Legislative Council

Thursday, the 17th May, 1979

The PRESIDENT (the Hon. Clive Griffiths) took the Chair at 2.30 p.m., and read prayers.

STATE FINANCE: INCOME TAX

State: Petition

THE HON. LYLA ELLIOTT (North-East Metropolitan) [2.33 p.m.]: I wish to present a petition from some citizens of Western Australia relating to the question of double income tax. The petition reads as follows—

> The Honourable the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> WE, the undersigned citizens of Western Australia:
>
> 1. Recognize that a system of "Double Income Tax" provided for in (State Income Tax Enabling Legislation) will cause West Australians to be the highest taxed citizens in Australia.
> 2. Are aware that all other States of Australia have rejected the system of "Double Income Tax".
> 3. Call upon the State Government to abandon its plans to introduce a new and additional tax on people's incomes.
>
> Your Petitioners therefore humbly pray that you will give this matter earnest consideration and your Petitioners, as in duty bound, will ever pray.

The petition contains 245 signatures, it bears the certificate of the Clerk, and it is in conformity with the Standing Orders of the Legislative Council. I move—

> That the petition be received, read, and ordered to lie upon the Table of the House.

Question put and passed.

The petition was tabled (see paper No. 186).

QUESTIONS

Questions were taken at this stage.

BILLS (4): THIRD READING

1. Public Notaries Bill.
2. Coroners Act Amendment Bill.
3. Registration of Births, Deaths and Marriages Act Amendment Bill.
4. Anglican Church of Australia (Swanleigh land and endowments) Bill.

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

ACTS AMENDMENT AND REPEAL (DISQUALIFICATION FOR PARLIAMENT) BILL

Second Reading

THE HON. I. G. MEDCALF (Metropolitan—Attorney General) [2.42 p.m.]: I move—

> That the Bill be now read a second time.

For many years the law which has the effect of disqualifying for Parliament persons who hold offices of profit under the Crown, or are parties to contracts made with the Crown, has been in an unsatisfactory state.

What we have is the inherited former English law restated in our Constitution Act and Constitution Acts Amendment Act.

The law in England developed over the centuries in a technical and rather haphazard way, with the result that the area of disqualification came to include persons whose relationship with the Crown was such that they could not, on any realistic view of the matter, be said to have been made subject to Crown influence at all. The law also became so ill defined that persons could not direct their conduct with any certainty.

It is possible that some members of the State Parliament may have breached the constitutional provisions in the past without their being aware that they may have done so. This is not a proper or healthy situation.

Now is the right time to put this matter in order, when there is no case involving any member in mind, and it can be considered free of any personal interest or bias.

Things were put right in the United Kingdom in 1957 by the enactment of the House of Commons Disqualification Act. The basic approach of this legislation was to provide that a contract with the Crown should no longer be a reason for disqualification in any circumstances, and that the only offices of profit which would disqualify were those set out in a schedule to the Act.

It then became possible for any person to ascertain whether or not the acceptance of any particular office would prevent him or her sitting

in the House of Commons. The 1957 Act has now been replaced by a 1975 Act of the same name but the general approach is the same.

In May, 1969, the State Government asked the Law Reform Committee to examine the State laws and report as to whether or not any alteration was desirable. The committee delivered its report in March, 1971, and that report includes a statement of the purposes of the relevant law and an explanation of its present defects.

The basic recommendation was for an Act like that in the United Kingdom, abolishing contract as a ground of disqualification and limiting the disqualifying offices of profit to those actually specified in the legislation.

However, in some incidental matters, the recommendations differed from and went beyond what was provided for in the House of Commons Disqualification Act, 1957.

In considering the question of legislation to cover this subject, the Government has been mindful of the Law Reform Committee's recommendations and the Bill now before the House reflects the detailed examination made by the committee on this area of the law.

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

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

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

Section 32 of the Constitution Acts Amendment Act provides that any person who directly or indirectly, himself or by any person whomsoever in trust for him or for his use or benefit or on his account, undertakes executes holds or enjoys in whole or in part any contract agreement or commission made or entered into with, under or from any person whomsoever for or on account of the Government of the State, shall be disqualified from membership of the Legislature. There are all sorts of qualifications and exceptions.

The removal of section 32 was recommended in the report of the Law Reform Committee. The committee was of the opinion that the disqualifying provisions relating to government contracts should be repealed, as has been done in the United Kingdom.

The 1956 Select Committee of the House of Commons pointed out the extreme difficulty of drafting satisfactory provisions to cover all the possible contractual arrangements in which a member may theoretically become subject to the influence of the Government.

It also pointed out that the House had inherent power to regulate the behaviour of its members, and any member who abused the position could be dealt with by the House itself by way of contempt proceedings.

The Parliamentary Privileges Act, 1891, of this State gives both Houses equally wide power. An additional safeguard exists in sections 60 and 61 of the Criminal Code relating to the bribing of members of Parliament. Also relevant, is Standing Order No. 195 of the Legislative Assembly which prohibits a member from voting on a question in which he has a pecuniary interest. The Legislative Council, if it wished, could adopt a similar type of standing order.

The Bill provides for the repeal of section 32—clause 9—in line with the Law Reform Committee proposal and following the United Kingdom practice.

Clause 10 states that, except as provided, the election of a person as a member of the Legislative Council or Legislative Assembly shall not be rendered void nor shall such person's seat become vacant by reason of his holding any office of profit from or under the Crown.

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

Clause 10 thus establishes the principle which is then modified by important safeguards in the succeeding clauses.

Clause 11 provides that a person is disqualified from membership if he holds any office specified in part 1 of the fifth schedule or is a member of the Commonwealth or another State or Territory Legislature. Likewise, a member of one House of this Parliament is disqualified from membership

of the other. The offices specified in part 1 of the schedule are those of judges and others holding judicial, quasi-judicial, or arbitral positions.

Persons coming within the terms of clause 11 cannot become members of Parliament whilst holding their particular offices. If they desire to stand for Parliament, they must resign their offices before becoming members.

Clause 14 is distinguished from clause 11. Clause 14 provides that if a person holds one of the offices specified in part 2 of the fifth schedule or is a member of any commission, council, board, committee, authority, trust or other body specified in part 3 of the fifth schedule and such person is elected to Parliament, he shall on taking the oath as a member of Parliament, automatically vacate the office, place or position referred to in either of such parts. Part 2 includes ordinary members of workers' compensation boards and various arbitral bodies—division 1 of part 2—and various State offices whether statutory or in the Public Service; also offices held in State instrumentalities—division 2 of part 2.

This part includes the Solicitor General, Commissioner of Main Roads, Public Service heads, school teachers and other government employees generally.

All such persons would, if elected to Parliament, automatically vacate their positions on taking the oath of office as a member of Parliament. Part 3 includes commissions, councils, boards and other bodies—where some or all of the members are Government appointees—membership of which will be automatically vacated on the member of Parliament taking his oath of office.

A sitting member would immediately lose his seat if he became the holder of any office or place referred to in parts 2 or 3—clause 15. There are, however, safeguards in clause 15 in cases of error, oversight, or misunderstanding where a member of Parliament becomes the holder of one of the places referred to. Parliament may, if the member resigns the office or place, direct that the breach be disregarded—section 39(2).

In case the vacancy should occur during a parliamentary recess, subsection (3) of proposed section 39 will prevent immediate action being taken to fill the vacancy until Parliament has had an opportunity to consider the matter.

Bodies have been included in Part 3 on the criterion of whether some or all of their members are Government or ministerial appointees.

No account has been taken of whether or not members receive remuneration, allowances, or expenses, except in the case of the boards of educational or cultural bodies where the empowering legislation does not authorise members receiving remuneration or sitting fees as distinct from reimbursement of expenses.

It was felt by the Government that to aid public and parliamentary scrutiny of the Bill the list of bodies in part 3 should be as comprehensive as possible. However, if a case can be made for the deletion of a body from the list the Government will be quite prepared to give consideration to that action during the passage of the legislation, subject to a consideration by Parliament of proper principles.

Apart from the aspect of remuneration, another factor is the time which service on such bodies may require.

The section does not apply to a Minister of the Crown who, by virtue of his office but only whilst holding ministerial office, is also a member of a board or other body.

The proposed section 36 in clause 13 applies to persons in the service of the Commonwealth or another State or a Territory and members of commissions, boards and other bodies appointed by the Commonwealth or another State or Territory.

Any such person elected to Parliament must first resign his other position before taking his oath of office and if he does not do so within 21 sitting days his seat shall become vacant.

Because of this all-embracing coverage, subsection (2) has been included to enable particular offices to be exempted in appropriate cases by Order in Council. Such an order would be subject to disallowance by Parliament in the same way as a regulation.

Honourable members will note that the new section 36 will apply to members of the armed forces, other than citizen and reserve members. This contrasts with existing sections 37 and 38 of the Constitution Acts Amendment Act which exempt all members of the sea and land forces from disqualification.

This alteration in the law was recommended by the Law Reform Committee in its report and, in essence, means that if a person to whom the section applies is elected to Parliament the election is not void, but the person will be unable to take his seat until he resigns from or otherwise vacates the office or place in question.

The present section 39 of the Constitution Acts Amendment Act enables any person to recover a penalty of $400 from a person who sits or votes as a member of Parliament when disqualified from doing so. The Law Reform Committee

recommended that this provision should be removed and that the matter be left to be dealt with under Parliament's ordinary disciplinary powers together with a further provision of the kind set out in clause 19. The committee recommendation has been adopted.

Clause 19 gives effect to the recommendation of the committee that the law empower any person to apply to the Supreme Court for a declaration as to whether or not a member of Parliament has vacated his office or his seat. To discourage groundless arguments, the applicant would be required to give security for costs.

The existing section 40 of the Constitution Acts Amendment Act, which provides that the presence of unqualified persons shall not invalidate proceedings, is to be expanded and reworded to make it consistent with the new provisions. In any event, it would be expected that the greater precision of the new provisions regarding disqualification would greatly reduce the possibility of an unqualified person sitting and voting in Parliament.

It is also proposed to repeal section 41A of the Constitution Acts Amendment Act which was designed to protect members from jeopardising their seats by serving as members of parliamentary committees or Royal Commissions, as Honorary Ministers, or as representatives of Parliament or of the Commonwealth Parliamentary Association. With the disappearance of the "office of profit" doctrine, this protection is no longer needed.

The office of "Honorary Minister" is at present given statutory recognition indirectly by the existing section 41A. It is proposed that this section should be repealed, but it seems appropriate that statutory reference to the office should be retained.

The proposed section 44A would specifically allow the appointment of Honorary Ministers but would prevent them from being paid more than an allowance for expenses incurred.

The existing section 42—Responsible Minister changing his office not to vacate seat—is linked to the "office of profit" doctrine and, of course, will no longer be required.

The proposed section 42 will enable additions and alterations to be made to, and deletions to be made from, the lists of offices and bodies contained in the fifth schedule by Order in Council.

These orders will be subject to disallowance by Parliament. Where an order adds the name of an office or body to the schedule, the operation of the order will be suspended for 30 days to enable any member of Parliament, who holds such an office or is a member of such a body, to resign his office or membership and thus avoid losing his seat.

Parts III to IX of the Bill deal with related amendments to the Electoral Act, Alcohol and Drug Authority Act, National Parks Authority Act, Waterways Conservation Act, Cancer Council of Western Australia Act, Constitutional Convention Act and Salaries and Allowances Act.

Most of these amendments have been dealt with earlier, but some have not, and I will conclude my remarks by referring to these briefly.

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

The effect of the amendments to the National Parks Authority Act and the Waterways Conservation Act will be that members of Parliament will not be able to be members of the bodies constituted under those Acts as those bodies are included in the proposed fifth schedule.

The Constitutional Convention Act was passed to protect members from forfeiting their seats under the "office of profit" doctrine as a result of receiving certain allowances in respect of attendance at meetings. Since the "office of profit" doctrine is to be done away with, there will be no further need for the Act.

The amendments to the Salaries and Allowances Tribunal Act will now include the traditional definition of "Minister of the Crown" and make provision to prevent a newly elected member of Parliament from receiving any remuneration until that person vacates any offices or places mentioned in clauses 13 and 14.

The final amendment to the Salaries and Allowances Act aims to restrict the payment of remuneration to members who carry out duties on behalf of the Government or a Minister. Such remuneration will not be payable unless Executive Council has approved the carrying out of the duties.

It is more than eight years since the Western Australian Law Reform Committee reported on amendments considered desirable to some old constitutional doctrines abolished by the mother of Parliaments more than 20 years ago.

The Government considers that these matters are long overdue for reform in our own Constitution. The Government appreciates, however, that members of Parliament and members of the public are entitled to a full and careful consideration of the proposals.

That is why the Bill has been brought in, together with full explanatory clause notes, at this time, so as to enable ample time for such consideration.

The Bill should perhaps be described as a parliamentary Bill, and I commend it to the House on that basis.

Debate adjourned, on motion by the Hon. R. F. Claughton.

Sitting suspended from 3.00 to 3.10 p.m.

ACTS AMENDMENT (MASTER, SUPREME COURT) BILL

Second Reading

THE HON. I. G. MEDCALF (Metropolitan—Attorney General) [3.10 p.m.]: I move—

That the Bill be now read a second time.

The Master of the Supreme Court is a public servant responsible for the administrative functions of the Supreme Court. He is assisted by three deputy masters who are all legally qualified, but neither the master nor the deputies are members of the Supreme Court. The master and his deputies are administrative officers.

There is a steadily increasing infusion of Federal jurisdiction into the judicial work of the Supreme Court and this is likely to increase still further as the scope of the Commonwealth law extends and the State Supreme Court is invested with Federal jurisdiction in respect of it.

The Government believes that in the interests of public convenience and the economical management of the courts, the vesting of Federal jurisdiction in the State courts is a trend to be encouraged, but at the same time, it presents a problem when the jurisdiction of the Supreme Court is being exercised by the master, as that office is presently constituted. Under the Commonwealth Constitution all Federal jurisdiction must be exercised by the court through its judicial and not administrative officers.

This problem can be overcome if the Supreme Court can be so constituted that it includes the master. He would then be in the position where he could exercise the duties of his office without regard to whether State or Federal jurisdiction was involved.

Victoria took this step in 1975 and it is considered that that example should be followed.

The purpose of this Bill can be stated in brief terms as reconstituting the Supreme Court so that it includes the master. This would have the effect of making him a judicial officer.

The amendment proposed would mean that the judges of the Supreme Court would be relieved from more or less all the procedural chamber work, which they currently undertake. Work which is not of this kind would still be dealt with by judges as part of their ordinary civil lists.

Duties of an administrative nature, probate work, taxation of costs and passing of accounts would be assigned to the principal registrar or one of the other registrars.

In making the master a constituent member of the Supreme Court, it has been necessary to include provisions covering the qualifications required for such an appointment, together with the conditions of service applying to that office. These various aspects are covered by the proposed sections 11A and 11B in clause 6.

If the present occupant of the position of master is appointed to that position, superannuation will continue as if he were a public servant, but it should be noted that if at some future time an appointee is not a public servant prior to his appointment, he would be entitled to pension rights in the same manner as a judge.

Provisions are also included to cover the retirement of the master at the age of 65, but this will not prevent him from completing proceedings which are outstanding at the time he turns 65 years of age or the time at which he elects to retire if this is earlier.

The proposed section 11D covers the matter of temporary appointments of acting masters during the absence or indisposition of the person holding the office of master. It has also been considered desirable to include a provision which will enable acting appointments to be made on either a full or part-time basis. This will enable the proceedings to be heard and completed before the person who held the office as an acting master.

As members will appreciate, several Acts of Parliament contain references to the master, and because of the proposal to make him a member of the Supreme Court some reorganisation of duties between the master and the registrars has been necessary.

Certain of the master's present functions relating to the legislation listed in the proposed section 11E(2) would still remain within his jurisdiction.

The principal amendments are to be made in the Supreme Court Act. However, certain other references to the master in the following Acts are to be amended and the functions dealt with by the principal registrar or the registrars as the case may be—

The Newspaper Libel and Registration Act
The Adoption of Children Act
The Arbitration Act
The Public Works Act
The Justices Act
The Administration Act
The Mining Act
The Evidence Act
The Electoral Act
The Workers' Compensation Act
The Public Trustee Act
The Companies Act
The Mental Health Act
The Charitable Trusts Act
The Recording of Evidence Act
The Criminal Code
The Legal Practitioners Act.

The details of the amendments to those Acts are contained in parts II to XVII of the Bill and relate solely to the reorganisation of duties.

As the result of his appointment as a member of the Supreme Court, the master will be entitled to perform certain functions, and the rearrangement of duties has necessitated the amendments contained in clauses 7 to 19 inclusive.

Some of these amendments also relate to functions which were formerly performed by the master and which will now be handled either by the master or a registrar.

The amendment in clause 16 to repeal and re-enact section 55 of the Supreme Court Act deals with the establishment of the offices of the principal registrar and such other registrars as may be required. These officers are currently public servants subject to the Public Service Act and they will remain so.

As the master will become a constituent member of the Supreme Court, it is no longer appropriate for the persons holding the office of deputy master to be known by that name, and it is proposed that there will be a principal registrar and other registrars as may be required.

This will ensure that there is a distinction between the master in his judicial role and that of the registrars who are responsible for the execution and administration of court matters.

In closing, I would emphasise that the master in this new role will not be a Supreme Court judge. His principal function will be to relieve the judges of work which is mainly procedural in character and which they currently undertake, and so enable them to concentrate on the contentious matters which arise and require the attention of a judge.

I believe the proposals in this Bill represent an important reform in the organisation of the Supreme Court, the beneficial effects of which will be felt for many years to come.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. D. K. Dans (Leader of the Opposition).

ADJOURNMENT OF THE HOUSE: SPECIAL

THE HON. G. C. MacKINNON (South-West—Leader of the House) [3.15 p.m.]: I move—

That the House at its rising adjourn until a date to be fixed by the President.

Question put and passed.

ADJOURNMENT OF THE HOUSE

THE HON. G. C. MacKINNON (South-West—Leader of the House) [3.16 p.m.]: I move—

That the House do now adjourn.

Victorian Legislative Council: Statement by Victorian Minister

THE HON. R. G. PIKE (North Metropolitan) [3.17 p.m.]: I refer briefly to comments made by the Hon. Lyla Elliott in this place in relation to the recent Victorian elections, and a statement made by the Deputy Leader of the Liberal Party in the Victorian Legislative Council regarding the upper House rejecting socialist legislation and supply.

The words used by the honourable member when quoting Mr Crozier were—

> ... the Liberals should use their numbers in the Legislative Council to withold supply in order to sack the Government. He also said he believed he had the support of most of the Parliamentary Liberal Party.

The Hon. Lyla Elliott then said—

> The Liberals have made it quite clear their policy now is that they are not prepared to allow the people of this nation to elect Labor Governments.

By this statement the honourable member indicated that Liberal members of Parliament supported Mr Crozier.

In reply, I pointed out that Mr Wilkes had said—

> Vote Labor in this election; we will not be able to nationalise or socialise anything because the Liberals will have the numbers in the upper House.

I also pointed out that the member opposite had absolutely no foundation for making the unfair and untrue allegation that the statement made by that Minister in the upper House in Victoria was, in fact, supported by the Liberal members in the upper House in Victoria, and that Mr Crozier did not have the backing of fellow members.

I now quote from a report published today dealing with the Victorian Government, which illustrates that Mr Crozier's view was merely his own. The report states—

> . . . the State Minister for Development Mr Digby Crozier, was dropped from his position as Deputy Government Leader of the Legislative Council.
>
> Mr Crozier's former position in the Upper House is the fourth most important position in the Government. He was replaced by the Attorney-General, Mr Haddon Storey.
>
> Many backbenchers were upset at remarks made by Mr Crozier only days before the election that Government members in the Upper House should use their numbers to block supply to a Labor Government . . .

Without further embellishment, these facts reveal the political mendacity of the Labor Party. It will continue to haemorrhage as long as it is guilty of this type of misrepresentation.

In regard to the pallid performance of the honourable member, I really question whether her sincerity in this matter is matched by her grasp of the situation.

Question put and passed.

House adjourned at 3.21 p.m.

QUESTION WITHOUT NOTICE

MINING: COAL

Lake Muir Area

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

I advise that I have given prior notice of my question which is as follows—

(1) What companies, if any, have applied for or hold leases for coalmining covering the wetlands to the east of Lake Muir and the area of its western shore?

(2) What Government departments, if any, have produced a set of conditions whereby the mining might take place without harming the long-term use of the wetlands by water fowl?

(3) Will the Minister table the conditions?

The Hon. I. G. MEDCALF replied:

(1) to (3) Considerable research is necessary and the honourable member will be advised as soon as this information is available.

QUESTIONS ON NOTICE

TRAFFIC: PEDESTRIAN CROSSING

School: Helena Valley

111. The Hon. LYLA ELLIOTT, to the Leader of the House representing the Minister for Police and Traffic:

Further to my letter of the 28th February, 1978, requesting urgent attention for the provision of a guard controlled crosswalk for children attending the Helena Valley Primary School, and the Minister's reply of the 6th April, 1978, advising that the Schools Crossing Committee had decided the crossing is unwarranted, and as I am told there have been a number of accidents involving children and motor vehicles outside the school, will the Minister now order the installation of this crossing before a child is killed or seriously injured?

The Hon. G. C. MacKINNON replied:

The Minister for Police has advised that he is not prepared to overrule the unanimous decision of the Schools Crossing Committee which is specially formed for the purpose of deciding these matters. There would be no point in having such a committee if its recommendations are to be disregarded. However, this particular location will be further examined after the school holidays. The honourable member may care to confirm the advice she has received concerning the accidents alleged to have occurred outside this school.

FUEL: PETROL

Concessions for Unemployed People

112. The Hon. R. F. Claughton (for the Hon. R. HETHERINGTON), to the Attorney General representing the Minister for Fuel and Energy:

Bearing in mind the increasing price of motor fuel, and the desirability of assisting those seeking employment through their own initiative, will the Minister consider what concessions might be made to the unemployed who find it necessary to use private motor vehicles when seeking employment?

The Hon. I. G. MEDCALF replied:

A State Minister for Fuel and Energy has no influence on the price of motor fuel which is dependent on Commonwealth Government policy and rules on pricing and excise taxation.