Legislative Assembly

Thursday, the 10th September, 1970

The SPEAKER (Mr. Guthrie) took the Chair at 2.15 p.m., and read prayers.

QUESTIONS (18): ON NOTICE

1. *This question was postponed.*

2. BRIDGE
Orlando Street, Kelmscott

Mr. RUSHTON, to the Minister for Works:

(1) Is the Main Roads Department to construct Orlando Street bridge, Kelmscott, or let a contract for the work?

(2) When is the bridge construction estimated to begin and finish?

(3) Has a design plan been finalised and, if so, will he make a copy available to me?

Mr. ROSS HUTCHINSON replied:

(1) The Orlando Street bridge, Kelmscott, will be constructed by the Main Roads Department.

(2) It is hoped to commence construction towards the end of the present financial year.

(3) It will be some time before a final design plan is completed.

3. EDUCATION
Newton Moore High School

Mr. WILLIAMS, to the Minister for Education:

(1) When is it likely that Newton Moore High School, Bunbury, will—
(a) have further extensions;
(b) be upgraded to a five-year high school?

(2) What extensions will be required to increase the school to a five-year high school?

(3) What will be the maximum capacity?

Mr. LEWIS replied:

(1) (a) There are no immediate plans for extensions. Accommodation will be provided according to growth of the district.
(b) A date has not been determined.

(2) Additional science and classrooms will be necessary. The actual numbers will be dependent upon the enrolment of upper school students.

(3) Possibly 1,250 students.

4. *This question was postponed.*

5. FARMERS
Plight

Mr. H. D. EVANS, to the Minister for Agriculture:

(1) Has any survey been made by the Department of Agriculture and the Rural and Industries Bank to ascertain the economic plight of wheat and sheep farmers in Western Australia?

(2) If so, will he table a copy of the findings of such a survey?

Mr. NALDER replied:

(1) and (2) The Government has been informed on the plight of wheat and sheep farmers in Western Australia from a variety of sources.

These include:—

(a) Surveys of established and new land farmers conducted earlier by the wheat quota independent committee of enquiry.

(b) A development survey carried out by the Department of Agriculture at the request of the Farmers' Union in the Jerramungup-Green Range area.

(c) An investigation by the Rural and Industries Bank into the economic circumstances of farmers in different regions—the survey is still continuing.

The wheat quota independent committee of enquiry report was tabled in the House on Tuesday, the 21st April, 1970, and consequently is available to members. The Green Range-Jerramungup development survey report has been made available on a confidential basis to people immediately concerned but cannot be released because of the confidential individual farm information which it contains. The information obtained by the Rural and Industries Bank is also of a confidential nature.

General information based on surveys was included in replies to the member for Warren on the 2nd September, 1970.

6. HEALTH
Hazard: Flies

Mr. MENSAROS, to the Minister representing the Minister for Health:

(1) Has his department considered the problem of proliferation of flies, particularly bush flies, *musca sorbens*, in the metropolitan area as a health hazard?

(2) Could he give information about steps which are or are proposed to be taken in this regard?

Mr. ROSS HUTCHINSON replied:

(1) Yes.

(2) (a) The control of fly-breeding is a routine responsibility undertaken by all local health authorities.

(b) The department attempts to co-ordinate and promote these activities through a central planning committee. It also provides facilities, and organises training courses, for auxiliary personnel employed by local authorities in summertime.

(c) The Health Education Council undertakes public education in this matter and prepares informatory material for distribution to the public and local authorities.

(d) The specific problem of the bush fly (*musca sorbens*) is less well understood than that of other species. As this is a natural problem requiring specialised research representations were made about three years ago to the Commonwealth to undertake research into this problem through the C.S.I.R.O. It is understood that studies are proceeding but that an early solution is not expected.

7. *This question was postponed for one week.*

8. MOORING FACILITIES

Seagoing Racing Yachts

Mr. FLETCHER, to the Minister for Works:

(1) Adverting to part (3) of question 48 of the 8th April, 1970, relevant to outer harbour mooring facilities for seagoing racing yachts—

(a) has the 12 months option given to a business syndicate for a feasibility study expired;

(b) who were the personnel associated with the syndicate;

(c) has there been any extension of the study;

(d) if so, for what period?

(2) As the Fremantle Yacht Club previously existed in the area at present occupied by the fishing boat harbour, are there any Government plans to help the re-establishment of the club at or near the site mentioned?

Mr. ROSS HUTCHINSON replied:

(1) (a) Yes.

(b) Company registered in the name of South Quay Pty. Ltd.

The Directors are—

Michael Victor Shallcross.
John Berkley Fitzhardinge.
Peter Kay Bryan.
Roland Leslie Tasker.
David Garrick Agnew.
Rory Edward Stanley Argyle (also secretary of the company).
Frank Anthony Manford.

(c) and (d) The company submitted a proposal within the option period and this is now being considered.

(2) Yes.

9. PERTH REGIONAL TRANSPORT STUDY

Cost

Mr. BURKE, to the Premier:

(1) What is the estimated cost of the Perth regional transport study?

(2) Why was the decision to sink the railway announced before the results of the transport study were available?

Sir DAVID BRAND replied:

(1) $210,000.

(2) The proposal to sink the railway arose long before the Perth regional transportation study was established. The objective of sinking the railway line is not primarily directed towards transportation; rather it relates more to the total development of the city.

The Perth regional transportation study alternatives will be available to the Government by the end of this year and consequently we will be able to determine our attitude to them and the impact which any of them may have on the rail sinking proposal well prior to any firm commitments being entered into.

10. FIRE BRIGADES BOARD

Extension of Facilities

Mr. BURKE, to the Chief Secretary:

Further to my question of the 2nd September, can he give any indication as to when properties in—

(a) Havelock Street;

(b) Bulwer Street,

which are required by the Fire Brigades Board are likely to have to be vacated?

Mr. CRAIG replied:

(a) The City No. 2 Station scheduled for Havelock Street is still under consideration and it is not possible at this stage to indicate when the property will be required.

(b) It is not anticipated that construction of the City No. 3 Station planned here will commence prior to the redevelopment of the city railway complex.

11. NATIVE RESERVES

Maori Visitors: Reports

Mr. LAPHAM, to the Minister for Native Welfare:

(1) Were the two Maori ladies, namely, Mrs. Hine Potaka and Mrs. Mana Rangi, who were sponsored by the Commonwealth Government through the Native Welfare Department, recent visitors to the Katanning native reserve with his knowledge and approval?

(2) Does he think that these ladies, of much experience of the problems of the native races of their own country, are well qualified to advise on native welfare in this State?

(3) Did he read the report published in the *Great Southern Herald* and other newspapers of the speech made by Mrs. Potaka on Monday, the 31st August, at the Katanning Rotary Club?

(4) If he has seen the report, what is his comment on the statements made by Mrs. Potaka to the effect that one was "appalled and shocked by the conditions of the native reserve at Katanning" and that "the reserve was a disgrace and young aboriginals could never be equal with white children unless better houses and facilities were provided"?

(5) Will the Maori ladies be reporting to his department on conditions at all native reserves visited by them or will they be reporting to the Commonwealth Government?

(6) Will he make available to the House any reports made by them?

Mr. LEWIS replied:

(1) The two Maori ladies are sponsored by the Native Welfare Department and are working on Aboriginal reserves with my approval.

(2) These ladies are qualified to advise on the establishment of preschool family education programmes.

(3) The report in the *Daily News* on the 4th September has been seen.

(4) The Superintendent, Southern Division, has advised that the Maori ladies were upset when they read the published report and went to the Katanning office of the newspaper complaining that statements attributed to them were out of context and denied having made some of them. A member of the newspaper staff is said to have apologised to them after going through the report with them.

(5) Not to either.

(6) Answered by (5).

12. BUNBURY POLICE STATION

Staff

Mr. WILLIAMS, to the Minister for Police:

(1) What are the various categories of officers on staff at Bunbury police station?

(2) Other than transfers, are any further additions to the staff expected within the next 12 months?

(3) What number of staff will the present building comfortably accommodate?

Mr. CRAIG replied:

(1)

Commissioned officer	1
Sergeants	7
Constables	24
Plain clothes constable	1
Detective sergeant	1
Detective constable	1
	35

(2) Yes.

(3) Approximately 70, working in shifts.

13. BUNBURY POLICE STATION

Policewoman: Permanent Appointment

Mr. WILLIAMS, to the Minister for Police:

(1) Why has a policewoman not been permanently appointed to the Bunbury police station?

(2) When is a permanent appointment to be made?

Mr. CRAIG replied:

(1) Shortage of trained staff.

(2) During 1970-71.

14. EDUCATION

Albany Junior Primary School

Mr. COOK, to the Minister for Education:

(1) Has he given consideration to my representations in relation to the downgrading of the Albany Junior Primary School and, in particular, to the alteration of boundaries to ensure maximum use of classrooms at the school and as a means of preventing the downgrading of the school?

(2) If "Yes" what is the result of his investigations?

(3) If "No" will he give an undertaking to consider these representations and advise the result?

Mr. LEWIS replied:

(1) Yes. It is considered that the alteration of boundaries in order to prevent the downgrading of the Albany Junior Primary School would be undesirable for the following reasons. It is unsound educationally and from the point of view of safety to direct a large number of primary children into a busy municipal and commercial locality. Such a policy would conflict with long term planning for the Albany townsite and could only be accomplished by transferring children already attending the new school at Yakamia to the Albany Junior Primary School.

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

15. EDUCATION

Commonwealth Technical Scholarships: Country Students

Mr. KITNEY, to the Minister for Education:

Is a country student who wins a Commonwealth technical scholarship and of necessity attends a technical college in the metropolitan area entitled to the department's boarding-away-from-home allowance?

Mr. LEWIS replied:

A boarding allowance would be approved if the student were doing an approved full time course and his parents' residence was more than four miles from a bus service to a technical college of requisite standard or more than five miles from that school. The Commonwealth technical scholarship does not affect the student's eligibility for the boarding allowance.

16. POWER BOATS

Number and License Fees

Mr. DAVIES, to the Minister for Works:

(1) How many power boats are now licensed in this State?

(2) What are the license fees?

(3) Is there any likelihood of such fees being increased in the foreseeable future?

Mr. ROSS HUTCHINSON replied:

(1) 17,103.

(2) $1.

(3) No.

17. TWILIGHT COVE RESERVE

Investigation by Museum

Mr. COOK, to the Minister for Education:

(1) On what date did investigations by the Western Australian Museum commence in relation to the declaring of the Twilight Cove Reserve No. 27632 "A"-class, and on what date were the investigations completed?

(2) Was any report prepared of their findings and, if so, would he make available the report?

(3) Who were the personnel who took part in this investigation and what were their qualifications?

Mr. LEWIS replied:

(1) The Museum did not make specific investigations of the Twilight Cove area prior to its being recommended as a Class "A" reserve. The Twilight Cove area was recommended to be a Class "A" reserve by the Western Australian Sub-Committee of the Australian Academy of Science Committee on National Parks. The principal biological reasons given in the report—made public in 1962—are—

(i) that it represents a boundary zone between the central Australian and south-western flora and fauna; and

(ii) that it permanently preserves an area along the old coastal migration route of animals and plants between eastern and western Australia which was open at various times in the Pleistocene.

The Museum was not directly concerned in the investigations but the subcommittee included among its members the Director of the Museum, as well as the Chief Warden of Fauna, the Conservator of Forests, the Curator of the State Herbarium, the former Government Botanist, and members of the University of W.A., including a present Professor of Zoology and a Reader in Geology. The Museum's contribution to this report was to provide the chairman (Dr. W. D. L. Ride), and to make available its administrative facilities to the Australian Academy of Science. Since that time the Museum has not specifically investigated or reported on the area but the opportunity has been taken by Museum parties to visit the vicinity and to compile further data on the area. These investigations are continuing. A Museum party will be in the area again later this

month. The findings of the Academy of Science Report were subsequently re-examined by the Fauna Protection Advisory Committee in 1964 and a further re-examination by the Government-appointed Reserves Advisory Council was made and it recommended the proclamation of the reserve as Class "A" on the 12th June, 1969.

(2) No report is available.

(3) (a) No personnel of the Museum were involved in investigations prior to the original recommendation.

(b) Subsequent investigations in the area and its vicinity have been made by—

December, 1962—Dr. D. Merrilees, B.Sc., Ph.D., Acting Curator of Palæontology, W.A. Museum, and Dr. G. M. Storr, B.Sc., Ph.D., Curator of Vertebrates, W. A. Museum—area north of Israelite Bay.

October, 1964—Dr. G. M. Storr and Mr. A. M. Douglas, Senior Experimental Officer, W.A. Museum—Eucla-Eyre area.

October-November, 1966—Mr. G. W. Kendrick, Technical Officer, W.A. Museum—Mundrabilla area.

March-April, 1968—Mr. J. L. Bannister, M.A., Curator of Mammals, W.A. Museum and Mr. A. Baynes, B.A., Graduate Student, University of W.A.—Israelite Bay area.

February-March, 1969—Dr. D. Merrilees, Mr. G. W. Kendrick, Mr. M. Archer, B.A., Graduate Student, University of W.A.—Labyrinth Cave area.

August-September, 1969—Mr. A. Baynes and Mr. W. K. Youngson, Technical Assistant, W.A. Museum—Roe Plains-Eyre area.

18. TWILIGHT COVE RESERVE

Dedication as Class "A"

Mr. COOK, to the Minister for Education:

(1) Were field trips made by staff and/or officers of the Western Australian Museum to the Twilight Cove Reserve No. 27632 in the course of and as a part of the investigation into whether or not it should be declared "A"-class?

(2) If "Yes" what was the duration of the trips, how many were made and by whom?

Mr. LEWIS replied:

(1) and (2) No investigations were made by Museum personnel prior to the recommendation of the Academy of Science subcommittee in 1962 but subsequent investigations have been carried out by Museum personnel in the area and its vicinity as detailed in the answer to question 17 part (3).

QUESTIONS (4): WITHOUT NOTICE

1. IRON ORE

Pilbara: Report of Committee

Mr. BICKERTON, to the Premier:

Concerning the committee which has been investigating the iron-ore industry in the Pilbara area and which as I understand from a newspaper account has submitted a report to the Government, is the Premier in a position to give the House any details in connection with this report, and when is it likely that it will be tabled in Parliament?

Sir DAVID BRAND replied:

I am not so certain that I know of any committee that is investigating the whole situation. The report certainly is not to hand; and when it is it will be dealt with by the Government in due course.

2. IRON ORE

Pilbara: Report of Committee

Mr. BICKERTON, to the Premier:

Apparently the Premier did not get the message. I understand from the political column in this morning's issue of *The West Australian* that certain information has been given by an organisation which is investigating the iron-ore development of the future in the Pilbara area. I ask the Premier—

(1) Has he received this report?

(2) Is it before Cabinet?

(3) Can he give the House any details of it?

(4) Is it likely it will be tabled, for the benefit of Parliament?

Sir DAVID BRAND replied:

(1) to (4) So far as the report is concerned, it is not before Cabinet. I presume if the report is available it is in the hands of the Minister for Industrial Development. Any further decisions on the matter will be made in due course.

3. IRON ORE

Pilbara: Report of Committee

Mr. BICKERTON, to the Premier:

Will the Premier be good enough to tell us, if he can, what is the body that has prepared the report?

Sir DAVID BRAND replied:

I am afraid that I am not certain of the report referred to by the honourable member. I will give him an answer next Tuesday.

4. IRON ORE

Pilbara: Report of Committee

Mr. BICKERTON, to the Premier:

The report to which I refer is the report to which reference is made in the political column which is made available to political parties in Western Australia to put forward their views. This matter was mentioned in this morning's issue of *The West Australian*. I do not say that the Premier personally reads the reports which appear in that column but I think he would read them before they were printed. The organisation mentioned in the column in this morning's newspaper is the one to which I am referring. Can he give us any details of it?

Sir DAVID BRAND replied:

I will give an answer next Tuesday.

COAL MINE WORKERS (PENSIONS) ACT AMENDMENT BILL (No. 2)

Second Reading

MR. BOVELL (Vasse—Minister for Lands) [2.35 p.m.]: I move—

That the Bill be now read a second time.

The purpose of this Bill is to liberalise some provisions relating to a retired mineworker who is suffering from permanent blindness. It is proposed also to extend these provisions to a dependant who may be similarly afflicted.

Section 7 of the principal Act at present provides that any amount of coalminer's pension paid to an invalidity pensioner shall, until he attains the age of 60 years, be reduced by the amount of the Commonwealth pension benefit excepting where the qualification for such Commonwealth benefit has been permanent blindness. I should mention, at this point, that no such provision is made in respect of Commonwealth blind pensioner benefits accruing to a pensioner's wife or child.

There is a further provision in the Act which provides that any amount a blind worker or his dependant receives from the Department of Social Services shall be deducted from his coalminer's pension. That provision is contained in section 13 of the principal Act.

The proposal submitted in the measure now before members is that where a retired mineworker or his dependants are granted a Commonwealth social service pension due to permanent blindness, irrespective of age, no reduction will be made to the miner's pension. I commend the Bill to the House.

Debate adjourned, on motion by Mr. Jones.

CHILD WELFARE ACT AMENDMENT BILL

Second Reading

MR. CRAIG (Toodyay—Chief Secretary) [2.37 p.m.]: I move—

That the Bill be now read a second time.

In introducing this Bill to make further amendments to the Child Welfare Act, 1947-69, I know that every member would want legislation relating to children to be frequently reviewed in the light of changing conditions and needs.

This year the main amendments focus on the clarity of judicial procedures; a set of circumstances where the use of a summons in the first instance is more appropriate than a warrant for apprehension and, finally, wider protection for foster children under six years of age.

The Bill proposes clarification on the issue of children over 14 years of age who have committed an indictable offence of such a serious nature as to warrant committal to the Supreme Court or District Court for trial or sentencing, because the powers conferred on a children's court are inadequate to deal with the particular case.

Existing legislation allows for juveniles over 14 years of age to be committed to the Supreme Court by the Children's Court on indictable offences; however, the amendment will facilitate procedures which, as they stand, present some problems. In addition, it will clarify and widen the sentencing powers of the Supreme Court, which are at present uncertain and do have some limitations. These powers should also be conferred on the District Court.

The proposed amendment would allow the Supreme Court or the District Court to deal with the juvenile as if it were committed under the provisions of the Justices Act. It would specifically allow any penalty consistent with those made by a children's court. In addition, the Supreme Court or the District Court would be able to impose any penalty that is imposed with respect to a person over the age of 18 years.

This would allow, as well as other penalties, the application of the Offenders Probation and Parole Act, when appropriate, provided the necessary amendment to that Act was passed. Incidentally, that Bill will be introduced following this one.

Next, I would like to refer to the proposed amendment relating to non-payment of penalties imposed after a juvenile reaches 17 years of age, but before attaining the age of 18 years. Existing legislation provides that if the person has since attained the age of 18 years, he may be apprehended on a warrant and brought before the Children's Court to be dealt with for non-payment of a penalty.

The situation is not sufficiently serious to necessitate the arrest of the people concerned in the first instance. They should be given the opportunity to appear initially in response to a summons and a warrant issued only in the case of the minority who fail to appear. This course of action is introduced by the proposed amendment.

Now I wish to draw the attention of members to the amendment relating to the licensing of foster mothers. Existing legislation requires that a person other than a near relative acting as a foster mother to a child under six years of age shall be licensed by the Child Welfare Department if she acts as a foster mother for gain or reward.

It is often difficult to establish whether or not the foster mother receives any payment for the care of the child. If the person fears that a license would not be granted because of unsuitable living conditions or unsuitable personal qualities or character, she only has to deny that she receives money from the parents of the child and the department would be unable to intervene or act at an early stage to protect the welfare of the child. Unfortunately, there have been one or two cases where an unsuitable person has fostered young children and the inability to establish "gain or reward" prevented further action.

I am sure members will agree that foster children cared for without gain or reward by a private foster mother are entitled to the protective provisions resulting from the licensing of foster mothers. The proposed amendment seeks to delete reference to gain or reward.

The only other proposal relates to changes in the list of subsidised institutions.

Debate adjourned, on motion by Mr. Bertram.

OFFENDERS PROBATION AND PAROLE ACT AMENDMENT BILL

Second Reading

MR. ROSS HUTCHINSON (Cottesloe—Minister for Works) [2.43 p.m.]: I move—

That the Bill be now read a second time.

As background which will indicate the necessity for the introduction of this small amendment to the Offenders Probation and Parole Act, I would refer to a proposal to amend the Child Welfare Act in a certain direction. In other words, this Bill is complementary to the Bill which has just been introduced by the Chief Secretary.

Section 20 of the Child Welfare Act refers to the jurisdiction of the Children's Court as regards children and provides authority to refer cases to the Supreme Court. In a recent appeal to the Supreme Court in the case of the Queen *versus* K. W. Gill, certain limitations to the existing section were pointed out by the Chief Justice and the Chief Crown Prosecutor. As a consequence, certain amendments were put in process of preparation to cover those deficiencies.

One of those amendments will permit a superior court to utilise the provisions of the Offenders Probation and Parole Act when dealing with a child. However, if members will refer to section 5 of the Offenders Probation and Parole Act, it will become evident that that Act does not apply to, or with respect to, a child as defined in the Child Welfare Act, 1947, who is convicted of an offence by a children's court established under that Act.

It will therefore be apparent that there is a need to amend this section of the Offenders Probation and Parole Act to accommodate the change being made in the Child Welfare Act, and, as a consequence, the amendment contained in this Bill is consequential on the particular amendment contained in the Child Welfare Act Amendment Bill.

On reference to the Bill now before members, it will be seen that it is intended to add to section 5 the following passage:—

> Unless the sentence for the offence is passed by the Supreme Court or the District Court of Western Australia pursuant to subsection 3 (a) or 3 (b) of section 20 of that Act.

I commend the Bill to members.

Debate adjourned, on motion by Mr. Bertram.

ROMAN CATHOLIC VICARIATE OF THE KIMBERLEYS PROPERTY ACT AMENDMENT BILL

Second Reading

MR. ROSS HUTCHINSON (Cottesloe—Minister for Works) [2.45 p.m.]: I move—

That the Bill be now read a second time.

The purpose of this measure is merely to accommodate changes made by church authorities in the title of a Kimberley vicariate and in the title of a Roman Catholic Bishop in charge of that diocese.

The vicariate styled in the principal Act as the Roman Catholic Vicariate of the Kimberleys has since 1966 been renamed

the Roman Catholic Diocese of Broome, and the Roman Catholic Vicar Apostolic of the Kimberleys now carries the title of the Roman Catholic Bishop of Broome.

Members will be aware that from time to time the Government has introduced, at the request of religious organisations, suitable amendments to appropriate Acts. This Bill comes within that category and is not of general application and affects possibly only the Roman Catholic Church in Western Australia, the Office of Titles, and persons concerned in dealing with the church lands mentioned in the schedules to the principal Act.

As a consequence of the amendments proposed, it would be inappropriate to retain the existing title of the Act, and members will see in subclause (3) of clause 1 of the Bill that the title of the principal Act is to be amended appropriately. I commend the Bill to members.

Debate adjourned, on motion by Mr. Bickerton.

PETROLEUM PIPELINES ACT AMENDMENT BILL

Second Reading

MR. BOVELL (Vasse — Minister for Lands) [2.47 p.m.]: I move—

That the Bill be now read a second time.

The construction of a pipeline under the existing provisions of the principal Act is prohibited until the required easements with the landowners or lessees of the land concerned have not only been procured but also registered in the Titles Office.

However, once the construction of a pipeline has been commenced, it is desirable that it be uninterrupted and proceed with a minimum of delay in order that a situation may be avoided where men and machinery are required to be moved away from sections of the route of the pipeline. Such an interruption would come about through the non-registration of an easement that has been obtained from the landowner or the lessee involved.

For instance, a delay in construction schedules could arise from a lost certificate of title or a delay in the issue of a title. A company could be understandably concerned that such a situation could come about and, in fact, representations have been made by Wapet to the Minister for Mines, seeking the introduction of some appropriate legislation to prevent delays in the construction of a pipeline occurring in this manner.

The purpose of this Bill then is to prevent any difficulty caused in the registration of easements granted by landowners to pipeline licensees from delaying the progressive work in the construction of pipelines along the defined routes. The Bill takes the form of an amendment to the principal Act, which will enable the Minister to make exceptions to the conditions of the registration of an easement which are at present contained in section 12 of the Act.

A new subsection is to be added to section 12 to provide that where the Minister is satisfied that the licensee has acquired any such easement and is unable to register it through circumstances beyond his control, the licensee, with the prior consent in writing of the Minister, may, pending the registration of the easement, commence or cause to be commenced the construction of the proposed pipeline over the land to which the easement relates. The Bill provides that this may be done on such terms and conditions relating to the registration of the easement as the Minister may think fit and specify in an instrument of consent. The conditions of consent under this section are, of course, restricted to matters relating to the registration of an easement only. I commend the Bill to members.

Debate adjourned, on motion by Mr. Jamieson.

FACTORIES AND SHOPS ACT AMENDMENT BILL (No. 2)

Second Reading

MR. O'NEIL (East Melville—Minister for Labour) [2.51 p.m.]: I move—

That the Bill be now read a second time.

The objects of the amending Bill are to strengthen the provisions in the Factories and Shops Act dealing with the closing of shops outside normal hours of trading; to provide increased penalties for breaches of closing provisions; to revise trading hours provisions for the sale of motor vehicles; to clarify the position in regard to the sale of goods by shops which are permitted extended or uncontrolled hours of trading; and to facilitate the introduction of a new system of registration of factories, shops, and warehouses.

Over the last few years there has been a growing tendency for certain retailers to circumvent the closing provisions of the Act and effect sales of goods outside the prescribed trading hours. This is particularly noticeable in the field of used motor vehicle retailing where, in spite of the fact that over 100 prosecutions have been undertaken during the current year, after-hours trading still persists.

To meet in some measure the obvious demand for extended hours in this particular field, the Bill provides for motor vehicles to be retailed until 10 o'clock on Wednesday evenings. This extension is supported by the Chamber of Automotive Industries and the Western Australian Automobile Chamber of Commerce. These chambers express concern over the after-hours activities of used motor vehicle dealers and support any move to curb

this practice. Opposition in other quarters to any extension of trading hours has been clearly demonstrated.

A number of weaknesses have become apparent in the shops closing provisions of the Factories and Shops Act, and amendments in the Bill are designed to eliminate these and at the same time provide for increased penalties to be imposed for breaches.

The definition of "shop" is amplified, and the amendment to section 93 will remove words which have a nullifying effect on the closing provisions of the Act.

As a deterrent to after-hours trading, a penalty clause applicable to breaches of the closing provisions and the sale of goods outside appropriate hours has been added. Penalties for offences against these provisions are up to $200 for a first offence, $300 for a second offence, and $500 for a third or subsequent offence.

The tendency today is for shops to diversify their stocks, and complications arise when the Factories and Shops Act allows of extended hours of trading for certain classes of goods and the stock of the shop includes other lines. To confine the stock of a shop which is permitted extended hours of trading rigidly to the goods to which those hours are applicable would be too restrictive in many cases. Motor vehicle traders who wished to open on Wednesday evenings would be precluded from stocking accessories or other than specified goods. Amendments to the Bill allow of exempt goods being sold at any time, restricted goods to be sold during specified hours, and other goods only during normal trading hours.

A new provision introduced by the Bill is the prohibition of advertising in a manner which is intended to promote the business of a shop by stating, implying, or suggesting that such shop will be open for business at a time when it is required to be kept closed. This is a further means of preventing illegal extensions of trading hours, and follows the legislation for this purpose in New South Wales and Victoria.

As the Act reads at present, all registrations of factories, shops, and warehouses are current for the year commencing on the 1st January and expiring on the 31st December. Registrations made during the currency of a year, irrespective of when effected, expire on the 31st December. The handling of registration renewals in the concentrated period of January and February each year imposes a severe strain on the staff of the Department of Labour.

The Act also places the onus of effecting and renewing registrations on the occupier of a factory, shop, or warehouse, and it has been necessary to take action to remind, and demand fees from, those occupiers who fail to register when due in December and January. The amendment is purely a machinery one to allow the period of registration to vary from seven months to 18 months, the objective being to allow the expiry dates to be spread over the year.

This is part of a move to allow registration procedure to be changed to a system of sending out combined notices and forms of registration by means of an addressing machine. The varying periods will only be necessary during the process of staggering the renewal dates; once this is achieved registrations will be current for 12 months from the date they are effected. Apart from this innovation assisting the department, it will provide a much better service to occupiers, who will be reminded through the mail to renew registration when it becomes due.

Debate adjourned, on motion by Mr. Davies.

HONEY POOL ACT AMENDMENT BILL

Second Reading

Debate resumed from the 26th August.

MR. DAVIES (Victoria Park) [2.57 p.m.]: The member for Warren took the adjournment of this Bill but unfortunately he is not able to be here today. He has been good enough to leave me his notes.

As the Minister said in his second reading introduction, the Bill seeks to make two small amendments. Firstly, the provisions of the Honey Pool Act, 1955-1957, established the corporate name of the administrative body as "The Trustees of the Honey Pool of Western Australia." This title is proving awkward and rather cumbersome, and it is somewhat hampering the operation of the Honey Pool. The Minister has therefore brought in this Bill to change the name, and he has achieved that by deleting from the present definition of "Corporation" the words "The Trustees of." The interpretation will now read—

> "Corporation" means The Honey Pool of Western Australia constituted under this Act;

This makes the name much shorter and much more in keeping, perhaps, with the functions of the pool.

To make this new name fully operative a further amendment is required, and this Bill inserts a new section 2A, which makes the pool fully operative and will, of course, complete the change. This is simply a machinery clause, to which there can hardly be any objection, and the Opposition certainly has no objection. We support the Bill.

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.

METROPOLITAN WATER SUPPLY, SEWERAGE, AND DRAINAGE ACT AMENDMENT BILL (No. 2)

Second Reading

Debate resumed from the 1st September.

MR. TOMS (Ascot) [3.01 p.m.]: When the Minister introduced this small amending Bill he indicated that it had two purposes. The first is to harness for the use of the Metropolitan Water Supply, Sewerage and Drainage Board unused loan allocations of local authorities and bank overdrafts obtainable by local authorities for extending water works and services, and to enable the board to take over such works as may be provided from those funds under certain conditions.

In 1968 the Minister introduced a similar Bill dealing with sewerage and at the time the member for Belmont put forward his opinion on that legislation. I believe the comments he made were most appropriate, and the results since that time have borne out that his assessment was fairly accurate. The member for Belmont indicated that unexpended loan funds and bank overdrafts of local authorities would be very difficult to find for the purpose for which the Minister hoped they would be used.

He also indicated that sewerage work had pretty well been completed in the majority of local authority areas which were fully developed, and that in those local authority areas which were still being developed and needed sewerage the local authorities would have very little or no unexpended loan funds and certainly would not be interested in taking out overdrafts to extend the sewerage system. This has proved to be correct because yesterday I asked the Minister the following question on notice:—

> (1) How many local authorities have made arrangements with the Metropolitan Water Supply, Sewerage and Drainage Board to utilise loan funds or an overdraft, for the purpose of sewerage works as permitted under Division 2 or 3 of Part XXVI of the Local Government Act?
>
> (2) Who are the authorities concerned, and to what financial extent is each committed?

The Minister replied that since 1968 only one local authority—the Armadale-Kelmscott Shire—had made arrangements with the Metropolitan Water Board to utilise loan funds for the purpose of sewerage works, and that since then the board had purchased the sewerage works from the local authority.

I cannot help but feel that this Bill may possibly meet a similar fate. However, the provision will be there in case a local authority has the opportunity to expend its moneys. I cannot see it happening for some time. Members who take the trouble to look at the plan at the back of the annual report of the Metropolitan Water Supply, Sewerage and Drainage Board will notice that the area shaded green, which indicates the sewerage system in the metropolitan area, has not been extended for a good number of years.

Indeed, I am beginning to wonder whether the creation of the Metropolitan Water Board, and also the handing over to local authorities of the power to do this work under certain conditions, is not in effect slowing down the extension of sewerage facilities. For many years it was the total responsibility of the board itself to carry out the extensions and it seems to me that local authorities have not got the money to do the work. If a local authority has to borrow for this purpose, it would mean that we would have three bodies trying to borrow money for the same purpose.

I have indicated previously in this House, when speaking about the creation of a particular board which was to have the power to borrow, that there is a limit to what people and departments can borrow.

Mr. Ross Hutchinson: Exactly.

Mr. TOMS: The bin has only so much in it, and if we keep dipping into it we will all get only a little and nobody will receive enough to carry out a big job. So I would have felt much more satisfied had the department itself continued to extend sewerage and water facilities in the manner it did previously. I know this work costs more nowadays but the Minister and members, generally, should bear in mind that ratepayers who have not got sewerage at the present time have helped to contribute —by paying taxes—to the extension of sewerage facilities to other areas.

I have no objection to this Bill. I only hope the ambitions and the desires of the Minister will be fully realised. However, I have my doubts about that. I support the Bill because it is possible that some local authority may be able to find unexpended loan funds—no doubt it would be in a developing area—for the purpose of extending the water supply system in the metropolitan area.

MR. ROSS HUTCHINSON (Cottesloe—Minister for Water Supplies) [3.08 p.m.]: I would like to thank the member for Ascot for his support of this Bill. What he said about the Bill and its limitations is largely true and freely admitted. However, this provision, which is virtually the same as the provision contained in the 1968 amendment, will be there if it is needed. The honourable member pointed out that he discovered from an answer I gave him that only one local authority had utilised the 1968 amendment. However, it is good that a local authority was able to do that.

Mr. Jamieson: Unfortunately, the only shires that have that sort of finance also have all the services.

Mr. ROSS HUTCHINSON: That is quite so, and we agreed upon that at the time. This measure provides another means by which to secure excess loan moneys where they are obtainable; it does not provide a royal road to the solution of the problem of deep sewerage in the city, or for unlimited extensions of water supplies in the metropolitan area. It is merely what it is represented to be; that is, a step forward in this direction.

The 1968 sewerage amendment has been operating for only a couple of years; and already some inquiries have been made in regard to this proposed amendment before us. I have no doubt that, say, within 12 or 18 months at least one local authority will avail itself of this proposal. I say that as a result of what I have seen and the representations that have been made to me. I think if we can help local authorities in this way—and so help the residents—then it is only right that we should do so.

My final comment is that the Metropolitan Water Board—to give it its short title—works *mutatis mutandis*, capitalwise, in the same manner as did the department that operated before it. I say the necessary change is being made.

Mr. Jamieson: You are not saying that subject to pressure by Parliament.

Mr. ROSS HUTCHINSON: It is true, however, that the Metropolitan Water Board now has a very much greater amount of work because of the tremendous expansion that is taking place. It is also true that it has a great deal more money to spend than had the department before it. This happens with regard to the larger loan allocations that come forward, but although they are larger they are not large enough to keep up with this development that is taking place.

Mr. Toms: How do you catch up with the price rises?

Mr. ROSS HUTCHINSON: The problems we are experiencing are similar to those experienced by countries where there is progress and development on a scale similar to that which is taking place in Western Australia.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 2)

Second Reading

Debate resumed from the 1st September.

MR. TOMS (Ascot) [3.13 p.m.]: As the Minister indicated this Bill is complementary to the one with which we have just dealt. It merely empowers the local authority to sell to the Water Supply, Sewerage and Drainage Board such works as have been completed under the former Act. There is no necessity for me to repeat what I have already said when discussing the previous measure, except to say that we support the Bill.

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.

TOTALISATOR AGENCY BOARD BETTING ACT AMENDMENT BILL

Second Reading

Debate resumed from the 27th August.

MR. BERTRAM (Mt. Hawthorn) [3.16 p.m.]: The first part of this amending Bill is designed to amend section 42 of the Act by inserting in the place indicated the words, "or employee of an agent of the Board."

When introducing the Bill the Minister did not really put up much by way of a case to justify this particular portion of the measure, but I cannot see any great harm arising from it. It may, in fact, be an improvement to section 42; and if it is an improvement—or there is that possibility—then we on this side of the House should, I think, support it; our desire being that anything we can put into this Act, or any other Act, which will make the legislation more efficient and the law better enforceable is worth supporting.

As will be seen from the notice paper, I have given notice of my intention to amend the Bill so that not only will section 42 be amended in the manner proposed by the Minister, but also section 33 will be amended in a similar way.

It seems to me that those sections are comparable and that if there is a case for the improvement, by an amendment in the manner proposed, of section 42, then it must follow, as I read the Act, that a similar type of amendment to section 33 is justified.

The wording will not be identical if the amendment of which I have given notice is inserted into section 33 in the two places I propose it should be, but it will be as close to the wording of section 42 in its amended form as one could get without rearranging the whole of the wording to achieve that purpose. As I say, the wording will not be identical, but I think the effect will be the same as that sought by the amendment to section 42.

The parent Act is dated 1960 and at the time it was before Parliament there was considerable debate. For those members who may be interested in that debate it

can be found in the *Hansard* volume covering the period the 14th September, 1960, to the 1st November, 1960. If members are interested particularly in the debate relating to sections 50 and 51 they will find it appears in that same volume of *Hansard* on pages 2055 and 2058.

I mention those two sections in particular as they were just two more sections which, when debated, were hotly opposed by the Opposition, because they tended to cut away at the rights of an accused person. The marginal note against section 50 reads "Evidence as to offences" and the section sets out that upon being able to establish certain facts, those facts shall be regarded as *prima facie* evidence of a particular type of offence.

I imagine that this type of provision is inserted so that when a prosecution is battling to get evidence, by making certain evidence *prima facie* against the accused, it has the effect of forcing the accused into the box and he has then to elect whether he will go in and face the possibility of virtually incriminating himself. In the debate in 1960 members said that this was a lessening of the burden of proof, or something of that sort, and to an extent that is really what it is. It may not be strictly so, but nevertheless it puts an accused at a very serious disadvantage.

The marginal note against section 51 reads "Reasonable suspicion sufficient to set up a *prima facie* case." Once again this is a chopping back of what is the conventional manner of proof against an accused person. Here we have a reasonable suspicion being sufficient to establish a certain position or to require a defendant then to do something or to argue his way out of a charge.

Mr. Craig: You can explain further for me if you would not mind. Would this not mean that the defendant could always use this as an excuse too?

Mr. BERTRAM: I do not think I quite understand the question, but perhaps I can get over it this way: Occasions do arise when this type of provision in legislation, whilst not rejoiced in, has to be accepted because of all the difficulties at law, in regard to which, unless this type of provision is included in the Act, a conviction is not possible. In other words, the Act could never be enforced because of technical difficulties at law.

The point I want to make at this stage is that we should be very hesitant to use this type of provision. The fact is that in the Act at present are sections 50 and 51 and, as I have indicated, they cut well away from the usual procedures to be followed when a person is charged with a serious offence. It is important to note that some of the offences under this Act are regarded very seriously. For instance the marginal note to section 45 reads "Unlawful betting" and the following is an extract from that section:—

> Penalty: For a first offence a fine not less than one thousand dollars nor exceeding two thousand dollars or imprisonment for two months.

The marginal note for section 46 reads "Being in public place for betting" and the following is an extract from that section:—

> Penalty: For a first offence a fine not less than two hundred dollars nor exceeding one thousand dollars or imprisonment for two months.

So it will be seen they are regarded as very serious offences, and that is just quoting two of them; and the penalties imposed are very severe.

What I am concerned about is that having inserted the sections into the Act despite great resistance from the Opposition at the time, we now should not lightly go even further in breaking down the traditional procedures in respect of proof of offences of a criminal nature. Surely if we are going to go even further, as this Bill proposes, we should have a very excellent case made out.

In 1960 when the initial legislation was being discussed, we had had no previous experience, but now, 10 years later, we are in a position to consider what experience has taught us about the law as it has been to date. I think it was incumbent upon the Minister in the first instance to have told us and given us a case. I do not think it is sufficient for him to say that this is what we are going to do without giving any reasons, because such an attitude only tends to build up unnecessary debate. I think a *prima facie* case should have been made out, but this was not done.

Let us for a moment have a look at what this present Bill seeks to do. I have already dealt with the first amendment, which is a slight one to section 42, but let us consider the other one. What is proposed in clause 3 is to insert a new section 51A, the marginal note to which reads "Certain persons not accomplices and evidence of accomplices." So that we may understand this, I will read the first proposed new subsection as follows:—

> 51A. (1) A member of the Police Force who, and a person who, at the request of such a member, makes a bet is deemed not to be an accomplice and is not guilty of an offence where a complaint, arising out of the making of that bet, is made against another person; and the evidence of the member of the Police Force or the person who made the bet at his request is deemed, on the hearing of the complaint, not to be the evidence of an accomplice.

What it is saying is that if a member of the Police Force or a person acting at his request makes a bet or something of that sort to set up a person to be charged under, perhaps, section 45, then in normal circumstances that member of the Police Force or the person acting at his request, becomes an accomplice with the person who takes the bet, and whom we might call the principal offender under section 45. I imagine that provision has been included because it has been held in our State, as members will be aware, in Snow *v.* Cooper and other cases, that the Criminal Code applies to other Statutes.

Section 7 of the Criminal Code, in particular, ties up principal offenders with other people who have assisted or been a party thereto. What is allegedly concerning the Minister is that a policeman who goes into a T.A.B. agency to make a bet may be charged—and even a person who makes a bet on his behalf may be charged—with an offence under section 45 of the Act. On the face of it this seems to be a reasonable concern. On the 3rd September, I asked the Minister for Police the following question:—

> How many members of the Police Force or persons acting at the request of the Police Force, respectively, have been—
>
> (a) charged;
>
> (b) convicted;
>
> (c) acquitted,
>
> of offences under the Totalisator Agency Board Betting Act and Betting Control Act, respectively?

I interpolate to say that the Betting Control Act is companion legislation to the measure under discussion and, in addition, an amendment to that measure appears on the notice paper. Members will be staggered to learn that the answer given by the Minister to my question was "Nil."

In other words, the amending Bill before us seeks to give protection to a non-existent situation. The Act has been operating for 10 years and we must assume that it has been reasonably enforced. Nevertheless we are now seeking, by this amendment, to protect members of the Police Force and persons acting at their request from prosecutions which may be brought against them under this Act in consequence of their actions, when in actual fact we find that the problem simply has not arisen. No police officer has been prosecuted for any offence under any section of the Act.

To support his case, the Minister should, at least, have been able to say, "We have had experience of this and it is embarrassing the Government. It is true that we can invoke the forgiveness provision—that is, amnesty or the Queen's prerogative—but we do not want to do this. The amending Bill is the obvious remedy, because the problem is embarrassing officers of the law and members of the public who are acting at their request. After all, police officers are doing a job for us and we must protect our servants."

There is no need for protection, because not one officer has been charged in 10 years. This automatically means that none has been convicted or acquitted. It would be a different matter if the extension of the law, proposed by the Bill, was of a minor nature. However, it is generally conceded that the type of law in question should be used only in rare circumstances; and this is an addition to that law. The measure is a departure from the norm and, as I say, there is absolutely no justification for its introduction. Perhaps I shall come back to this point later. However, when the Government is prepared to meet the cost, and go to the time and trouble of introducing a Bill into the Parliament to meet a situation which simply does not exist, it is reasonable for a member to wonder, "What is the reason behind it?" He must ask himself, "If there is no possible justification for the intended amendment on the face of it, what is the reason behind the face?" As I have said, perhaps I shall come back to this point later.

As I have indicated, sections 45 and 46 are really the main sections of the Act, if any section can ever be said to be a main section. Let us look to see if any trouble has been experienced in sheeting home prosecutions under these sections.

In the last five statistical years, 26 charges have been laid under section 45. There have been 21 convictions and three acquittals, which make a total of 24. I do not know what has become of the other two; whether there is an arithmetical error or whether some charges have been withdrawn. The reason does not matter. I merely comment in passing, because the figures do not appear to tally arithmetically. Altogether 21 out of the 26 were prosecuted successfully, which is not bad prosecuting in my view. On that kind of statistical information, I wonder whether it is necessary to tighten up the provisions of the Act. Having said that, I think it is incumbent upon the Minister to say, "Whilst there has been a high percentage of successful prosecutions under section 45, other sections of the present law are letting us down and this is why we need to do something further."

I have put these statistics before the House and the onus is now back on the Minister. I hope he will make an explanation, because the measure before the House is very important.

I mentioned previously that section 46 contains an extremely heavy penalty for a first offender and the penalties become crippling with subsequent offences. I am not complaining about the size of the

penalties if they are necessary in order to enforce the law. If there is a case to show the necessity, I am completely in favour of heavy penalties. Nevertheless the heavier the penalty, the more concerned we should be to see that a defendant obtains a fair trial. It is true that some people believe that others who have a case to be considered should not be heard by letter or by word of mouth, or even know what the tribunal or who the examiner will be. However, there are not many people in that category. Most of us take the view that every person who is charged is entitled to be heard and to receive a fair trial.

Section 46, the other section to which I referred previously, presents no problem at all, because no charges have been laid. Consequently, there have been no convictions or acquittals.

In my opinion there is almost a total lack of justification for the incorporation of proposed section 51A in the Act. I hope I made myself clear when I indicated that the circumstances demand a very excellent case. There should not be just the possibility of a need, but an actual real need for this type of provision to be inserted in the parent Act. It should be inserted only if it is necessary to make the legislation work efficiently and to ensure that the law which has been enunciated by the Parliament is put into effect with reasonable efficiency.

I shall not deal further with the first subsection of proposed section 51A. I should like to refer to proposed subsection (2), which I shall read out so that members will know exactly what is being discussed. It reads—

> (2) On the hearing of a complaint for an offence against this Act the Justices hearing the complaint may, if in the circumstances of the case they think it proper to do so, convict the defendant to whom the complaint relates on the uncorroborated evidence of an accomplice; and the Justices shall not dismiss the complaint by reason only that the only evidence against the defendant is the uncorroborated evidence of an accomplice, unless they reasonably suspect the truth of such evidence.

Generally speaking, as I understand the position, courts are loath to attach too much weight to the evidence of an accomplice. I think the reason for this is that if an accomplice gives evidence he may have a very real incentive to dob his fellow offenders in so that he may let himself out. That is a natural thing to expect and it is just as natural that the courts are careful about accepting the evidence of an accomplice and warn juries to guard against accepting such evidence too lightly and to look to some other source for some corroboration of what the accomplice is saying.

That is a well worn but excellent rule but this Bill is yet another attempt to push that excellent rule away in so far as this Act is concerned. In my view no case has been made to justify that being done.

In a similar way I think new section 51A tends to break down certain existing law in respect of the admission or statement of an employee or agent of a person who has been accused. As I have intimated that, too, is yet another attempt to vary the existing law as it would apply in this and in most other cases. Once again, no case has been made out to support the proposition.

I have no objection to Bills being brought into this House from time to time, or of other matters being raised in the House in respect of the rights of an individual—whether it be a person, a company, or what have you—if they are positive measures in which one can clearly see some virtue. To the extent that Parliament will occasionally down tools to look at individual cases it is a good thing and it gives people outside, among other things, the feeling that they are just not enmeshed in the great mass or tied up in the establishment. They take the view that Parliament will occasionally listen and look to individual cases, if they are good cases.

However, I do not like the introduction of the type of measure we are discussing here, and particularly clause 3, where perhaps there is an attempt to catch one or two or three or four offenders who are slipping through the provisions of the Act. This sort of thing creates a bad precedent; and if we slide this type of provision into one Act we have to be careful that we do not slide it into other Acts. What I am saying is that I would prefer to see the occasional offender slip through this or any other Act instead of building up a bad precedent; because in the long run it will react against so many other people. Much less, of course, should we strive to catch the odd transgressor with legislation as severe as this.

Sitting suspended from 3.45 to 4.05 p.m.

Mr. BERTRAM: For reasons I think I have amply demonstrated, I question whether the provision in clause 3 is at all necessary and whether in the long run it will be worth while.

The debate on this Bill affords me a convenient opportunity to introduce a new line of thought. If members look at the notice paper they will see that I have given notice of an amendment, my intention being to add a new section 51B after the proposed new section 51A. I certainly hope the proposed new section 51A will not become law. However, whether it does become law or whether it does not,

I would hope that the proposed new section 51B standing as an amendment in my name on the notice paper will become law. My proposed new section reads as follows:—

> 51B. It shall be a defence to any charge under this Act that the defendant was for the purpose of prosecution instigated, induced or lured by a member of the police force or other person into the commission of the offence charged but which he had otherwise no intention of committing.

This will provide, as nearly as I have been able to put it into words, a defence which is known in some places in the United States of America as the defence of entrapment—sometimes referred to as "illegal entrapment." I think there was a case not so very long ago in this State where a man was operating licensed premises of one sort or another and an endeavour was made to catch him so that he could be prosecuted for selling liquor after the prescribed closing time. An agent-provocateur—I suppose we could call him that—was sent along to purchase a bottle of brandy or some such thing after the closing hour. He did not simply walk in and ask for the brandy; he told a very real tale of woe. Perhaps his tale was something along the lines that his wife was very sick and the brandy was essential for her welfare, etc. After the licensee—as I will describe him—resisted for a long time, his natural fairness and good faith prevailed and he sold the brandy to the person. He was subsequently charged.

Mr. Lapham: Was the purchaser of the liquor acting under the direction of the police?

Mr. BERTRAM: I will not say definitely that he was; but my recollection of the case is such that my answer to the question would be, "Yes."

Mr. Lapham: Would he therefore be an accomplice?

Mr. BERTRAM: Yes, I think he would normally be called an accomplice. Now, not too many people tolerate that sort of operation. Not only does the ordinary lay person think that is a rather unfair type of practice, but also none other than Lord Goddard, Chief Justice of the King's Bench Division, does not approve of it. I propose to refer briefly to a case put before Lord Goddard whilst he was sitting in the King's Bench Division back in 1947.

A man had been convicted of an offence and was appealing against his conviction. Information was preferred against the appellant by an inspector of police named Peek. The information was that the appellant had frequented a public house on behalf of one William Wragg for the purpose of receiving bets. In his remarks, Lord Chief Justice Goddard had this to say—

> It appears that a police constable named Allen visited licensed premises known as the Chesterfield Arms, Derby, on a day in Jan., 1947, and saw two men writing on slips of paper on the bar counter. They handed the slips to the appellant with money, and the appellant used the words: "I hope it wins." Allen, who was in plain clothes, told the appellant that he had come from Stoke-on-Trent to see the football match between his team and the Derby County football team (which was, in fact, untrue)—

It is very important to note that, I think. Continuing—

> —and he offered to bet with the appellant a pint of beer that the Stoke team would win. The appellant agreed. Then Allen asked the appellant if he could make a bet on a horse in a race taking place that day. The appellant agreed, and Allen thereupon made a bet with him, writing out a slip with the name of the horse and handing it to the appellant with 2s. 0d. cash. On the following Tuesday, Allen again went to the Chesterfield Arms with another police constable in plain clothes. The appellant seems to have been on that occasion reluctant to bet. I suppose he wondered why it was that a man who said he had come to see Stoke play was still in Derby on Tuesday. Allen, however, told him he had been staying the week-end with friends at Derby. Allen again made out a betting slip which he handed to the appellant with 2s. 0d. in money. The justices expressly found that the appellant was reluctant to take the bet, but that he did so eventually. He was accosted by the police officers after leaving the Chesterfield Arms, and they found on him a bag containing betting slips and a certain sum of money.

Without referring to other aspects of the appeal, but addressing himself to the facts I have just related, Lord Goddard said—and I would like members to take particular note of this—

> There is another point of much greater public importance.

He had dealt with the earlier part of the appeal and had disposed of that. Continuing—

> The court observes with concern and disapproval the fact that the police authority at Derby thought it right to send a police officer into a public house to commit an offence. It cannot be too strongly emphasised that, unless an Act of Parliament provides

> for such a course of conduct—and I do not think any Act of Parliament does so provide—it is wholly wrong for a police officer or any other person to be sent to commit an offence in order that an offence by another person may be detected. It is not right that police authorities should instruct, allow, or permit detective officers or plain clothes constables to commit an offence so that they can prove that another person has committed an offence. It would have been just as much an offence for the police constable in the present case to make the bet in the public house as it would have been for the bookmaker to take the bet if in doing so he had committed an offence.

I would also like members to take particular note of what the Lord Chief Justice said in his concluding remarks, which are as follows:—

> I hope the day is far distant when it will become a common practice in this country for police officers to be told to commit an offence themselves for the purpose of getting evidence against someone; if they do commit offences they ought also to be convicted and punished, for the order of their superior would afford no defence.

Lord Chief Justice Goddard said he did not know of any Statute that affected the position in that country and, so far as I am aware, the defence of entrapment —as we shall call it for the purpose of this exercise—does not apply to people in Western Australia. As I said before, I think we should give serious consideration to introducing it as a defence in this State, because we have not yet reached the stage where we should set traps for people. It is not an action that is accepted by the public, generally, and it is frowned upon in a very real way by legal people of consequence. Also, it is not the sort of practice which causes the law to be accepted in a way it certainly must be by society.

So I think it is now opportune for us to show to the public that we think that not only should this practice be frowned upon, but that by statutory enactment we should provide that these acts shall not be done. If there is a real desire to convict a person or persons of this act or offence, there will also be a real inducement to bend over backwards to obtain a conviction; a temptation, perhaps, to set a trap or two to get it. It may be said that this is out of the question; that it is not the intention to trap anybody, and I most certainly hope that this is so. If it is so, then the provision I hope to insert in the legislation will indicate that we take a dim view of this action and we will not allow it, and so it will be a good defence. But if any person or police officer seeks to gain a conviction by the practice of entrapment, no-one will be disadvantaged. Therefore we have made ourselves clear on the one hand and, on the other, we have provided a defence for an honest person. So we have a win in both worlds, which is a magnificient situation.

In some of the United States of America —I do not know how many—the provision relating to entrapment is embodied in the law. One of two publications in the United States of America is what is known as *Corpus Juris Secundum*, which is somewhat analagous to the publication *Halsbury*—more familiar to the people in the British Commonwealth of Nations—and which, in a sense, is, I suppose, the bible of law. On page 137 of the publication *Corpus Juris Secundum*, the following appears:—

> Entrapment and Instigation
>
> Entrapment is commonly, although not universally, recognized as a valid defense under certain circumstances, but it is a positive defense which necessarily assumes that the act charged was committed.
>
> While in some states—

The reference there is to the United States. Continuing—

> —entrapment, defined infra, is not recognized as a defense, it is more commonly held that entrapment is a valid defense available to a person charged with the commission of a public offence under certain circumstances.

Under the heading "Basis or reason for defense" we find the following:—

> The basis or reason for recognizing entrapment as a defense has been variously stated to be that the function of law enforcement is the prevention of crime and the apprehension of criminals, and does not include the manufacture of crime that, by analogy to the equitable doctrine of estoppel, the government cannot be permitted to contend that accused is guilty of a crime, where the government officials are the instigators of his conduct, and that, where the act is committed at the sole instigation of a government agent, the public injury is not the direct result of accused's purpose. It has also been held that entrapment is recognized as a valid defense because it is unworthy that the government should play such an ignoble part, and out of the courts' regard for their own dignity and in the exercise of their duty to formulate and apply proper standards for the judicial enforcement of criminal law.

If I might interpolate, it does seem to me that those are excellent reasons in support of the amendments I have on the notice paper which I feel we should put into statutory form in this Act. The report continues—

> Commission of act charged assumed; inconsistency with other defenses. Entrapment is a positive defense, the invocation of which necessarily assumes that the act charged was committed.

It seems to me that this means that a man might say, "Yes I have committed the offence, technically"—in this case against section 46 or whatever it might be—"but I committed it in these circumstances. It was certainly not my intention to commit the offence. I was lured, persuaded, coerced, cajoled into doing something which did not originate in my mind."

On page 138 of the same publication, under the heading, "What Constitutes Entrapment" we find the following—and it is from this that I have drawn my proposed amendment:—

> One who is instigated, induced, or lured by an officer of the law or other person, for the purpose of prosecution, into the commission of a crime which he had otherwise no intention of committing may avail himself of the defense of "entrapment." Such defense is not available, however, where the officer or other person acted in good faith for the purpose of discovering or detecting a crime and merely furnished the opportunity for the commission thereof by one who had the requisite criminal intent.

It can be seen, therefore, that the defence of entrapment does not in any way constitute an added difficulty upon the prosecution. So long as the prosecution goes about its investigation and gets its evidence in an ordinary routine way there is no impediment placed upon it.

The defence of illegal entrapment only avails where there has been a positive attempt on the part of the police, or whoever it is, to set up a trap, to catch somebody, or to ensnare. In a sense the belief in America is that if one goes out of one's way to cause somebody to do something, or to commit a crime, which that person would not otherwise have committed, then one should not be able to say, "Now that you have done it, we are going to prosecute and convict you for it."

That is the reason for the second amendment which I have on the notice paper. I think it is a very worth-while amendment. It is, I suppose, a little unusual. I certainly did not propose it on the basis that because it is done in America we should do it here. I will leave that sort of thinking for my opponents in the Federal sphere—they can invoke such thoughts as "all the way with L.B.J." which, I am sure, are obnoxious to most Australians. I invoke the principle because it is a good one and I feel we should put it to work.

Debate adjourned, on motion by Mr. Lapham.

House adjourned at 4.26 p.m.

Legislative Council

Tuesday, the 15th September, 1970

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

QUESTIONS (8): ON NOTICE

1. TOWN PLANNING

Herdsman Lake Area

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

(1) Is it proposed to use any portion of Herdsman Lake locality for sanitary landfill?

(2) If the answer to (1) is "Yes"—
  (a) where will the site be located; and
  (b) is it proposed to construct a sand bund to contain pollution?

(3) What evidence is there that a sand bund will prevent contamination of adjoining waters from sanitary landfill?

(4) (a) Have peat deposits on Herdsman Lake been measured;
  (b) what is their maximum thickness; and
  (c) what is their average thickness?

(5) (a) Do the Shire of Perth by-laws provide for construction on piles where peat is present:
  (b) if "No" is it proposed to introduce such a by-law?

(6) Is it permissible in the Shire of Perth to construct on sanitary landfill for—
  (a) residential; and
  (b) other purposes?

The Hon. L. A. LOGAN replied:

(1) Yes.

(2) (a) Approximately 60 acres in the South-West section of the lake adjacent to Cromarty Road.
  (b) Yes.