is nothing mentioned in that Bill as to the destination of the money; but there is very definite mention in the Act where the three sources of money for the use of the authority are determined. It deliberately states where that money shall be paid—and that is not into the Consolidated Revenue.

A little later on in this session we will be receiving for consideration an appropriation Bill; an appropriation Bill which will be sent to us after the full consideration of the Estimates of every department of State. And, in addition, we will be receiving a Bill for consideration and approval of the spending of loan funds. The appropriation Bill will represent the spending of—I cannot be definite on the figure for this year, but I will come very close to it, based on

the last year or two, if I say the spending of nearer £70,000,000 than £60,000,000; and every department will have had the approval of the Treasury for the spending of everything down to its postage and envelopes. Under the requisite section of the Constitution Act, these proposed payments out of Consolidated Revenue will be brought here to be sanctioned by Parliament.

If members receive from the other end of this Legislature the whole of the Budget tables and the departmental Estimates, they will find, in meticulous detail, the expenditure down to £5 where an individual item may be so mentioned; and for every department—whether it be for Child Welfare, for Housing, for the Premier's Office, Agriculture or Education, or for any other purpose—this Parliament approves the expenditure.

The Hon. H. K. Watson: The £20 expenditure for those pocket year books that go to every child cannot be spent this year because it is not in the appropriation.

The Hon. F. J. S. WISE: What will it cost?

The Hon. H. K. Watson: About £50, I suppose.

The Hon. F. J. S. WISE: There is an example. Because the appropriation or the framing of the Budget Estimates did not provide for this requirement to the tune of £50, that money cannot be expended by Treasury. Is that the situation?

The Hon. H. K. Watson: That is the situation.

The Hon. F. J. S. WISE: I repeat that we are dealing with something very fundamental in parliamentary practice; and I do not doubt that the Minister is able to trot out one, two, three, or more particular instances where Parliament has erred and permitted taxes to be deviated from Consolidated Revenue. It is possible that there are several; it is possible that there are many for specific purposes where a levy is imposed, and where under a separate Act something is prescribed, whether it is for the baiting of fruit fly or something of that sort, which may not conflict at all; but there may be others that do.

However, that does not make this one right; and that is the importance of what we are trying to say. I agree with the thought expressed by Mr. Watson: that if there is a doubt, let us take the course that was taken when a validating Bill was passed in respect of other legislation; let us put the issue beyond all doubt; let us have the Act amended and let Parliament resume control of sums, vast and small, which have got away from its authority and control. The most important function and purpose of the Legislature is to have that control.

If the ruling submitted by the Solicitor-General is correct, there was no need for Act No. 63 of 1950. But why was it necessary to introduce a Bill to validate those several doubtful laws? The Crown Law Department ruled that it was necessary; and I suggest, as a humble layman, after a study of these documents, quite apart from the common practice implicit in the running of a State Government, and the governing of a State, that the nearer we keep to a written Constitution, and its provisions, the better for all the citizens of the State.

THE HON. G. C. MACKINNON (South-West) (10.53 p.m.): Several members who have spoken to the debate this evening have said that it is a simple problem. Of course it is not a simple problem. I do not think anything appertaining to law, particularly constitutional law, ever is a simple matter.

The Hon. H. K. Watson: Neither of the two previous speakers suggested that it was a simple matter.

The Hon. G. C. MacKINNON: I think the word was used at least once. But be that as it may, there are two fundamental points in the debate; and I think we have to clear our minds with regard to the two of them when we consider the matter. There is, of course, the matter of principle—the matter of fundamental principle as to what should happen to the revenue and what should happen to moneys.

I do not think there is any doubt that the age-old principle that they should be paid into Consolidated Revenue, and paid out by Parliament should be adhered to. I think we are all in agreement on that point. If we are not we ought to be, because there has been too much bloodshed in the history of Parliament to establish the point. As I heard the matter put very succinctly the other night by one member: we should not lightly give away what we fought kings to get.

That is one point on which I think we can all agree. As distinct from that we have the point of pure law as to whether this particular Bill does transgress the Constitution. When we get down to tinctacks, the thought has crossed my mind that in debating it perhaps we ought to have moved that the previous vote on the parent Act should be rescinded; because the whole of the debate could be defined as a reflection on a previous vote of this Legislative Council. At least the indications are that we could have been remiss; and I think the impression has been given, and perhaps even to some extent proved, that at some previous time we may have been remiss in safeguarding the fundamental principles of this House.

The Hon. L. A. Logan: Not only this House, but Parliament as a whole.

The Hon. G. C. MacKINNON: Yes; that is quite correct. I think we could possibly be pulled up under Standing Order No.

391; because I do not think there is any doubt that some of the speakers have tended to cast a reflection on a previous vote of this House; and, indeed, as the Minister just interjected, on Parliament as a whole. If the argument is right, then we were remiss in passing the parent Act.

The Hon. L. A. Logan: And so have three lots of Crown Law officers been remiss, too.

The Hon. G. C. MacKINNON: Very, very remiss.

The Hon. L. A. Logan: Three separate Crown Law officers have dealt with this.

The Hon. G. C. MacKINNON: The Minister mentions Crown Law officers; and in this regard I do not think it is quite fair to use one set of advice from the Crown Law Department to prove that another piece of advice from the same department is wrong; in other words, I do not think it is fair to use one man's opinion, expressed last week or last year, to prove that the opinion he expressed this week or this year is wrong. It has been said tonight that because the Crown Law Department advised that a certain validating Act should be passed one year it automatically proves that its officer's advice on this Bill is wrong. I do not think that is quite logical.

But let us get back to the Bill itself. It specifically lays down that a tax shall be raised in a certain way; but the clause reads—

Section 3 added.

The principle Act is amended by adding after section 2 a section as follows:—

I cannot see anything wrong with that as it stands; but I can when it is put into the parent Act. It is not the Bill that is wrong; it is the parent Act that is wrong.—if either is wrong. It is a matter of law—a matter of opinion. Formidable authorities have been quoted, and I tremble at my impertinence in arguing against some of those authorities. I think the authority quoted by Mr. Watson, while proving the fundamental principle with which I have already dealt, had really no bearing on the point of constitutional law because it dealt with a different Constitution in which Constitution—namely the Federal—it is laid down in no uncertain manner how it shall be changed.

Some of the authorities quoted by Mr. Wise were in a very different character altogether; but, to my mind, the point on which the argument would rest is contained in section 73 of the Constitution Act, 1889, which appears on page 117 of our Standing Orders, and which reads—

The Legislature of the Colony shall have full power and authority, from time to time, by any Act, to repeal . . .

From those words, Mr. Watson endeavoured to prove that the Constitution had to be specifically amended; but, of course,

it does not say so. Mr. Wise went closer to proving this point with the help of the authorities he quoted, and raised some doubt on the question.

However, we come back again to the actual Bill with which we are dealing—the Metropolitan Region Improvement Tax Act Amendment Bill—which seeks to amend the parent Act. It seems to me that, of all the Acts, the legislation which has been under trial has been the parent Act and not this Bill.

If that is so, I consider there is no doubt that we should have been ruled out of order under the provisions of section 391; and we have only been able to continue as a result of your courtesy, Sir, in permitting the debate to proceed, because it would appear to be a reflection if members have, in fact, been putting the parent Act on trial and not this Bill, this measure being a simple one to amend the parent Act. For my part, up to this stage, I am not fully convinced the Bill is out of order.

Debate (on amendment to motion) adjourned, on motion by The Hon. A. F. Griffith (Minister for Mines).

ADJOURNMENT OF THE HOUSE: SPECIAL

THE HON. A. F. GRIFFITH (Suburban—Minister for Mines): I move—

That the House at its rising adjourn until 2.30 p.m. tomorrow (Thursday).

Question put and passed.

House adjourned at 11.3 p.m.

Legislative Assembly

Wednesday, the 18th October, 1961

CONTENTS

| | Page |
|---|------|
| QUESTIONS ON NOTICE— | |
| Canterbury Court: State's Financial Involvement | 1758 |
| Housing at Albany— | |
| State Rental and Purchase Homes to be Built | 1756 |
| State Houses Sold and Realisation | 1756 |
| Indeterminate Sentences Board: Members and Dates of Appointment | 1756 |
| Margarine— | |
| Annual Quota and Amount Manufactured | 1755 |
| Imports | 1755 |
| Northcliffe Settlement Farms: Number Vacant, Acreage, and Fire Hazard | 1755 |