Legislative Council

Tuesday, 22 September 1981

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

QUESTIONS

Questions were taken at this stage.

MISUSE OF DRUGS BILL

Second Reading

Debate resumed from 17 September.

THE HON. R. J. L. WILLIAMS (Metropolitan) [4.41 p.m.]: It gives me no pleasure to rise in this House to speak yet again upon the subject of drugs—all drugs. Let me make my position abundantly clear before I start. I am not a Queen's Counsel; I am not a legally trained person; but I will not have the division of drugs into hard drugs, soft drugs, and alcohol. They are all drugs.

I commend to the House the speech made on this Bill last Thursday by the learned member opposite, the Hon. Howard Olney. It was typically legal in that it ignored all the main possibilities of the Bill and concentrated upon the case of codification which Mr Olney put up. That is a good defence ploy, because it does not exist. He expounded upon that for an hour and a half, without let or hindrance.

I have said that I want to make my position understandably clear to this House and to the community. I have a fair backing for my stand in not wishing to divide drugs into anything but drugs.

Although it was not said in relation to this Bill, I attribute my next remark to the Hon. Robert Hetherington. All this mismash about drugs is so much stupidity. Drugs are drugs, including alcohol—and one cannot mention the subject in this community without incurring some wrath. That is what it is all about.

I propose to demolish, sensibly and sanely, the arguments put forward in the very learned speech by the Hon. Howard Olney. First of all, let us sheet home the responsibility for abuse of drugs. Generally speaking, if the abuse of drugs is prevalent amongst people under the age of 21, this is due entirely to the failure of our social system. Put another way, it is parental neglect—sheer and absolute parental abdication of responsibility.

I do not want to put too much emphasis on that, as it might cloud later sections of the argument. It is astonishing to find that of those people who have been to the Alcohol and Drug Authority for treatment for drugs those who are 20 years or younger represent 0.0123 per cent. To put it another way, if the calculators I have are not wrong, 14 people out of 113 924 are under the age of 20. There is a marked difference when one comes to the 30-39 group and the 40-49 group. Members can check this information in the annual report of the Alcohol and Drug Authority tabled in this House. The facts are there for them to read.

Those figures relate to the reported people only. In trying to confirm them, let us consider the Williams Royal Commission into drugs. Its report had nothing whatsoever to do with me. My Royal Commission was in 1972-73, and the report I presented was a far better one than the one presented by the Williams Royal Commission although the Federal Royal Commission cost 500 times more than ours did.

However, the two Royal Commissions came to the same conclusion—the responsibility for drug addiction rests upon the parents in the community. The parents either have abdicated or have not even accepted their responsibilities to their children.

Do not anybody attack me on the socioeconomic stratas of our society, and where the drug addiction occurs. Most often we find that it occurs in the so-called higher socioeconomic groups—neglect by wealth. That is being said by a "Liberal".

When one looks at the whole problem of drugs, and not in a strict legalistic fashion, one could become emotional. One could become emotional every time somebody dies and one witnesses it. That is an emotional experience. Like the Hon. Howard Olney, I am affected by emotion. Certain speeches he has made in this House suggest to me that he is affected by the same emotion called love and charity towards one's fellow human beings.

It is a chastening thought when one knows that a life—a young life in particular—has been cut off by a drug of addiction. Yet I find in the opening remarks of the Hon. Howard Olney that his comments are true up to a point. I will not call them half-truths, because in calling them half-truths I would indicate that half are lies. However, it is not exactly accurate for him to say that the Government is concerned only with drugs of addiction. The Government is concerned with all drugs. Every Government is concerned with drugs of all sorts. Members should not forget that my Royal Commission sat under a Labor

Government. In his speech last week, the Hon. Howard Olney said—

> One thing the Government does not appear to have appreciated is the distinction between drug addicts and drug users.

Perhaps the Hon. Howard Olney has not read the Alcohol and Drug Authority Act properly. Certainly it distinguishes between users and addicts. The addict is the person who cannot manage for a part of the day, or a part of a week, or a part of a month without the use of the drug related to his addiction.

The Hon. H. W. Olney used a very neat argument, and I commend him for it. I wish I had attended a law school and been taught to argue in such a way. The Hon. Howard Olney said, "It is completely wrong to equate drug users with drug addicts in the same way as it is completely wrong to call alcoholics all those who consume alcohol". I have news for the Hon. Howard Olney: His statement is not correct. When people take drugs, they take them to get "stoned". Let us face the fact that getting "high" is what it is all about. However, when people have an alcoholic drink, they do not necessarily do so to get drunk. This is where the distinction lies. We have used alcohol since we cropped grain.

The Hon. H. W. Gayfer: After.

The Hon. R. J. L. WILLIAMS: In our civilisation, we have used alcohol since we cropped grain.

The Hon. J. M. Berinson: Perhaps you should say, "Since after we cropped grain".

The Hon. R. J. L. WILLIAMS: I accept the wording suggested by the Hon. Joe Berinson.

The Hon. D. J. Wordsworth: What about pumpkin wine?

The Hon. R. J. L. WILLIAMS: Alcohol was produced when grain went rotten and fermented. Society did not have CBH in those days to move the grain quickly!

However, the people with whom I mix and who have a drink do not say, "Let us go out and get "stoned". We want to forget something". People may say that individually, but they do not say it socially. Indeed, they may be running away from something—who knows—but do not let us have that sort of sophistry with this type of definition. When people take drugs, they take them for certain purposes.

I am amazed when I read the dust which has been thrown about in this debate—indeed, around the nation, if members like—in Parliament. We heard accusations and counter-accusations, and then the Opposition came into the Chamber and said, "After all, the Government introduced this Bill on an emotive basis". It is clear that, when the Opposition does not have a feather with which to fly, it stirs up the emotions of people by using half-truths and untruths. We have seen this sort of situation arise when debating other Bills in this place. Opposition members get people into such a state that they take the sort of action to which I will now refer: A woman telephoned me in tears, because of the death of a member of her family and said this Government would do a terrible thing to future generations by means of this legislation. Such people ask why the Government cannot do something to stop the police hounding their loved ones. I have answered such people in the following manner: "Look at yourselves; what are you crying for now? Are you crying because you have lost a loved one?" Indeed, that is anti-Christian behaviour anyway, but we all do it. I then go on to say, "Are you crying because of your own guilt—the guilt that you did not give that child the care, the love, and the proper affection it needed during its formative years?"

Members should cast their eyes around the House and ask themselves how many of them have had problems with their children; but how many of those children have in fact resorted to taking drugs? One member of this House was honest enough to tell us that, had he had that problem with his children he would not admit it anyway and neither would I. However, he described the activities of one of his children who wanted to enjoy herself legally within society, and she did so.

I have been associated with drug users and abusers and also with alcohol users and abusers for a number of years. Indeed, I have been associated with alcohol users for many years and also with alcohol abusers, who have not recognised their position, for the same length of time. There are members of this House who are alcohol tolerant and there are those who are not.

It is quite wrong that, within the community of Western Australia, the Police Force is vilified for the way in which it polices the use of cannabis. I am aware from information I have received from parents and certain drug users that the "puffers" of cannabis—those who are experimenting with it—when apprehended by anybody in authority, be it the drug squad or anyone else, are taken home and presented to their parents on the basis of what they have done. The situation is the same as the old "stealing apples" situation we used to have.

I challenge any member of the House to present to me evidence that a first offender—a "puffer"—has been charged and prosecuted by

the police of Western Australia. I throw open that challenge and I wonder how many takers I will have. It seems to escape the knowledge of many members that the drug squad, which was set up in this State rather too late, has to operate not only against the criminals, but also it seems against the people who have the greatest concern for our juvenile population.

It was very pleasing to me when Mr Justice Williams and his committee came out so strongly in favour of putting to rest a number of the myths about the drug scene. Unfortunately, too few members have bothered to read the report and, therefore, call this Bill a "misnomer".

If members have never heard of a drug called palfium, they should think about whether or not they would regard injecting palfium under a person's eyelids as being a "misuse" of that drug. Palfium is used legally by medical practitioners for certain purposes. I do not know where society is going if people are allowed to get hold of these sorts of "legal drugs" and use them to get kicks. Further examples of this sort of activity are the mixing of Vegemite with hot water or the distillation of a famous cough medicine. If such practices cannot be called the misuse of drugs, I do not know what can.

Never let me hear anybody stand up in this House and laud the British attitude to drugs. The British wish they could turn back the clock and change the drug legislation passed in 1926 under which the use of heroin was legalised in certain circumstances. That legislation has led to a situation in which people go to doctors pretending to be heroin addicts. They obtain a legal prescription and go to Boots Chemist in Piccadilly and at night sell the heroin down the alley, or proceed to that marvellous hub of the universe, the centre of Piccadilly, and tie belts around their arms and "shoot up" right in the middle of the corridors. These people do not even bother to go to the toilets to do that any more.

Let nobody say to me, "Let us put heroin on prescription". There are unscrupulous doctors and unscrupulous people who would seek to get hold of that drug in any way whatsoever. It is a drug that eventually kills, and kills hard. Some people should be made to stand around a bed with the parents of a 17 or 18-year-old child and witness his demise. If that is being emotional, I am being emotional. This is a filthy, stinking, rotten trade that this Government does not, and previous Governments did not, want to see anywhere within this country. I am not here to score a political point in respect of it. I am not here to score political points from human misery and avarice.

It is no use whitewashing the whole scene and saying it is the result of unemployment, or the result of this or that. It is due to the fact that people have lost the faith of parenthood. People have the right to procreate, to breed children; but they do not accept the responsibility of doing the best they can for those children. If I feel strongly about the subject, it is only because I have looked strongly at it.

There is no member in this House, to my knowledge, who has been touched by this sort of tragedy. One could point, I suppose, to the famous or infamous people of this world. Perhaps some of the famous ones are the Linkletters of this world whose daughters were the victims of drugs. That was in the days when we were told LSD was not a very deleterious drug. It was used in mental hospitals with safety and had been used up to five years before that poor unfortunate person died in the way she did.

So what are we talking about in relation to the misuse of drugs? We cannot get away from it. The title of the Bill is wrong, or at least insignificant in the overall assessment of this Bill.

I am pleased to see the Hon. Graham MacKinnon sitting in the House.

The Hon. G. C. MacKinnon: I am always here.

The Hon. R. J. L. WILLIAMS: That was no criticism.

The Hon. G. C. MacKinnon: I misunderstood you.

The Hon. R. J. L. WILLIAMS: I am merely saying it is a delight to see Mr MacKinnon sitting in this House when we are discussing a matter of such crucial import in a portfolio that he once administered.

The Hon. G. C. MacKinnon: It was not a great problem in those days.

The Hon. R. J. L. WILLIAMS: No. I am not talking about the portfolio before his last portfolio. I am talking about the Education portfolio.

The Hon. G. C. MacKinnon: That one!

The Hon. R. J. L. WILLIAMS: This is where I agree entirely with the Hon. Howard Olney and the Opposition because it is not necessarily by legislation against the misuse of drugs that we will achieve success. I have said this outside this House on a hundred occasions. It has been always lauded as, "Very nice, well said", but nobody has done a darned thing about it. Until we accept the fact that, because of parental neglect, we have to educate or re-educate the children we will never get rid of problems of this nature.

Never let it be forgotten that, in the main, there is little faith left in this or many nations around the world. The churches fail. That is why we get so many churchmen now turning to social welfare and rabble-rousing, I suppose. Preaching the Gospel as they were taught to preach it no longer exists. No longer is a clergyman a trusted person. If anybody thinks I am overstating the position, let him look at the evidence given by the Dean of Perth to the Honorary Royal Commission into Alcohol and Drugs in this State. Have a look at what the dean said. It is there as a matter of record and not for me to reiterate.

Our salvation lies partly in the stopgap operation of putting a fence around the cliff to stop the people going over the cliff with drugs, rather than catching them in the hospitals at the base of the cliff, as Mr Justice Williams described it. That is what this Bill is about—cutting off the source of supply. When the source of supply is cut off and every assistance is being given to the community, a step forward is being made. Then the next step forward must be in the educational field. That education can start as early as the pre-school stage. I said I was glad the Hon. Graham MacKinnon is here because I reported to him direct that that education should begin even at pre-school. That is where we as a population now have to pick up our responsibilities. That is where the source of neglect lies.

If one is going to teach a child dental hygiene, one does not talk about caries and their results, but rather one talks about brushing the teeth in a certain way with a certain rhythm. An educative system can be adopted and adapted within our schools right up to university level. People can be taught the hygiene of being a human being. A very important lesson is there to be learned. I do not know whether other parents agree with me, but it is not a question of being completely negative and saying, "Thou shalt not", but is more a question of, "If thou dost, this is what might happen".

Perhaps we have been allied too long to the "Thou shalt not" parts of the Mosaic law. I might say that the adherents to Mosaic law fortunately in percentage offend less than any other members of the community. I do not know where the truth of this lies.

I would like to point out that in Canada, in Toronto, or the Province of Ontario in particular, six years ago an experiment was conducted over a five-year period—this now makes it 11 years—where children were educated in relation to the use and abuse of drugs. It is a very simple programme based on Aesop's Fables. For the benefit of the record, the programme is called "Through the Hole in the Fence." When a person continues to university he is then taught "people and health" hygiene if that is the term and he could even take a degree in that subject. That is how we should be tackling this problem. In a decent society in 20 years' time this Bill will be looked upon as being archaic. People will say, "What were they talking about?"

At the moment we need this Bill. We need it badly. There are people within our community who do not share our ideals and who seek to prosper on the weaker members. I read with amazement the other day—I certainly hope it is not going to happen—where a person who had imported a certain amount of a drug into this State was taken to court and bail was granted. I hope the conditions of the bail were so impossible that they would never be complied with.

Let me say this: We are not dealing with penny-poppers down the Terrace or in West Perth or East Perth or wherever else abuse is going on for $100 a throw. We are dealing with international traffickers. Bail of $100 000 is a great big giggle, as is bail of $1.25 million. When will we wake up to the fact that these drug carriers have unlimited financial resources?

Good heavens above! To prove the worth of a carrier a syndicate will deliberately tip off a narcotics agency or a detection agency that two pounds of heroin is going to go through customs in a person's anus and that his name is so-and-so, and he will be arriving on flight so-and-so. The carrier is told before he departs, "Do not worry about it. If you get caught, just keep your mouth shut. You will get four years, but do not tip off who we are talking about. If you do not talk about it we will look after your family for the whole time you are incarcerated". When that person comes out of goal, having complied with all the conditions, he has become a reputable carrier within a drug ring. He has proven himself. Do not let us be so naive as to sit here this afternoon and fondly imagine that this is a one, two, or three-off job. It is well organised. Unless we arm our law enforcement agencies with every instrument legally possible, we should not bother about it. We should turn our backs on it; go home and forget about it. That is precisely what these traffickers would love us to do.

I will not go into the argument, as I was intending to do, about cannabis and its effect. It is a chemical conundrum plant. We do not know enough about it. Let any member of this House who wants to challenge that read the results of Mr Justice Williams' inquiry. Do not depend on me or those who want to ban the use of cannabis. How in God's name can we get two identical

seeds from the same plant, plant them under the same control conditions and find that one has got a greater toxicity than the other at the end of all the trials? The purveyors of the drug that is derived from those plants do not know what toxicity is. When that is applied to the scale, perhaps, of heroin users, one of the greatest ways of getting rid of or killing the heroin user is to give him pure heroin. The person would not be able to tolerate it. It has been cut so much by the time he has purchased it on the streets that any use of the pure stuff would kill him stone dead.

I find nothing repugnant in this Bill presented before the House. Tremendous smoke screens have been put up as to how the innocent are going to suffer and what a terrible thing it will be to be caught in a room where drug smoking is going on. What a load of codswallop! The Bill does not say that and neither does the law say that. The Hon. Howard Olney said this is codified law, but it is not in any way, shape or form. If the word "codify" has been used, it has been used in the wrong sense, and well he knows it. He also knows that the Criminal Code applies to this Bill in the same way it does to every other Act. I would like to quote what the Hon. Howard Olney said in his second reading speech, as follows—

> If the sort of laws applying to drugs were to apply to alcohol any person who had an empty bottle with a whiff of liquor emanating from it, or a dirty glass with a smudge of beer around the edge, would be guilty of an offence. He could be found guilty of using a utensil for the consumption of alcohol. Such a law would not be tolerated by the community, and I am not suggesting it should be.

I have news for the Hon. Howard Olney. I have the greatest respect for him because of his legal knowledge and expertise, and the fact that the authorities have seen fit to bestow upon him the highest honour in law does not detract from the next statement I will make: He does not know the drug scene and has never been in it because that is not his particular forte within the law. The utensil used for smoking drugs is used among the drug addicts only for that purpose. It is called a bong, which is a water pipe. It is not used for tobacco smoking among drug addicts. If one suggested that it was used for tobacco the drug addicts would laugh. Ordinary pipes are never used for smoking pot. From the information I have received from drug addicts, if a utensil is found with traces of a prohibited drug in it, it is almost 100 per cent certain that the possessor has used the utensil for drug consumption. One does not pass one's glass around the pub for everyone to drink out of it; it is a personal thing. Unless one has been involved in the drug scene, which luckily I have got out of, one would not be expected to know that, and I am sure the Hon. Howard Olney did not know that particular fact.

Looking at the Bill in total, it may have one or two technical drafting mistakes and I think perhaps Mr Olney was correct in commenting to this House that an awful lot of drafting mistakes—I think 51 was the figure he mentioned—had been made. A number of the changes were consequential upon an amendment being accepted in another place by the Government. I do not think we will ever get a perfect piece of drug legislation.

The Hon. H. W. Olney: That was the Mental Health Bill in which I referred to the 51 mistakes.

The Hon. R. J. L. WILLIAMS: I beg Mr Olney's pardon. However, there were many amendments to the drugs Bill.

If we are to accept the research undertaken around Australia by Justice Williams we have to accept some of his findings.

I may be accused of doing what Mr Olney said he would do; that is, wait until the Committee stage before I speak further to this Bill, as I will have plenty to say about individual clauses.

I would like to quote from page D12 of the report of the Williams Royal Commission as follows—

> The Commission believes that there has been a large degree of inefficiency in law enforcement operations to date and that a much better result can be obtained if Australia mobilises its resources and adopts a truly national policy against illegal drugs.

That is precisely what this Bill is setting out to do, nothing more and nothing less. It will certainly give the police an extra hand which they need. I acknowledge also the fact that some of the apprehensions which society shares about the powers of the police must always be shared with us, because there will always be policemen who are, what is commonly called, bent, just as there will always be lawyers and politicians who are bent. All of us are tainted, from time to time, by the actions of an individual or individuals within our organisations. I have not discussed this Bill with many people because I have refused to interview them. I know that some of my colleagues have discussed the Bill but I have refused to because I have my own ideas about it. I do not regard as a cannabis user everyone who prepares a petition. Many people in this society never realise what a devious, skilful, cunning,

lying bunch of people drug addicts are. They will lie to one's face to obtain a drug of their desire.

The Hon. N. E. Baxter: You could also use the word "conniving".

The Hon. R. J. L. WILLIAMS: Yes, one could use the word "conniving" or many other adjectives to describe these really desperate people.

Have members ever seen drug addicts swallow a mouthful of methadone and then go outside and regurgitate it so that they may inject it? This is the sort of sick people we are dealing with. Would not you, Mr President, consider it humiliating if when you had to give a specimen of urine someone should stand over your back and watch you to ensure that you did not substitute it for someone else's specimen? This sort of thing happens at the Alcohol and Drug Authority. The Hon. Howard Olney asked a question—and very nicely—as to what the Drug and Alcohol Authority does.

The Hon. H. W. Olney: I did not ask that question. I referred to section 18(g).

The Hon. R. J. L. WILLIAMS: The member asked whether the Alcohol and Drug Authority was complying with that provision and I said I thought it was. Like every other department it labours under a shortage of funds. If the Alcohol and Drug Authority was given unlimited money it would produce unlimited results but it, like other authorities, is limited by a budget. I would like to quote from its annual report to give an indication of what it is doing concerning education. The old business of sending people around schools to preach about the evils of alcoholism springs to mind. My son when he was 13 told me that he knew about alcohol because he had been told about its effect on worms. When I asked him what he meant by that he told me that he had had a lecture that afternoon and the lecturer had dropped a wriggling worm into alcohol. The result was a stiffened worm, which showed that one should not drink alcohol.

The Hon. R. G. Pike: It also shows that if you drink alcohol you won't get worms!

The Hon. R. J. L. WILLIAMS: One could add another corollary there but I do not propose to do so at this stage. It is difficult to answer the Hon. Howard Olney honestly because section 18(g) has been complied with within the limitations of the budget available to the Alcohol and Drug Authority. Page 3 of the authority's report refers to an event of significant importance. Do not forget that when this authority was set up it was largely a question of, "Well, we will go around the world and have a look and then we will see if the actions we have taken need to be modified". I quote from page 3 of the report as follows—

> An event of significant importance that occurred during the year was the visit by Dr. Thomas Bewley, M.A., M.D., F.R.C. Psych., F.R.C.P.I., who was engaged by the Authority to specifically review and report on the current activities and make recommendations on possible future developments. As Dean of the Royal College of Psychiatrists, and Consultant Adviser to the British Government on matters of dependence, Dr. Bewley spent six weeks examining in detail the nature of services provided and reported on the achievements of the Authority since its inception. The final report which was received by the Authority earlier in the year firmly supports the manner in which services have been established and delivered to the public. It also makes a number of recommendations concerning the administrative structure and areas in which future developments might take place. Special mention is made of the importance of developing stronger links with the teaching hospitals not only in the interest of clinical treatment, but also with a view to developing preventative programmes based on sound principles of education.

I would be delighted if anyone cared to check up on Dr Thomas Bewley because it would be found he is a man of authority and has been in this field since its inception in the United Kingdom. Do not let us think that heroin in the United Kingdom is different to heroin in Perth.

When the Hon. Lyla Elliott and the Hon. Tom Perry and myself were told in 1972-73 that drugs would never be a problem in Perth, we believed it for about 20 minutes. However, our recommendations at that time reflected what we believed would be the case. It was at that stage that we implored the Commissioner of Police to allow the use of a revolutionary method of detecting drugs—dogs. At that time we were pleading with the Commissioner of Police to expand the drug squad. Members of the drug squad had to serve two days of ordinary duty each week to be *au fait* with what was going on in the Police Force. There were only four members in the drug squad at that particular stage.

We were told there would be no problem in pretty Perth.

Do we not just love judges? When it comes to an inquiry, the whole nation screams out for a judicial inquiry and for a judge to head it. Royal Commissions with judges at their head are the

greatest laugh of all time; they are absolutely futile in their construction. If members do not believe me, ask Sir Henry Winneke, former Chief Justice of Victoria and Governor of Victoria. He said that he would never allow one of his judges to sit on a Royal Commission; he would never give him permission to do so.

Judges are there to adjudicate on points of law. Commissioners are there to deduce and adduce the facts as they are presented. A judge interprets the law only after the jury has said, "Guilty" or, "Not guilty". Let us get rid of this mythology about judges being the only people in Australia who can come to an incorruptible solution. What a load of rubbish! That is not to denigrate the legal profession; let them do their job, and interpret the law; let them present their arguments in a legalistic fashion. But for God's sake, let us not depend on judges to look at facts. Every member of this House is well equipped to look at facts and adjudicate on the facts presented.

If I have not given that impression already, I say now that this Bill has my strongest support. It is only a small addition to what is really needed. Certainly, any Government must look at the educative process, which will supersede this Bill in time. However, we must go through at least two generations before the results of that educative process are apparent. I hope the Education Department is picking this up slowly.

However, in the meantime this legislation must not be regarded as a Band-Aid. It is radical treatment which is what our law enforcement agencies need. If the provisions of this legislation are used in an irresponsible or wicked fashion, let the facts be known to this Parliament and let us repeal the law and punish those who have acted in that wicked fashion. I am sure the legislation we pass will not affect for one second the sleep of even one of the big drug traffickers.

It was suggested to our Honorary Royal Commission that a person who commits his second drug trafficking offence in this State should face a mandatory minimum prison sentence of 10 years. However, legal people told us that although our recommendation was laudable, it would be difficult to prove the committing of a first offence in another part of the world. We accepted that advice and did not proceed with that recommendation.

The Honorary Royal Commission believed also that imprisonment for life—by which term we meant "natural life"—would not be sufficient punishment in the absence of capital punishment for these filthy, stinking, rotten traffickers. It would not be enough for them to be incarcerated for the rest of their natural lives—which they should be, because they are nothing more than the type of people who have been abhorred throughout the centuries. They are the poisoners of society. They push these drugs onto young children. They kill the young people of our community. Far more important, they destroy the confidence of our society because we know there are poisoners in our midst who cannot be detected.

Let members opposite—as is their wont—oppose the Bill for the alleged technical improprieties it contains. I tell them this: If they are to hamstring the law enforcement agencies, it is tantamount to their saying to these poisoners that they do not really understand what is going on in this filthy, stinking drug world.

THE HON. R. HETHERINGTON (East Metropolitan) [5.35 p.m.]: I must admit I am one of those who does not know very much about the drug scene, nor do I particularly want to. Therefore, I suppose I learned something from the Hon. John Williams. However, I would have felt happier about some of the things he said if he had not been so prone to adopting a rather sanctimonious, sermonising, and simplistic approach to the matter in sheeting home all responsibility to parental neglect. I would have thought that parents have been neglectful of their children for centuries; some have survived, and some have not. Parental neglect has been around for a long time, although the kinds of drugs we have in the community have not been around for all that long.

Some of the things said in regard to opposition to the Bill remind me of the situation in 1951, when the Menzies Government introduced the Communist Party Dissolution Bill. I remember saying to somebody that I was opposed to the Bill and was asked, "What—do you approve of communism?" The answer, of course, was, "No, I do not approve of communism, but I do not think the Communist Party Dissolution Bill is the best way to deal with communism". In the event, of course, the Communist Party Dissolution Bill was found to be invalid. It was defeated at a referendum and we had to deal with communists in a different way, with some degree of success.

One of the things which perturbs me about this Bill is the oft repeated statement by the Minister in charge of the Bill in another place that the people who oppose this Bill are part of the cannabis lobby, or are a nasty little minority who are opposed to the Bill for their own selfish interests. I do not believe that is the case. It is quite possible to argue that many of the people

who oppose this Bill may, in various degrees of detail be wrong. However, many of the people to whom I have spoken who are opposed to this Bill in fact are honest, decent, dedicated people who do not believe in drug abuse. So, I believe we should get rid of that kind of argument.

I take the point made by the Hon. John Williams that in one sense, drugs are drugs and that alcohol, cannabis, and heroin are all drugs; there are all kinds of drugs. I take the point also that, sometimes, people will do anything to get drugs.

I was a little surprised—I suppose the Hon. John Williams would not have been—after being taken to Sir Charles Gairdner Hospital with a kidney stone to find I was being injected with a drug of addiction. The doctor said, "Do you realise you are mainlining pethidine?" I did not realise it, and I was not very much concerned about it at the time. I simply wanted the pain to stop, and it did after the second injection.

I was told that some people in fact turn up at the Sir Charles Gairdner Hospital outpatient centre showing all the symptoms of kidney stones—which it is possible for a good actor to display—in order to have pethidine administered. They do all sorts of things.

I am not here defending drug pushers or saying I approve of drugs. However, we should differentiate between drugs because, socially, we do make such a differentiation. If we did not have alcohol in this country I would be in favour of banning it because it is a drug which causes a great deal of harm. It is a drug I use; I do not know whether I am yet addicted to it, but I try not to be. The harm done in this community by the abuse of alcohol is tremendous. However, if we tried banning it now that it is generally accepted throughout the community we might find, as was found in the United States of America, that the end result would be worse than if we merely tried to control it.

One of the problems with alcohol is that a lot of very wealthy firms are making profits out of it, and the Federal Government is making a great deal of money through taxation. This puts alcohol in a different category. So, we have alcohol in one category and nicotine in a slightly different category.

When it comes to soft or hard drugs, let me say at the outset that I am not a member of the cannabis lobby, nor do I approve of the smoking of cannabis. I have never even sampled cannabis, nor do I want to. I do not approve of the taking of heroin or of any drug unnecessarily—except the one with which I was brought up; namely, alcohol, which I imbibe every now and again. No doubt if I were a member of a Middle East society in which cannabis was accepted, I would hold the same view about cannabis as I do about alcohol.

When the Hon. John Williams was talking about drugs he differentiated between alcohol and other drugs in a manner which cannot be sustained. I am informed by people who claim to use cannabis that their feeling about cannabis is much the same as other people's feelings about alcohol; they smoke cannabis for much the same reason as other people drink alcohol. People drink alcohol for a number of reasons: Sometimes, they want to forget; sometimes they want oblivion; sometimes they are looking for courage. I remember that the first time I gave a lecture I had a small whisky beforehand to give me courage. I discovered on the second occasion that I did not really need the whisky and, anyway, it probably was not big enough to have much effect.

The Hon. G. E. Masters: On the third occasion, your students probably drank the whisky.

The Hon. R. HETHERINGTON: That may be true. The Minister is not suggesting, of course, that this practice continues whenever I make a speech in this House.

Quite often, alcohol is taken because it makes it easier for people to get on with each other. Some people take alcohol because they are addicted to it and must have their shot every night.

What I am saying is only hearsay because, to my knowledge—I may be wrong—I have never been present while cannabis is being smoked, but I am told that people smoke cannabis for much the same reasons. Cannabis is a social thing; it relaxes people and makes them feel mildly happy; it makes it easier for people to be with each other.

The point I make is that cannabis is socially acceptable amongst a large number of people. This is something which concerns me; I wish it were otherwise. However, we must take this fact into consideration.

People have suggested to me that pushers allow cannabis to flow freely and then they cut it short and when people find they cannot obtain cannabis, they may turn to heroin. I do not know if that is true.

We do not know whether, if the police come down too heavily on cannabis users and pushers and cause it to be in short supply; its price will be pushed up, making it more profitable and bringing in the big criminals and heroin. I do not know whether that is true. It is something that concerns me. I have not done the research into the drug scene that the Hon. John Williams has done; I have not done the research into the whole range

of laws involving this matter that my colleague the Hon. Howard Olney has done; but I do know that a lot of good, honest social workers are concerned about the possible effects of this Bill.

Many people would feel happier if the Bill and the Minister who introduced it in another place were less concerned with saying that the only way we can stop this problem is by repression. The two sections of the Bill which really worry me state that people who conspire to produce and sell drugs, including cannabis, can be goaled for up to 20 years without the option of a fine.

I presume from what I hear that some young people grow some cannabis and they conspire together to provide it to various people, sometimes without being tremendously interested in any profit. The provisions to which I refer mean that if these people are caught—and let us be concerned for everyone—they can be sent to gaol for up to 20 years. I am not suggesting they would be sent to gaol for that time, but I am suggesting there is no alternative to a gaol sentence. This shows overreaction.

Discretion should be left with the judiciary and not just with the police. I have no doubt what will happen if a little conspiracy is found is that the police will not charge people under this legislation. I would be very surprised if they did. I am not being anti-police here, but it does seem we should not leave all the discretion with the police. I have said time and time again that we should write safeguards into our legislation. I am the last person who wants to assist the international drug runners running drugs into this country. When I hear about Australians in other countries being sent to gaol for 20 years for trying to get hold of heroin so as to import it into this country I do not get upset because they are Australians; I feel upset because they have tried to do that. If they end up in gaol I have little sympathy for them.

We have to make sure that we have a discretion in the use of the law and that we are quite clear with what we are doing. My concern is that we may not be doing this, and that the Minister who introduced the Bill is concerned only enough to say, "We must do something about this". It reminds me of a time when I was a school teacher and we had a student whose father used to stand over him and force him to do homework. This was turning the young person into a nervous wreck and his results were nosediving. When it was suggested to the father that he ought to relax and lay off for a bit so that his child might relax to enable him to achieve better results, the father agreed with everything that was said but then turned around and said, "I must get him through the exam". So the whole process started over again.

We should look at the whole problem of how we treat addicts, near-addicts, people who may become addicts, and users. I am not satisfied that we will not necessarily push some people from cannabis to heroin. There is a difference.

The Minister for Police and Traffic said—I do not know whether the Minister in this House would agree—that heavy smoking of cannabis over one year will do more harm to a person than the smoking of cigarettes over 20 years. This may be the case, but I do not know. I wonder what sort of harm the Minister has in mind and what sort of proof he has to back up that statement. There seems to be a great deal of argument and controversy about cannabis.

I would still rather we did not have cannabis around the place. Certainly if I could be shown a sure and certain way of turning off the supply of cannabis and heroin simultaneously, I would be prepared to turn the tap. That would be highly desirable, but whether this Bill as it stands by itself will do it, whether it is sufficient and is the right kind of Bill, and whether it will perhaps do some harm as well as some good, I do not know.

I know we must be very careful that just because we tremendously abhor and dislike something we do not throw out the baby with the bath water, and that we do not make it possible to bring in repressive legislation which may do some harm in the field in which we are trying to be preventative, and in other areas as well. After all, it was with the intention of getting rid of alcohol that prohibition was introduced in America. The attempt failed miserably and it increased organised crime tremendously.

If the Minister in his reply can convince me all is well, I would be much happier. This Minister might be able to do that because I do not think he has the same frenetic quality about him as does his colleague in another place who introduced the Bill. This Minister might be fairly relaxed and is certainly less frenetic; he might be more balanced in the way he believes this law should be carried out. After all, probably there will be no great harm done.

When one opposes a Bill which one believes is giving too much power to our law enforcement agencies, one is accused of being "anti" the police. Certainly I am not "anti" the police. I believe we have too few of them and their task is made very difficult by that fact. I believe we should have more police, and they should be better paid and better trained.

The Hon. P. G. Pendal: Better taxes.

The Hon. R. HETHERINGTON: I would be prepared to trade a better overall Police Force for more taxes.

The Hon. P. G. Pendal: You said that about education, too.

The Hon. R. HETHERINGTON: I have said it about everything. I believe the Federal Government, with its phony taxation policy, is not doing the country any good at all. A wealthy country like ours can afford better services, and there are ways we could do this. I am not going to back away from the little cries coming from my left wing about more taxes. Perhaps there will be more taxes. I would rather be more highly taxed and feel safe in the streets than be more lowly taxed and feel I could not walk through Perth at night. I do not feel safe to do that in certain parts of Perth now. If that is our real choice, let us take it. We need better and more extensive services, which would mean a better Police Force. Far from disliking policemen, I want more of them. When tomorrow I speak about domestic violence I will have more to say on this point. I will not do so now because I would preempt what I have to say, and I know that you, Mr President, would not permit me to do so.

One of the things that would perhaps make this Bill less necessary would be a larger, better paid, and better equipped Police Force so that it could carry out its duties properly; so that there could be more patrols at night and more cars in the city. In some areas we could perhaps go back to foot patrols. I remember the sense of safety those patrols gave me when I was young, when we would find policemen not very far away and within running distance. The sight of a uniformed policeman is in itself a deterrent to crime. But this would not make much difference to the big drug pushers.

We know the incidence of drug taking is increasing in our community. We know, as in other realms of education, that many parents are not doing the right thing by their children. I had a woman speak to me whose son recently committed suicide because he was a drug addict. She said she had four children who were all right, but she had one lost son. If she has four children who are not in the drug scene and who are happily married and okay, are we to say that this proves she is a good parent or that the one child proves she is a bad parent?

It is not just a problem of parents but a problem of a whole range of things in our society. One of the things causing the development of the drug scene is the very nature of our society which has grown up in the post-war era. Society has said we should gratify our whims now. The ad man's cry has been that we should do it now, borrow the money, get credit, do not hold back, do not resist, do not behave like ordinary human beings should, let it all out. The people who are exploiting the pop music scene and other areas are doing so in order to make money.

There are other people brought up in the tradition of our private enterprise society who want to exploit juveniles and young people; they want to exploit the worries, the fears, and the difficulties they experience in the great cities where, because we have not been able to raise taxation and have not been able to provide them with the right kind of environment, young people are being exploited for profit.

It is not just education that we need, but very basic reforms of our society. That is something we have to look for in the future. In the short term we need to do something to stop the big drug pushers. We need to persuade people out of the drug scene. I have no answer to this; I cannot get up and say that if only we did this or that it would solve the whole thing. I am not sure that this Bill, with its accent on repression, is the only answer.

We must look for other answers. We must consult social workers working with people addicted to drugs, in an endeavour to determine the kinds of things we should do. If we had done that this Bill might have been better and we might have finished up with better legislation.

Sitting suspended from 6.01 to 7.30 p.m.

The Hon. R. HETHERINGTON: During the tea suspension I was interested to find out that the Minister who introduced this Bill in another place has now interviewed the members of a delegation and he admits that those members are not part of the cannabis lobby. Also, he is now talking about the Police Force enforcing the provisions of the Bill with discretion. I wish we had had that kind of language from the Minister earlier, and in public statements, because there may have been less concern about the Bill. Had the Minister been prepared to talk to the people, perhaps some of the deficiencies in the Bill—deficiencies which are still in the Bill and which my friend and colleague, the Hon. Howard Olney, will deal with in the Committee stage—would not still be in it.

The very statement that the Minister for Police and Traffic is alleged to have made, that the Police Force will use this Bill with discretion if it becomes an Act, suggests that there is too much discretion in the legislation, and this is one of the matters which concerns me. People say that the proposed Act will be very little different from the law which applies at present.

One interesting fact that emerges when we come to codify the law in relation to a subject is that we look at the law again and we find things in the law that we do not care for. We find also that things are being written into the law that we do not care for. I have said before that because the law has not been abused by the law enforcers in the past, and because the law enforcers at present are not likely to abuse the law, does not mean we should leave dubious law on the Statute book. We should keep examining the Statutes of the State to ensure that we do not give undue powers to people in authority.

Unfortunately many of the statements made by the Minister who will be in charge of the legislation suggest an authoritarian tendency, similar to that which we find in another State. We could well do without this. Certainly I would be much happier were another Minister in charge when this Bill becomes an Act. The person I would like to see in charge of the legislation, and the person I believe should have introduced it is the Attorney General—the Bill itself might then have been a better Bill. It seems to me the legislation encompasses a whole range of matters which are not to do with police powers, but which are to do with the Constitution, the law of the land, and the rights of the subjects. Naturally the Attorney General should be handling the legislation.

I will not delay the House any further. I am sorry that the Hon. R. J. L. Williams made the kind of speech he did. He said that because drug addiction and drug pushing are such terrible crimes, nobody should criticise the Bill. He made a moral statement about the responsibilities of parents, but he tended to ignore basic problems in the community. As the Prime Minister of Great Britain said recently, when referring to the riots in cities in Britain, parents should keep their children at home. If I may say so, with all due respect, that was a fatuous remark and the Hon. R. J. L. Williams' speech was in the same tradition. It was a typically conservative remark, and one which does not take into consideration the problems of social change.

So, I will continue to oppose the Bill as it stands, and to support my colleagues in their criticism of it, and I will accept any abuse I have to accept because of my stand. Certainly I can assure the House I am not pro drugs or pro drug pushers, and I am not part of the cannabis lobby. As I have always been, I am interested in the rights of the individual, and in achieving a free and democratic state in Western Australia.

THE HON. PETER DOWDING (North) [7.36 p.m.]: As I had the leave of the House to be absent, I was not present to hear some of the debate on this Bill, and I regret that. I have had to rely on the unemotive print in *Hansard* which rather deflavours the quality of the debate.

My definite impression is that in this case the Government has adopted what could be described as the standard approach to legislation of the Minister for Police and Traffic, which is, "If you are not for me you are against me, and if you are against me you are evil and must be counteracted with every method possible".

Regrettably, Government members in either House have not made a decent attempt to deal with the issues raised by the Opposition, and, indeed, the issues raised by many people in society, when considering the elements of the Bill before the House. I was impressed particularly with the issues raised by two people who work with Christian organisations which are involved in helping people caught up in the drug scene.

The economic policies of the Federal Liberal Government and of the State Liberal Government unfortunately have driven considerable sections of our youth into enforced poverty and permanent unemployment.

The Hon. R. Hetherington: And despair.

The Hon. PETER DOWDING: As my friend, the Hon. Robert Hetherington, remarked, they are forced also into despair. Amongst other factors, that factor has increased the involvement of young people in the drug scene. Although this Bill does not deal with these sensitive issues in a sensitive way, nevertheless it must be said that other sections of the community also are very heavily involved in the drug scene; that is, in regard to barbiturates, valium, etc. That is a product of the economic and social despair which, in my view, is in turn the product of the policies of Governments more concerned with some vague protection against inflation but which are in reality an attempt to protect the rich at the expense of the poor.

Other aspects of this Bill are important. I do not believe for one moment that the police officer in the field has no right to speak on these issues. Of course he has a point of view, as must anyone who has had deep contact with the sort of social trauma which follows drug abuse. However, the law enforcement agencies may take a point of view that is not an appropriate point of view, bearing in mind other values in the community. It is not up to police officers necessarily to tell us how to guard our civil liberties. It must be remembered that the community has interests above the mere apprehension of offenders under

the law, interests which may be more important than that.

I referred to this in my maiden speech last year, and despite the derision of some members opposite who seem to be incapable of understanding the civil liberties issues which are referred to repeatedly in such legislation—

The Hon. R. Hetherington: They never learn.

The Hon. PETER DOWDING: We do not expect them to; they just go along like sheep, ignoring such problems. They represent the establishment, and, as the Hon. Phil Lockyer does—

The Hon. P. H. Lockyer: At least I am not trooping off overseas; I am looking after my electorate.

The Hon. PETER DOWDING: If the honourable member thinks that informing oneself about what happens outside one's electorate is a misuse of one's time, he is mistaken. I hope that my electorate and the State of Western Australia will gain a little by increasing my education.

The Hon. P. G. Pendal: You could do with a lot of that.

The Hon. PETER DOWDING: One looks at the Hon. Phil Lockyer and one understands that his philosophy has not been to improve himself over any period of time.

The civil liberties issue is one that requires balance. I have been in England, and I was very interested to read the material presented to the Royal Commission inquiring into the reason for the riots which occurred recently. It is a compliment to the English conservative establishment which runs that country at the present time that it understands that important issues of civil liberties are involved. These issues affect the whole of society, and unless we deal with them, Western Australia will end up with the sort of situation which is emerging in Britain. So while the police have a very proper point of view and much of the material they prepare and present as legislation must be considered and duly weighed up, it is not the end of the issue. I regret to say that the Misuse of Drugs Bill is entirely the product of the inability of the present Minister for Police and Traffic to balance, in a clear and reasonable way, all the considerations that ought to affect any Government when introducing such legislation.

The Hon. R. Hetherington: He is a most unbalanced Minister.

The Hon. PETER DOWDING: From the evidence presented to the two Australian Royal Commissions which inquired into drugs, as well as the evidence presented to innumerable Royal Commissions in England and the United States, simply increasing the penalties for drug offences has no impact at all on the drug scene. If anything, increases in penalties—and in particular increases in penalties relating to that inelastic trade, the heroin trade—merely drive people underground and extend the efforts taken by drug traders to avoid detection. This increases the criminal activities of the drug traders; it has been proved that these people will resort to murder to protect their activities. Also, it increases their attempts to infiltrate law enforcement agencies with bribery and corruption.

Increasing the penalties in relation to drug trafficking has done nothing to stem the trade. If anything, increasing penalties has extended the actual criminal activity involved. The bulk of people arrested and charged with drug offences are not the Mr Bigs. Despite the best endeavours of the police and customs agents, the drug trade has proliferated, and it is very rarely that the big operators come before the courts. In this State I do not believe the situation is a product of an inadequate attempt by the law enforcement agencies to deal with the problem. It is more likely that the problem is the result of shortage of manpower and facilities. However, the fact remains that the majority of the people arrested for drug offences are the small fish.

The small fish involved in the drug trade in a peripheral way as young people—perhaps as students or as unemployed youths—will be the adults and the responsible citizens of tomorrow. There is no doubt in my mind that if a sense of injustice is created in their minds by an increase in police powers, or an increase in the force the police can use in apprehending them, ongoing resentments will be created. If the police are given the powers enumerated in this legislation, yet another section of our community will be alienated from the law-abiding life that we hope they would lead.

The massive changes in these provisions provide for an increase in the powers of the police. They change the long-standing right that one is not obliged to incriminate oneself. It will be an offence to be on premises in circumstances in which one ought not, in my view, be guilty of committing an offence. Whilst the police will be given power over property which may have been accumulated as a result of drug dealing, I do not object to the last point, provided adequate safeguards are instituted.

Another area in which the Bill makes changes is in relation to the penalties for drug-related offences. I say simply that none of the speakers on

this Bill, or the Minister, or, for that matter, the police or any of the law enforcement agencies, have been able to produce one skerrick of evidence to suggest that increasing penalties will have any effect on the trade. No plea has been made by any judge claiming that the range of penalties has not been severe enough. No suggestion has been made that increasing the penalties is other than a token gesture by a Government bereft of ideas for dealing with a serious social problem with which it is incapable of coming to grips.

Instead of increasing the numbers in law enforcement agencies, instead of looking at how people in our society are able to trade in drugs, instead of not tolerating a small batch of people who are able to make millions of dollars out the gambling clubs and the prostitution in this State without being honest and open about it, and instead of analysing why the society does not trust the Government, the only reaction from the Government is this knee-jerk response to increasing penalties. That is a measure of the remark made by the Hon. Phil Lockyer when he complained that I ought to have been in my electorate instead of going overseas. That is a classic example of what is wrong with that sort of introspective Government. That is what is wrong with this Government and this State.

These problems are not unique to Western Australia. They are not problems which have not been experienced elsewhere. However, Western Australia is in a time capsule of its own. It is 20 years behind what has been happening in the American States. It may be 10 years behind what has been happening in the United Kingdom. However, if one went to those places and analysed the ways of solving these problems, one would find the solutions have nothing to do with increasing penalties.

The Hon. P. G. Pendal: Perhaps you should have taken some time to listen to Mr Williams tonight, but you did not bother.

The Hon. PETER DOWDING: If the Hon. Phil Pendal wants to engage in a little personal invective, which is apparently his wont, and if he does not want to listen to the experience that other people have had, that reinforces my view about his parochialism.

The Hon. P. G. Pendal: You did not attempt to listen to Mr Williams. He could have taught you something.

The PRESIDENT: Order!

The Hon. PETER DOWDING: Mr Pendal is quite a frustrated man. He is unable to have anyone take him seriously. However, that is no reason for him to carry on about my reasons for not listening to Mr Williams. The Hon. Phil Pendal is entitled to listen to what I have to say. Perhaps he will derive some benefit from that; it would not be difficult, bearing in mind the standard of his comments.

The thrust of this legislation in increasing the penalties is a token to show the public that the Government is doing something without spending any money and without achieving anything. Time will show whether I am right or wrong. I believe I am right; and I believe that in five or 10 years' time there will be no change in the extent of drug trafficking and drug using, except that the social conditions applying in this State will have changed.

If one talks to a person working in the casualty section at the Royal Perth Hospital, seeing the people coming in night after night, having abused themselves with drugs, being destitute, unhappy, disadvantaged, and disillusioned, one would know that the alleviation of those problems is more important than the penalties for drug using. Such a matter was raised in *The Examination of Drug Users and Associated Persons and Their Influence on Crime Patterns* by Wardlaw, published by the Australian Institute of Criminology. Mr Wardlaw concluded that the demand for heroin was inelastic. It did not increase or decrease with price or supply. He said that drug-related offences based on heroin sold were likely to increase; and an increase in penalties would result in an increase in the price of heroin. If the price of heroin is increased, the number of drug-related offences will increase to maintain the heroin supply. If the penalties are increased, the price will increase. So it goes on in an interminable circle, without the Government coming to grips with the advice of so many qualified people throughout the world.

This is a regrettable piece of legislation because it is so internal; because, in reality, the people who are in charge of the distribution of drugs will continue to be in charge of them. The people who fund the distribution of the drugs will continue to do so. Senior police officers in this State can name the people said to be funding some of the heroin trade. Can they catch them? No! Will this Bill enable them to catch the drug financiers? No!

The Hon. P. G. Pendal interjected.

The Hon. PETER DOWDING: Dear me, the Hon. Phil Pendal is at it again.

The PRESIDENT: Order! I ask the honourable member to ignore the interjections and address his comments to the Chair.

The Hon. PETER DOWDING: It is a pleasure, having regard to the quality of the interjections. They are a comment on the way in which this House operates. If a member seeks to make a serious contribution, he has this sort of lunatic fringe comment constantly disparaging him. There is no analysis of his remarks. It is easy to says, "Rubbish". I think the Hon. Phil Pendal says, "Rubbish" more than anyone else in this Chamber. He should pay more attention to the issues.

Will this Bill do anything to improve society in this State? Will this Bill do anything to change the patterns of drug usage? Perhaps half a dozen university students will stop using marihuana. Perhaps half a dozen young people will be busted whereas they would not have been busted before. However, will any of the big operators be given the nick? No!

The Hon. G. C. MacKinnon: Can you tell us the most effective action that has been taken overseas?

The Hon. PETER DOWDING: The most effective point overseas is that the whole issue of drug usage relates to the society and the policies of the Government—

The Hon. G. C. MacKinnon interjected.

The Hon. PETER DOWDING: The Hon. Graham MacKinnon wants to ignore the cause and try for the panacea. We must look for the cause. If we go on creating a socially disadvantaged community within the larger community, the drug scene will continue, and nothing the Government can do will change it.

The Hon. G. C. MacKinnon: Is that the history overseas?

The Hon. PETER DOWDING: Yes, it is. In the law enforcement field, the American State and Federal authorities would have more people involved in attempts to prevent drug dealing than we have in the whole of the Australian Army.

The Hon. G. C. MacKinnon: It would interest you to know that Mr Olney disagrees with that, and believes the English Act is effective.

The Hon. PETER DOWDING: I do not think that is what the Hon. Howard Olney said at all.

The Hon. G. C. MacKinnon interjected.

The PRESIDENT: Order!

The Hon. PETER DOWDING: The Hon. Howard Olney made the point that legislation has been introduced which attempts to deal with these problems in a more creative way. There are ways—

The Hon. G. C. MacKinnon interjected.

The PRESIDENT: Order!

The Hon. PETER DOWDING: It is my first day back. I thought—

The PRESIDENT: Order! I ask the honourable member to cease his unruly interjections. I recommend to the honourable member addressing himself to the Bill to direct his comments to the Chair, from where he will receive no interjections.

The Hon. PETER DOWDING: I am grateful, Sir.

I seek to persuade the House that the solution does not lie in increasing the apprehension rate. It does not lie in filling our gaols with the small fish. The solution lies in dealing with two types of trade. One is the heroin trade specifically, and we cannot ignore the barbiturates, the valium, and the over-prescribing by general practitioners of those drugs when we are talking about the solutions to drug problems; nor, of course, can we ignore the abuse of alcohol. I understand that a journalist is in deep trouble for suggesting that parliamentarians suffer from that.

There are two points on which the Government needs to focus. It needs to focus on the social conditions giving rise to the taking of drugs. Secondly, it needs to focus on the people who are financing and distributing the drugs. The Opposition believes this legislation does not deal with either of those problems.

To the contrary, this State of Western Australia has a higher rate of imprisonment than any other State in Australia. Even including the fact that we in this State imprison Aborigines at an outrageously high rate, our rate of imprisonment is the highest. Over 30 per cent of the prison population is Aboriginal, and yet the Aborigines represent about 2 per cent of the overall population.

I was interested to learn that in some States of America with high indigenous Indian populations, the authorities regard 15 per cent of the prison population and 10 per cent of the general population as a totally unacceptable figure. In that situation, the Government takes steps to introduce positive programmes to avoid the problem, in marked contrast to our own pathetic State Government's attempts to deal with these sorts of problems.

Notwithstanding the Aboriginal population in the prisons, we still have the highest rate of imprisonment in Australia. This Bill will do no more than increase that rate.

If the only argument which appeals to some honourable members opposite is the money argument, if the only argument that some people

can understand is the cost of it all, the cost of running our gaols will be increased dramatically by this legislation—unnecessarily so, because Western Australia is in no different position from the rest of Australia.

The real cost to the taxpayers will come only years after the introduction of the legislation. If members opposite happily support the Government line and happily support the Minister's pathetic, narrow, shallow response to serious criticism of his legislative programmes, and if their only reaction is abuse and refusal to listen, all I can say is that our State will be the loser.

THE HON. G. E. MASTERS (West—Minister for Fisheries and Wildlife) [7.59 p.m.]: I am sorry the Opposition has seen fit to oppose this Bill. The objective of the Bill is quite clear. It is to consolidate and clarify the position of the law with regard to the misuse of drugs in this State of Western Australia.

The aim of the legislation is quite clear. We are aiming to deal with the "big boys". Whatever Mr Dowding or other Opposition members say, quite clearly set out in the Bill with the penalties is the wish and intent to deal with the big dealers and the financiers behind the scene.

I am sorry the Opposition is opposing the Bill. I cannot understand why it has chosen to do so. Certainly the Hon. Howard Olney said he had some reservations about it. However, other Opposition speakers simply took the opportunity to criticise the Government without putting forward any alternative suggestions whatsoever. I listened very carefully to the speeches made by members opposite and I tried to take notes.

The Hon. Peter Dowding interjected.

The Hon. G. E. MASTERS: Mr Dowding did not make one single objective remark. All he did was take the opportunity, as usual, to slate the Government. That is all which needs to be said about the Hon. Peter Dowding's speech.

The Hon. Howard Olney made some comments which need to be answered on behalf of the Government. He said he thought the name of the Bill was a misnomer. Surely the title of any Act of Parliament must be brief and to the point. When we talk about the misuse of drugs, we are talking about misuse in every way. We are talking about misusing drugs by injecting them and passing them on to other people; we are talking about the misuse of drugs by the marketing of prohibited drugs to people who should not have them; and we are talking about the misuse of drugs where people are producing prohibited drugs for the market in an endeavour to make money.

The Hon. R. Hetherington: That is just repeating the comments in the second reading speech.

The Hon. G. E. MASTERS: The query was raised by the Hon. Howard Olney who, after criticising the Government for using the word "misuse", used it on almost every page of his speech. Probably the Hon. Howard Olney could not think of a better word and, therefore, decided it was not a bad word to use when describing the Bill.

It is clear the Bill will not solve all the problems and control totally drug addiction and the trafficking in drugs in this State. However, we say quite clearly that it will make them much more difficult in certain areas. We make no excuse for the increase in penalties as far as the very serious offences are concerned. We are talking about dealers, traffickers, and the "big boys" behind the scene. Not only have we increased the penalties, but also we propose to take away the proceeds in the form of property and money where we can identify them as being the proceeds of the sale of prohibited drugs. In many cases, this in itself is a severe penalty, because we are talking about very large sums of money. When we talk about fines and penalties we refer to a fine of $100 000 and/or 25 years' imprisonment. However, $100 000 for a major offender in the drug scene is just chicken feed. Therefore, we have set down automatic imprisonment and the proceeds from dealing in drugs will be taken away from offenders in this area. We believe that is a very effective measure and it will work to some degree as a deterrent.

The Hon. R. Hetherington interjected.

The Hon. G. E. MASTERS: I invite the member during the Committee stage to tell me of some alternative propositions, because the Opposition has not done so yet. The loss of proceeds from dealing in drugs will most certainly be a deterrent to people involved in this area. We suggest some of the dealers are more likely to confess and give the names of the people controlling the supply of drugs, who might otherwise get away.

All these matters will contribute to more effective handling of the drug problem, although we do not suggest we will have a perfect situation.

The Hon. Howard Olney asked why the Bill is before us now. I point out this matter has been considered for a number of years and in fact the Minister for Police and Traffic tabled a Bill last November. That Bill has remained on the Table

of the House and people have been invited to give their opinions of it. After all that time we have a Bill which has been introduced with the sincere wish to deal with the drug problem in this State as well as is possible.

The Bill before us is not a piece of window dressing. It is certainly not an endeavour to obtain political gain. That is not our purpose and we do not suggest the Opposition would not take similar steps given the opportunity. Indeed, were the Opposition in power, we would expect it to introduce some sort of legislation in this area. Of course, members opposite are rarely in power, so it behoves us to bring forward this legislation.

The Hon. Howard Olney said we used emotional terms and stirred up the public unnecessarily. We do not agree. This is a very serious problem and we are stating the facts in a forthright manner. We, as a responsible Government, are simply restating our position as it has always been, which is that drugs are of very great concern to us and they cause tremendous problems in the community, especially in relation to young people.

Unfortunately the Hon. John Williams is not in the Chamber, but I am sure all members who are familiar with his background and his great knowledge of the drug scene, would have been impressed by what he said.

The Hon. R. Hetherington: We were very unimpressed by some of it.

The Hon. G. E. MASTERS: I do not expect members opposite to be impressed by all that the Hon. John Williams said, but at least the Hon. Robert Hetherington has acknowledged he was impressed by some of the comments, and that is at least some sort of gain as far as he is concerned.

The misuse of drugs affects the mind, body, and soul of every person involved in it. The taking of drugs drives people to do things they would never normally consider doing. Indeed, some people under the influence of drugs, or in their desire to obtain them, are driven to commit robbery with violence. Of course, all robbery and all violence is not caused by drugs, but evidence suggests that, in many cases, drugs have a bearing on such crimes. Therefore, we are trying to come to grips with these matters.

This Bill takes much from the Police Act and the Poisons Act and provides a workable framework which can be understood easily by the public.

We do not suggest we will do anything other than build on this Government's policies which have been part of its platform election after election. We believe we can take account of the Williams report and other expert recommendations submitted by various people and within the framework of this legislation, we can build from those reports and arrive at provisions which will have some effect.

We make no excuse when we say it is a tough law to deal with a tough problem and, in many cases, the penalties are as severe as they are intended to be. At times some members may feel the legislation is too severe, particularly as far as mandatory imprisonment for certain offences is concerned. However, it must be borne in mind when we are dealing with the big people behind the drug scene, it is essential the penalties be severe. We do not suggest the death penalty be brought in, but it is clear that would certainly be a great deterrent. Indeed, it would certainly frighten the dickens out of me! However, we say offenders shall be imprisoned for up to 20 years and, in some cases, that penalty would not be severe enough.

We do not say the police should have unlimited powers nor have we ever said that. I am sure the Police Force would not accept such a situation. The police will not have unnecessary powers under this legislation but they are being given powers which will enable them to perform their job and police the laws of this State.

The Minister in another place has said already—I believe it was unnecessay to do so—that when this legislation is proclaimed as an Act of Parliament it will be administered with discretion. The police always administer legislation with discretion, care, and understanding and it is quite wrong for anyone to suggest the contrary.

There is increasing evidence that the drug problem is becoming worse in this State. The Hon. Howard Olney referred to the fact that no figures had been given in this regard. Therefore, I should like to quote one or two brief figures in relation to drug offences in Western Australia. If it is required by any member, I can give a breakdown of the total figures. In 1976-77 a total of 828 drug offenders were arrested and 959 charges were laid. In 1980-81 there were 1 623 arrests and 2 035 charges. Members can see the charges have more than doubled and the trend is serious enough for the Government and the police to say something must be done in this area.

The Government recognises the problem and understands that, over a period of time, it has got worse. For a number of reasons the Government is trying to come to grips with the problem at the present time. Certainly the misuse of drugs is an

increasing problem in this State and is cause for alarm on the part of anyone who is concerned generally for the welfare of the young people of Western Australia. The police reports are quite clear in this regard and they certainly recognise the problem.

In answer to an interjection by the Hon. Graham MacKinnon, the Hon. Howard Olney indicated he believed the British law was having some effect and by that I mean a good effect. Indeed, the Hon. Howard Olney suggested in his speech the problems in the United Kingdom were not as great now as they were before the legislation was introduced there.

The Hon. H. W. Olney: I made a distinction between their Act and ours. They tackle the problem of the misuse of drugs.

The Hon. G. E. MASTERS: I should like to quote an extract from the speech made by the Hon. Howard Olney, as follows—

> The Hon. G. C. MacKinnon: The legislation of 1971 that you spoke about, did it reverse the trend in the United Kingdom at all?
>
> The Hon. H. W. OLNEY: According to the report I have the various strategies adopted by the English Government tended to reverse the trend with respect to the illegal use of drugs. The strategies appear to have arrested the trend towards an increase in young users. I suggest that has occurred because the English Government has tended to consider the whole problem, not just penal provisions relating to drug abuse. The English authorities therefore have been in a better position to monitor what goes on.

The Hon. H. W. Olney: They set up an advisory council. You have not done that.

The Hon. G. E. MASTERS: In response to the statement made by the Hon. Howard Olney, let me give him some information with regard to the United Kingdom, based on reports from the London area in relation to the use of drugs. An extract from the report of the Commissioner of Police of the metropolis shows that in 1977 in respect of the use of drugs there were 4 049 arrests and in 1980 there were 6 582 arrests. The report then breaks down the figures in relation to heroin, cocaine, and cannabis. However, it can be seen arrests are increasing quite rapidly and there is no doubt the action being taken by the British Government is not stopping the problem, although it is trying to cope with it.

The Hon. H. W. Olney: They are certainly dealing with the problem.

The Hon. G. E. MASTERS: The Hon. Howard Olney was saying the British penalties were lower than ours and the legislation introduced by the British Government was better than ours. I am saying the British legislation has not been totally effective, and we believe the increased penalties we are putting forward, and the provisions in the Bill, take account of the problems. In many cases, the provisions in the Bill will be more effective than those in the United Kingdom. We are trying to beat the problem before it gets here.

The Hon. H. W. Olney: The penalties are not all that greatly increased, anyway.

The Hon. G. E. MASTERS: We are talking about taking away the proceeds from the trafficking in drugs. We are not just talking about a fine of $100 000 and 20 years' imprisonment.

I was asked why the Bill should come under the direction of the Minister for Police and Traffic. It is fair to say that was a policy decision made by this Government. The Bill could have come under the direction of the Minister for Health or the Attorney General. Certainly much of the legislation is drawn from the Police Act and we thought it much more appropriate that the Minister for Police and Traffic should be responsible for the legislation; so that was purely a policy decision made on the facts before us.

The Hon. Howard Olney talked about a code and said this Bill is a code, and he compared it with the Criminal Code. We believe there is a distinction between the code created by this Bill and the Criminal Code.

We believe the Criminal Code is much closer to true codification on various aspects of criminal law. This Bill does not, and is not intended to, replace all existing laws. I am sure the Hon. Howard Olney understands that only too well. Where this Bill conflicts with other Acts of Parliament, such as the Police Act and the Criminal Code, this Bill applies where drug abuse is concerned. Where certain sections of the Criminal Code are not included, obviously section 36 of the Criminal Code applies. Perhaps the member should read section 36 of the Criminal Code, which is quite clear.

The Hon. H. W. Olney: You read section 25.

The Hon. G. E. MASTERS: I will read section 36. We are going to take some time over this. It is quite clear, as far as I am concerned, and I have had legal advice on the matter which I am prepared to accept.

The Hon. G. C. MacKinnon: From a QC?

The Hon. G. E. MASTERS: I would think it is quite as good as any we could get here. I will read

section 36 of the Criminal Code. I think the Hon. John Williams said that judges and people in high offices in the legal field are not always the best judges of what is right or wrong. They have to adjudicate. I am sure the Hon. Howard Olney would do his best in each particular case. Section 36 reads—

> The provisions of this chapter apply to all persons charged with any offence against the Statute Law of Western Australia.

The Hon. H. W. Olney: The second paragraph of section 24!

The Hon. G. E. MASTERS: Give me a bit of time on this; do not rush me. Sections 23 and 24 of the Criminal Code deal with intention, motive, and mistaken facts. What I am saying is that if those sections are not included in the Misuse of Drugs Bill before us now, certainly they will apply where any action is taken. I am certain that is quite clear. Even the honourable member would agree with me in this respect. Those provisions deal with a state of mind and reasonable cause. I do not think we can possibly say that any Bill as such could be regarded as an exhaustive code. Certainly the Bill before us does not exclude many areas of the Criminal Code.

Much of the other comment I think should be debated in the Committee proceedings. I do not think it is necessary for me to raise them at this time. I know even my own members in some areas are concerned with one or two particular clauses and they are going to raise them at the appropriate time.

I have dealt with conspiracy and I have dealt with other matters.

I would suggest the Hon. Phillip Pendal made some very useful comments and the matters he raised should be answered at this time. He made the point that the drugs area was a very sensitive area. The comment was made that in certain cases the police should be careful in how they deal with drugs, particularly drug takers or drug addicts and users. He stated also that where people take advantage of shelter provided in the way of welfare and in places dealing with drug users, the police should use tact and care, and they should be trained in these areas. In fact the police are trained and do understand these particular problems. There may be a case, of course, where there is an overstepping of the mark. I guess that happens whatever we say.

The Hon. P. G. Pendal: Could I just make this clear: I was not suggesting they were not trained. I know some of the people involved. I was referring particularly to that area of communication and social workers.

The Hon. G. E. MASTERS: I understand that. I think it is necessary for the information of the House to point out something about the police courses that take place in the academy for new recruits. This should go on record simply because in certain areas there is a great deal of criticism of some actions of the police. It is quite obvious that people do not understand the procedures.

Dealing with the academy for new recruits, there is a lecture where the handling of and dealing with derelict and disadvantaged persons is discussed by a social worker from the Commonwealth Department of Social Security. The recruits receive lectures dealing with the handling of urban Aborigines from a teacher from the Aboriginal Education Council. They receive lectures on the handling of domestic situations by social workers from the domestic crisis centre, school for social work of the Western Australian Institute of Technology.

They receive lectures on handling and dealing with migrants and refugee groups. They receive lectures dealing with Aboriginal sites by an anthropologist from the Western Australian Museum. Also they have courses dealing with welfare; and they are lectured by welfare officers. They have a very careful procedure and training. It is hoped, of course, that the police gain a great deal from these lectures and it is hoped and expected that the police would behave very properly in these cases. I say again that there is always the situation where someone oversteps the mark but, in the main, the Police Force adopts the practice to which I have referred.

The Hon. G. C. MacKinnon: Can you tell us which of the western nations has been most successful in combating the question?

The Hon. G. E. MASTERS: The member knows I cannot.

The Hon. G. C. MacKinnon: The Minister cannot tell us that?

The Hon. G. E. MASTERS: I cannot tell Mr MacKinnon which country has been the most successful.

The Hon. G. C. MacKinnon: Where did you get this Bill from? They were trying to tell us we are well behind the times.

The Hon. G. E. MASTERS: We are not well behind. It is quite obvious we are well in front as far as the United States and most of the European countries are concerned. The member would know as well as I do that, if I were to go through all the western countries, I would have an answer. I would say we are well ahead of most countries, as Mr MacKinnon would know. The

figures I have given today would indicate quite clearly that in fact we are doing very well.

The purpose of this legislation is to ensure that we continue with our progress, combat these serious problems, and get on top of them. Again I say I am extremely sorry that the Opposition is opposing the Bill. I cannot understand why that is so. If it is just because of one or two clauses, I feel it should have supported the thrust of the Bill which is, in all sincerity, dealing with a very serious and dangerous problem in this State.

Question put and passed.

Bill read a second time.

In Committee

The Chairman of Committees (the Hon. V. J. Ferry) in the Chair; the Hon. G. E. Masters (Minister for Fisheries and Wildlife) in charge of the Bill.

Clauses 1 to 4 put and passed.

Clause 5: Offences concerned with prohibited drugs and prohibited plants in relation to premises and utensils—

The Hon. P. G. PENDAL: The Minister will be aware that along with other members I was one who raised some query particularly on clause 5(1)(e) which says that a person who is found in any place which is then being used for the purpose of smoking a prohibited drug or prohibited plant commits a simple offence. The Committee would be aware that paragraph caused considerable public discussion. It was pointed out to me that the absence of the word "knowingly" in that clause was perhaps an oversight. As the Minister is aware, I, along with other members, consulted him on that. I ask if he would give the Chamber the explanation in respect of clause 5(1)(e) of which we had the benefit in private conversation.

The Hon. G. E. MASTERS: I would like to refer the Chamber to a judgment that I think all members would have had the opportunity of reading before we met to debate this Bill. I will read it because I would like it on the record. It is a judgment brought down by Justice Jackson in Peacock *v.* Drummond. It deals with a section of the Police Act which is almost identical to this clause except that the Police Act deals with cannabis and opium and we are dealing with a prohibited drug or prohibited plant. Otherwise, exactly the same provision is in the Police Act at this time. It is a judgment given some eight years ago in August 1973. We are dealing with section 94B of the Police Act 1892-1972, which provides—

> (1) If any person—
>
> (g) smokes or otherwise uses cannabis or prepared opium, or is found in any place which is then being used for the purpose of cannabis or opium smoking, he shall be guilty of an offence against this Part of this Act.

That is virtually the same as the provision we are talking about now. The judgment is as follows—

> Held: it is not sufficient, to establish an offence under para. (g) that a person is present in a place in which another person is smoking cannabis. The place must be shown to be a place "then being used" in the sense that there was an employment of the place for that purpose.

What I am saying is unless there is absolute and undoubted proof that the place itself is being used for the sole purpose—I would imagine; but certainly the true purpose—of taking drugs, whether it be taking heroin or smoking cannabis, then certainly the people concerned are not committing an offence. There was a great deal of fear from some members to the effect that if they were to attend a party and at that party half a dozen people were smoking cannabis—or even if someone suggested a way-out proposal of a cinema and half a dozen people were smoking cannabis in the foyer—in fact all people present would be guilty of an offence. That is not true. The judgment clearly states that the premises must be used for the purpose and be proved it is used for that purpose; in other words, it is a gathering in that place for the purpose of smoking cannabis.

The honourable members then said, "What would happen if we were at a party or were asked to go to a gathering not knowing cannabis was to be smoked and then when we got there, not knowing cannabis was being smoked, the police raided the place and we were charged?" They wanted to know if the only person there who did not know that cannabis was being smoked would be charged with an offence. The police obviously use discretion and care in these cases. If a person can suggest that he was there not for the purpose of smoking cannabis, it is reasonable for the police to accept his explanation.

The Hon. H. W. Olney: You are saying section 24 of the Criminal Code does not apply?

The Hon. G. E. MASTERS: Let me finish. What I am saying is this: In fact if there is reasonable excuse or reasonable grounds to suggest that they were not there for that purpose, they will get away with it. Let us draw a comparison: If Mr Olney were to steal my car

from the carpark of Parliament House—he would not, of course, but I am just making a comparison—

The Hon. H. W. Olney: You have seen my car?

The Hon. G. E. MASTERS: If my car was sitting outside Parliament House and he stole it, drove it down St. George's Terrace, picked up three people on the side of the road and put them in the car, drove towards Victoria Park and near the Causeway was stopped by the police who said, "You are driving a stolen car. The whole lot of you are under arrest", the other people in the car, or even one of them, could say, "We had no idea. I certainly was not a party to stealing that vehicle". Mr Olney could possibly say he was not, either. Goodness, the police have to make a decision on whether they will charge all four of the people in the car or whether they will accept their explanation.

The Hon. G. C. MacKinnon: Don't you believe that every person who has ever stolen a car would say that?

The Hon. G. E. MASTERS: I am not denying that. Mr MacKinnon knows as well as I do, most definitely, that where the police are faced with this type of situation they have to make a decision. In fact, in most cases they make the right decision.

The Hon. H. W. Olney: Why can't Parliament make a decision so there is no discretion?

The Hon. G. E. MASTERS: The police must have powers to make a judgment and say, "Righto, there are reasonable grounds to suggest that you are involved". If I obtained a lift in a motor vehicle, I could say that I did not know the vehicle was stolen and I did not know the driver. If I went to a party where cannabis was being smoked, I could say that Mr Wells invited me—perhaps I had better change that to Mr Moore—to the party and I did not know that cannabis was going to be smoked. The police have to make a judgment.

In this case, if there is justifiable cause to suggest that the premises are being used for drug smoking the police should be able to make a judgment on whether the people present know what is going on. If they know that drugs are being smoked or used they should walk out. The same thing would apply if a person went to a gaming house—wherever they are in Perth—and it was raided by the police; he would be told that he would be charged unless he could prove that he went there for a purpose other than gambling.

If, in fact, the police were to raid the gaming house they would automatically arrest everyone there and if a person had reasonable grounds to say he did not know it was being used for that purpose he obviously would not be charged by the police.

The Hon. H. W. Olney: Can we have that assurance in black and white?

The Hon. G. E. MASTERS: The member has my assurance.

The Hon. H. W. Olney: A judge or jury would not take much notice of that.

The Hon. G. E. MASTERS: A judge or jury must make a judgment and the police have to present the facts.

The Hon. H. W. OLNEY: I wish to speak on two or three points arising out of clause 5. First of all I take up what the Minister said in answer to Mr Pendal. He has fallen for the three-card trick for which people often fall; that is, taking the usually important principal of law set out in a head note in a law report and quoting it as though it was a panacea for everything. What he has not done is what I did do in my second reading speech, when I referred the Chamber to the particular facts of the case of Peacock *v.* Drummond because that case is not a decision that says if one did not know that cannabis was being smoked in a place one is not guilty. This is not a clause which says the premises must be used solely for the purpose of drug smoking before a person can be convicted under it. It is true that section 94B(2)(a) of the Police Act is in substantially similar terms to that of clause 5(1)(e) of the Bill. What Sir Lawrence Jackson said in the case of Peacock *v.* Drummond would be of relevance if the particular rules of construction that apply to codes did not apply. The Minister suggests that they do not apply. On page 154 of the law report, Sir Lawrence Jackson explained his decision in relation to Section 94B(2)(a) of the Police Act as follows—

> There is no evidence that more than one man smoked the pipe, and then only for a short time before the police arrived; his attempting to pass the pipe to another man was equivocal, as the police had then entered the room; the small quantity of cannabis on the table could readily have been recently placed there by the same man

He then talked about the isolation of the farm house, etc. He then went on to say—

> The evidence is consistent with an entirely innocent gathering of a number of guests for a meal with the residents of the farm house, during which one guest of his own accord fills and lights a pipe of cannabis.

That is the factual basis upon which the case of Peacock *v.* Drummond was determined and it is the only factual basis of any principle of law that Sir Lawrence Jackson extracted from that case which can be applied here.

There are many other cases where we find that a person may have lit up a joint for his own use in premises that obviously are being used for smoking a prohibited drug but I put it to the Chamber that in the case of a person who innocently comes upon those premises, although I have the greatest respect for the discretion of the Police Force, I would not like my civil liberties to be determined by whether or not a police officer decides to charge me.

I would be happy to be charged with that offence, if I knew my innocence—that is, my innocent mind in not knowing the premises were being used for this purpose—would be a defence to the charge. That is really what Parliament ought to be doing, and not saying Big Brother will look after us and only charge us if he thinks we are guilty. I do not care if the police think I am guilty of taking Mr Masters' car or being on premises where cannabis is being smoked, I would like to think it is the court, whether it be a magistrate or judge, that decides whether or not I am guilty. The question of whether a person is charged is quite irrelevant to the question of guilt.

The Minister took the case of being unlawfully on premises used as a gaming house. I refer the Chamber to section 86 of the Police Act. I do not think I am wrong when I say if a person is unlawfully on the premises of a gaming house he is guilty of an offence. It may be that if the person pitches a yarn to a police officer he will not be charged.

I remember the case where some Japanese fishermen were found in a gaming house and when questioned they said they thought they were in a brothel which was apparently next door. This explanation was accepted by the police and they were not charged. They were obviously guilty of an offence but the policemen accepted their explanation. If they had been charged they would have been guilty. This is what we say about this clause: if it has always been an unsatisfactory provision, now is the time to remedy the situation.

It is all very well to quote cases and try to explain the principles that appear to apply, but one has to look at the individual cases upon which those decisions are based.

The Minister quoted to us section 36 of the Criminal Code as I did in my second reading speech. That section says that the provisions of chapter V of the Criminal Code apply to all persons charged with any offence against the Statute law of Western Australia. The particular provision with which we are concerned is section 24 of the Criminal Code which reads as follows—

> A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

If I go to a common gaming house thinking it is a common gaming house—and apparently they are reasonably tolerated—and it turns out unknown to me that the premises are being used for the smoking of an illegal drug, under section 24 I would not be criminally responsible because of my reasonable but mistaken belief. That is what the Opposition says should apply.

The second paragraph of section 24 of the Criminal Code says—

> The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

So section 36 is, of course, subject to that provision of section 24. Section 24 may be excluded by the express or implied provisions of the subject law, and this brings us back to the argument about whether this Bill is a code. The Minister has said it is intended to be one. If it is a code I would suggest there is an implied exclusion of portion of chapter V of the Criminal Code. I ask: Is the Government going to back its own assessment of the law by putting in this Bill at the end, middle, or wherever it likes, a provision which says, "Nothing in this Bill shall affect the operation of chapter V of the Criminal Code"? If the Government did that we would have no argument at all. I urge the Government to give serious consideration to that.

I see that the Government has given consideraion to another matter I proposed in my second reading speech, and that is very commendable and I appreciate it. In another place the Government gave serious consideration to a number of amendments put forward by the Opposition which were effectively adopted, if not in words, at least in substance. I think the Opposition can take a lot of credit for the way in which it has approached this Bill and has persuaded the Government to see the logic of the arguments put forward, which are necessary to ensure that the Bill presents a balanced approach to its very serious penal provisions.

I would like to draw the attention of the Committee to the use of the word "knowingly" in

clause 5. We find in clause 5(1)(a) that to be guilty of offences relating to the manufacture or preparation of a prohibited drug the occupier of the premises must knowingly permit those premises to be used for that purpose. I draw the attention of the Chamber to section 94B(1)(c) of the Police Act which states:—

> If a person being an occupier of any premises permits those premises to be used for the purpose of preparation of opium for smoking . . .

So in this Bill the Government has taken that section and has deliberately inserted the word "knowingly" before the word "permits". It is now to be an offence if the occupier knowingly permits that to happen. That is an indication that previously the state of mind of the occupier in permitting the premises to be used was not relevant, and the Government is to be commended for making it relevant by inserting the word "knowingly". I would point out that if it is necessary to insert the word "knowingly" in paragraph (a) of clause 5(1) the same argument applies in respect of other clauses of the Bill.

I turn now to clause 5(1)(c) which says that a person who is knowingly concerned in the management of any premises used for any of the purposes referred to in paragraphs (a) and (b) is guilty of an offence.

Section 94B(1) of the Police Act provides that if any person is concerned in the management of any premises used for such purposes aforesaid he shall be guilty of an offence. Here again, the draftsman has inserted the word "knowingly" where in the previous legislation it did not exist. Surely that must indicate the new law will not be the same as the old law. So, it throws some light on what the draftsman at least thought the old law meant.

Clause 5(1)(a) refers to the words "occupier of any premises". The term "occupier" is not defined in the Bill and one presumes therefore that the term means the person in actual occupation. I would have thought it would be desirable to make sure everybody knew who the occupier of a premises might be. I am trying to help the Minister obtain convictions. We do not want some smart aleck saying, "I do not occupy the premises. All I do is own them. I have never occupied them"; or he might say that he is the lessee or in some other way is connected with the property. There is a case to define "occupier"; I see that as a deficiency in the legislation. If we want to stop people relying on technicalities, we should cast the net a little wider and clearly define the word.

I draw members' attention to the wording of clause 5(1)(b). The term "owner" is defined in subclause (2) in a way which may strike fear into the hearts of every estate agent in Western Australia. Subclause (2) states as follows—

> In subsection (1)—
>
> "owner", in relation to any premises, includes the person entitled to receive the rent of those premises and the person to whom the rent of those premises is paid.

It may well be that if an estate agent receives the rent of a property, he is deemed to be the owner. If he knowingly permits those premises to be used for certain purposes, he should be guilty; I do not quibble over that. However, if it is intended to cast the net wide in the definition of "owner" there is some case for the defining of "occupier" rather than leaving it to have its ordinary meaning. It is often the hardest thing for a court of law to determine the ordinary meaning of a word; the courts seem to have the greatest difficulty in deciding ordinary meanings.

In paragraphs (a), (b), and (c) of clause 5(1) we see the term "premises" used; that term is not defined and here again, I believe the omission to be a deficiency in the legislation. This is particularly so when one finds in paragraph (e) of the same subclause the term "place". Apparently, there is a distinction between "premises" and "place".

I put this to the Minister in a constructive way. Let us take a paddock on a farm which is used for the manufacture or preparation of a prohibited plant. A crop of a prohibited plant is growing there and is harvested and is prepared out in the open for use or distribution or whatever might be required. Would that paddock be regarded as "premises"? I cannot express an opinion on the matter; I simply do not know. Normally, "premises" envisages a building, or some defined area. The same comments apply to paragraphs (b) and (c) of clause 5(1).

What about the term "place"? If a person is found in any place which then is being used for the purposes of smoking a prohibited drug, can the term "place" be interpreted in a wider sense than "premises"? If it is, perhaps it would be desirable to use the word "place" instead of the word "premises" throughout the clause. If there is no difference between the two terms, I wonder why it is not possible to use the same term to have the same meaning.

I raise these points constructively because they are the sorts of things I imagine will be raised in proceedings arising under this legislation. They

are likely to be raised for the very reason that we have a new piece of legislation. Obviously, the courts with some confidence can believe that Parliament has directed its mind to these issues.

It is quite different where we have old laws which have grown up like Topsy, with bits and pieces added here and there; one cannot gain any idea of policy simply by reading the Act. But here, we have a deliberate attempt to bring together all the laws relating to the subject matter, and we have a use of terms which is confusing. If it is not confusing to the Minister or the Government, the terms are such as is likely to give rise to some confusion to the ordinary man in the street who reads this legislation. One would hope we can produce legislation which will enable the man in the street to know precisely what is intended by Parliament.

The Hon. G. E. MASTERS: Mr Olney referred to section 24 of the Criminal Code; I draw his attention to the second paragraph, which states as follows—

> The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

He will note that the word is "may" not "shall". Surely that allows the court discretion to make a judgment. If there is reasonable doubt in the mind of the court that the person in fact was not there to break the law and did not understand the situation, he shall not be considered to have committed an offence.

The Hon. H. W. Olney: It either applies or it does not.

The Hon. G. E. MASTERS: It may. Surely we are talking about a situation in which the court has the discretion in any decision made. It is exactly the same situation as that of a person found in a gaming house or a stolen vehicle. The police need to make a judgment as to whether that person has knowingly committed an offence.

Let us confine the argument to drugs, and the smoking of cannabis. My understanding from the Police Force is that a person who enters a place being used solely for smoking drugs would be in no doubt as to what was going on, and it would be his duty to leave those premises as soon as possible. In an extreme case where perhaps the person wandered in by mistake and there was insufficient time for him to leave the premises, the court has the discretion to make a judgment on the matter. This provision has been in the legislation for eight years and I am informed the police do not have one example of where the provision has been abused in that time. So, I believe the Criminal Code makes allowances for this situation.

If we look at the judgments over recent years under this section of the Criminal Code and of the Police Act, we see we have no need for fear.

Mr Olney asked about the difference between "premises" and "place". I understand a paddock would be a "place". "Premises" in my simple understanding of the term, would mean buildings, and nothing less.

Mr Olney questioned the definition of the term "occupier". I imagine that the occupier of a premises would be the person in charge of a premises or in occupation at the time. If I were an occupier, I would be in occupation, taking the rent, or in charge of the management of those premises.

I think the term "knowingly permits" is very important. Let us take the example of a person who owns a home, and goes on holidays. He may rent his property, and may not return for 12 months. In the meantime, his property could be used for the purposes of producing or smoking prohibited drugs and, of course, the owner of the property would have no knowledge of these activities. The legislation requires that the police prove that person knowingly permitted those activities to take place.

The Hon. P. H. WELLS: Is the Minister saying the courts will interpret and decide if the exclusion or implied exclusion of section 24 of the Criminal Code should apply to this Bill? In reading that section I got the impression that the exclusion or implied exclusion was stated in the Bill, just as the Criminal Code provides that a person cannot use as a defence the fact that he did not know a girl was under the age of consent. I ask the Minister: Is there any implied exclusion of section 24 of the Criminal Code?

The Hon. G. E. MASTERS: I am not sure I understood what the honourable member asked me. This Bill, as far as is possible, sets out the actions which need to be taken when dealing with drug offences. Quite obviously, it is not feasible to include every piece of the Police Act or the Criminal Code, or to specify every single action which takes place.

In a case where a mistake is made or there is reasonable doubt the person is not on the property for the same purpose as the other people, this section in the Criminal Code would apply. The court would decide there was reasonable doubt, there was some excuse, and the person was not guilty of an offence.

The Hon. P. H. Wells: So it is not implied in clause 5(1)(e) that section 24 should not be taken into account?

The Hon. G. E. MASTERS: Section 24 will apply.

The Hon. H. W. OLNEY: A couple of heresies ought not be let go. I think Mr Wells was on the right track. Section 24 of the Criminal Code talks about the operation of those provisions being expressly or impliedly excluded. An express exclusion of the operation of section 24 could be the statement that that section of the Criminal Code was not to apply under any provision of a particular Act.

The same thing could be achieved by saying in respect of clause 5(1)(e) of this Bill that it shall not be a defence for a person accused that he believed the place was being used for some lawful purpose. That would obviously be an express exclusion of section 24 of the Criminal Code, because it is expressed in terms quite contrary to those provided for by section 24.

An implied exclusion can arise in many ways. We have to look at the Act and determine whether it was intended when it was passed that section 24 should apply.

I refer the Minister to a case decided in the Supreme Court where, under the Fisheries Act, it was said there was no implied exclusion in respect of a particular offence. I think it was dealing with a Geraldton fishing company. In another case concerning one of our transport Acts, the Supreme Court came to the conclusion that in one section where the offence was created there was no implied exclusion of section 24, but in another there was. The court came to a conclusion by looking at the Act as a whole.

That is why I say that if we look at this clause as a whole we see that in paragraphs (a), (b), and (c) the knowledge of the accused person is an ingredient of the offence, whereas in paragraphs (d) and (e) it is not an ingredient. I suggest there is some likelihood that it could be construed by a court that paragraphs (a), (b), and (c) would not exclude the operation of section 24 of the Criminal Code, but because the word "knowingly" is not used in paragraphs (d) and (e) the court may be led to the conclusion that section 24 of the Criminal Code is excluded.

I am not saying we have to know here, in black and white, in watertight terms, what courts are going to say about legislation we pass, but if what the Minister says is true, a simple amendment along the lines I suggested earlier would be appropriate.

As for the matter of an occupier, I ask the Minister to consider that my wife and I own a house in Fremantle. Let us say I go away to Margaret River for six months and before doing so I tell my wife that it is quite all right for her to use the house for the manufacture or preparation of prohibited drugs or plants during my absence. Obviously she is in occupation and knowingly permits the house to be used for that purpose. I am not involved in the actual operation of the venture but I knowingly permit the premises to be used for that purpose.

Am I, as the absentee owner, the joint owner, and a person entitled to occupy those premises, to escape penalty simply by not being there or am I going to be lumped in some way under the term "occupier" because I am entitled to occupy, or have in the past occupied, or intend in the future to occupy, the house? That is a very real problem and one to which the Bill does not address itself. The Government should address itself to this matter.

The Government needs to define the term "occupier". I refer members to the definition of "occupier" in the Factories and Shops Act. It is quite an explicit description of an occupier of a shop or factory. It is described in such a way that people cannot escape their responsibilities simply by saying that on a particular day they were not there or they had not been there for a few months.

The Hon. G. E. MASTERS: In respect of clause 5(1)(e), quite clearly section 24 of the Criminal Code is implied and intended to be used. This clause or one like it has been in the Police Act since 1968 and section 24 of the code was implied and meant to be used where necessary. So there is no change and things will go on exactly as before. It is not necessary to change it; it has been used and proven to be effective. Section 24 can apply where necessary. If we miss a particular clause, thus creating a vacuum, we refer back to the Criminal Code.

The Hon. H. W. Olney: You can create a vacuum with a code.

The Hon. G. E. MASTERS: It is not a code in the way Mr Olney means. It is implied that section 24 will apply as it does in the Police Act. It has applied successfully for eight years.

When we speak about joint owners and the like it is clear that if a person is in occupation of certain premises and knowingly permits them to be used in relation to prohibited drugs or plants, he is guilty of an offence. If there are two owners and one is absent but knowingly permits this sort of activity to occur, both parties would be guilty if

it could be proved each knew what the premises were being used for.

Clause put and passed.

Clauses 6 to 12 put and passed.

Clause 13: Powers of police officers when property suspected of being connected property—

The CHAIRMAN: When the Bill was reprinted after being amended in another place the word "so" was omitted from line 27 on page 12. This has been corrected so that the words read "person so suspected".

The Hon. H. W. OLNEY: The clause in its present form is substantially different in two respects from the clause originally introduced by the Minister in another place. Subclauses (2), (3) and (4) have been added which protect the civil rights of individuals who may be affected by this clause. Subclause (1) has been amended by including the words "as is reasonably necessary" after the words "using such force".

I commend the Government for agreeing to the insertion of those words. If force is to be used it must be judged by some objective standard. What an individual considers to be necessary is purely a subjective standard. It is appropriate when a person is given authority to do something which would otherwise be unlawful that the authority should be extended only to what is reasonably necessary. Similar changes have been made to clauses 14, 23, and 24. To that extent the Bill is better than it was previously.

Clause put and passed.

Clause 14: Granting of search warrants in respect of property suspected of being connected property—

The CHAIRMAN: There is a printing error in line 27 in that the word "firstmentioned" has one too many "i"s. The Clerk has corrected it.

Clause put and passed.

Clauses 15 to 31 put and passed.

Clause 32: No limitation—

The Hon. H. W. OLNEY: This clause departs from the normal rules that apply to the bringing of prosecutions. The rules relating to prosecutions for indictable offences always have allowed for prosecutions to be brought at any time after the commission of the offence; whereas with respect to simple offences which are conveniently described as trials before a magistrate or a justice of the peace there has been a six-month limitation period at least since 1902 in this State, and possibly longer. What that means is that with less important offences, if the charge is not brought within six months of the offence having been committed, the Crown Prosecutor has no right to bring the prosecution—it is said to be Statute barred.

No explanation has been given in this case as to why there should be a departure from the existing rule. The Minister did make some reference to it in his second reading speech, but I just cannot put my finger on it. In general terms he said the provision will close off a loophole. The simple offences described in the Act are not illegal drug trafficking offences—ones which attract severe penalties.

I am concerned that the Government intends to remove the limitation in regard to simple offences. One can say that no justification exists for a six-month limitation period. I would not agree with that argument, but I suppose it is an argument. If it is justifiable in this legislation it would be justifiable in every section of the Police Act, the Road Traffic Act and the Traffic Code; in fact, it could be justified to apply to any simple offence.

Not one cogent reason or specific case has been offered by the Minister. I ask whether he knows of any specific circumstance which has shown that the administration of the existing law has been unduly hindered by the six-month limitation period.

The Hon. G. E. MASTERS: I believe the reason for this clause—I must admit it is not normal practice and that the Justices Act provides for a six-month limitation period—is that this legislation involves a special situation. The drug scene involves problems which are not the same as in other cases. We may have the situation of undercover officers involved in a complex and lengthy operation. Certainly with illegal drugs that seems to be the case. It may take some time before an offender can be brought to justice.

I do not have a specific example, but I am sure that in certain instances the police have found they require a period of more than six months before they can bring an offender to justice, and that may occur for one reason or another. By rather devious means some people may be able to avoid the wrath of the law. This clause therefore is a step to close the gap.

In relation to simple offences a magistrate, if he thinks fit, may refer an offender to a higher court. That simple offence could be changed to an offence involving some sort of conspiracy, or whatever the case may be, within the terms of the legislation before us.

For the reasons outlined it is felt that the six-month limitation period should be removed so that offenders will not avoid the penalties to be imposed under the law.

Clause put and passed.

Clauses 33 to 37 put and passed.

Clause 38: Evidential status of certificates of analysts and botanists—

The Hon. H: W. OLNEY: This clause is one which would not normally create great attention. It allows for the production in evidence of a certificate of an analyst or botanist relating to his examination of a drug, plant, or other thing. My objection to the clause is twofold.

The certificate of the analyst or botanist is put in evidence without proof of the signature of the person signing the certificate, or without proof that the person is an analyst or botanist. When the certificate is handed up by the Crown Prosecutor it will be deemed to be sufficient evidence of three things. Firstly, it will be deemed to be sufficient evidence of the identity, nature, and description of the thing obtained or received for analysis or examination. If the certificate says, "On this day I received from Constable Jones a package which contained cannabis", the certificate is evidence that the substance was cannabis. Secondly, the certificate is deemed to be sufficient evidence of the result of that analysis or examination. The certificate is proof of the description of the goods obtained and the result of the analysis of the goods. Thirdly, the certificate is deemed to be sufficient evidence of the matters relevant to those proceedings stated in the certificate.

I suggest that when an expert like an analyst or a botanist whose sole role is to determine the nature of a substance, does so, that should be the end of his role. Simply no scope exists for his certificate to touch upon any other matters relevant to the proceedings.

I have had some little experience with a similar provision. Ultimately when the workers' compensation legislation comes before us, if it ever does, I will be able to inform the Chamber of some of the problems associated with provisions like the one before us now.

No doubt the Minister will handle that legislation. The provision relating to the pneumoconiosis medical board indicates a problem with certificates. Contradicting evidence of the matters stated in them cannot be given. There is a problem associated with material being put in those certificates which ought not be there and which the interested parties are not able to challenge.

I query whether it is appropriate for subparagraph (iii) to appear in this clause. After all, it seems to suggest the analyst has a role other than identifying and analysing a substance given to him. I will not move an amendment because I know from what occurred elsewhere the Government is hell-bent on having this provision, but I query its desirability and suggest some thought be given to removing it.

The second part of my objection is that in paragraph (b) it is provided that the certificate is sufficient evidence of the three things I have mentioned unless the defendant, by not less than three days' notice in writing delivered to the complainant and to the analyst or botanist, requires the analyst or botanist to attend as a witness in the proceedings. The words "opportunity to deliver which notices shall be afforded to the defendant" appear in brackets. It is completely unsatisfactory for the accused person to be required to give three days' notice of his desire to have an analyst give evidence if the defendant does not have the certificate it is intended to produce.

Certainly the defendant would have to have the certificate three days before the proceedings; and I suggest he would need it more than three days before the proceedings. He ought to have the opportunity to have his own expert advisers consider the matter to advise him whether the analyst ought to be called and cross-examined.

I suggest the amendment proposed in another place, but rejected, would be much fairer than the provision existing in this clause. The proposed amendment was to the effect that when the prosecution intends to rely on a certificate of an analyst or botanist it ought at a very early stage of the proceedings notify the accused person to that effect, and it ought to provide a copy of the certificate at an early stage so that a proper assessment of the need to call the analyst or botanist can be made.

The Hon. G. E. MASTERS: The certificate quite obviously would be necessary for a court hearing to proceed.

If the analyst or botanist is to sign a certificate to be produced in court, that certificate must do a number of things. Paragraph (b) sets out these as follows—

(i) the identity, nature and description of the thing obtained or received for analysis or examination;
(ii) the result of that analysis or examination; and
(iii) the matters relevant to those proceedings stated in that certificate . . .

On my reading of subparagraph (iii) it means that the matters in those certificates are relevant to the proceedings before the court. Obviously that must be the case: the particular drugs which

the analyst or botanist examined must relate to the case before the court at that time.

The honourable member said also that the certificate cannot be challenged. Of course it can be challenged; if the defendant wishes to call a botanist or an analyst to the court he may do so.

The Hon. H. W. Olney: I did not say it could not be challenged.

The Hon. G. E. MASTERS: I thought that was what the member had said. It can be challenged simply by requiring the analyst to come before the court to give evidence.

The Hon. H. W. Olney said that three days is not sufficient time. Let me say again that this provision appears in the Police Act and there have been no problems about it. So from experience, it will present no real problem.

Clause put and passed.

Clauses 39 to 41 put and passed.

Clause 42: Amendment of certain Schedules—

The Hon. G. E. MASTERS: I move an amendment—

> Page 33, line 8—Delete the passage "(2) On the publication" and substitute the passage "(2) Subject to this section, on the publication".

Amendment put and passed.

The Hon. G. E. MASTERS: I move an amendment—

> Page 33—Add after subclause (2) the following new subclauses to stand as subclauses (3) to (5)—
>
> (3) The Minister shall cause a copy of every Order in Council made under subsection (1) to be laid on the Table of each House of Parliament within the first 14 sitting days of that House after the publication of that Order in Council in the *Gazette*.
>
> (4) If a copy of an Order in Council made under subsection (1) is not laid on the Table of a House of Parliament in accordance with subsection (3), that Order in Council ceases to have effect when that copy is not so laid, but without affecting the validity or curing the invalidity of anything done or omitted to be done in good faith before that Order in Council so ceases to have effect.
>
> (5) If either House of Parliament passes a resolution, of which notice has been given within the first 14 sitting days of that House after a copy of the relevant Order in Council made under subsection (1) has been laid on the Table of that House under subsection (3), that that Order in Council be disallowed, that Order in Council thereupon ceases to have effect, but the disallowance of that Order in Council does not affect the validity or cure the invalidity of anything done or omitted to be done in good faith before the passing of that resolution.

This amendment has been moved because of comments made by members on both sides of the Chamber, and in consultation with the responsible Minister. We consider it is a justifiable amendment. We concede that Parliament should be able to make a judgment on these matters. The schedules refer to quantities as well as to particular drugs. Also, as more drugs are nominated in the Poisons Act they will be referred automatically to these schedules and become part of the Act.

Nevertheless, the penalties to be imposed under the legislation will be affected by the quantity of particular drugs in a person's possession, and a change in a quantity of a drug could mean that a simple offence becomes an indictable offence. Such an offence would attract a much heavier penalty and it would be dealt with much more severely by the court. For that reason we believe our amendment will enable Parliament to make a decision, if desired, where changes are to occur. I hope it will meet the requirement of members.

The Hon. H. W. OLNEY: The amendment is in line with the suggestion I made during the second reading debate, and the Opposition supports it. I was hoping the Minister would say that it was in direct response to my suggestion, but apparently members on the Government side have his ear as well. Whatever the motive for the amendment, it is an improvement, and we support it.

Amendment put and passed.

Clause, as amended, put and passed.

First to sixth schedules put and passed.

Title—

The Hon. H. W. OLNEY: The title of the Bill was raised during the second reading debate, and responded to by the Minister. I objected to the title of the Bill because, when compared with the United Kingdom legislation of the same name, it has no provision for a body similar to the advisory council set up under the English legislation.

The English Act contains both penal and therapeutic aspects, but the Bill before us is penal

legislation. The title "Misuse of Drugs Bill" suggests that it is aimed at the total problem. It is not; it is aimed only at the penal aspects of the control of the drug scene. For that reason I suggest it is a misnomer. This is particularly so when we consider the Williams report; Mr Justice Williams recommended trafficking in drugs legislation. That is really what this Bill is about. I think it is valid to seek to distinguish between this Bill and the English Act of the same name.

Title put and passed.

Bill reported with amendments.

ACTS AMENDMENT (MISUSE OF DRUGS) BILL

Second Reading

Debate resumed from 16 September.

THE HON. H. W. OLNEY (South Metropolitan) [9.40 p.m.]: I will be very brief with my comments to this Bill. It is consequential upon the Bill recently considered by the House, and it is to bring a number of related Acts into line.

One of the amendments in the Bill will affect the jurisdiction of the District Court. In this regard I wish to refer to a Press release put out by the President of the Law Society of Western Australia. I do not have the date of the Press release, but it was some time prior to 18 August 1981. It refers to a number of particular features of the Bill. A committee of the Law Society called the courts committee examined the Bill and expressed concern about certain features of it. The Press release stated as follows—

> The Committee is concerned, however, as to the courts in which certain offences under the Bill are to be tried.
>
> The present general rule is that offences carrying a maximum term of imprisonment exceeding 14 years are heard in the Supreme Court.
>
> The Misuse of Drugs Bill does not stipulate the Court in which indictable offences are to be tried. However, an allied piece of legislation, the Acts Amendment (Misuse of Drugs) Bill 1981 proposes that the District Court should be competent to try offences under Sections 6(1) and 7(1) of the Bill. These offences carry maximum penalties of 25 years of imprisonment or a fine of $100 000 or both.
>
> Charges under Sections 6(1) and 7(1) of the Misuse of Drugs Bill would be amongst the most serious charges in terms of penalty that come before the Courts in this State. Perhaps the only charge that would be more serious in terms of penalty would be one of wilful murder.
>
> The Committee anticipates that often minimum terms of imprisonment for offences under Sections 6(1) and 7(1) of the Misuse of Drugs Bill will be of greater duration than those received by persons convicted of murder.
>
> The Committee believes that persons charged with the most serious offences are entitled to be tried before the most senior and competent Judges and that therefore charges laid under Sections 6(1) and 7(1) of the Misuse of Drugs Bill should only be heard in the Supreme Court.

The release then comments about the need for more judges.

I suggest there is some justification for the comments of the Law Society of Western Australia. We have heard the Minister tell us tonight about how seriously he regards drug trafficking offences, and no-one will disagree with him. His comments support what the Law Society is saying. However, surely the most serious offences ought to be tried by the highest courts. It would be unfortunate if the reason for allowing the District Court to have jurisdiction in this respect is simply one of mere administrative convenience. I do not wish to underestimate the difficulties under which the system of administration of justice labours, particularly in times of shortage of finance.

There is a need to get the priorities right. One of the highest priorities when it comes to the administration of very serious penal laws must always be that those people who are likely to be deprived of their liberty or their property, or both, should be seen to have a fair deal.

If there is a good reason of policy for District Court judges in other circumstances not to try cases carrying a penalty of 14 years' imprisonment, that same philosophy ought to apply across the board. For that reason, we express some disappointment that the Government has adopted this attitude and has done so without any real explanation.

We have been convinced by the Government and by the eloquence of the Minister that these are very serious offences. Although Mr Masters did not want us to hang drug traffickers, I would not mind betting that two or three members of the Government would like to hang them.

The Hon. G. C. MacKinnon: Two or three parents of kids who have become addicted would like to hang them.

The Hon. H. W. OLNEY: That may well be so. The fact is that if offences are of such a serious nature that the Government is contemplating even the ultimate sanction, surely they are offences for the Supreme Court and not for a court which, according to the policies of our legislation in other respects, is an inferior court and one which does not normally have the power to try such serious cases.

THE HON. G. E. MASTERS (West—Minister for Fisheries and Wildlife) [9.46 p.m.]: I take note of the honourable member's comments.

When we are dealing with the drug scene in particular, it is a very serious matter, and very serious offences are associated with it. In making a decision that the District Court should deal with these matters, we were of the opinion that the offences, in the main, are not very complex. They are very straightforward offences. That has been the experience in the past. There is nothing complex in most of the problems that have been struck in this regard.

It is a matter of judgment. We have examined the facts and we have reached the conclusion that, in fact, it would be a good idea for the District Court to be able to deal with these matters in the very competent manner that it would deal with them. In doing that, we are not fragmenting the situation into a number of courts. We are saying simply that there will be a summary court and a District Court.

We are perfectly satisfied that the District Court will be able to deal adequately with these offences. We are not talking about the ultimate penalty. We are not talking about life imprisonment; it is less than life imprisonment.

A policy decision has been made. We have reason to believe that justice can be done adequately in the District Court, and that is why we have taken this step. It will be in the interests of all concerned.

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.

DOMICILE BILL

Second Reading

Debate resumed from 15 September.

THE HON. J. M. BERINSON (North-East Metropolitan) [9.50 p.m.]: "The private international law of domicile" is the sort of phrase to delight academic lawyers and dismay most of the rest of us. Nonetheless, the concept is not as awful as it may appear on first hearing; and, in fact, the background against which this Bill is presented has been, if I may say so, clearly and helpfully presented to the House in the second reading speech of the Attorney General.

As I understand it, this Bill has three main objectives. In the first place, it seeks to abolish the common law rule by which the domicile of a wife always had to follow the domicile of her husband. In future, a married woman will be capable of establishing a domicile independently of her husband. That is in keeping with the general movement towards the equality of status between the sexes; and it could be supported on that basis alone. The Opposition does support it.

For those who may be concerned by the change, it might be worth mentioning in passing that it is far from being a radical change. Apart from our following at least four other States of Australia in this respect, I note that the abolition of the common law rule in the United Kingdom took place as long ago as 1973 by virtue of the Domicile and Matrimonial Proceedings Act. There is no evidence that that Act has led to any undesirable effect, but rather the contrary.

The second major change provided by this Bill is in its provision that 18 years shall be the age at which an independent domicile can be established; that is, a domicile of a person established independently of his or her parents. Again, that is in keeping with the age of majority provisions in a number of other areas, although it differs from the English legislation to which I referred in that the latter adopted 16 as the age at which that independent choice of domicile could be exercised. There is nothing to suggest that the Government's proposals in this respect are other than reasonable and acceptable.

The third major change is rather more esoteric. It abolishes the former common law rule that where one domicile was abandoned and before another was adopted, the so-called domicile of origin should revive. For practical purposes, that was the domicile of birth. I would have found it constructive had the Attorney elaborated on that point in his second reading speech, indicating the difficulties which arose under the common law rule, which difficulties are sought to be avoided by this provision of the Bill. Nonetheless, one must again come to the conclusion that the amended situation is a sensible one, and again justifies our support.

In passing, I might mention that among the other attractions of this Bill is that it is part of a

process which, by agreement of the Standing Committee of Attorneys General, will result in uniformity in these provisions amongst the Australian States and the Commonwealth; and that is another plus for it.

In all, the Bill has the virtues of commonsense and a move towards uniformity on its side; and the Opposition supports it for those reasons.

I commend the Bill to the House.

THE HON. I. G. MEDCALF (Metropolitan—Attorney General) [9.55 p.m.]: I thank the honourable member for his indication of the Opposition's support for the Bill. He has analysed correctly that there are three major items of importance in it.

In relation to the reference to the United Kingdom legislation of 1973 and the fact that it has taken us eight years to catch up—the member did not say so, but that is the inference to be drawn from his comments—there has been a degree of disunity on the subject of domicile. It is a subject which has engrossed the minds of academics for a long time, and the few lawyers who happened to have been involved in that area. It is largely an area in which there had to be some compromise, because much can be said on both sides of every argument, particularly in connection with the three major items in this Bill. That is one reason the debate has lingered for so long.

One of the officers engaged in research on this Bill informed me the other day—and I did not know until then—that in the course of his research he had found a file of the Crown Law Department of Western Australia which indicated that this amendment had been suggested in 1946 by the then Mr R. G. Menzies, who was the Leader of the Federal Opposition. Whether he was the first to suggest it, I do not know; but Mr Menzies made the suggestion that it was time to consider these questions.

I know that the Standing Committee of Attorneys General first started to consider the matter in 1968 or 1969, according to inquiries I made myself. We have spent a long time in getting everyone to come to the barrier.

Even at the last moment, before final agreement was reached, there had to be compromise. We were being deluged by the writings of various academics in various institutions of learning who had very strong views on particular aspects of this topic. I must confess that we had to ignore some of those views in order to reach a stage at which we could present a Bill to the people of Australia.

I thank the Opposition for its indication of support. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

Third Reading

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

ADOPTION OF CHILDREN AMENDMENT BILL

Second Reading

Debate resumed from 15 September.

THE HON. J. M. BERINSON (North-East Metropolitan) [10.01 p.m.]: This Bill is consequential on the Domicile Bill with which we have just dealt. As I indicated in my remarks on the earlier Bill, one of its effects will be to avoid in future the need to have recourse to the concept of domicile of origin.

Section 9 of the Adoption of Children Act refers to the domicile of origin of the child, in the provision which deals with the ability of a court to vary, reverse, or discharge adoption orders. Since this is a concept which will have no further application in the law of domicile, it follows that the reference to it in the Adoption of Children Act is out of place and this Bill seeks merely to reflect that position.

The Opposition supports the Bill and I perhaps need add only that the Domicile Bill has particular provisions to which reference was not made previously covering the position of adopted children in the event of discharge of adoption orders. In other words, the position of such children is both covered and protected, and that is the only other comment which is necessary on this piece of legislation.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

Third Reading

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

House adjourned at 10.05 p.m.

QUESTIONS ON NOTICE

RACING

Western Australian Turf Club

528. The Hon. N. E. BAXTER, to the Minister representing the Chief Secretary:

(1) What was the total amount of funds received by the Western Australian Turf Club under subsection (4) of section 28 of the Totalisator Agency Board Betting Act for the financial year ended 30 June 1981?

(2) What amount was paid to each of the following provincial clubs from 20 per cent of the total amount as prescribed in the subsection of the Act aforementioned—

(a) Bunbury;
(b) Pinjarra;
(c) Northam;
(d) York;
(e) Beverley;
(f) Toodyay; and
(g) Narrogin?

(3) What amount was paid to all other country racing clubs in the State?

(4) What was the total amount invested, both on-course and off-course—

(a) on totalisators on races held in the metropolitan area;
(b) on totalisators on racing in other States of Australia; and
(c) on all totalisators on racing in country areas in the State?

The Hon. G. E. MASTERS replied:

(1) The total amount for the TAB's financial year ended 31 July 1981 was $6 756 054.

(2) and (3) Not known. The Western Australian Turf Club is responsible for the distribution to individual country clubs. Annual reports of the WA Turf Club do not disclose individual payments.

(4) Statistics relative to investments on on-course totalisators are maintained by the Commissioner of State Taxation to whom clubs are required to submit returns subsequent to each race meeting. Amounts invested with the TAB for the year ended 31 July 1981 were—

(a) on racing and trotting and greyhound races held in the metropolitan area, $76 966 809;
(b) on racing and trotting and greyhound races held in other States of Australia, $101 792 833;
(c) on all racing and trotting and greyhound races held in country areas of the State, $49 812 653.

TRANSPORT

Southern Western Australia Transport Study

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

(1) Did the Minister see the articles which appeared in *The West Australian* on 7 September 1981, and on page 19 of the *Daily News* of Wednesday, 16 September 1981, which stated "The South Western Area Transport Study recommended that Westrail restrict its transport to bulk goods and let private firms handle small goods"?

(2) Will the Minister take appropriate action to ensure that the public are aware that SWATS recommendation 5 was as follows—

> That the handling of small freight consignments and parcels be transferred to a new and separate division of Westrail, to be known as Westfreight?

(3) Will he also ensure that the public are made aware of the purpose of the recommendation, which is as follows—

> The purpose of the recommendation is to enable a relatively uneconomic and labour intensive sector of traffic to be adequately served under a separate "organisational roof" with its own separate set of accounts.
>
> The reason is that small consignments and parcels, while of great importance to many people, require a mode of handling that will be increasingly out of step with the rapidly growing and highly mechanised bulk transport traffic that provides, and will increasingly provide, the major earning power of Westrail.

By keeping the two kinds of business separate, problems that could adversely affect railway employees will be avoided. Furthermore, the separate business philosophies required for the two kinds of business can be pursued without conflict?

The Hon. D. J. WORDSWORTH replied:

(1) to (3) The Minister for Transport appreciates the member's interest in the accuracy of reporting of the findings of the Southern Western Australia Transport Study. The SWATS said that total withdrawal of Westrail was "not a realistic approach to government policy for LCL traffic in the foreseeable future". Like the member, informed members of the public will know this, having obtained and read SWATS some years ago. There is very little in addition that the Minister can do when, from time to time, the study's recommendations are misunderstood or misreported.

HOUSING

Disabled Persons

531. The Hon. R. HETHERINGTON, to the Minister representing the Minister for Housing:

(1) Can the Minister inform me what consideration is given to the special needs of disabled people by the State Housing Commission?

(2) Are there any guidelines followed by the SHC which the Minister can make available?

(3) How many houses have been built with the needs of disabled people in mind, and how many have been modified to meet the needs of the disabled?

(4) Is there provision for the adjustment of already built SHC homes or units to accommodate disabled people as for example, ramps, larger doorways and bathroom alterations?

(5) Is there provision for disabled people to share accommodation either with an attendant or another disabled person so that they might assist each other?

The Hon. G. E. MASTERS replied:

(1) The commission has by long-standing policy modified accommodation to suit the special needs of disabled people; and this will continue.

Aged persons' units are so designed to allow wheelchair-bound tenants complete access as required.

(2) In liaison with the Royal Perth Hospital occupational therapy department, the needs of the person are ascertained and suitable modifications to existing accommodation are arranged at commission cost.

(3) This information is not readily available.

(4) Yes.

(5) The commission will agree to tenancy outside normal criteria for disabled persons.