

becomes flesh in the mouth of the magistrate or the judge. We prepare the skeleton and if there is some flaw in that structure it is up to the House when it is in Committee to do the best it can to provide simple, clear, language.

The Hon. A. F. Griffith: I agree with your second point, but every man is deemed to know the law.

The Hon. R. J. L. WILLIAMS: I agree that ignorance of the law is no defence; though I would suggest that there are certain sections of the law which require a specialist to interpret, and in this way I feel it is poor legislation—not bad legislation, but poor legislation—when one has to get an expert to interpret the law.

So with those few remarks I look forward to the Committee stages of the Bill which are bound to be arduous, because there are so many amendments on the notice paper.

THE HON. W. F. WILLESEE (North-East Metropolitan—Leader of the House) [5.15 p.m.]: I thought another member wished to make a contribution to the debate, and I would not like to forestall him.

The Hon. A. F. Griffith: It is quite all right. Any member wishing to comment may do so during the Committee stage.

The Hon. W. F. WILLESEE: I do not intend to take this measure through the Committee stage today. The several speakers to the debate have clearly indicated that it is a Committee Bill. I am also of that opinion. No speaker actually opposed the Bill, but several points have been raised by members which certainly warrant discussion during the Committee stage.

I believe two points raised are not Committee material. Mr. Willmott mentioned some amendments which he had considered but eventually found he could not use in the context of this legislation. I propose to consult him and later submit the amendments to the appropriate Minister for consideration with the licensing authority. Inevitably we will have further Bills to amend the Liquor Act.

Mr. Ferry has also raised a point which he would like noted for a future occasion. I do not have the actual submissions before me, but I assure the honourable member that his suggestion will be looked at.

Mr. Willmott dealt with the Bill in great depth. I feel other speakers have touched on points connected with his comments. I have amendments on the notice paper as do other members. I repeat that this Bill is one to be debated during the Committee stage. The House is very light in members

and I am not prepared to go further tonight. Accordingly, I thank the members who have contributed to the debate and commend the Bill to the House.

Question put and passed.

Bill read a second time.

House adjourned at 5.19 p.m.

## Legislative Assembly

Thursday, the 19th October, 1972

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

### INLAND SUPERPHOSPHATE WORKS

#### *Feasibility Study: Tabling*

MR. GRAHAM (Balcatta—Minister for Development and Decentralisation) [11.05 a.m.]: I have here a copy of a report of a feasibility study on inland fertiliser works, prepared by consultants Davy-Ashmore which I present to be laid upon the Table of the House. I wish to point out, if I may, that the Department of Development and Decentralisation has not as yet completed its studies and accordingly the Government has made no determination whatever in respect of the submissions in the report.

*The report was tabled (see paper No. 431).*

### JETTIES ACT AMENDMENT BILL

#### *Introduction and First Reading*

Bill introduced, on motion by Mr. Jamieson (Minister for Works), and read a first time.

#### *Second Reading*

MR. JAMIESON (Belmont—Minister for Works) [11.07 a.m.]: I move—

That the Bill be now read a second time.

The purpose of this Bill is to amend the Jetties Act with objects of—

- (i) ensuring that absolute liability for injury to public jetties by vessels is imposed upon owners and/or masters of vessels;
- (ii) imposing absolute liability for damage to the Government's jetties upon persons, other than owners and masters of vessels, using and causing damage to them;
- (iii) placing a reasonable qualification on the operation of the proposed absolute liability provisions to protect users of a jetty against liability when such

injury is caused by negligence or tortious conduct for which the Minister or his officer is responsible;

- (iv) updating terminology where it is no longer appropriate due to changed circumstances.

The SPEAKER: Order! Will the students in the Gallery be quiet please?

Mr. JAMIESON: The Act in its existing form apparently provides for the imposition of absolute liability upon the owner and/or master of a vessel for injury done to a public jetty or bridge.

The provision concerns damage to jetties by vessels only and has been deemed in the past not to exempt the owner and/or master from liability for damage in cases where the damage was caused by inevitable accident or by an act of God.

However, legal advice indicates that experience in another State has shown that there is some doubt about this aspect of the Act, and therefore the absolute liability ingredient in the Act is in doubt.

The existing legislation provides for liability to be imposed on an owner and/or master of a vessel for damage to a jetty by a vessel only and does not take into account that a public jetty may be injured by vehicles, cranes, or machines other than vessels.

In recent years the trend has been toward the greater use of public jetties by privately owned and operated vehicles, cranes, and machinery, in addition to plant owned by the State, in the loading and unloading of ships, and there have been cases where the jetties have been damaged by these machines and the cost of repairs has not been recoverable because of a deficiency in the legislation.

Referring to an example, a privately owned crane was operating on a public jetty when the jib of the crane collapsed and caused damage to the jetty deck. Although there was no doubt whatever that the crane caused the damage to the jetty the owners of the crane held that, as the collapse of the jib was due to a latent defect in the machinery unknown to the owners or the operator, neither the owners nor the operator was guilty of negligence and was therefore not liable. On these grounds the owners declined to meet the cost of repairs to the jetty. Legal advice subsequently indicated that success in recovering the costs of repairs would be doubtful because of the inadequacy of the Act.

In ensuring the imposition of an absolute liability for damage to a jetty upon the owner of a vessel, vehicle, crane, or machine it is fair and reasonable to provide that such an owner is entitled to use as a defence against liability proof that the injury to the jetty was wholly

or partly attributable to negligent or tortious conduct for which the Minister or his officers were responsible.

The Bill provides for amendments to meet the situations referred to and these will be further explained to members during the passage of the Bill.

In the drafting of the measure opportunity has also been taken to make minor amendments to terminology concerning harbour trusts and harbour boards which authorities are no longer known by such terms in this State.

A further minor amendment has been made to bring the terminology in line appropriately with the Crown Suits Act, 1947.

Although the principle of absolute liability appears far reaching, including as it does inevitable accidents and the results of acts of God, it is reasonable that the State should be protected against damage to its jetties which, without the presence of the vessels, vehicles, cranes, and machinery referred to, would probably not have occurred. I commend the Bill to the House.

Debate adjourned, on motion by Mr. I. W. Manning.

#### MARRIED PERSONS AND CHILDREN (SUMMARY RELIEF) ACT AMENDMENT BILL

##### *Second Reading*

Debate resumed from the 7th September.

MR. T. D. EVANS (Kalgoorlie—Attorney-General) [11.12 a.m.]: I thank the member for Floreat for his contribution to this debate. The Bill was introduced in March for the very purpose of testing the reaction of interested bodies and, indeed, interested persons. Hence, considerable time has elapsed since the measure was introduced and an appreciable time has elapsed since the member for Floreat resumed the debate in respect of which I now respond.

I have carefully studied the comments made by the honourable member and I have noticed from the transcript that he expressed concern about the future of the family unit. I am sure he expressed the feelings of every member in this Chamber in that regard. I consider it is necessary for us, as legislators, to do the best we can by means of this legislation to maintain the necessary balance between the parties to a marriage where this is possible. This legislation, in all sincerity, does endeavour to achieve that objective.

The member for Floreat also expressed the view that in some instances the legislation appears to be working in favour of the wife, or the family spouse and, in other instances, it seems to be working in the direction of favouring the husband. I find this complaint—I refer to it as a complaint

rather than as a criticism—somewhat difficult to understand because of the very nature of the legislation and its object to endeavour to provide a necessary balance between conflicting interests. When this legislation is called in aid it is the conflicting interests that are in issue. I might say again that the object of the legislation is to ensure, as far as is legislatively possible, that each of the parties shall, under the legislation, be responsible for his or her action and be required to meet his or her obligations consistent with his or her ability so to do.

The member for Floreat mentioned the question of the garnishee of wages as a means of enforcing the payment of maintenance in favour of the spouse in respect of whom an order is made for his or her benefit. This matter has come under consideration many times. I can recall the time when the late Arthur Watts, in his capacity as Attorney-General, introduced what might be called the parent legislation—the Married Persons (Summary Relief) Act—in the early 1960s. Part V of that Act was, indeed, directed to a provision for garnisheeing of wages against a married person. Even at that time the then Attorney-General was aware of the many difficulties involved in giving practical effect to that provision. The Bill introduced on that occasion was drafted in such a way that part V was to come into operation on a date to be proclaimed.

Subsequently the parent legislation—the Married Persons (Summary Relief) Act—was broadened in name, not necessarily in scope, to be known as the Married Persons and Children (Summary Relief) Act. Again, provision was made for the garnisheeing of wages but, again, that particular provision was to be brought into operation on a date to be proclaimed. As yet, those provisions have not been proclaimed.

The reason is that experience in every jurisdiction has shown reluctance on the part of employers—and it is a reasonable reluctance—to be involved in such matters. The class of worker against whom such orders would be made would probably have little concern about avoiding the operation of that provision by either frequently changing his employment or, despite that in Western Australia it is an offence to change one's name without recourse to the Change of Names Regulation Act of 1923, by changing his or her name. It is for that reason there has been a reluctance to bring the garnishee provisions into operation. In those other jurisdictions where the provisions do operate it has been shown that by and large they do not operate successfully at all.

The member for Floreat made another suggestion which, on the surface, appears to be quite sound; that is, every employee should be required to furnish to his em-

ployer a certificate setting out the number of his dependants and any obligation, if any, he has for maintenance of those dependants. However, I fear there would be a severe reaction from employers required to handle all the paper work which would be incidental to such a procedure. We all know that in these days all citizens—particularly those engaged in commerce, industry, and business generally—complain about the paper work which is thrust upon them by Governments.

Mr. Mensaros: I did not quite suggest that. What I said was that those who had no obligations would simply sign a pre-printed declaration to that effect; those who had an obligation would be the only ones involved in some paper work.

Mr. T. D. EVANS: Here again, the kind of person who does not balk at changing his employment frequently or at changing his name when he knows this is an offence against the law may not necessarily balk at making a false declaration.

This is a matter which will be kept under careful consideration, but at this stage I cannot indicate that we would hasten to implement the provision relating to a garnishee of wages.

The member for Floreat also suggested that too much discretion is given to the court. I do not think he means too much discretion will be given to the court by this particular measure. I believe he feels the very basis of the parent legislation is such that too much discretion is vested in the court. I do not agree that this is a valid criticism. The British system of judicature, which has been followed throughout Australia, necessarily gives courts a great deal of discretion. As a matter of fact, it is my own personal view that in some of our legislation—which I will not name—the inherent discretion of the court is unduly restricted because the Legislature has limited the right of the court.

I consider there is an inherent right for courts to exercise discretion based upon the merits of the case. To employ a Gilbertian expression, the court should, in fact, have wide and adequate discretion to make the punishment fit the crime. For brevity's sake I shall refer to the Summary Relief Court; until there is strong evidence that the power should be limited, I cannot see any real grounds to effect a change. I point out that if a court—in this or in any other jurisdiction—has been shown to have acted in a manner whereby the discretion has been applied in a nonjudicial way, the decision of that court would be extremely vulnerable on an appeal.

Mention was made that some magistrates lack legal training. The member for Floreat referred to the provisions of the Stipendiary Magistrates Act of 1957 which sets out the qualifications required for the

appointment of magistrates. All magistrates have qualified in accordance with the provisions of that legislation and their standing and reputation are beyond doubt, I am quite sure, irrespective of the means whereby they acquired the necessary qualifications. It is a fact that all magistrates who are practising are qualified pursuant to the provisions of the Stipendiary Magistrates Act.

Since the Bill was introduced for the purpose of testing public reaction, as I indicated in my opening remarks, a meeting has been held of a subcommittee, representative of the Law Society, the Summary Relief Court, and the Crown Law Department. As a result of that subcommittee having deliberated on the Bill, as introduced into this Chamber, I have placed on the notice paper certain amendments. If and when the Bill passes into Committee, it will be my intention to move those amendments and explain their proposed effect. At that time I will be interested to hear the comments of the member for Floreat and, indeed, of any other member. I now commend the Bill.

Question put and passed.

Bill read a second time.

#### *In Committee*

The Deputy Chairman of Committees (Mr. A. R. Tonkin) in the Chair; Mr. T. D. Evans (Attorney-General) in charge of the Bill.

Clauses 1 to 3 put and passed.

The DEPUTY CHAIRMAN: Order! Will the people in the gallery sit down please.

Clause 4: Section 5 amended—

Mr. MENSAROS: First of all, Mr. Deputy Chairman, if you do not mind, I would like to thank the Attorney-General for his reply which dealt with practically all the questions brought up during the second reading debate. From this point of view, it was extremely helpful. In connection with this clause I think the definition of "dependant" is quite sensible.

The DEPUTY CHAIRMAN: Excuse me. The Minister is having difficulty in hearing the honourable member.

Mr. MENSAROS: The definition of "dependant" in this clause, as I understand it, follows the practised law as applied by the Supreme Court. This is quite commendable. One finds that more and more children aged 18 and over are attending university and similar institutions. Perhaps they are more in need of support than younger children, because of the money which is needed for their studies.

I think it is also desirable for the onus still to be on the complainant to prove that the child is a dependant, because there seem to be a number of cases, which must not be overlooked, of fictitious dependants.

I have one query of the Attorney-General: Why are part-time students not covered? Very often youngsters find that they have to do courses at the university and at other institutions on a part-time basis. Of course, this is a commendable action. It often has a great deal to do with the financial status of their parents.

I ask the Attorney-General what is the reason for the clause specifically relating to "a period of not less than two years"? I consider there could be quite a number of courses which either do not last two years or can be taken in intervals of less than two years in a consecutive time. Perhaps the Attorney-General could enlarge on this point. The relevant part of the clause to which I refer appears on page 3 of the Bill. I refer to paragraph (b) (ii) which says—

(ii) who is either receiving full-time instruction at an educational or training establishment, or is undergoing training for a trade, profession or vocation in such circumstances that for a period of not less than two years he is required to devote the whole of his time to that training;

Mr. T. D. EVANS: The member for Floreat has rightly indicated that the basis of the definition of "dependant" has been taken from the practice adopted in this regard under the Supreme Court Act. It will be noticed that the definition begins—

"dependant" means a person who is under the age of sixteen years, or a person who having attained the age of sixteen years is without means, or sufficient means, and to that extent depends on some other person for his support . . .

In the first instance, if a person is under the age of 16 there are no other qualifications. If the child has attained the age of 16 years, it must be shown he is without means, or sufficient means, and to that extent depends on some other person for his support.

Now we come to paragraph (b) of the definition. If the person is under the age of 21 he must show (1) that his earning capacity is impaired through illness or disability of mind or body; or (2), that he is receiving full-time instruction at an educational or training establishment. This refers to a person who has attained the age of 18 years and is under the age of 21 years.

A person under the age of 16 is not required to show any reliance or dependence or that he is without means. A person between 16 and 18 years must show some degree of dependence, and, following this pattern, a person who has attained the age of 18 and is under the age of 21 is required to show something more than that he is without means, or sufficient means, and that he depends upon some other person.

Subparagraph (ii) of paragraph (b) of the definition requires, as the first alternative, that the person who has attained the age of 18 and is under the age of 21 must be receiving full-time instruction at an educational or training establishment. The rationale is reasonably clear that, having regard for the interests of the person against whom a maintenance order may well be or has been made, the court should be very cautious in the case of a person who has attained the age of 18 years.

In Western Australia, for almost all practical purposes and for all practical legal purposes, a person who has attained the age of 18 is now an adult. Therefore, where authority is vested in the court by an Act of Parliament, in making the maintenance of a person who has attained the age of 18 years a charge against the means or income of another person, the court should act with great caution and the Legislature should lay down certain guidelines.

I would say the Legislature is quite correct in setting down guidelines which have the effect of restricting the court's discretion. I agree with the member for Floreat that it is a rightful exercise of the responsibility of the Legislature to set down guidelines for the judiciary. If the Legislature were satisfied with something less than full-time instruction, it would have some difficulty in providing the necessary guidelines to enable the court to exercise its discretion.

We could stipulate that a person must be engaged in employment for so many hours a week, or we could set a limit on the amount he could earn before the court could exercise discretion. With changing money values and a person's ability to change his employment, I think those requirements would be far too difficult, and I believe the guidelines set down in the Bill are more satisfactory.

The explanation I have given regarding the requirement that the person must be receiving full-time instruction at an educational or training establishment applies equally to the other alternative that the person must be undergoing training for a trade, profession, or vocation in such circumstances that for a period of not less than two years he is required to devote the whole of his time to that training.

The rationale of the second alternative is, again, that the court must be satisfied that an undue charge will not be levelled against someone who is liable for the payment of maintenance in the case of a person who, for all practical and legal purposes in Western Australia, is now regarded as an adult.

Mr. MENSAROS: I understand what the Attorney-General has said, but let me give examples of practical circumstances which could arise. The Attorney-General said there would be difficulties in allowing

part-time students to apply for an order for some maintenance because the court must be given some guidelines and it would be difficult to set those guidelines. The Attorney-General apparently means that such proposed provision could be misused.

Let us bear in mind that a person between the ages of 18 and 21 might be a full-time student at a tertiary educational institution not so much of his own volition but because his mother so desires. He might fritter his time away by taking part in demonstrations and all sorts of nonsense. Such a student would be covered simply because he was undergoing full-time education. It could happen that this provision would be an incentive for the student to subscribe to a full-time course at a tertiary institution and not do much because he would be entitled to an order from the court.

In normal circumstances a part-time student takes his studies very seriously. Of course there are exceptions, but I feel members will agree that not all full-time students take their studies seriously. Under the provisions of this clause, the full-time student does not even have to finish his education. However, a part-time student is working at the same time and is more likely to take his studies seriously. A full-time student may use this loophole and apply for entry to the university but do no work. I appreciate that the Attorney-General defended the clause as it stands, but I would like him or his department to have regard for my comments.

Mr. T. D. EVANS: I do not know whether I correctly followed the second contribution made by the member for Floreat to the Committee stage of the Bill. I understood him to say that this clause would take away something which was provided in the parent Act. I have carefully read the definition of "dependant" in the parent Act and I cannot see that the present measure would deprive a person of the opportunity to engage in part-time studies at a tertiary institution, a technical institution, or a trades school.

Mr. Bertram: Under this provision a student would not be entitled to maintenance if he were over 18 years.

Mr. T. D. EVANS: The parent Act provides at the present time that a dependant is a person under the age of 16 years. It also provides that a dependant is a person—

- (b) who, having attained the age of sixteen but not of twenty-one years, is either receiving full-time instruction at an educational establishment or undergoing training for a trade, profession or vocation, in such circumstances that he is required to devote the whole of his time to that training for a period of not less than two years; or

- (c) whose earning capacity is impaired through illness or disability of mind or body and who has not attained the age of twenty-one years;

The only difference between the definition in the parent Act and that contained in the present legislation is that in the case of a person who has attained the age of 16 years but has not attained the age of 18 years, the court must be satisfied that such person, not being one engaged in studies or suffering from some impairment of his capacity through illness or disability of mind, has no means or insufficient means and is dependent on some other person. When an order for maintenance is sought in respect of a person having attained the age of 18 years, we revert to the provision applying in the parent legislation: The court must be satisfied that this person is engaged in a full-time course of instruction at an educational establishment or is engaged in a course of training which requires him to devote at least two years' full-time study to that end.

As I mentioned previously, we are all aware that the Senate has set up a committee to examine exhaustively the provisions of the Matrimonial Causes Act. I feel this inquiry will be of great benefit to the State as it will review State legislation involving marriage and matters affecting children at summary jurisdiction level. I expect that the committee will devote some of its time to the question of dependence. However, at the present time I ask the Committee to support the clause.

Mr. MENSAROS: I appreciate the Attorney-General's remarks. I did not suggest that we vote against the clause. I did not say that the provisions of this Bill are less far-reaching than those contained in the existing Act. I simply asked for consideration to be given to my suggestion that the definition of "dependant" should include part-time students.

Clause put and passed.

Clause 5: Section 10 amended—

Mr. MENSAROS: In dealing with clause 5 I will have to ask for indulgence because it is logical to refer back to clause 4. Proposed new paragraph (c) divorces the two matrimonial offences of excessive drinking and the taking of drugs. The first ground is excessive drinking, and the second is the taking of drugs.

The term "habitual drunkard" is defined at length in clause 4 in almost the same way as it is defined in the parent Act, with the exception that drug taking is omitted. However, no such definition is provided in this clause in proposed new paragraph (e). I wonder what the practical consequences of this will be. It appears to me that a person habitually intoxicated by drugs commits an offence, but

his resulting conduct does not have to be as defined in clause 4; namely, that he at times renders himself dangerous to himself or to others, or his state is such that it is unreasonable to expect a person of ordinary sensibilities to continue to cohabit with him. These provisions apply under the Act, but not under the Bill.

We know that drugs may have different effects on different people. I do not wish to advocate a great deal of sympathy for drug-takers, but one can imagine a person who habitually takes drugs purely for the purpose of rendering himself unconscious to relieve pain, or for some other reason, and who causes no trouble to his family, being asleep most of the time. However, in that case his wife is entitled to a separation order—or that is my interpretation of the new definition in the clause. The definition omits reference to the resulting conduct of the person, and merely refers to his being rendered unconscious by taking drugs.

Mr. T. D. EVANS: The member for Floreat is quite correct. We are breaking new ground by providing an additional ground for relief of married persons and children. That additional ground is that the person against whom the complaint is made must be proved to the reasonable satisfaction of the court to be habitually intoxicated.

The word "habitual" and its derivatives have given rise to a great deal of case law, particularly in the jurisdiction of domestic relations, whether at summary jurisdiction level or at matrimonial causes level. A person who is habitual in respect of some conduct must be shown to have developed a pattern of behaviour over a considerable period of time. I cannot be more specific about what is a considerable period of time. I suppose one could acquire in a short time the habit of smoking or the habit of being fond of alcohol.

However, in the first instance the court must be satisfied that the person has manifested over a period of time a pattern of behaviour which could be said to class him as one who habitually practises that course of conduct. What is that course of conduct? It is the conduct of a person who has been intoxicated by reason of taking or using to excess any sedative, narcotic, or stimulating drug or preparation.

I think the fact that the court must be satisfied on the balance of probabilities that the person has formed a pattern of behaviour is a safeguard. Once the court is satisfied that the person has formed that pattern of behaviour it looks to see whether the pattern has been formed from taking or using drugs to excess.

If one reads the second reading speech made by the late Hon. A. F. Watts when he introduced the parent Act, one finds he expressed the desire that the legislation

would be responsible not for playing havoc with marriages but for trying to preserve them. So wherever possible the court must be reasonably satisfied that the only real remedy to offer relief to the spouse or to the children of the family is that it should make an order.

I think any magistrate would require a fairly high standard of proof, and if he found the argument advanced did attain that fairly high standard he would probably make an order. The fact that the magistrate is required to be satisfied that an habitual pattern of behaviour has been manifested is sufficient to protect a person who on odd occasions has been guilty of taking a drug or preparation.

I give the honourable member an undertaking that I will have his comments examined. His aim is to ensure that the court will not act in such a way as to make an order for separation or for other ancillary relief which might have the effect of bringing about an end to any possible hope of reconciliation between the spouses. This is a delicate situation and I will have the point examined.

Mr. MENSAROS: I thank the Attorney-General for his undertaking. There is no suggestion on my part of any improper or incorrect behaviour on the part of the magistrate. I am merely examining the peculiarity of the drafting of the clause. I think if the clause is left as it is, although the magistrate would interpret it in the best sense, he would be placed in a difficult position if a counsel stood up and said he was entitled to ask for an order because the provision is contained in the Act.

The magistrate may be forced to decide on an order in a case where otherwise he might have decided differently, and he may know that he is not acting in the best manner and according to the intention of this amendment. That is my only point.

Clause put and passed.

Clause 6: Section 11 amended—

Mr. T. D. EVANS: This clause amends section 11 of the Act, which lays down the various forms of relief which may be made available by way of order of the court where the court is satisfied, amongst other things, that a ground has been established under section 10.

Clause C of the Bill relates to paragraph (b) of section 11 (1) which provides that the defendant shall pay to the complainant or to any officer of the court for the complainant's use, or to a third person on the complainant's behalf, such weekly or periodical sum by way of maintenance as the court, having regard for the means of both parties to the marriage, considers reasonable in all the circumstances of the case. It can be clearly shown, therefore, that the parent Act enables the court to

make an order for payment of maintenance to the complainant either to the complainant himself, to an officer of the court for the complainant's use, or to any third party for disbursement to the complainant.

The Bill seeks to require the court to make payment of maintenance available only to an officer of the court for disbursement to the complainant and to those for whom the maintenance was intended. When speaking to the second reading of the Bill I indicated the rationale behind this move; it is because provision is made in the parent legislation for the clerk of courts, if requested, to issue a certificate which shows the amount of money paid by a defendant pursuant to an order into the court, and the law provides that the certificate issued by the clerk in this instance is *prima facie* evidence of the facts it purports to portray. In other words, if a defendant has paid money direct to the complainant, or to some other party for the purpose of having it transmitted to the complainant, and a subsequent complaint is made to the court by the complainant that the defendant is in arrears in his payments and is unable to produce some form of evidence that he has paid the money direct to the complainant or some other party, the certificate of the clerk of courts is called for, and unless the defendant can prove that he has paid the money, he is in difficulties.

Since the introduction of the Bill the contents have been examined by members of a subcommittee drawn from the Law Society, the Summary Relief Court, and the Crown Law Department, and it is suggested that the wording of clause 6 should follow the similar provision in the Commonwealth Matrimonial Causes Act. The reason is that this section in the Commonwealth legislation has operated since the Act was promulgated in 1960, and during that time I should think it has given rise to a considerable field of case law which makes the construction of any point at issue on this subject more easy to determine and adds more certainty to the law. The substituted words in the amendment that is to follow have been taken from the Commonwealth legislation.

I move an amendment—

Page 4, lines 30 and 31—Delete the words "common household" and substitute the words "household which the parties had in common during the period in which they had been living together".

Mr. MENSAROS: I have no objection to the amendment. In actual fact it is only a question of different drafting, but it does not alter the provision in the clause. I have a few remarks to make on the clause itself and I think I am in order if I wish to do that.

The DEPUTY CHAIRMAN (Mr. A. R. Tonkin): You are permitted to speak three times on each question and not on each clause.

Mr. MENSAROS: Thank you. I simply wish to indicate that I have no opposition to this amendment.

Amendment put and passed.

Mr. T. D. EVANS: I move an amendment—

Page 5, line 31—Delete the words "Subject to" and substitute the word "Notwithstanding".

Mr. MENSAROS: I agree with the amendment, but to obtain some clarification, I take it I will have an opportunity to make some comment on the clause after it has been amended?

The DEPUTY CHAIRMAN (Mr. A. R. Tonkin): Yes.

Amendment put and passed.

Mr. T. D. EVANS: I move an amendment—

Page 6, lines 1 to 3—Delete the words "Where the parties are not living apart and in the opinion of the court are not about to live apart" and substitute the passage "Notwithstanding subsection (3) of this section, where the parties are not living apart".

The purpose of this amendment is to make it clear that despite the possible operation of discretionary bars, the court may make an order and need not concern itself as to whether or not the parties are going to live together. The bars to which I have referred are matrimonial offences committed by the complainant, undue delay in bringing an action, condonation, connivance, and inducing.

Therefore, the effect of the amendment is to make it clear that, despite the possible operation of a discretionary bar, the court may—here again the court has a discretion—make an order, and need not concern itself with whether or not the parties are, in fact, to continue to live together.

Amendment put and passed.

Mr. MENSAROS: Although one can agree that generally the provisions of this clause are simpler than the provisions in the relevant section of the Act, one should express the fear that it might keep at arm's length the intention of the parties to reconcile. Presumably proposed new subsection (3a) will enable a person who remarries to place preference on the children of the second marriage.

The courts, particularly the Supreme Court and the divorce jurisdiction, have always taken the view that if a man chooses to remarry and to have children from the second marriage, then the children by his previous marriage should not

suffer and, at least, should be placed on an equal footing with the children of the second marriage.

I am afraid that the effect of these amendments might provide an easy way out for a man to avoid his obligations to his former wife and the children of the first marriage, if he desires to do so; because if one looks a little ahead one can visualise that the provisions in this clause could lead to marriages of convenience. Those are my first remarks on the clause.

My second remarks deal with proposed new subsection (3a) (e) which appears on page 5 of the Bill. This seems to suggest that a man ought to undergo some form of training if the court thinks fit. This would definitely put the court in the position of being almost a vocational or a guidance body. I think this goes a little too far, because one would have thought that proposed new subsection (3a) (e) would give the court power to consider the potential income of a person, and would meet the needs of the situation.

If a party increases his or her income during the existence of an order, I think there is power available to the other party to seek a variation of the order and an increase in the amount on the grounds I have just cited. I am told and I understand that the magistrates now take into account all factors that are set out in proposed new subsection (3a) (e). The practical effect of obliging the magistrates to make formal inquiry into many of these matters will impose on them a fairly intolerable task. The procedure itself might be too lengthy, and therefore overrule the aim of this Bill and the aim of the procedures adopted in this type of court. One can envisage the need for a magistrate to be an accountant in order to deal with these situations adequately.

There is a fairly important principle related to this, and I am now dealing with proposed new subsection (3b) on pages 5 and 6 of the Bill. There is the principle of blame, and blame is still the basis of the matrimonial law; therefore it is recognised that the defaulting party loses his or her rights for maintenance, except where it is absolutely essential to retain the maintenance for the benefit of the children or the marriage itself.

The divorce law accepts this principle. It appears there will be a set of laws for the divorce court, and another set for this court. The effect of this new provision may be this: If, for example, a person instituted proceedings for divorce in the Supreme Court, subsequent to an order being made some time ago, then the defaulting spouse will automatically lose his or—as it is in most cases—her maintenance after having enjoyed it for some years, and after having organised his or her life in accordance with the decision made by the Summary Relief Court.

The case would go to divorce proceedings, and the factor of blame being important and insurmountable, the whole position might be reversed. One could readily question whether this would lead to an acceptable state of affairs.

Having discussed many of the clauses in the Bill with some legal practitioners I am led to the suggestion that these particular provisions could have been designed to assist the State, particularly the Treasury; and therefore this creates objection to certain people.

My next remarks relate to proposed new subsection (3c) on page 6 of the Bill. It is difficult to understand what the amendment really means; and it is difficult to visualise that it will have a reconciliatory effect, as usually cohabitation signifies condonation, unless there are some special circumstances.

Presumably this is an attempt to incorporate provisions into the matrimonial causes legislation, as the Minister indicated generally, giving the parties the right to cohabit for a period of three months and then to effect a reconciliation without prejudice to pre-existing rights. However, the provision in the Matrimonial Causes Act is quite different from that proposed in this clause. Whilst the provision in the matrimonial causes legislation is designed to be entirely reconciliatory, and encourages the parties to effect reconciliation, one fears that the provision in the clause could have the reverse effect.

Proposed new subsection (7) (b) empowers the court to make specific provisions instead of general provisions. I do not know what this is meant to cover, but I can envisage that the court could order payment of Hospital Benefit Fund contributions of the spouse or certain other expenses, such as the account for the milkman, or instalments on the refrigerator. Again, the situation is becoming tremendously cumbersome because under this provision the proceedings in the court would take much longer and thereby the original intention would be defeated. I would be appreciative if the Attorney-General would explain why this provision is necessary. Instead of the court making a general order, it would have to consider a list of financial obligations of the applicant and then order that specific hire-purchase instalments and other accounts be met. I do not consider this is a practical provision.

Mr. T. D. EVANS: I will have the comments of the member for Floreat examined. As we have not yet disposed of the Legislature of Western Australia Bill he will have another opportunity to have any amendments he considers necessary dealt with. However, I would like his comments studied at some depth because I have difficulty in hearing everything he says.

Mr. MENSAROS: My final comment concerns the power of the court to deal with property rights. I understand that not even the Supreme Court has such wide rights to enable it to go into partnership affairs, because it must be very cautious in making an order which will interfere with a partnership.

The effect of this clause will be that in order to secure the maintenance order partnerships may have to be resolved or rearranged. Definitely all the papers will have to be shown to and examined by the magistrate. Apart from that undesirable feature, the provision will make the whole proceedings very lengthy. I believe that the summary Relief Court will, under this provision, have much wider jurisdiction than even the Supreme Court.

Mr. T. D. EVANS: The member for Floreat has touched upon a very sensitive subject; that is, a person's property rights. However, I am certain that the court exercising jurisdiction under this new power would be guided by the large body of case law which has been built up as a result of cases presented before the court under a very long-standing Statute; that is, the Married Women's Property Act of 1892, which Statute was in fact adopted from the 1882 United Kingdom Act of that name.

In Australia, the Married Women's Property Act has been adopted by each of the States of Australia and it has on many occasions been the subject of litigation before the High Court. When referring to this type of legislation, the late Chief Justice, Sir Owen Dixon, said that the court must not use its power capriciously and that it was not endowed with the authority to exercise what he referred to as palm-tree justice. This expression could be equally applied to this legislation.

I think it is only right and proper for a court, if in the first instance it deems it necessary to make an order, to have the follow-up power to ensure that a person will not defeat the efficacy of the order by interfering with, removing, or diminishing his assets in such a way that his capacity to meet the terms of the order is likewise diminished so that the person in whose favour the order is made will suffer. As I said, I think the court would be guided by the various decisions which have been made by superior courts and, indeed, the High Court and would not use the power capriciously but judiciously.

The provision is not intended to extend palm-tree justice, but is merely a means of ensuring that an order given by the court, after very careful consideration of the issues, is protected. It is designed to operate in the best interests of the person in respect of whom the order is made.

Clause, as amended, put and passed.

Clause 7: Section 13 repealed and re-enacted—

Mr. T. D. EVANS: This clause is designed so that the court, on hearing a complaint made under section 10 or at any time on application by way of complaint by a married person for an order against the other party to the marriage may, at the instigation of a party or of its own motion and in addition to or in lieu of any order which it may make under the provisions of this Act—and this is important; that is, that it has the right to make an order in addition to or in lieu of another order if it is satisfied that the making of the order is necessary for the protection of the party to the marriage or any child of the family—make an order referred to as a nonmolestation order requiring the party to the marriage to keep the peace and be of good behaviour and not interfere with the rights of the other party.

I pointed out at the second reading stage of the Bill that often a person who has had a difference with the other party to the marriage and who is, in fact, physically separated from that other party—and who is being molested by the other party—may not wish to avail himself or herself of obtaining a separation order under this Act for the very purpose that if he or she obtains a separation order he or she immediately negatives his or her right to apply to the Matrimonial Causes Court for an order that the other party, after two years, has deserted him or her. Desertion has to take place over a period of two years because “desertion” is defined as being the bringing to an end of a matrimonial relationship on the part of one spouse against the other.

Where the aggrieved person rushes to a Summary Relief Court and obtains a separation order, to obtain some relief from the other party molesting him or her, then the very effect of the separation order immediately negatives, from that time on, desertion on the part of the other party to the marriage. It is desired to afford a person the opportunity to approach the Summary Relief Court and, in lieu of asking that court to grant him or her a separation—having proved there are grounds within the meaning of section 10 of the principal Act—ask the court to grant a nonmolestation order only. A person who becomes subject to such an order will be restrained, or can be restrained, from molesting the aggrieved person without the aggrieved person depriving himself or herself of the opportunity to approach the court at the end of the statutory period required under the Matrimonial Causes Act and ask for a dissolution of the marriage on the grounds that the other party has deserted the applicant.

Mr. Bertram: He would put himself in the position of having to get a divorce in five years' time instead of two years' time.

Mr. T. D. EVANS: The member for Mt. Hawthorn is so right. In such a case a person would have to rely on the other provision of the Matrimonial Causes Act under which the parties have to live separately for a period of five years, instead of two years.

Since the Bill was introduced it has been examined by the special committee to which I have referred. The Law Society has suggested that my proposed amendment will give the court more discretion to decide whether or not a complaint amounts to harassment or molestation. I move an amendment—

Page 7, lines 19 to 30—Delete the passage commencing with the words “to the marriage” down to and including the word “person” and substitute the following passage: “to the marriage not to, and not to attempt to, influence or interfere with the manner of living of, or to harass, or otherwise molest any person named in the order”.

Mr. MENSAROS: Whilst I have no objection to the amendment I would like to comment. It is very interesting, in fact, to take part in this debate because it is similar to a debating society. Whilst the Attorney-General rightly points out the reasons behind his amendments I might be excused for pointing out some of the events which might occur under the very same provisions.

The Attorney-General is quite right; the proposed amendment may have a salutary effect. However, we can imagine certain happenings where the proposal put forward by the Attorney-General would not have the same effect. I am referring to the nonmolestation order. It could happen that a spouse could be so restricted by such an order that he could not gather any evidence, for instance with regard to adultery, in order to set divorce proceedings in motion.

It is not uncommon for a party who has received a nonmolestation order to indulge in certain activities in which she—in most cases she—would not ordinarily indulge. Having received a nonmolestation order a spouse is fairly secure in the knowledge that she can commit offences against the matrimonial Act with little chance of being detected. In such a case the husband would be deprived from applying for a divorce on the ground of adultery. He would have to wait for the period of desertion in order to get a divorce.

Although that ability is watered down considerably by the proposed amendment—with which I can only agree—the amendment could still have that effect. I think it is worth mentioning that effect for the record. Another aspect is that it is not uncommon for a spouse, having received a maintenance order, commencing to work under an assumed name. We

would then have the same situation as that mentioned by the Attorney-General in connection with another clause in the Bill. In the case of the spouse commencing work under an assumed name the proposed amendment would have the effect of depriving the husband of his right, or at least severely limiting him, in any effort to vary the original maintenance order on the ground of his wife's increased earning capacity.

The first point I raised is that the non-molestation order could have the effect of depriving the husband of the opportunity to obtain evidence against his wife for presentation to the court in a divorce case. The second point is that the husband could be deprived of the opportunity to vary a maintenance order against him because of the higher earning capacity of the wife which he could not detect.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 8: Section 14 amended—

Mr. T. D. EVANS: Clause 8 of the Bill seeks to amend section 14 of the principal Act which relates to applications with respect to custody of children. The reason for the amendment is to make it clear that an applicant, who already has the care and control of a child or the *de facto* custody of a child, can, nevertheless, ask the court to make an order confirming the legal status; that is, granting legal custody.

It would appear that, in the past, courts have either refused or have been reluctant to make such orders where a child has already been in the possession or the control of the applicant. That is the rationale behind the move to amend section 14.

However, I do desire to seek an amendment to clause 8, as printed in the Bill. The purpose of this will be to delete the word "legal" which purports to qualify the word "custody." It would appear to be redundant. "Custody" within the meaning of the principal Act must, indeed, be legal. I could not imagine it being illegal custody if it is made pursuant to the Act. Consequently the word "legal" is redundant where it appears in the clause.

The other amendment I propose to move is to delete the words "*de facto* custody" and to substitute the words "care and control" which are more readily understood and more embracing. I move an amendment—

Page 8, line 33—Delete the word "legal".

Amendment put and passed.

Mr. T. D. EVANS: I move an amendment—

Page 8, line 35—Delete the words "*de facto* custody" and substitute the words "care and control".

Mr. MENSAROS: In relation to the words proposed to be inserted, I ask the Attorney-General whether the effect will be the same as I understood the effect of the original proposal to be.

I think the purpose is commendable, because there have been practical instances of women being asked to provide a certificate to, say, the State Housing Commission when applying for accommodation, or even to a school, but they were unable to do so because they did not have legal custody but *de facto* custody of the children in question.

The DEPUTY CHAIRMAN (Mr. A. R. Tonkin): Order! There is far too much conversation.

Mr. MENSAROS: I am thinking in particular in terms of applicants for State Housing Commission homes. In the past a woman with, say, two children—if she has not been able to prove that she had the legal custody of those two children but only *de facto* custody—consequently may have missed out with her application for a State Housing Commission home. The effect of the provision, I assumed, would mean that a woman with *de facto* custody of a child or children would now be able to apply. This also has application in various other spheres.

I would like the Attorney-General to assure me that the amendment he has proposed will, in fact, have the same effect.

Mr. T. D. EVANS: I give the assurance that I believe this to be so.

Amendment put and passed.

*Sitting suspended from 12.45 to 2.15 p.m.*

Clause, as amended, put and passed.

### *Progress*

Progress reported and leave given to sit again at a later stage of the sitting, on motion by Mr. T. D. Evans (Attorney-General).

## CONTRACEPTIVES ACT AMENDMENT BILL

### *Third Reading*

Bill read a third time, on motion by Mr. Lapham, and returned to the Council with amendments.

## ACTS AMENDMENT (ROMAN CATHOLIC CHURCH LANDS) BILL

### *Second Reading*

Debate resumed from the 12th October.

MR. MENSAROS (Floreat) [2.19 p.m.]: It is—and I suppose it should be—with some trepidation that one deals with the affairs of an institution which is 1,850 years older than this State and which, as a consequence, has nearly 20 times as much experience as this State has had in conducting its own affairs. I daresay such an

organisation as the Roman Catholic Church can operate without constant amendment of its rules simply on past experience; yet apparently there are even larger forces than the experience, and all that goes with it, of such a venerable institution—that is, the red tape of titles offices throughout the world, and not especially that at Cathedral Avenue.

Apparently it has been discovered that certain actions within the Titles Office cannot properly be executed unless the relevant legislation is amended. Therefore, someone in the Crown Law Department probably had to don a dustcoat to look up the very old Statutes which related to the rights of the Roman Catholic Church in regard to land; hence, the Bill which is in front of us.

Apparently it has been discovered in the process that many provisions of the original Acts—some of them Government Acts and some of them private members' Acts—do not apply today and are in fact anachronistic. The process of remedying all those anachronistic provisions could not have been easy but it was commendable. It is interesting to note that one of the amendments results from the fact that only now—after 56 years—has it been discovered that the Roman Catholic Bishop of Perth has the title of Archbishop. This matter has been corrected in part II of the Bill.

Also, it has apparently been discovered that the lengthy description in one of the parent Acts which deals with advisers to the Archbishop has never been used. That is almost contrary to the requirements of the Act. The Archbishop, or Bishop as he was legally called, has never asked for advisers before transferring or mortgaging land. Nevertheless, because of the provisions of the Act, a lengthy provision had to be inserted in every document that the Bishop took this action with the consent of his advisers. As this is also a virtually defunct section, it will be deleted by the provisions of the measure before us.

The Bill also provides for smooth succession before the appointment of a new Archbishop where an Archbishop fails to appoint someone to act after his death. The Bill provides that a Vicar Capitular—I understand this is a standing appointment—can act in the interregnum.

The Bill contains further tidying-up provisions and in fact it perhaps goes a little further than the measures the Attorney-General commented on. In an endeavour to facilitate legal work provision is contained in the measure for alteration to the boundaries of dioceses in the case of alterations or the creation of a new diocese. The issue of a simple certificate by the Roman Catholic Archbishop—something along the lines of a statutory declaration—with his seal attached is sufficient evidence to the Titles Office that the

particular Bishop acts as the owner of that land. The legislation also establishes the legal acknowledgement of the seal and describes the conditions regulating its use. Finally, the measure enlarges the powers of the Archbishop in regard to land transactions.

The Attorney-General stated that this legislation is before us as the result of a request by the Roman Catholic Church, and that the solicitors of the church have checked the legislation and were in fact instrumental in the drafting of the legislation. Churches generally prefer believers to sceptics. I believe the Attorney-General and I support the Bill.

**MR. T. D. EVANS** (Kalgoorlie—Attorney-General) [2.25 p.m.] : I thank the member for Floreat for his support.

Question put and passed.

Bill read a second time.

*In Committee, etc.*

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

*Third Reading*

Bill read a third time, on motion by Mr. T. D. Evans (Attorney-General), and transmitted to the Council.

## **LAW REFORM COMMISSION BILL**

### *Council's Amendments*

Amendments made by the Council now considered.

### *In Committee*

The Deputy Chairman of Committees (Mr. A. R. Tonkin) in the Chair; Mr. T. D. Evans (Attorney-General) in charge of the Bill.

The amendments made by the Council were as follows:—

No. 1.

Clause 6, page 3, line 6—Add after the word "partnership" the passage—

"and who has had, in this State or elsewhere, not less than eight years experience as a legal practitioner".

No. 2

Clause 6, page 3, line 9—Add after the word "Australia" the words—

"who has an academic status or position of Associate Professor or Professor".

No. 3.

Clause 6, page 3, line 13—Add after the word "State" the passage—

"and who has had, in this State or elsewhere, not less than eight years experience as a legal practitioner".

No. 4.

Clause 12, page 6—Delete the clause.

Mr. T. D. EVANS: I move—

That amendment No. 1 made by the Council be agreed to.

Clause 6 deals with the members of the proposed commission and paragraph (a) provides—

one shall be a certified practitioner within the meaning of section 3 of the Legal Practitioners Act, 1893 who is practising as a practitioner on his own account whether alone or in partnership;

The Legislative Council seeks to amend this provision by adding that the legal practitioner to be appointed should be one who has the standing or eligibility to be appointed as a judge of the Supreme Court or the District Court. The Legislative Council seeks to add the following words after the word "partnership"—

"and who has had, in this State or elsewhere, not less than eight years experience as a legal practitioner".

The Government has no objection to this amendment and I recommend that it be accepted by the Committee.

Mr. R. L. YOUNG: I have examined the amendments made by the Legislative Council and I am aware that they should be supported. It is interesting to know that, in regard to the first amendment, during my speech on the second reading of the Bill I pointed out to the Attorney-General that he should keep in mind that the time will come when the number of legal practitioners who practise on their own account and who are admitted to the Law Reform Commission may well be extended to cover more than one, because this would add more flexibility and more ability to the commission. I therefore reiterate that important point.

It is interesting to note that one of the qualifications required of a judge in the Supreme Court is that he shall be in practice for eight years in this State. Instead of that provision, this amendment by the Legislative Council requires a similar qualification to that of a judge, but the experience required by the legal practitioner appointed to the commission shall be eight years' practice on his own account which will include time spent in this State and elsewhere. That is an interesting and worth-while variation of the clause, because it could be beneficial to include experienced legal practitioners who have had experience of the law in other States as well as in this State. Therefore, I am quite happy to agree to the amendment.

Question put and passed; the Council's amendment agreed to.

Mr. T. D. EVANS: I move—

That amendment No. 2 made by the Council be agreed to.

This amendment refers to the status of a person having academic experience who shall be appointed as a member of the proposed commission. As printed, the Bill requires that one shall be a full-time member of the academic staff of the Law School of Western Australia. The Legislative Council seeks to add after the words "Western Australia" the words "who has an academic status or position of Associate Professor or Professor" which would qualify the type of person who could be appointed to this position.

As a matter of interest, the term "associate professor" is now used at the University of Western Australia instead of the more orthodox and familiar term "reader." Again, it is considered that the Legislative Council's amendment has much to commend it. As a matter of fact, the person who has occupied the position since the inception of the Law Reform Committee is Professor Eric Edwards who naturally has these qualifications and, as far as I know, he is still desirous of carrying on the good work the committee has so far been able to perform. Obviously, the Government will be anxious that he should be appointed and therefore we cannot see any difficulty in accepting this amendment.

Mr. R. L. YOUNG: I support what the Attorney-General has said in regard to this amendment and I add that it is only fitting that a commission of this type should have as one of the university representatives a man who has at least the status of an associate professor. I join with the Attorney-General in stating that Professor Edwards has done excellent work on the Law Reform Committee and it is only fitting that a man of his stature should be a member of the commission. I therefore agree to the amendment.

Question put and passed; the Council's amendment agreed to.

Mr. T. D. EVANS: I move—

That amendment No. 3 made by the Council be agreed to.

This amendment refers to paragraph (c) of clause 6 of the Bill and relates to the appointment of a practitioner within the meaning of section 3 of the Legal Practitioners Act. The Legislative Council seeks to add words which would require such a practitioner to be one who has had in this State, or elsewhere, not less than eight years' experience as a legal practitioner.

The effect of the proposed amendment is that the person appointed under paragraph (a) of clause 6—that is, a certificated practitioner—and the officer who is appointed from the Crown Law Department will require to have the experience as outlined, and in this regard I feel that the requirement to extend an opportunity to a person to acquire the eight years' experience, either in this State or elsewhere, is indeed beneficial in so far as a person who has had outside experience as well

as experience within the Crown Law Department of this State may be able to bring to the task wider experience of the work, instead of one who has had his experience limited to Crown Law Department work. I recommend that the Committee accept the amendment.

Question put and passed; the Council's amendment agreed to.

Mr. T. D. EVANS: I move—

That amendment No. 4 made by the Council be agreed to.

This amendment seeks the deletion of clause 12 of the Bill which provides that the commission shall, if so requested by the Attorney-General, submit a confidential advisory report to him on any topic.

When the Bill was being debated in this Chamber previously, this clause was subject to comment. It was then expressed that if there were to be a Law Reform Commission its reports should be made available to persons who are interested. Provision is made elsewhere for the reports to be made available at large and whilst I could see some merit in clause 12 giving the Minister of the day the right to call for a confidential report, the Legislative Council feels that if there is to be a Law Reform Commission its reports should be available to those who have a legitimate interest in them.

I cannot see that the deletion of the clause will cause any embarrassment to the Minister of the day, because he has other law resources available to him, and again believing that the Law Reform Commission should have a good public image, I can see some merit in accepting the Legislative Council's amendment.

Mr. BRADY: I would like the Minister to indicate whether it was originally envisaged that the Law Reform Commission should advise the Minister on such matters as the wording of hire-purchase agreements and the tactics of people in the hire-purchase arena, and on members of the legal profession who do not act promptly on work given to them.

In recent times I have been appalled at the number of people who have drawn my attention to what appeared to be grave weaknesses in hire-purchase agreements which Custom Credit and other firms get people to sign. On the other hand I am appalled at the number of people who have raised with me the fact that legal men who have been given jobs to do do not act promptly.

I believe that the public should have some tribunal to which to appeal on these difficulties because the layman cannot afford to wait indefinitely on legal matters and he cannot afford to go to court. A tribunal such as the Law Reform Commission or some other committee should be able to advise the

Minister from time to time of the necessity to do something to protect the public against what I believe are malpractices.

Mr. HARTREY: I cannot help responding to the remarks of the member for Swan. I resent strongly being linked with Custom Credit or any similar organisation in this manner. A complete distinction exists between finance companies engaged in financing credit-purchase transactions and practitioners at the bar who are, for the most part, concerned with endeavouring to rescue the victims of those organisations.

So let us deal first of all with the question of finance companies. A consumer credit department is to be created and that will be the obvious place to which any person dissatisfied with a consumer-purchase transaction should appeal. I take it that will be the procedure. I do not believe that the Law Reform Commission should have anything in the world to do with that aspect.

As far as the reflection on the legal profession is concerned, it may well be that on many occasions matters appear to take a long time to be processed in a legal office, and there are many very good reasons for this.

One is that the staff has only seven working hours a day. The wretched lawyer is limited to 24 hours a day. I have been trying for a 36-hour day for a long time, but have not been successful yet. A certain amount of a lawyer's 24-hour day must be devoted to sleep. So the time factor is one which must be considered. However, others are involved as well. The probate of an estate is often held up for months because the Taxation Department refuses to certify how much tax must be paid on the value of certain shares not listed on the market. Delays in criminal processes, especially in the metropolitan area, occur because the Local Courts, Courts of Petty Sessions, and District Courts are too crowded at present to enable speedy trials to take place; and of course the lawyer gets the blame.

All sorts of reasons exist for actions being delayed. Maybe a witness has gone to the Eastern States and the case cannot be proceeded with until he returns. The Law Reform Commission can do nothing under God's heaven about these circumstances. If it could I would be glad to pass the buck to it immediately.

With great respect to him, the member for Swan was not as clear as he should have been on the subject before he spoke. Further, if he had perused the admirable report in the preparation of which you, Mr. Deputy Chairman (Mr. A. R. Tonkin) and I had a hand—that is, the report of the Royal Commission relating to hire-purchase and other agreements—he would have learnt a great deal. If he read it he

would, on the next occasion he addressed the Committee on the subject, be better informed.

Mr. BRADY: It is very nice to hear a legal man protecting his kith and kin. This is the weakness in the system. The legal people will always stick together.

Mr. Hartrey: Hear, hear!

Mr. BRADY: This is one of the difficulties. People must have some way of dealing with members of the legal profession. I can recall one or two cases in recent years when I have had occasion to ring a member of the legal profession three and four times on a matter which, in my opinion, should not have required my assistance at all.

The legal friends all stick together. One legal man will not take a case against another. If I have done nothing else I have drawn the Minister's attention to this weakness in the legal profession. I have nothing against legal people, generally speaking. I know they do a good job; but sometimes some of them do a very bad job.

Mr. Cook: Hear, hear!

Mr. BRADY: Recently a member of the legal profession was prosecuted for having helped himself to other people's funds. Therefore, although the member for Boulder-Dundas might have been acting in good faith when having a shot at me, I feel I have a responsibility to draw the Minister's attention to some of the weaknesses in the system.

Mr. Hutchinson: Hear, hear!

Mr. BRADY: For too long Parliament has taken the view that because the legal profession is composed as it is it has special rights. I do not believe it has any more rights than any other profession. Most of the members of the legal profession have a terrific ego and they feel they can do no wrong. I believe they can, and just as we must have an Ombudsman to protect the public against the administration in Government departments, it would do us no harm to have an Ombudsman in the nature of the Law Reform Commission to advise the Minister of the weaknesses in the legal profession.

Mr. R. L. YOUNG: Having dealt with the dull parts of the Bill, I do not think I will miss the opportunity to get in on the fun, because, despite the fact that we are not talking about the Bill—

Several members: Hear, hear!

The DEPUTY CHAIRMAN: (Mr. A. R. Tonkin): I assume that is not a reflection on the Chair.

Mr. R. L. YOUNG: Not at all. It is a reflection on the two previous speakers.

Both the member for Boulder-Dundas and the member for Swan are in some respects correct. There is no doubt that

some members of the legal profession will take every opportunity to make things as difficult as they can for their clients. Some of them do this, but not all of them, by any means. Some lawyers will procrastinate to such an extent that one wonders what one can do about it. What one can do about it is to go to the Barristers' Board and report the lawyer. In that respect I consider the comments of the member for Swan would be better directed to the Barristers' Board—

Mr. Hartrey: Hear, hear!

Mr. R. L. YOUNG: —than to this Committee on this legislation. By the same token, however, there are some fields of law which both the member for Swan and the member for Boulder-Dundas mentioned which could be well and truly covered by a report from the Law Reform Commission.

To get back to the question before the Chair, it is right and proper that any report coming from the Law Reform Commission should be laid before Parliament as is required under clause 11, and not be a confidential report as it would be under clause 12. Therefore I support the deletion of clause 12.

Question put and passed; the Council's amendment agreed to.

### *Report*

Resolutions reported, the report adopted, and a message accordingly returned to the Council.

## **NOISE ABATEMENT BILL**

### *Second Reading*

Debate resumed from the 12th September.

MR. HUTCHINSON (Cottesloe) [2.51 p.m.]: In the absence overseas of the Deputy Leader of the Opposition it falls to my lot to speak to this Bill. The measure proposes to control excessive noise and vibration and to provide for their abatement. In addition it provides—in terms of that famous phrase—for incidental purposes.

At the outset, I would like to say that we on this side of the House are not opposed to the concept of the legislation for those stated purposes. Indeed, legislation already exists on the Statute book to control noise and to give effect to the control of noise hazards in industry and in the community. I cite the Factories and Shops Act and the Local Government Act. In addition, many industrial companies have begun to tackle the problems which surround noise hazards in industry. Local authorities, also, have tried to abate community noise within their sphere. It is true, however, that amendments probably should be made.

I have a number of suggestions and criticisms to make in connection with this Bill and to give effect to some of my criticisms and suggestions I have placed a number of amendments on the notice paper.

At this juncture, I would like to mention, too, it is unfortunate that the Minister who is in charge of the Bill cannot be present in the Chamber this afternoon. He has explained to me that business takes him elsewhere but he will read the speeches made during the debate. With that assurance, of course, we must be content.

In brief, my suggestions and criticisms are based on a number of items. In my view the Bill has been drafted much too hastily. I believe there is insufficient reference to other departments which already control noise hazards in industry and community noise. Consequently, the Bill has legislative sins of omission and commission. Although I am no legal authority—in fact, far from it—I believe many legal eagles will find this Bill is badly drafted.

Secondly, the measure has no relevance to other legislation which deals with noise. I refer once again to the Factories and Shops Act and the Local Government Act. No regard has been paid as to whether there is inconsistency with those other Acts. Consequently, the measure fails to complement other Acts which deal with this problem. At a later stage I shall endeavour to point out the grave conflict between the provisions of this measure and the provisions of the Factories and Shops Act. I intend to read portions of both Acts to try to prove what I have to say. The conflict is so apparent to me that it is possible to think the present measure is valueless, if not invalid.

My third point is that the noise abatement advisory committee, which is to be set up under the measure, will be too specialist and too academic. It will not have the wider representation which is required for a committee to probe into problems associated with noise hazards in industry and in the community. Being of such a restrictive nature it will lack that breadth of vision which will be so important in the complex problems the committee will have to face.

Although I will refer to it later, I say at this juncture that this specialised legislation could possibly have been avoided and appropriate amendments made to the Factories and Shops Act as well as other legislation which is involved.

My next point is that inspectors to be appointed under the legislation will not be required to have any qualifications whatsoever. I think this is a sad omission and should be rectified. As I said previously, I have placed a number of amendments on the notice paper, one of which

deals with an endeavour to rectify this point—and rectify it along the lines of one amendment appearing on the notice paper which is to be sought in connection with the Factories and Shops Act Amendment Bill which is listed in the legislation currently before the House. If members look at the notice paper they will see that my amendment is substantially the same as the amendment being sought to the Factories and Shops Act Amendment Bill.

A further—and unnecessary—inspectorial system is to be introduced under this Bill. This will be in addition to those already existing whereby inspectors can enter factories, shops, and homes. I refer to inspectors appointed under the Factories and Shops Act, the Clean Air Act, the Environmental Protection Act, and the Health Act. I would think that this does not exhaust the list. It is not healthy to have a proliferation of inspectors with the wide powers which are given under the various Acts when Parliament can enable the existing inspectorate to deal with this work. On this subject I will say more anon.

Mr. Brady: Does that not contradict what you said earlier; namely, they should have specialised knowledge?

Mr. HUTCHINSON: If the honourable member had listened to all I have said—

Mr. Brady: I have listened to it all.

Mr. HUTCHINSON: —he would have heard that one of my criticisms is that this question could have been dealt with under other legislation. I said that I am not opposed to the concept of taking steps to reduce noise hazard in industry or in community life.

Mr. Brady: What specialist knowledge would a man need when people are kept awake all night by machinery which is operating near the house?

Mr. Williams: That does not come under the industrial side but under the social side.

The SPEAKER: Order!

Mr. HUTCHINSON: I will deal with this more particularly later on in my remarks.

I say that, as far as I am concerned, the compensation factor which is being introduced in this measure is premature.

Mr. Hartrey: It should have been introduced a long time ago.

Mr. HUTCHINSON: That is the view of the member for Boulder-Dundas. I ask him to hear me out. The complex nature and effect of noise in industry and in the community can be linked so closely together as to make it difficult properly to apportion a percentage of blame to one or the other.

Mr. Brady: You could not be more ridiculous.

Mr. Hartrey: How about the miner working 500 or 5,000 feet down? Do you think he would be worried about noise causing deafness?

Mr. HUTCHINSON: I do not doubt that most members in this Chamber have been to social functions where electrically-boostered music within confined spaces has had a profound effect on the hearing of some people. When a full analysis is made of the reports of research carried out by such bodies as the Australian Standards Association, it will be found there are many contributing causes of deafness arising from noise. At this juncture, it would be very difficult to apportion any compensation which industry should pay. One is often afflicted with noise in this House as you know, Mr. Speaker, when you say so often, "There is too much audible conversation."

A further criticism is that if separate legislation is required, I do not believe enough research has been done in the matter. Greater reliance should have been placed on the example set in the Clean Air Act which has proven to be quite successful in regard to trying to clean a polluted atmosphere.

It will be remembered that the Clean Air Act sets up two statutory bodies — a Clean Air Council and an advisory committee. The council is widely representative. The advisory committee is a more specialised body but it still has wider representation than the specialist committee which it is proposed to set up under the Bill now before us.

The next point is, as will be noticed by those who have read the Bill, that one of its clauses especially indemnifies the State against any problems arising out of the impact of this legislation. The State is excluded from its provisions, whereas the Clean Air Act binds the Crown. I believe in this respect the Bill before us is lacking. Why should the State be excluded? I do not think that it is at all fair or just. One of my amendments is designed to endeavour to rectify what I consider to be a most unjust situation.

I now want to refer to the conflict that exists between the Bill we are now discussing and the Factories and Shops Act. As I said earlier, it appears to me that this Bill is virtually valueless and demonstrates that it has been too hastily drawn.

The Factories and Shops Act deals with noise in industry, and section 46 of that Act is rather interesting. Subsection (1) of section 46 reads—

(1) The Board shall in relation to any factory or class or description of factories investigate and make recommendations to the Minister with re-

spect to all measures necessary for securing the safety, health and welfare of employees, including—

Then follows a list of 10 measures which the board shall take to protect employees. The first named is—

(a) the prevention or diminution of noise;

The board referred to is the Factory Welfare Board. Section 46 also refers to the fact that the Minister has powers to investigate, and the board has powers to investigate and report on any question referred to it by the Minister in relation to any of the 10 measures which are headed by the prevention or diminution of noise.

Sections 61 and 62 of the Factories and Shops Act also refer to noise problems and hazards in industry. Very early in section 61 it is stated—

(1) The Governor may on the recommendation of the Board make regulations for the purpose of securing the health and safety of persons employed in factories and in particular the regulations may—

(a) provide for the cleaning of factories and the abatement of nuisances therein—

Read with section 46, that makes powerful reading and instances the powers conferred under the Factories and Shops Act. Section 62 also refers to noise. Paragraph (d) of subsection (1) of that section reads—

(1) Where it appears to the Minister that in any factory or in any class of factories . . .

(d) any noise, gas, dust, fume or impurity generated in a factory interferes or is reasonably likely to interfere with the personal comfort of any person—

In those circumstances, the Minister may cause regulations to be made to try to overcome the problem. We therefore see that this problem of noise is handled by the Factory Welfare Board. I do not deny it is possible that amendments to that Act are desirable.

Now I reach the conflict. If we look at section 107 of the Factories and Shops Act we will see it deals with possible conflict with that Act. Subsection (1) reads—

(1) Where there is inconsistency between the provisions of this Act or any Order in Council, regulations, rule or by-law made under this Act including those continued in force by this Act that relate to the safety or welfare of employees and the provisions of any Order in Council, regulation, rule or by-law made under any other Act, including those continued in force by that other Act, the former provisions prevail in so far as they apply under

this Act to any person, thing or circumstances and the latter provisions do not apply thereto.

Very simply, that means that the Factories and Shops Act prevails over the subject matter of the Bill before us.

Mr. Williams: Or any other Bill.

Mr. HUTCHINSON: Yes, or any other Act; however, I am speaking about the Bill before us at the moment. So that leads me to say the measure before us is probably valueless, if not invalid.

Mr. Hartrey: Surely it cannot be invalid?

Mr. HUTCHINSON: Well, I was not being dictatorial in that statement. However, I do say it is valueless and I challenge the honourable member to disprove that statement.

Let me explain a little further to the honourable gentleman, although I feel he understands, anyway. Regulations made under the Bill before us, if it becomes an Act, would have no force or effect on subject matter upon which regulations are made under the Factories and Shops Act.

Mr. Hartrey: Who said?

Mr. HUTCHINSON: Section 107 of the Factories and Shops Act states that. Did not the honourable member hear me read it? I will repeat for his benefit that section 107 states that the provisions of the Factories and Shops Act prevail over any other legislation regarding regulations made in connection with noise.

As I said before, I feel this measure has been embarked upon too hastily and that no liaison has occurred between the departments. It would appear to me that the Factory Welfare Board would be better able to deal with this matter than the Commissioner of Public Health. That point could be debated, so I will not make an issue of it. However, certainly there should have been closer liaison with the Factory Welfare Board. I believe that when legislation is prepared as hastily as this measure was prepared, and is presented to Parliament without reference to other Acts, it indicates that something is wrong with the administration of the Government.

Mr. Graham: Does not the legislation last passed by Parliament have preference over legislation passed earlier? In other words, the Bill before us, when it becomes law, would prevail over the provision in the other Statute.

Mr. HUTCHINSON: I do not think so.

Mr. Hartrey: Well, I do.

Mr. HUTCHINSON: Well, it would not be the first time that I have differed with a lawyer, nor would it be the first occasion that the Deputy Premier has differed with a lawyer.

Mr. Graham: I think not only are you outnumbered, but our point of view prevails.

Mr. HUTCHINSON: I have very grave doubts about that. However, it is certainly not good drafting when we find that the Factories and Shops Act—a most important Statute—contains a section which is in conflict with the Bill before us, and yet this measure has no reference whatsoever to that Act.

Mr. Graham: I am afraid that has happened on many occasions in State law.

Mr. HUTCHINSON: It is the duty of the Opposition to endeavour to point out these things.

Mr. Graham: I did that very thing in respect of the late Government regarding the powers of resumption in the Public Works Act whilst the State Housing Act contains no powers of resumption.

Mr. HUTCHINSON: That may be so; and it indicates the Deputy Premier is more than half on my side. At least he admits it is undesirable that legislation should be framed without reference to other legislation.

Mr. Graham: Exactly; but there is nothing new or novel about that. It has applied to each side of the House.

Mr. HUTCHINSON: I think that type of thinking is often carried too far. It is certainly a type of thinking in which I do not believe, although politics lead one to do strange things at times.

Mr. Williams: Probably the Deputy Premier was the first to have brought it up.

Mr. HUTCHINSON: Yes, probably. I think the measure lacks form and appropriate relevance to other legislation; and maybe it is to be placed under the jurisdiction of the wrong department. I think the legislation will be largely valueless as it is written at present.

I believe all those members who are interested in the type of problem before us would be well advised to familiarise themselves in some way with the draft standard codes of practice on noise prepared by the Standards Association of Australia. I think the Standards Association of Australia is well known to all members as a highly reputable organisation with branches in every State. There are comparable organisations in most countries of the world. The association carries out a great deal of research on a wide variety of subjects. In regard to noise hazards, it has prepared a Draft Australian Standard Code of Practice for Hearing Conservation, and a Draft Australian Standard Specification for Hearing Protection Devices.

One should read those documents in order to gain some knowledge of the extent to which research has been carried out. They do not make easy reading because reference must be made to a variety of graphs dealing with such things as the intensity of decibels, the distance from the noise source, and the age of the employees and the period they have been engaged in the industry.

In the preface to its codes of practice the association said—

While the incidence of noise-induced hearing has been recognised in a general way, it is only in relatively recent years that a systematic approach has been made to this subject and that serious study has been given to methods for dealing with the problem. There is not yet any universal agreement as to how noise-induced deafness may be reduced, but what is certain is that prevention is the best cure.

I felt it appropriate to quote those comments because they point out that there is still a great deal of research to be made into this complex subject, and it is not as simple as those who say there is no trouble at all believe. We know that there is noise, and one gets deaf from it; so that is that. I repeat the last comment in that preface—"prevention is the best cure." In any case there is not yet any universal agreement as to how the problem should be properly combated. Again, the preface says—

The drafts are intended to offer guidance to all concerned in recognising the main problems and in setting out the means whereby they may be analysed and diminished.

As the Minister for Health has said he will read the transcript and answer any queries, I would like him to inform me whether he has made a study of the documents prepared by the Standards Association of Australia.

They are offered as fine Australian standards, so far as research has taken us in this regard. If we go into this blindly and without proper reference to these Australian standards, we could have regulations written under this legislation which could possibly conflict with the Australian standards. So, I would like to know to what extent study has been made of these documents which were only printed in May of this year.

As an aside to this, I have already criticised the fact that inspectors without the necessary qualifications may be appointed. How will inspectors without these qualifications be able properly to administer regulations which may differ, in any case, from the Australian code?

In his introductory speech the Minister made no attempt to give us any real idea as to what research had been under-

taken, although I know that the officers of the Public Health Department have been interested in this matter for a long time.

The preface to this code also states—

There must be widespread co-operation to succeed, and adequate prior education regarding the effects of noise on hearing should be undertaken. The effect of training in the use of hearing protective devices should be undertaken by inspectors, and there should be the correct selection of devices.

This same code also points out that while it caters primarily for the need for improved occupational environments, it draws attention to amounts of undesirable noise to which individuals may subject themselves in many nonoccupational environments. This is a matter to which I referred earlier when I spoke about the difficulties of apportioning blame to industrial noise, community noise, social noise, or hobby noise in regard to compensation problems. The code definitely states that whilst it caters primarily for the need for improved occupational environments it draws attention to the undesirable noise to which individuals may subject themselves in many nonoccupational environments.

Reference has been made by me to electronically-boostered music and like entertainment which have high sound pressure levels. Activities such as motor cycle racing, motor racing, and speedboat racing can involve people in exposure to undesirable noise levels. How can compensation be legally determined at this juncture?

I do appreciate this fact: the legislation before us is virtually ineffective without extensive regulations to back it up, and the House will be very interested to see the type of regulations that will be drawn up in order to clothe this rather badly written piece of legislation with desirable regulations which are designed to control noise hazards in industry.

There is no doubt that early detection of an individual's susceptibility to noise hazards in industry is essential, and there is definitely room for positive action to be taken in regard to co-operation between employers and employees as to the wearing of protective devices. Already a number of firms have done this, but co-operation is still not as good as it should be.

It is frequently found by employees that hearing protective devices perhaps do not suit them, are uncomfortable, or are hot to wear; some of them find that ear plugs cause discomfort, while others find ear muffs cause discomfort.

In order to try to obviate the problem of noise in industry, hearing protective devices of this kind should be worn where the noise levels are of such intensity as to make them dangerous to the employees. It is at the design stage in the production of

machinery, and later its mode of operation, where potential noise problems can be most effectively minimised. That is right at the design stage of the production of machinery.

We can understand that most of the machinery, which creates noise hazards in industry, in use at the present time would be very difficult to modify to prevent noise; but the problem should be tackled at the design stage. Unfortunately this is a long-term solution, but it is a problem which is inherent in determining compensation cases.

The draft code makes this point—

In stating the criteria contained in this document it has been realised that it would be impossible to guarantee that the hearing of every individual in the community would not be damaged by exposure to noise of one type or another.

The Australian Standards Association says there is no possibility of giving a guarantee that no damage would be caused to the community by noise levels in industry. This again points to the difficulties regarding compensation.

The draft code also states, *inter alia*—

Before any attempt can be made to solve the type of problem involved a thorough understanding of the physics of sound and vibration is required.

I think that is fair enough, but as the legislation stands at present the Minister wants to appoint inspectors without the necessary qualifications. I emphasise again that the Australian Standards Association says that in order to understand this we need people with a thorough understanding of the physics of sound and vibration.

Mr. Hartrey: Does it mean that the 51 members of this Chamber should have knowledge of the contents of the Bill?

Mr. HUTCHINSON: No, but the people who have to administer the legislation and who have to control noise hazards and vibrations in industry so as to bring about their abatement, should have that knowledge. That is what the standard code says.

In addition to this, in commenting on this statement the Minister does not want on the advisory committee, which is to be set up under the legislation, persons with practical knowledge of noise in industry—those who work in and manage industry. At present the advisory committee comprises a specialist body of scientists and medical people. I believe there should be a wider representation on this committee.

It appears to point out, by inference, that an early implementation of this Act would be unwise.

Regarding the point made by the member for Boulder-Dundas as to whether we should have particular knowledge to be able to debate this measure, I believe that

the inspectors should have a sound knowledge of many aspects concerning noise hazards in industry. Indeed, the Standards Association believes that an operator of testing equipment—who will be an inspector—should have received basic training in audiometry, and that appropriate training should also be obtained from an ear specialist, an audiologist, an audiometrist, distributors of audiometric equipment, or at a technical college.

Of course, we do not find any provision of that kind written into this legislation. We merely find the statement that the Minister may appoint any person to be an inspector. As I said earlier, the amendment which I have placed on the notice paper will endeavour to correct that situation.

I want the Government to understand that the Opposition is not opposed to broadening the control of noise hazards in industry or in the community. On the contrary, the Opposition believes the control should be much more effective than will be possible under the type of legislation which has been hastily thrust before Parliament. It behoves the Government to indulge in greater liaison between its departments in considering what should be done to smarten up this legislation, and to consider whether or not the existing legislation, such as the Factories and Shops Act, should be amended instead of presenting specialised legislation such as this.

If it is determined that separate and specialised legislation is still required, then it should be written properly and it should borrow extensively from the Clean Air Act which was introduced some years ago. I believe the Clean Air Act tackles the problem of trying to produce cleaner air much better than the problem of noise is being tackled by this rather shabby piece of legislation.

At this juncture, and until the Minister replies, I reserve my views as to what to do regarding the legislation. My colleagues will probably talk about regulations; but, until the Minister is able to give us some information about the regulations and the extent we will be able to consider them before they are implemented, we think the legislation is too wide open to many points of conflict. The legislation will conflict with various Acts already on the Statute book. All in all, it presents a most unsatisfactory picture for us to judge properly and on which we can make a determination as to what to do with it.

MR. WILLIAMS (Bunbury) [3.34 p.m.]: I, too, have had some second thoughts about the Bill after reading what the Minister had to say when he introduced it. The Minister gave us some of the history relating to noise from as far back as the Roman times. He mentioned the ability

of Claudius to sleep, but how he was awakened by the bread sellers in the streets. The Roman poets, and other poets also, have written about noise in the streets. Of course, we all know that social and industrial noises have increased to a far greater degree over the years; in industry—with the use of heavy machinery—and socially through the use of motorcycles, motorcars, and the amplification of music. The noise with which we have to contend is far greater than that created by the squeaky carts and the bread sellers of the Roman days.

The member for Cottesloe has covered the provisions of the Bill very well. I am a little surprised at some of the comments of the Minister in his second reading speech. I certainly do not envy him in having to introduce this Bill, nor do I envy those people who had to draft the measure. However, the Minister gave us very little information regarding the intention of the Bill, apart from the fact that it was to try to abate noise. That, of course, is fairly obvious from the title.

The Minister explained that the Bill is designed virtually to cover the areas of social and industrial noise. I will deal mainly with industrial noise. The Bill will provide for the appointment of inspectors. I wonder about the advisability of passing yet another Act which will involve the appointment of additional inspectors. That applies especially in this case because the inspectors appointed will not need to have any special qualifications.

At the present time we have machinery inspectors, mine inspectors, factories and shops inspectors, inspectors of pressure vessels, boiler inspectors, health inspectors, and of course the unions can appoint inspectors of employers' books.

The majority of inspectors deal with machinery, pressure vessels, and mining, and I believe that in the main they are specialists within their own fields. Inspectors are also appointed under the provisions of the clean air legislation. Inspectors dealing with machinery can usually see when something is wrong. However, in the case of noise the cause of the complaint cannot be seen; it can only be heard.

Noise will affect one person more than another, depending on the keenness of the hearing. Many people are affected in different ways because of their different attitudes. For that reason inspectors will have to rely to a large degree on some mechanical device to measure the decibel level. Then, of course, there are various types of noise: intermittent noise and constant noise.

To some people an intermittent noise is far more annoying than a constant noise. On the other hand, some people prefer an intermittent noise to a constant noise. I am sure many members in this Chamber

would have had occasion to speak with people who work in factories where there is considerable noise. If one talks to them in a noisy atmosphere they will usually hear quite well. However, if one talks to those same people away from the noisy environment one usually has to speak much louder than normally. Those people are so used to constant noise for up to eight hours a day that they find quietness to be rather strange.

I would not like to have to be one of the members of the advisory committee, nor would I like to be the Minister who has to control the legislation. Indeed, I would not like to be one of the inspectors.

The problems associated with this legislation will be many and varied. The Bill before us deals only with generalities and, of course, the details will be taken care of by regulations.

Because of the variation of some noise in certain circumstances I fail to see how the regulations will be able to lay down a pattern in those circumstances. This is where I believe the job of the inspector will be to say, "Well, the particular noise in those circumstances—that is in the smaller area of a shop, or in the confines of a mine or any other closely confined area—is too much for the men to put up with and it will have an effect on their health; but the same noise on the same level in a greater area will not have the same effect on the individual." This is where the problems will arise.

As has been explained, the Factories and Shops Act is able to cover the area of industrial noise. I suggest that when the Minister was drawing up his legislation somebody appears to have overlooked the fact that under the Factories and Shops Act industrial noise can be controlled; and in overlooking this fact he appears to have forgotten the section controlled by the Minister for Labour—because the Minister said when he introduced the Bill that it was drafted by the Crown Law Department working in close co-operation with his own department; that is, the Public Health Department.

I do not blame the Minister for Labour, when this matter came before Cabinet, for not having, perhaps, said anything about this, because I do not think any Minister knows what is contained in all the legislation under his control; nor do I think he should really be expected to know. He is aware of the generalities of the legislation under his portfolios and, of course, he may not have known at the time that noise could be controlled under the Factories and Shops Act, when it has to do with a workshop.

The Factories and Shops Act does not, of course, cover social noises, and if a factory is making a noise and it is not objectionable to the employees, even though it may be objectionable to the residents in

the area, nothing can be done about it under the Factories and Shops Act—this must be remedied by a complaint to the appropriate Minister, the Minister for Health, or the local authority; it is they who will have to do something about it.

The Bill before us will expect the Minister and the local authority to have the power to do something about noise which may be emanating from a factory and disturbing the residents of the area.

Mr. Brady: Is not that a good reason for our having this Bill now?

Mr. WILLIAMS: Exactly; I do not think anyone disagrees that we should have the Bill. All I am saying is that while social noise is covered by the Bill there is much doubt about the industrial side and there are complications.

Having had a great deal to do with industrial noise and as a result of his association with the unions, the member for Swan will realise that there will be complications in connection with this matter. The Minister has said that the industrial side will be the second phase of the implementation of the Bill and that he will deal with social noise.

Mr. Brady: Industrial noise affecting residential areas is the main concern and that will be covered.

Mr. WILLIAMS: The question of social noise will be covered through the local authority.

Mr. Hutchinson: As it stands at the moment.

Mr. WILLIAMS: That is so. The point has been raised of section 107 of the Factories and Shops Act having precedence over every other Act.

I rang a couple of people in order to obtain their opinion. The people I rang are those who should know the position. I was informed that what I have said is the case. I understand that even though a more recent Act may be passed—and this will be the case if the Noise Abatement Bill becomes an Act—the Factories and Shops Act will still have precedence over the legislation which covers noise abatement.

I would like the Minister to clarify this point, because there are people in the Department of Labour who believe this will be the case. It is important, therefore, that the matter be clarified.

I now wish to refer to the advisory committee which will be set up under the legislation before us. The advisory committee will be a specialist committee and I have my doubts as to whether a specialist committee will be able to do all that is expected of it in the practical field.

*Sitting suspended from 3.45 to 4.07 p.m.*

Mr. WILLIAMS: Just prior to the afternoon tea suspension I was commenting on the advisory committee which will be set up under this legislation. Whilst we are

speaking of noise, I feel somebody should do something about the bells here because they are unpleasant to all of us on some occasions.

Mr. T. D. Evans: When they ring for the last time this session, it will be a most pleasant noise.

Mr. WILLIAMS: The Attorney-General may think so, but perhaps members on this side would not agree.

Clause 14 of the Noise Abatement Bill provides for the setting up of the noise abatement advisory committee consisting of five members who must all be qualified in certain spheres. The members are described in the Bill as follows:—

- (i) one shall be a person who is a legally qualified medical practitioner recognised as an expert in the field of occupational health;
- (ii) one shall be a person who is a legally qualified medical practitioner recognised as a consultant in relation to conditions of the ear, nose and throat;
- (iii) one shall be a person who is recognised as an expert on matters relating to the design and construction of buildings and the problems of noise control in buildings;
- (iv) one shall be a person who is recognised as an expert in the physics of sound; and
- (v) one shall be a person who is recognised as an expert in relation to the effect of noise on the mental and social well-being of persons.

I believe that such a committee will play a very important part in the administration of this legislation. However, in this instance I feel the Minister has put the cart before the horse. I suggest that as well as the specialist advisory committee he should consider a practical advisory committee, such as that set up under the Factories and Shops Act—the Factory Welfare Board. This board is composed of three people conversant with the problems of men in industry. I think from memory the chairman is the Secretary for Labour, one member is a representative of employers' organisations, and one is a representative of the Trades and Labor Council.

Members have pointed out that problems may arise because of the overlapping of this legislation and the Factories and Shops Act. I therefore suggest that the Minister gives serious consideration to the provisions of the Factories and Shops Act, and particularly the sections relating to the control of noise before the Noise Abatement Bill is implemented. In this way he could control the situation until he has a clear indication of the steps he should

take. The Factory Welfare Board is already established, and I believe it would be a very wise step for the Minister to use this body until such time as the specialist advisory committee is set up and then to use the advisory committee with the welfare board.

The last matter I wish to deal with is the regulations which will be gazetted. The regulations will be many and varied, and I should imagine that new regulations will be brought in from time to time. As this legislation has no political implications whatever—in fact it is for the welfare of people in the control of social and industrial noise—I believe the Minister should consult people in industry before the drafting and gazetting of the regulations. The Minister may do this by way of a ministerial statement when he presents the regulations to this House prior to their being gazetted.

Parliament may look at the regulations and express its views. The Minister may then alter the regulations if he feels any suggestion made in Parliament has merit. I imagine that the regulations will run the normal gamut of the House; that is, members may move to disallow them. In these circumstances the Minister would not run the risk of disallowance of the regulations.

I suggest that the Minister examines this aspect very closely and that he implements my suggestions particularly in the early stages of the administration of the legislation. I strongly recommend that the Minister uses the provisions of the Factories and Shops Act in conjunction with the Department of Labour until such time as this problem—and I believe it is a problem—is overcome.

Mr. Bickerton: Is Parliament exempted under this Act?

Mr. WILLIAMS: It is not mentioned particularly. However, the member for Cottesloe has an amendment on the notice paper to delete clause 24. I do not know whether Parliament itself is mentioned, but if the amendment is carried, the indemnity clause will not apply. Shortly before the Minister took his seat in the House, I mentioned that the ringing of the bells may fall within the provisions of the Act.

With those words I give the Bill qualified support. It is unfortunate that the Minister in charge of the measure was not here this afternoon, but he has assured members that he will look at the speeches and reply to them at the conclusion of the second reading debate. We will discuss the matter in Committee later when the Minister is present.

Debate adjourned until a later stage of the sitting, on motion by Mr. Harman.

## QUESTIONS (26): ON NOTICE

### 1. ELECTORAL

*"First Past the Post" System*

Sir CHARLES COURT, to the Attorney-General:

In view of Federal Opposition leader Whitlam's reported remarks about the preferential system and Federal Labor policy (see *The West Australian* 16th October, 1972 "Lab. Wants Fewer Polls") does the Government still plan to proceed with the Bill currently before the Legislative Assembly dealing with the "first past the post" system?

Mr. T. D. EVANS replied:  
Yes.

### 2. EDUCATION

*Television Aid*

Mr. MENSAROS, to the Minister for Education:

Referring to his reply to my question 14 on 12th October, 1972—

(1) Have the State Ministers for Education received recommendations from the special committee on educational television which was established upon the recommendation of the Conference of Federal and State Ministers on 17th November, 1969, and which met four times, the last meeting being on 8th May, 1972?

(2) If so, can he disclose such recommendations?

Mr. T. D. EVANS replied:

(1) A progress report by the interdepartmental working group has been submitted to the Federal Minister.

(2) No.

### 3. LAND

*Deepline Scenic Area*

Mr. W. A. MANNING, to the Minister for Lands:

(1) Is he aware that a scenic area known as "Deepline" which has been open to the public for many years was early this month closed to all such access?

(2) Has the ownership of this area changed?

(3) If so, who is the present owner?

(4) Will he make further inquiries with a view to reopening the area for the public?

Mr. H. D. EVANS replied:

(1) No.

(2) Yes.

- (3) The area presumably Sussex locations 75 and 1377 is registered in the names of John Trent Prohoroﬀ, Jean Alec Prohoroﬀ, Peter Alex Wren, Manya Wren, as tenants in common in equal shares.
- (4) The Minister for Lands has no jurisdiction over this freehold land.

#### 4. LAND

##### *Sacred Heart School, Rockingham*

Mr. RUSHTON, to the Minister for Lands:

Referring to question 20 on 21st September relating to the new Sacred Heart school, Rockingham—

- (1) Has the Crown grant been issued?
- (2) If not, will he expedite the availability of this grant to enable completion of financial arrangements to ensure early completion of this school is not prejudiced?

Mr. H. D. EVANS replied:

- (1) No.
- (2) Advice has not been received in the department that the conditions referred to in the reply to the previous question of 21st September, 1972 have been met. Meanwhile, right of entry has been given.

#### 5. ROAD MAINTENANCE TAX

##### *Nonpayment: Effect on Expenditure*

Mr. HUTCHINSON, to the Minister for Works:

- (1) What effect will the losses sustained in the collections of road maintenance tax have now and in the future on road maintenance expenditure?
- (2) What is the approximate total loss up to the end of the last financial year?

Mr. JAMIESON replied:

- (1) Although there has been a reduction in the receipts from the road maintenance tax the Main Roads Department is still allocating substantial sums for road maintenance. The difference is being made up by allocations from other departmental funds.
- (2) The Transport Commission reports that \$568,943 is unpaid to the 30th June, 1972, on truck owners returns. The collection of this outstanding money is being followed up by that office.

#### 6.

#### POLICE

##### *Sex Acts: Charges*

Mr. R. L. YOUNG, to the Attorney-General:

Will he examine the police court depositions upon which a case was made in the district court against certain women in respect of sex acts performed at a football club function at Wanneroo and advise me as to whether he will either—

- (a) table them; or
- (b) make them available to me for examination?

Mr. T. D. EVANS replied:

Yes, I will examine the papers and advise the member accordingly.

#### 7. REGIONAL COUNCILS AND PROMOTION COMMITTEES

##### *Operations*

Mr. NALDER, to the Premier:

- (1) How many regional councils operate in Western Australia?
- (2) How many conferences are held each year by each of the councils?
- (3) Do they hold these conferences in the same central town or do they hold them in different places each time?
- (4) For how many years has each regional council operated?
- (5) Is it correct that the Government intends setting up regional promotion committees?
- (6) If "Yes" how many committees have been appointed and at whose request?
- (7) Will they be part of the present regional councils?
- (8) If not, why not?

Mr. J. T. TONKIN replied:

- (1) Regional councils are locally sponsored, and records are not maintained by any Government department. The exact number of such councils is, therefore, not known.
- (2) to (4) It is not known how many conferences are held each year by these councils, but I understand they endeavour to meet in different towns within their respective areas.
- (5) to (8) The future organisation needed for the most effective administration of the decentralisation policy is, at present, under consideration by an inter-departmental committee, but it has not yet made any recommendations.

8. LAKE KING SCHOOL

*Repairs and Renovations*

Mr. W. G. YOUNG, to the Minister for Education:

What arrangements have been made for repairs and renovations to the Lake King primary school?

Mr. T. D. EVANS replied:

The Lake King primary school is listed for a complete repair and renovation in the 1973-74 financial year.

9. COLLEGES OF ADVANCED EDUCATION

*Commonwealth Contribution*

Mr. MENSAROS, to the Minister for Education:

- (1) Is it a fact that amongst the recommendations of the Australian Commission on Advanced Education upon which the Federal Minister for Education and Science's statement in the House of Representatives on 22nd August, 1972 was based, a total of \$42 million was included for recurrent expenses for the 1973-75 proposed programme for Western Australian colleges of advanced education?
- (2) Is it a fact that the programme actually only includes a total of \$40 million with \$14.04 million Commonwealth share (*vide* table 4 of ministerial statement)?
- (3) Is it a fact that the reduction of \$2 million from the recommended sum occurred on the Western Australian Government's recommendation?
- (4) If so, what was the reason for such recommendation reducing the recurrent expenditure for the triennium by \$2 million and thereby losing approximately \$700,000 in Commonwealth share?

Mr. T. D. EVANS replied:

- (1) and (2) Yes.
- (3) Yes, but for reasons also acknowledged by the Commonwealth Government.
- (4) Following the preparation of the report of the Australian Commission on Advanced Education incorporating the agreed allocation of \$42 million, a change to the institute's method of providing for superannuation pension payments and a decision to support supplementary grants during the triennium in respect of additional wage costs arising from national wage case decisions, meant that a lesser provision need be made for recurrent expenditure by the institute in triennium 1973-75.

After allowing for these adjustments, it was estimated that a sum of \$40 million would enable the institute to achieve the educational objectives inherent in the commission's recommendations.

10. YUNDURUP CANALS DEVELOPMENT

*Government Policy Changes*

Mr. MENSAROS, to the Premier:

- (1) Appreciating his courtesy informing me in his letter of 23rd August, 1972 about the Government's decision contrary to that publicly stated in his reply to my question on 8th December, 1971 re Yundurup canals—would he please state whether the other facts and policies spelt out in his replies to Parliamentary questions during 1971 in connection with this project have been changed or are going to be changed?
- (2) If they were or are going to be changed, which are the facts or policies to which such changes relate, and what are such changes?

Mr. J. T. TONKIN replied:

- (1) and (2) In view of the large number of questions answered in 1971 on this project, a considerable amount of research will be required before answers can be given.  
However, inquiries will be put in hand immediately, and the member will be advised as soon as possible.

11. *This question was postponed.*

12. DOG RACING

*Revenue and Venues*

Mr. MENSAROS, to the Premier:

- (1) Has the Government made some research and planning in aspects connected with greyhound racing before having introduced legislation?
- (2) If so, could he please disclose the revenue anticipated by the Treasury from betting tax on greyhound racing for the 1973-74 financial year?
- (3) Approximately how many courses are envisaged to be established—  
(a) in the metropolitan area;  
(b) in the country?
- (4) Approximately how many meetings are envisaged to be held yearly—  
(a) in the metropolitan area;  
(b) in the country?
- (5) Will respective local authorities have to give permission for required venues?

- (6) Will the local authorities' decisions be final or will the Minister for Local Government or the Chief Secretary have the final decision?

Mr. J. T. TONKIN replied:

- (1) Yes.
- (2) Although this matter has been researched, decisions that would be made by the board of control as to the number of venues in the metropolitan and country areas, and the time such venues would be ready to operate, make it impossible to make a worthwhile estimation, but it is expected to be substantial.
- (3) and (4) It would be improper to anticipate the decisions of the board, whose function it would be to advise on the number and location of courses, and the number of meetings to be held.
- (5) and (6) All greyhound racing courses will be subject to recommendation for license by the greyhound racing control board to the Minister.

Where existing facilities are owned by local authorities, obviously the consent of the authority would be necessary. If new venues were to be established, local authorities would be involved upon questions of town planning, etc., and subject to the conditions of relevant legislation concerning appeals. If venues were considered on already existing suitable privately-owned recreational facilities, it is unlikely local authorities would be interested.

### 13. MILK BOARD

#### *Report: Tabling*

Mr. NALDER, to the Minister for Agriculture:

- (1) Has he received the 1972 report of the Milk Board?
- (2) When does he expect to table the report?

Mr. H. D. EVANS replied:

- (1) Yes.
- (2) The report will be submitted for tabling on Tuesday next, the 24th October.

### 14. HIGH SCHOOLS

#### *Clerical Assistants and Registrars*

Mr. MENSAROS, to the Minister for Education:

- (1) What is the basis upon which high schools are given clerical assistance?
- (2) What is the basis upon which high schools and/or senior high schools are allocated registrars?

- (3) What provision, if any, has been made for extra clerical assistance in high schools with the advent of the achievement certificate?

Mr. T. D. EVANS replied:

- (1) Clerical assistants are appointed according to—
  - (a) the classification as a high or senior high school;
  - (b) the enrolment;
  - (c) the number of year groups working under the achievement certificate.
- (2) Consideration is given to the appointment of a registrar when the enrolment of a senior high school exceeds 1,000 students.
- (3) Answered in (1). Adjustments are made annually according to the extension of the Achievement Certificate.

### 15.

### COMPANIES

#### *Auditors*

Mr. R. L. YOUNG, to the Attorney-General:

As it would appear that the answer given to part (3) of my question 1 of 18th October, 1972 applied to circumstances arising after the passage of recent company legislation in New South Wales requiring the appointment of auditors for all companies except in certain circumstances, would he have an assessment made of the situation in Western Australia under existing legislation and give me an estimate of the percentage of exempt proprietary companies currently being audited?

Mr. T. D. EVANS replied:

Yes, an assessment of the situation in Western Australia will be made. However, as the information is not readily available an immediate answer cannot be given.

### 16. GREENMOUNT-MUNDARING DUAL CARRIAGEWAY

#### *Completion*

Mr. MOILER, to the Minister for Works:

Does the Main Roads Department still anticipate that the dual carriageway between Greenmount and Mundaring will be completed by the end of 1972?

Mr. JAMIESON replied:

No. Because of problems associated with the acquisition of land the completion of the dual carriageway between Greenmount and Mundaring has not proceeded as planned. However, it is expected

that these problems will be resolved at an early date and the Main Roads Department now expects to complete the dual carriageway by the end of the financial year; that is, June, 1973.

17.

# EDUCATION

## Free Books Scheme

Mr. RUSHTON, to the Minister for Education:

- (1) Will he advise for each grade 1 to 7 the schedule of items and their cost for books and stationery being or to be provided under the "free" system?
- (2) Will he provide the cost of each item mentioned in (1) comparing the departmental cost as against the item being procured from the booksellers, etc.?

Mr. T. D. EVANS replied:

- (1) Items to be provided under the free text scheme consist of—
  - (a) reading materials;
  - (b) stationery;
  - (c) departmentally produced text materials;
  - (d) atlas and dictionary.

The costs shown for reading materials are retail prices which are used only for the purpose of school selection. The actual books are purchased by quotation and prices are subject to variation.

The costs shown on the stationery list are anticipated net costs to the Government but will be subject to some variation according to quotations.

It is not possible to list the costs of all materials to be produced by the Department as many of these are yet to be compiled.

- (2) As indicated in the answer to (1) items are purchased by quotations which are subject to variation according to the time of placement of the order and the quantities involved.

The retail prices charged by booksellers for each of the many items included in the schedules tabled, are not known to the Education Department.

*Schedules for (1) (a) to (c) are tabled herewith (see paper No. 432).*

18.

# EDUCATION

## Resource Centres: Subsidy

Mr. RUSHTON, to the Minister for Education:

- (1) What are the prospects for the Armadale parents and citizens' association receiving the subsidy for remodelling of their resource centre this year?

- (2) How much subsidy has been requested?
- (3) What is the sum available this year for providing subsidies for resource centres for schools built prior to the cluster-type schools?
- (4) What is the Government policy for providing resource centres for these older type schools?
- (5) Which older type schools have received resource centres or received approval for provision or subsidy for a resource centre?

Mr. T. D. EVANS replied:

- (1) A listing has been made in accordance with the date the application was received at the Education Department. The final decision will depend on the contract prices and the subsidy allocations to projects higher on the list.
- (2) The subsidy will be on the basis of \$ for \$ of the contract price, to a maximum subsidy of \$5,000.
- (3) The amount provided for subsidies on building projects in primary schools is \$197,000.
- (4) The provision of resource centres by the Education Department is dependent on available loan funds and the need for other capital works.
- (5) The distinction "older type schools" is not clear and further, it is not possible to give specific information without an indication of the period involved.

19.

# ROYAL PERTH HOSPITAL

## Shenton Park Annexe: Dog Nuisance

Dr. DADOUR, to the Minister for Health:

- (1) Is he aware that dogs are kept at the Royal Perth Hospital annexe at Shenton Park?
- (2) Is he aware that there have been a number of complaints concerning the noise from these dogs?
- (3) Will he ensure that measures will be taken to reduce the noise to acceptable levels?

Mr. H. D. Evans (for Mr. DAVIES) replied:

- (1) and (2) Yes.
- (3) Yes. As a result of the member's letter to me dated 11th September, 1972, inquiries were made which show that R.P.H. is taking measures to eliminate any cause for complaint. The matter is being pursued.

## 20. LAND TRANSFERS AND LOCAL COURTS

### *Increased Charges*

Sir CHARLES COURT, to the Premier:  
With reference to *Government Gazette* No. 96 dated Friday 6th October, 1972 and dealing with charges under the Strata Titles Act, Transfer of Land Act, Local Courts Act—

- (1) Will he advise the extent to which the charges involved have been increased both in money and in percentage terms?
- (2) (a) Have these charges been the subject of reference to Parliament through amendments to Statutes;  
(b) if so, when were the respective amendments agreed to?
- (3) If amendments to Statutes are not required, what is the enabling authority for the increases to take place?
- (4) What reference has been made to these increases in the Budget speech?
- (5) What is the estimate of the total increase in revenue—  
(a) for the remainder of this financial year to 30th June, 1973;  
(b) for a full financial year?
- (6) Where are these increases reflected in the Budget papers?
- (7) (a) Are there any increases in charges—other than those referred to above—that have been gazetted in the last 12 months which do not require enabling Statutes, and  
(b) if so, what are the details of these?

Mr. J. T. TONKIN replied:

- (1) The *Government Gazette* referred to, lists more than 100 different charges, of which many have not been increased. Where increases have occurred, they range up to \$10 or, in percentage terms, up to 150%.

In the case of court fees, the previous practice of charging on a sliding scale, according to the value of the claim, has been discontinued, and a flat charge for the service performed has been introduced.

- (2) (a) No.  
(b) Answered by (a).
- (3) By amendments to regulations under the respective Acts.

- (4) The Budget speech referred to revenue collections by departments rising as a result of increased activity, and "a continuing review of departmental fees and charges aimed at bringing them more into line with current costs".

- (5) (a) \$365,000.  
(b) \$538,000.

- (6) In the estimated revenue of the Land Titles Office and of Law Courts.

- (7) (a) Yes.  
(b) A schedule of alterations to fees and charges gazetted during the period, is hereby tabled (*see paper No. 433*).

21.

## CHILD WELFARE DEPARTMENT

### *Vehicles for Extension Work*

Mr. REID, to the Minister representing the Minister for Community Welfare:

- (1) Was it a condition of employment in the past for officers of the Child Welfare Department in country areas to provide their own vehicles for extension work?
- (2) What will be the policy of the Government in this regard now that the department is incorporated in the Department of Community Welfare?
- (3) Is the Minister aware that many officers were forced to purchase a second vehicle for family purposes or are presently engaged in paying off a vehicle that was bought purely for them to qualify for their position?

Mr. T. D. EVANS replied:

- (1) Yes. These officers were given the advantage of a Treasury loan to purchase a vehicle. However, as funds became available Government vehicles were provided to those officers who subsequently requested them. No country officer has been required to purchase a new vehicle since November, 1971.
- (2) Government vehicles will be provided for all country field officers of the Department of Community Welfare and no country officer will be required to purchase a vehicle as a condition of employment.  
Those officers who purchased a vehicle under the old conditions of employment have been permitted to use their vehicles for official business and claim allowances until such time as their Treasury loan is repaid.
- (3) No officer has been "forced" to buy a second vehicle for family purposes. However, it could be that some officers have chosen to

buy a second vehicle, as indeed have many private individuals and families.

Where an officer is currently paying off a vehicle bought on a condition of employment he is permitted to use the vehicle for official business and claim a mileage allowance.

22.

**POLICE***Sex Acts: Charges*

Mr. R. L. YOUNG, to the Minister representing the Minister for Police:

In regard to questions asked by me on 17th and 18th October in respect of the failure by police to charge men who performed sex acts at a football club function with women, who were subsequently charged and gaoled, can he say—

- (a) in order that the public will not be confused and concerned as to the possibility of impropriety on the part of the police, how the male witness who took part in the sex acts was identified if he was not previously known to the police;
- (b) if it is true that the witness referred to took part in the sex acts and was subsequently given a certificate exempting him from any charge provided he acted as a prosecution witness;
- (c) if "Yes" to (b), at what point of proceedings was the certificate given;
- (d) what was the occupation of the witness;
- (e) was the witness paid a witness fee;
- (f) how many sex acts were performed between the women charged and the men involved before arrests were made;
- (g) approximately how many men were involved?

Mr. BICKERTON replied:

- (a) By subsequent police inquiry.
- (b) Yes. The matter of giving a certificate under sections 11 and 13 of the Evidence Act is not the prerogative of the police. This discretion is exercised by the presiding magistrate on application by the witness.
- (c) After the witness had given evidence.
- (d) A grant worker.
- (e) Yes, as is the usual practice with all witnesses.
- (f) Two.
- (g) Two in this particular case.

23.

**HOUSING***Aborigines: Conditions of Tenancies*

Sir CHARLES COURT, to the Minister for Housing:

- (1) (a) Are there any special conditions attaching to State Housing Commission tenancies where the tenant is of Aboriginal descent;
- (b) if so, what are they and how do they differ from other tenants?
- (2) (a) Are there any special departmental or ministerial instructions about procedures when rents fall in arrears in these cases;
- (b) if so, what are they and how do they differ from other tenants;
- (c) are any changes contemplated, or have changes been made recently?

Mr. BICKERTON replied:

- (1) and (2) In taking over the function of Aboriginal housing the State Housing Commission agreed to follow the practices of the old Native Welfare Department for an interim period during which assessment could be made of the extent and direction in which changes, if any, might be required. The commission is in the process now of conducting field surveys in the metropolitan and country areas, and of closely examining the operation of existing policies. It is expected the necessary material will be assembled and analysed and conclusions reached so that should any changes be necessary they could be introduced in the early part of 1973.

24.

**HOUSING***Building Blocks: Tabling of Reports*

Mr. RUSHTON, to the Minister for Town Planning:

- (1) Will he table the departmental and M.R.P.A. reports enabling the Premier and the Minister to announce the availability of 40,000 and 33,600 building blocks?
- (2) How many building blocks have been approved for subdivision each year from 1966?
- (3) How many building blocks were fully developed each year since 1966?

Mr. H. D. Evans (for Mr. DAVIES) replied:

- (1) The data on which these figures were based include subdivision files, Town Planning Board minutes, 47 base maps and about 400 aerial photographs lent by the

Department of Lands and Surveys. The information resulting from the examination of this data was condensed into my Press statement of 9th October last, a copy of which, with leave, I table. It would not be practicable to table the above documents but the member is welcome to make arrangements to inspect them at my department.

- (2) Statistics are not available for the period before 1st January 1970. The number of lots approved in principle since that date are as follows:—

1st January to 30th June 1970—  
8,545;

1st July 1970 to 30th June  
1971—8,371;

1st July 1971 to 30th June  
1972—11,908.

- (3) There are no statistics which record the annual number of lots on which development took place during the year. The nearest equivalent is to take the number of houses completed and to add a percentage for flat construction as a calculation of the number of lots occupied by residential dwellings. On this basis, the estimated number of lots for the period requested is—

1966-67	....	5,490
1967-68	....	7,040
1968-69	....	9,560
1969-70	....	10,990
1970-71	....	8,280
1971-72	....	9,790

*The Press statement was tabled (see paper No. 434).*

25.

## EDUCATION

### Free Books Scheme

Mr. RUSHTON, to the Minister for Education:

- (1) As he has, in his answer to question 24 of 20th September, inferred printers and sellers of school books are profiteers by the figures he quotes, will he give sufficient detail of departmental costs to support his claimed savings?
- (2) How many students are involved in the "free book" scheme?
- (3) Relating to the \$14,000 saved in the departmentally produced or purchased atlases, what portion of these atlases were produced in Hong Kong or elsewhere overseas, and at what cost?
- (4) What would have been the cost of producing the segment of the atlases produced in Hong Kong or elsewhere overseas as against producing the same segment in Australia?

- (5) What was the number and salaries of staff and employees of the Curriculum Research Branch of the Education Department, the Government Printing Office and the Education Supplies Branch on the 1st March, 1971 and 1st October, 1972?
- (6) What has been the cost of additions of buildings and plant and materials for the Curriculum Research Branch, the Government Printing Office, and the Education Supplies Branch since 1st March, 1971?
- (7) What was the cost of packing and distributing by taxi trucks, etc., the readers, dictionaries and atlases to schools in 1972?

Mr. T. D. EVANS replied:

- (1) In my answer I merely stated the facts. It is the member who has made the inference of profiteering. The conclusion I would draw is that the burden on parents has been relieved by a substantial amount through the Government's scheme of central purchase and distribution.
- (2) All pupils at primary level in both Government and independent schools—at present approximately 160,000.
- (3) The atlases were purchased from an Australian publisher who has advised the department that the cartography was undertaken in Australia and the printing and binding in Hong Kong. The Education Department does not have access to publishers' costs.
- (4) This information is not available.
- (5) to (7) This information is taking some time to prepare and will be made available to the Member direct as soon as possible.

26.

## HOUSING

### Building Blocks: Prior Subdivisions

Mr. MENSAROS, to the Minister for Town Planning:

- (1) Can he supply information as to the number or approximate number and location of building blocks in the metropolitan region which were created as a result of subdivision prior to the requirements of developers having to service building blocks as a condition of the permit to subdivide?
- (2) Can he give information about the approximate number of such blocks having been offered for sale complete with services since the operation of the statutory compulsion for servicing subdivided blocks?

Mr. H. D. Evans (for Mr. DAVIES) replied:

- (1) No, because applications to subdivide were being approved with conditions relating to road and drainage construction before the implementation of the metropolitan region scheme in October, 1963.
- (2) It would be impossible to give this information without a personal inquiry into the intentions of every holder of a vacant lot and even these intentions could be subject to change according to circumstances. In any case, the information would be valueless. It is the number of lots that are vacant and available for the erection of a home that is relevant in relation to the current annual demand for 10,000 housing lots. We believe in the overwhelming majority of cases a vacant lot is bought for the purpose of erecting a home. Though some lots in a subdivision may be owned by project builders and therefore are not "for sale" at a particular moment, the homes built later on such lots become available "for sale" and go towards meeting the annual demand.

#### QUESTIONS (4): WITHOUT NOTICE

##### 1. PAY-ROLL TAX

###### *Concessions for Decentralised Industries*

Mr. WILLIAMS, to the Premier:

- (1) Is he aware that the Victorian Government is going to introduce legislation for pay-roll tax concessions for decentralised industry?
- (2) Bearing in mind the Opposition's suggestions for this incentive, and the then Treasurer's assurance that these suggestions would be studied—*Hansard*, page 1156, the 7th September, 1971—would he now give consideration to this matter, and give his findings to Parliament during this session?
- (3) If not, why not?

Mr. J. T. TONKIN replied:

- (1) Yes.
- (2) The matter is being considered, and when a decision has been made, it will be announced.
- (3) Answered by (2).

##### 2. ROAD MAINTENANCE TAX

###### *Nonpayment: Effect on Expenditure*

Mr. HUTCHINSON, to the Minister for Works:

Arising from the answer given to question 5 on today's notice paper—

- (1) Will he explain from what "other departmental funds" moneys are drawn to make up the loss sustained in collections of road maintenance tax?
- (2) Does not this method deplete funds for other road needs?

Mr. JAMIESON replied:

I ask that the question be placed on the notice paper.

3.

#### DECENTRALISATION

##### *Cash Incentive Scheme*

Mr. WILLIAMS, to the Minister for Development and Decentralisation:

- (1) Has he seen the report in today's issue of *The West Australian* that Victoria's Minister for Decentralisation has announced a cash incentive scheme to shift families from the city to country areas?
- (2) Has his Government any similar plans; if so, what are they?
- (3) If not, would he give this matter consideration and give his findings to Parliament during this session?

Mr. GRAHAM replied:

- (1) Yes.
- (2) Not at present.
- (3) Decentralisation incentives are the subject of continuous review by an interdepartmental committee, with the object of providing the maximum incentives possible within the financial resources of the Government. Implementation of the previously announced incentives to industry has priority, and it is unlikely that further incentives could be considered before the end of this session.

I might add that in any event the principal requirement in this State is to encourage industry to establish in localities outside the metropolitan area and provide accommodation and amenities generally. There has been no necessity for the Government to offer tax inducements to people generally to move to country areas.

The prerequisites for decentralisation of population is decentralisation of industry and public enterprise, other than perhaps in a few specialised areas such as medical practitioners and the like.

In regard to inducements generally I do not think that overall Western Australia suffers by comparison with the other States. Indeed, in many respects, it is far out in front; and this was

acknowledged at a recently held meeting in Melbourne of Ministers for Development and Decentralisation.

#### 4. EDUCATION

##### *Resource Centres: Subsidy*

Mr. RUSHTON, to the Minister for Education:

Part (3) of question 18 on today's notice paper reads—

What is the sum available this year for providing subsidies for resource centres for schools built prior to the cluster-type schools?

I also questioned the Minister on the Government's policy regarding the older type school. The answer was—

The amount provided for subsidies on building projects in primary schools is \$197,000.

Do I assume that is for all resource centres this year or for the schools about which I asked the question?

Mr. T. D. EVANS replied:

I ask the honourable member to put his question on the notice paper so that I can have the matter researched and be quite positive in the answer I give him.

#### BILLS (2): RECEIPT AND FIRST READING

1. Lotteries (Control) Act Amendment Bill.
2. Racing Restriction Act Amendment Bill.

Bills received from the Council; and, on motions by Mr. Bickerton (Minister for Housing), read a first time.

#### PARLIAMENTARY COMMISSIONER ACT

##### *Rules: Motion*

Debate resumed, from the 14th September, on the following motion by Mr. J. T. Tonkin (Premier):—

That pursuant to section 12 of the Parliamentary Commissioner Act, 1971, this House makes the following rules for the guidance of the Parliamentary Commissioner in the exercise of his functions—

1. These rules may be cited as the Parliamentary Commissioner's Rules, 1972.
2. In these rules, the term "the Act" means the Parliamentary Commissioner Act, 1971.
3. The Parliamentary Commissioner may from time to time, in the public interest or in the

interests of any department, authority, organization, or person, publish reports relating generally to the exercise of his functions under the Act, or to any particular case or cases investigated by him, whether or not the matters to be dealt with in any such report have been the subject of a report laid before either House of Parliament.

MR. HUTCHINSON (Cottesloe) [4.42 p.m.]: This motion is one with which members on this side of the House agree, but an amendment is proposed in order that the Parliamentary Commissioner might not be unbounded in his ability to be able to carry on what could become a newspaper controversy on various issues which might be submitted to him.

The SPEAKER: Order! There is too much noise.

MR. HUTCHINSON: It seems to me that otherwise his job could be carried too far and could mean that he would be outside the parliamentary influence which would normally restrain him from making any newspaper reports on any matter or relying on any feature.

Mr. J. T. Tonkin: If it will help you in your debate, I indicate that I am prepared to accept the amendment of the Deputy Leader of the Opposition.

Mr. HUTCHINSON: I appreciate the Premier's interjection and his acquiescence.

##### *Amendment to Motion*

MR. HUTCHINSON: I move an amendment—

After the word "or" in line 8 of the proposed rule 3 insert the words "with the prior approval of the Parliamentary Committee, relating".

MR. J. T. TONKIN (Melville—Premier) [4.46 p.m.]: As I have already indicated, I am prepared to accept this amendment. I think the argument in support of it is sound. I take this opportunity to say that during the discussion on the motion the Leader of the Opposition raised the question as to whether there was power in the legislation to make rules such as those we are endeavouring to make. I undertook to have this query referred to the Crown Law Department. It has been discussed with the Solicitor-General who has informed me that it is his opinion that the power to make the rules is contained in section 28 of the Parliamentary Commissioner Act.

The purpose of the amendment is simply to ensure that the commissioner shall not, of his own volition and without reference to anybody else, make reports. I think the idea of some control is a reasonable

one, and the suggested parliamentary committee will meet with the approval of the Government.

Amendment put and passed.

*Motion, as Amended*

**MR. HUTCHINSON** (Cottesloe) [4.47 p.m.]: I move an amendment—

Add an additional paragraph as follows:—

“4. (1) The Parliamentary Committee shall consist of the persons from time to time holding the following offices—

in the Legislative Council—

The President,

The Chairman of Committees,

The Deputy Chairmen of Committees,

in the Legislative Assembly—

The Speaker,

The Chairman of Committees,

The Deputy Chairman of Committees.

(2) At any meeting of the Parliamentary Committee five members shall constitute a quorum.”

Amendment put and passed.

Motion, as amended, put and passed.

*Request for Council's Concurrence*

**MR. J. T. TONKIN** (Melville—Premier) [4.48 p.m.]: I move—

That the resolution be transmitted to the Council and its concurrence desired therein.

Question put and passed.

**STOCK (BRANDS AND MOVEMENT)  
ACT AMENDMENT BILL**

*In Committee*

The Deputy Chairman of Committees (Mr. A. R. Tonkin) in the Chair; Mr. H. D. Evans (Minister for Agriculture) in charge of the Bill.

Clauses 1 to 5 put and passed.

Clause 6: Section 40 repealed and re-enacted—

Mr. W. G. YOUNG: I move an amendment—

Page 2, line 35—Delete the passage “justice.”

My reason for moving this amendment is that clause 6 of the Bill reads as follows:—

Section 40 of the principal Act is repealed and re-enacted as follows—

40. Any stock that is not branded, earmarked or otherwise identified in accordance with the provisions of this Act, found depasturing on unenclosed land may be impounded by any justice, Inspector or Police officer.

I query the wisdom of including a justice in this provision. Stock inspectors and police officers are more readily available than a justice would be and, in many cases, a justice would not be familiar with the legislation. Naturally some justices would be familiar with it because they would be stock owners in their own right, but large numbers would not be. Justices are gentlemen who do work in an honorary capacity.

A police officer would be far more readily available if stock are found wandering along a road or on unenclosed land. Therefore, I think it is incumbent upon the Committee to remove the word “justice.” I do not think a justice is the right person to be asked to round up a mob of sheep or cattle and put them into a local pound so that they may be identified later by an inspector or a police officer who would have to be called in in any case.

Mr. H. D. EVANS: As I indicated when I replied to the second reading, I have no objection to this amendment being accepted. Indeed, the word probably crept into the Bill through an anachronism in the first instance.

By removing the word “justice” the work will be left to inspectors and to the police. Both inspectors and the police would have ready access to a register. Indeed they would probably carry it with them, whereas a justice could hardly be expected to do this. Also, he could not be expected to be familiar with the operation of the legislation and the regulations as inspectors or the police would be. Doubtless in earlier days when distances were much greater and the population much sparser, there would have been fewer police and far fewer inspectors. In consequence, at that time, it was probably reasonable to call upon a justice to act in this capacity. However, this is no longer required in modern times and I am quite in agreement with the amendment moved by the member for Roe.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 7: Section 46 repealed and re-enacted—

Mr. REID: I move an amendment—

Page 3, lines 1 to 14—Delete all words after the word “repealed” down to and including the word “section”.

This is the clause which deals with the proposed introduction of a waybill. During the second reading debate I outlined my objections to this provision and I do not propose to delay the Committee for an unduly long time. However, some members may not remember my objections to this provision.

If the clause is passed a waybill will have to be made out before any stock can be moved from a property. The argument I raised at the second reading stage still stands. It has been claimed that the provision of a waybill will serve as a better record of the movement of stock. I do not deny this; I agree it may serve as a better record of the movement of stock. However, the reason for the provision being included in the measure was not that it should serve as a record of the movement of stock, but of the movement of individual stock. There is a world of difference between the two. A waybill will not achieve the purpose for which it is designed. I put forth my argument purely on that basis. The principle of a waybill is sound but, in practice, it will not work and, consequently, it is not sound in this case. Therefore, why include it in the measure?

As Carnegie said, if we worry about something we must do something about it. That is fair enough, but we must do something constructive about it. Until there is some means positively to identify all stock, it is completely futile to introduce a provision which will impose a high cost burden on the producer. The system will be clumsy, impossible to administer, and it will serve no useful purpose. That is the basis of my argument.

The Minister does not look as if he agrees with me but I can assure him that, in actual practice, the waybill system will fail dismally for the reasons I have stated. With the pressure which exists at stock sales—particularly with the sale of sheep which are so hard to identify and have been for centuries—there will not be time to identify each earmark on each animal individually. It is hard enough with cattle; anybody with knowledge of cattle realises that the brands are almost impossible to identify quite soon after the animals have been earmarked. Identification is almost impossible unless a very close inspection is carried out and, in some cases, by clipping of the ears. This is simply not on when hundreds of thousands of stock are being handled.

Unless the Minister is prepared to give an assurance that the provision will be deleted in a short time if it proves to be unsatisfactory, it should not be included. That is as far as I will go. I believe we are making an ass out of the law in this regard.

A waybill has to be retained for six months, as I pointed out during the second reading stage. The cabs of truck drivers will be full of waybills. The only useful purpose they will serve will be as toilet paper for the truck drivers. Quite apart from the question of having masses of pieces of paper containing producers' signatures scattered all over the country, I think we are inclined to show a lack of

confidence and respect for the law. We would be introducing a provision which would be impossible to enforce. Unless it is enforced, it is absolutely useless in its performance.

Mr. H. D. EVANS: I cannot go along with the argument put forward by the member for Blackwood. I can understand his apprehension and I am aware of some of the difficulties which have already arisen.

I think the concept of the waybill should be understood a little more clearly. Firstly, the fundamental purpose is to enable a check to be made on stealing. Almost equally important, it will be an insurance or of assistance in checking back on disease outbreaks, particularly if an exotic disease happened to occur.

The police feel waybills would be a definite assistance to them if the provision is introduced. As a matter of fact waybills would aid the police very considerably in their efforts to detect stolen stock, if they were confronted with this situation. The small number of convictions mentioned by the member for Roe, when he spoke to the measure, is a reflection of the difficulty which the police encounter at the moment in trying to make a conviction.

It is not for one moment envisaged that every stock truck will be stopped. It would be a discretionary matter. Doubtless the circumstances would be such that the police officer or inspector was suspicious.

There may be a series of routine stoppings to see how the total effect of the provision is working. I am not familiar with the details of how the police operate or their methods. Even if I were, I am sure members would not want me to elaborate to the last detail.

However, we are confronted with the situation that it is necessary to provide a document which a carrier can show to the officer who has stopped him. Firstly, that document must show the origin and the destination, so that there is an immediate check on whether there is a waybill, and if there is not a waybill the circumstances are immediately suspicious.

Mr. Reid: Could not—

Mr. H. D. EVANS: Hold it! Secondly, the police will have a means of checking with the owner and checking the alleged destination, which will enable them to further their investigations. No doubt, in the course of a routine stopping, as in the case of most departments, a logging by the police would include the registration number of the truck and the details on the waybill which the driver is obliged to carry.

I know the difficulty of identifying the animals carried with the description on the waybill is the crux of the matter.

The object is not only identification but also streamlining the procedure at the saleyards in obtaining a definition and description. The waybill is required to bear a description of the stock being carried, which need not necessarily include full details of the brand marks. If all the marks are the same there is no problem, but in a saleyard where there are split lots and various lots it may be necessary to give a description such as "various." At the same time, if the load is described on the waybill as a load of shorn cracker ewes and the load being carried consists of full ram lambs, there is a disparity in the description which will enable the police to establish the circumstances.

The pen numbers could be used or it might be determined that an existing routine used by farmers, agents, and auctioneers can be adopted. It will be noticed that the document need not necessarily be a waybill; it may be any other acceptable document, in duplicate, which is already used in an agent's existing system. Such a document would serve the same purpose as a waybill.

The agents have given an assurance that they can adequately identify by pen numbers. Furthermore, they are prepared to provide that service to their clients. They would not provide it to people other than their clients and those with whom they are directly concerned. Anyone else would be responsible for filling in his own waybill. The agents are prepared to co-operate to that extent.

I know it is impossible to devise a system that will positively and accurately identify a load of animals with the waybill description. It may be possible in some cases where a specific line is concerned, but in many instances this will not apply. We will provide the police officer or the inspector with additional information which he does not already have. The important thing is to establish the existence or otherwise of a waybill. That is the first point along the road. The waybill will give the police the opportunity to check a stage further with the owner or at the destination in order to verify that a truckload of animals approximating those described on the waybill is expected. As things are now, the police cannot take any further action, but the absence of a waybill would enable a police officer to prosecute his investigations a stage further. That is probably one of the greatest advantages of the waybill.

The member for Blackwood was concerned about pen numbers not being satisfactory. The agents disagree with him. The honourable member must bear in mind that pen numbers are not the only means of identification. An agent can identify a pen number on a particular day and it would be possible to follow up the matter readily from there. The agents have indicated this can be done.

I recognise that this method will not be perfect. However, the opinion which is shared by the committee that examined this matter at great length is that this method will be a considerable advance on the existing situation where there is nothing at all to assist the police and the inspectors. While I agree there are areas of great difficulty, I think the system should at least be tried for a period of perhaps 12 months. If it can be shown before that time has elapsed that the system is not workable, is inconvenient, or creates a hazard, it can be abolished. In the meantime, as it has been requested by all those who have been involved in and have shown concern about the apprehension of stock stealers, it should be given a fair trial. On those grounds, I am opposed to the amendment moved by the member for Blackwood.

Mr. REID: One of the matters which concern me is that this system imposes a burden on the producer which will be disproportionate to that placed on the dealer. If there is any situation where stock thefts will occur, it will be in this mixed up situation where stock are carrying various brands and earmarks, and people are wheeling and dealing. Thefts will not take place amongst honest farmers who make out waybills.

If waybills are to be used, it must be a case of "all in" or "all out." The dealer has been exempted; he will use the pen number. That is one valid reason for not enacting the waybill provision.

The Minister said the waybill would serve as a valuable lead. He admitted it was not possible to make positive identification. Most truck drivers can speak English, and even if they did not have a waybill they could still wind the the window down and say, "I am going to butcher A and the sheep belong to Joe Blow." The waybill will not prove anything. That is the point. We are involving producers in a mountain of documentation before they can move any stock, and the documentation will not prove anything. If it did prove anything I would be quite happy to go along with it.

Mr. Brady: Do you not think it might save some cattle being stolen?

Mr. REID: No. Before a farmer can move any stock anywhere, even across the road, he must have a permit. If he wants to send stock even three miles away to a sale he must go through and individually identify every animal—cattle with slashed earmarks, strain 19 earmarks torn out on fences, and so on—otherwise he will be fined \$20, irreducible by mitigation. When the dealer buys them he does not have to do anything like that. He just puts the pen number on the waybill. If several lots are put into the pen, where will it all be at the end of the day? It is time-wasting and costly to a certain extent. It is all

mixed up, with dealers agisting stock and putting them aside on properties for a few days. It is chaos.

If we pass a law that does not do the job, what will we be doing? We will be losing the respect and confidence of the Police Force. Would the Minister like to put his name to a lot of hairy old steers?

Mr. Brady: The police are often asked to investigate thefts which are not thefts at all but simply the result of negligence on the part of farmers.

Mr. REID: That is the point I am making. The incidence of thefts has been minimal over the last six years but there has been a high incidence of stock stealing. In many cases farmers have bad fences, but in proven cases of stealing a man has been caught skinning an animal. If this proposal becomes law, the last thing a police officer will do is pull up a stock truck.

On two occasions I have sold stock, all of which had the same earmark. The agent could not identify the earmark on the cattle and when he signed the book he wrote in "Various." He did not put in the description of the earmark because he could not identify it. Those stock did not have various earmarks; they all had the same earmark. Every waybill in Western Australia will have written on it, "Earmarks—various," and no description. Where will we be then? Where is the shining principle that it supposed to assist in tracing the movement of stolen stock? I say it does not exist.

Mr. H. D. EVANS: The member for Blackwood is correct in saying the method of identification is imprecise. He made the point that individuals would be greatly disadvantaged. That is not quite so.

Mr. Reid: Producers will be disadvantaged.

Mr. H. D. EVANS: He said producers would be disadvantaged. I do not think that is so because in most cases individual producers have a fair indication of the stock they are having transported. Accordingly, he would be able to identify and describe his own stock more readily than anybody else, including the agent.

Let me remind the honourable member of the trend regarding stock stealing. He says that the number of apprehensions and convictions has dropped, and that only six were recorded last year. That is true. Surely there are two points here: Firstly, the price of stock has been depressed, and now that trend is being reversed the probability of theft will increase; also we have improved transport methods and better roads.

Secondly, the police find it difficult to obtain a conviction, and they consider the use of waybills will help them considerably. The problem of identification is very

real and one which will require not only the use of earmarks but also the use of other means of identification to remedy it. The forms currently used for the purposes of payment for stock are to be prescribed as an acceptable alternative to the waybill.

Mr. Reid: For the dealer only.

Mr. H. D. EVANS: Yes. I would suggest the problem is of more concern in the saleyard situation than it is in the case of the individual purchaser.

The provision has been accepted by the committee which spent several years examining in depth the problem of stock stealing. I realise that extra paper work will be involved; but for whose benefit is the legislation?

Mr. Reid: That is the point I am making.

Mr. H. D. EVANS: It was introduced to benefit the individual farmer.

Mr. Reid: The six sheep stealings last year?

Mr. H. D. EVANS: I have a fair idea that number is well below what were actually stolen last year within the State. Of course, it is hard to verify hearsay. One of the reasons that only six convictions were recorded is that it is exceedingly difficult to obtain a conviction in the case of stock stealing.

If a person is pulled up at the moment, even in what appear to be, *prima facie*, suspicious circumstances, the apprehending officer can do very little. He can ask for the waybill, and if it is produced he has immediate grounds upon which to make a further check.

Mr. Reid: If you were going to steal stock you would forge the waybill. We are back to square one.

Mr. H. D. EVANS: The waybill will show the origin and the destination, and if the circumstances were suspicious the officer would have the registration number of the truck which he could follow up, if necessary. He could check with the alleged owner at the alleged destination and ascertain whether or not the sheep answering the description on the waybill reached the point of destination or left the point of origin. If not, he has access to the registration number of the truck and can make further inquiries of the carrier.

Mr. Reid: The police have that power now.

Mr. H. D. EVANS: That is not so. It is considered the waybill system will allow the police to further their investigations if necessary.

Mr. O'Connor: A policeman can follow it up now if he is suspicious.

Mr. H. D. EVANS: But how does one ascertain whether or not the circumstances are suspicious?

Mr. O'Connor: The same applies in a case of a forged weighbridge ticket.

Mr. H. D. EVANS: The waybill provides a means of further investigation. The carrier could simply tell the police that the sheep came from Mr. Smith if there were no waybill.

Mr. O'Connor: The policeman could check that.

Mr. H. D. EVANS: The name could be fictitious.

Mr. O'Connor: The policeman would have the carrier's registration number.

Mr. H. D. EVANS: That is true, but the point is that he would have *prima facie* evidence on the waybill; at least he would have a description broadly fitting the contents of the load. The stock would not be positively identified, but at least there would be a general description and the work of the police would be greatly facilitated.

Mr. O'Connor: That would be like taking a photo of a sheep and producing it in court and saying, "That is the one."

Mr. H. D. EVANS: I am sorry, the analogy eludes me. For the benefit of the member for Blackwood I repeat that the committee which examined this matter was unanimous in the opinion that the proposed method would facilitate the apprehension of stock stealers.

Insufficient emphasis has been placed on the tracing of disease. This is a most important consideration. The waybill may be used to trace the origin of infected animals, and could save valuable moments. That aspect must be considered along with the aspect of stealing.

On the committee's recommendation, and indeed on the parliamentary recommendation and approval of those on the other side of the Chamber, it should be given a fair trial. So I still oppose the amendment.

Mr. BLAIKIE: After listening to the debate and the explanation given by the Minister, I consider the amendment moved by the member for Blackwood is quite real. We are creating a paper war in this situation, but we are not contributing anything towards solving the problem. I defy anyone to identify the earmarks of cattle on a loaded truck. I can assure the Committee that this is a real problem. All owners of cattle put either a firebrand or earmark on their beasts, or both can be used. Again, I would defy anyone to identify a firebrand on cattle at a distance. It would be almost impossible to identify the brand unless one made a close inspection of the hide of the beast. Therefore the practical application of the provision in the Bill is just ridiculous.

To take this to the nth degree, I am certain we would have to instruct the apprehending officer on descriptions and classifications of sheep. As the Minister said, anyone can tell the difference between a cracker ewe and a woolly lamb. I do not argue this point. But can anyone tell the difference between a two-tooth ewe and a four-tooth wether when they are on a truck? In point of fact, it takes a close personal inspection to tell the difference; it cannot be done at a distance of 200 yards.

Anyone can write on a piece of paper the variations in the description of sheep or cattle. The Minister has put up a theoretical possibility, but it would be impossible to put it into practice.

Mr. H. D. EVANS: The member for Blackwood has missed the practical point. If a conviction for stock stealing is to be obtained there must be some means of identification which can be checked. It may not be necessary to examine the contents of a truck with any great detail, but if this becomes necessary in view of some suspicious circumstance there is some definite identification which inspector can check, but he cannot make a check if the identification is missing.

Mr. NALDER: I have listened to the debate with a great deal of interest and I know the practicability of the whole business only too well. I think the member for Blackwood and the member for Vasse are highlighting the position which in my view could develop.

Mr. H. D. Evans: You started all this.

Mr. NALDER: No, I did not start it, but I was requested to start it, perhaps. However, let the Minister contain himself for a moment. In this situation the problem arises with the carrying out of the request contained in the Bill, and this is what concerns members. I can visualise a situation developing, if this provision is carried out to the letter, where there will be nothing but confusion and it will considerably delay the movement of stock. It is all right for the member for Merredin-Yilgarn to shake his head, but if he does not agree with me he is so far away from the situation he does not know what he is talking about.

I have been involved in this business for 30 years, and if one has to fill in a form every time a truck of animals is taken from one place to another it will only cause confusion and delay. This is the point I am making. I am not against the legislation, because what I want the Minister to say is that he will give the provision a trial, and if he finds it will not work he can request that it be withdrawn until some other solution is found.

The member for Blackwood has possibly set out the true position. The problem is probably greater in saleyards in the south-west than it is in the wheatbelt and

the great southern where large numbers of stock are handled. From 200 to 500 head of stock could be handled in one line.

I know that pigs are also being stolen, but I am now dealing with sheep. In the south-west it is likely that the sales deal with small lots of stock, therefore the position will be greatly aggravated. I am aware of the problems that exist in the areas of the member for Blackwood and the member for Vasse. There could be 100 farmers each selling 20 sheep and two or three head of cattle. After the sale we might find 15 or 20 head of stock from different farms loaded into a truck.

I would like the Minister to give this proposition a trial to see how it works. This is a trial and error exercise which is designed to grapple with the existing problems. I agree with the Minister that last year only six cases of sheep stealing were accounted for, but in my view it is an indication that we are not able to grapple with the problem. Obviously hundreds of head of stock are being stolen each year. Some of these have been shot in the paddock and taken away. This is done by people who steal cattle systematically.

I know of a case personally. This was put into the hands of the police and the persons concerned were apprehended. On their way back to Perth from a Narrogin trotting meeting they stole some sheep from a paddock and loaded them into their trailer. We were following the vehicle and saw the sheep. We said to the people concerned that there was a hole in the bottom of their trailer, and the sheep were falling through. There were four persons in that vehicle. When we pulled them up they ran into the bush.

Later at about 3.00 a.m. we rang the police and reported the incident. We had the number of the trailer, and the police were able to apprehend the culprits eventually. The case was taken to court, and it was proved that these people had run down half a dozen sheep which they had picked up in their trailer to take back to Perth for rations.

I am prepared to go along with the proposition of the Minister, because I believe the member for Blackwood and the member for Vasse have put up a good case. If the Minister is sympathetic with their problems then I am sure he will take steps to overcome them. If the proposition is given a trial some progress will be made.

I am aware of the difficulties of identifying stock. A person might have a waybill to indicate that he has picked up stock from certain places and is taking them somewhere else. Should he be apprehended by an inspector he would have evidence to indicate that he was engaged in legitimate business; but should he not

be able to produce evidence or should he counterfeit the waybill, the case would be investigated.

This Bill has been before us for a long time. However, the Minister has not satisfied us as to the best method to be adopted. We should not ignore the problems that have arisen in the south-west. I can foresee more difficulties arising if we are not careful to take steps to solve the problem.

Mr. H. D. EVANS: I did give the member for Blackwood an indication that this should be given a trial for a period of 12 months or less if the circumstances warrant this being done. The leader of the Country Party said this was a very complex situation and the proposals should be given a trial, and if necessary an amendment to the legislation should be made. This is an attempt to bring about beneficial legislation, and that is the spirit in which the measure was introduced. Obviously the Leader of the Country Party is still of that opinion and I agree with him.

I am happy to give an assurance that this legislation will be kept under constant review to determine its effect one way or the other, and see whether the benefits offset the amount of paperwork and inconvenience that will be created. If benefits are to accrue, some responsibility will be placed on individuals to fill in forms to comply with the regulations.

Mr. I. W. MANNING: I am interested to know whether there is to be any change in the format of the waybill, and I would like the Minister to comment on this.

Mr. H. D. EVANS: Any acceptable document as prescribed is the proposal. Tagging could be introduced by regulation, and this method would be very acceptable also.

Mr. I. W. MANNING: I express my appreciation to the Minister. I too would like to see this legislation given a trial. I am more concerned with the calf market situation, because there is conflict between the Act and the regulations made thereunder. A person is not required to earmark or firebrand an animal under six months of age, yet an animal less than one week old which is sent to a sale must be earmarked or branded. Any satisfactory agreement that can be reached on a suitable means of identification of animals to be included in waybills will have my support.

Mr. REID: The Minister has said this resulted from an unanimous decision of a committee of experts.

Mr. H. D. EVANS: The committee was representative of all farmers' organisations.

Mr. REID: In August last when this legislation was proclaimed and was to be enforced there was some back-peddling. To add more confusion to the situation there

were instances where carriers picked up mixed loads of stock from farms. Will they be required in the future to have available for inspection several waybills in relation to a truckload of cattle or sheep? This aspect has not been touched on. I have no argument against the production of waybills, but in my view the problem is the identification of stock carried in vehicles.

Amendment put and negatived.

Mr. W. G. YOUNG: I do not think there is any need for me to deal at length with the identification of an earmark when an animal is on the back of a truck because I did so during my second reading speech.

When a producer registers an earmark for his stock he is given two marks which must be placed in the ear at certain specified positions. There are six of these positions and 120 different types of marks. As I said in the second reading debate, these earmarks are placed on the lamb when it is young, but the actual mark is no longer identifiable when the animal is older because shearers take their toll, apart from which the animal spends several years in the bush, and this certainly helps to destroy the earmark.

My suggestion is that the location and designation number of each earmark be used on the waybill rather than a description of the earmark. I therefore move an amendment—

Page 3, line 20—Insert after the word "earmarks" the words "as defined by the coded earmark index".

This index is included in the Brands Directory issued by the Registrar of Brands, and all stock inspectors and police stations would carry a copy. In this way the inspector would be able to identify the earmark by the position indicated on the waybill.

Mr. H. D. EVANS: The principle the member for Roe has introduced is very acceptable but is rather unnecessary because under the definitions the word "earmark" means the registered earmark. He would streamline the provision if he were merely to insert the word "registered" after withdrawing his amendment.

Mr. W. G. YOUNG: I see the point the Minister is making, but while this Bill has been before the Chamber I have spoken to 25 to 30 farmers about it and I have asked them whether they were aware of the fact that the index exists. To my amazement only one indicated he was.

If I were to withdraw my amendment farmers would have to be circularised or informed in some way that they could use the index code to describe the earmarks of their animals. I want to make certain that the position of the earmark in the ear is used as identification, because the earmark itself will be obliterated. All that will remain constant is the position.

Perhaps the Minister and I could compromise. I would like my amendment to be accepted to make the position quite clear.

Mr. H. D. EVANS: The amendment will clutter up the legislation a little, but if the honourable member thinks it will be of practical advantage to the farming community I will accept the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

New clause 8—

Mr. W. G. YOUNG: A lot of the verbiage in section 49 is unnecessary because all the items mentioned are incidental to animal husbandry. I therefore move—

Page 3—Add after clause 7 the following new clause to stand as clause 8:—

8. Subsection (1) of section 49 of the principal Act is repealed and re-enacted as follows—

49. (1) A proprietor of stock who desires to move any of his stock repeatedly to and from neighbouring runs for purposes incidental to animal husbandry, may apply in writing to the nearest inspector for a special permit.

Mr. H. D. EVANS: I indicated earlier that the new clause is quite acceptable.

New clause put and passed.

New clause 9—

Mr. W. G. YOUNG: My amendment refers back to the problem of waybills, and deals with the issuing of permits. Many farmers move stock backwards and forwards, either on a daily or weekly basis, from one section of their farms to another. In the case of dairy farmers cows are often moved backwards and forwards across a road for their daily milking. Farmers in the wheatbelt area often move stock across roads for feeding and watering.

Sections 46 and 49 of the principal Act provide for the issue of a permit, and a farmer who is constantly moving his stock would need to have that permit in his possession at all times. It would become a permanent fixture in his pocket until it went through the washing machine. I consider it should be sufficient for him to keep the permit at home. I move—

Page 3—Add after new clause 8 the following new clause to stand as clause 9:—

9. Section 50 of the principle Act is amended—

(a) by deleting the paragraph designation "(a)" in line four of subsection (1);

- (b) by deleting the passage  
"; or" in line four of para-  
graph (a) of subsection  
(1);

and

- (c) by deleting paragraph (b)  
of subsection (1).

Mr. H. D. EVANS: I think the amendment illustrates the close propensity the member for Roe has for sheep farming. The Act will be further steamlined, and the amendment is quite acceptable.

New clause put and passed.

New Clause 10—

Mr. W. G. YOUNG: My next amendment is to section 54 of the principal Act, and concerns, in the main, the penalties which can be imposed on a stock owner for having on his property stock with mutilated ears. Mutilated ears occur amongst all stock and it is impossible to say how the mutilation occurs. Ear tags are pulled off by fences. All farmers find that marks do occur on the ears of their stock and to penalise those farmers would be ridiculous. Paragraph (a) of my new clause will insert the word "wilfully" before the word "slices" in line 1 of paragraph (a) of subsection (1) of the principal Act.

Paragraph (b) deals with any person who has in his possession sheep with cropped or mutilated ears. Sometimes this is unavoidable and the provision should be deleted. Paragraph (c) refers to the same subject of mutilation of the ears. Paragraph (d) refers to wilful action. I move—

Page 3—Add after new clause 9 the following new clause to stand as clause 10:—

10. Section 54 of the principal Act is amended—

- (a) by inserting the word  
"wilfully" before the word  
"slices" in line one of  
paragraph (a) of sub-  
section (1);
- (b) by deleting paragraph  
(b) of subsection (1);
- (c) by inserting after the  
word "mutilated" in line  
three of paragraph (c) of  
subsection (1) the words  
"to which he cannot prove  
ownership";  
and
- (d) by inserting after the  
word "or" in line one of  
paragraph (f) of sub-  
section (1) the word "wil-  
fully"

Mr. H. D. EVANS: The whole new clause is quite acceptable. Paragraph (a) will simply add the word "wilfully" before the

word "slices" in line 1 of paragraph (a) of subsection (1) of section 54. Neither the police nor anybody else has any objection to this rather minor alteration.

Paragraph (b) seeks to delete section 54(1)(b) from the principal Act. This is an obvious amendment and there is no objection to it, either. As the Act now stands, it is an offence to own a sheep with a mutilated ear, whether or not that mutilation has occurred accidentally. In common sense, this provision should be deleted.

Paragraph (c) of the new clause seems quite reasonable, too. It will allow a farmer to have in his possession, without fear of prosecution, as would be the case with the legislation as it stands at the moment, sheep skins, with the ears accidentally mutilated. The amendment is satisfactory as far as resolving that point is concerned. No objection can be seen to paragraph (d) which simply adds the word "wilfully" before the word "mutilates." The provision will then read "wilfully mutilates" as distinct from merely "mutilates." The four paragraphs of the new clause are quite acceptable.

Mr. REID: I wonder how I stand now, Mr. Deputy Chairman (Mr. A. R. Tonkin) because my proposed new clause also relates to section 54 of the principal Act.

The DEPUTY CHAIRMAN (Mr. A. R. Tonkin): Yes, but to a subsequent subsection.

Mr. REID: It relates to subsection (2). I will spell out the reasons for the four paragraphs which I wish to have inserted. There is a printing error on the notice paper to which I shall refer.

Before doing so, I would like to make a few comments. The member for Roe has touched on the point that it was an offence for a person to have on his property sheep with mutilated ears, whether or not this was done accidentally. The four paragraphs will be a means of overcoming an anomaly. Section 54(2) states the conditions under which a person is exempted—in terms of an offence—where he has the skins of sheep with mutilated ears on the property. Whether or not the skin is on or off the sheep there could still be a mutilated ear. The point of my amendment is to make it clear that the exemption would apply to sheep as well as skins, which came into the possession of either an owner or an agent. The effect of the amendments will be purely to incorporate the word "sheep" along with the word "skins." Exemption will be granted provided the person into whose possession the skins or sheep come notifies the police that he has them in his possession. In this

way it will not be a punishable offence. I would like to move the following amendment—

Section 54 of the principal Act is amended—

- (a) by inserting after the word "skins" in line one of paragraph (a) of subsection (2) the words "or sheep";
- (b) by inserting after the word "agent" in line two of paragraph (a) of subsection (2) the words "or owner";
- (c) by inserting after the word "skins" in line two of paragraph (b) of subsection (2) the words "or sheep"; and
- (d) by inserting after the word "skins" in lines one and six of paragraph (c) of subsection (2) the words "or sheep".

Mr. H. D. EVANS: This proposed amendment refers to section 54(2) of the principal Act. Along with paragraphs (c) and (d) of the proposed amendment, the member for Blackwood seeks to include sheep together with skins. Subsection (2) of section 54 provides defence only for charges brought under paragraph (d) of section 54(1); that is, for offences concerning possession of skins of sheep from which ears or parts of ears have been removed. Members will see that it is concerned only with that specific point. What the honourable member is trying to elaborate upon would not be possible under the terms of the Bill. If paragraphs (a), (c), and (d) proposed by the member for Blackwood were accepted they would still not provide the defence he seeks so far as live sheep are concerned.

If one reads section 54 (1), to which subsection (2) refers, it will be found the protection required will not be achieved.

The member for Blackwood seems to be concerned about offences involving live sheep. The relevant parts of section 54 are paragraphs (a), (b), and (f) of subsection (1); but not paragraph (d). Therefore, the amendment cannot apply to paragraph (d). It can apply to the other three paragraphs. The Crown Law Department agrees this is so. Perhaps the honourable member would care to consult the Crown Law Department before the Bill goes to another place.

Paragraph (b) of the proposed amendment of the honourable member appears to protect the person who, as an owner, comes into possession of mutilated skins which he did not mutilate. I think that is the underlying purpose of it. There is no objection to that minor amendment. I do not think the Police Force would object to it.

Mr. REID: I accept the Minister's explanation that the amendments relate back to skins only. I wish to incorporate live sheep. I will agree to the suggestion the Minister put forward and withdraw paragraphs (a), (c), and (d) of my proposed new amendment. I move—

That the new clause be amended by adding after paragraph (d) a new paragraph (e) as follows:—

(e) by inserting after the word "agent" in line two of paragraph (a) of subsection (2) the words "or owner";

Amendment put and passed.

New clause, as amended, put and passed.

Title put and passed.

#### Report

Bill reported, with amendments, and the report adopted.

House adjourned at 6.11 p.m.

---

## Legislative Council

Tuesday, the 24th October, 1972

The DEPUTY PRESIDENT (The Hon. N. E. Baxter) took the Chair at 4.30 p.m., and read prayers.

### QUESTIONS (8): ON NOTICE

1. *This question was postponed until Thursday, 26th October, 1972.*
- 2.

### CATTLE INDUSTRY COMPENSATION FUND

#### Method of Levy Collection

The Hon. N. McNEILL, to the Leader of the House:

- (1) What is the method by which the Cattle Compensation Levy is collected in Western Australia?
- (2) What are the agencies responsible for the collection of the levy?
- (3) Who is responsible for the administration of the fund, and under what authority?

The Hon. W. F. WILLESEE replied:

- (1) Payment of stamp duty on cattle sales.
- (2) (a) Commissioner of Stamps;  
(b) authorised selling agents;  
(c) authorised processing companies.
- (3) The fund is controlled by the Director of Agriculture under the provisions of Part IV of the Cattle Industry Compensation Act.