Legislative Council

Wednesday, 29 September 1982

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

QUESTIONS

Questions were taken at this stage.

COMMITTEE FOR THE SESSION: LIBRARY COMMITTEE

Appointment

THE HON. I. G. MEDCALF (Metropolitan —Leader of the House) [4.55 p.m.]: I move—

> That for the remainder of this Session and in accordance with Standing Order No. 38, the Hon. P. G. Pendal be elected to the Library Committee in lieu of the Hon. W. R. Withers, resigned.

Question put and passed.

ROAD TRAFFIC AMENDMENT BILL (No. 2)

Second Reading

Debate resumed from 28 September.

THE HON. N. E. BAXTER (Central) [4.56 p.m.]: Unfortunately, due to committee commitments and other duties, I have not had a great deal of time to study this legislation; however, I believe the details of the Bill can be thrashed out during the Committee stage.

I am rather intrigued by the proposal to repeal and substitute section 67 of the principal Act, because it appears to represent an alteration of principle. Under the current legislation, section 67 provides that a person who refuses to take a preliminary breathalyser test may be arrested and charged with committing an offence; he may be taken to a police station or such place as nominated by the patrol officer and searched and fingerprinted. In other words, he may be subjected to all the treatment meted out to a common criminal. He may be required to provide bail if he does not wish to spend the night in prison, and he must appear in court the next day.

However, new section 67 refers to the failure of a person to provide a breath, blood, or urine sample for analysis, and it stipulates severe penalties for non-compliance. Because of its different application, I cannot reconcile proposed new section 67 with the existing section 67.

Other factors in the Bill also cause me concern. The Hon. J. M. Berinson referred to a person's being convicted of an offence, and being fined and disqualified from obtaining or holding a driver's licence. Proposed new section 67 (3) provides heavy penalties for non-compliance with the Act; for the third offence, the fine will be not less than $1 000, or more than $2 000, together with permanent disqualification from holding or obtaining a driver's licence. However, that person also may have committed a prior offence under section 63 of the Act, which, in my understanding, could be considered when a penalty is being invoked under proposed new section 67 (3).

There would not be much let-out if this sort of thing applied. This is a most peculiar Act that can be manipulated in the courts in various ways to penalise drivers if they commit certain offences.

Dealing generally with the matter of driving offences, and particularly those relating to alcohol and drugs, I am inclined to believe that we have gone overboard a little. It seems to be the desire of the powers that be, from the Minister down to the traffic authorities, to pin as many accidents and deaths as possible on alcohol and, to a lesser degree, on drugs.

The Hon. Garry Kelly: Do you not believe that is the case?

The Hon. N. E. BAXTER: I believe that, to some degree, alcohol is responsible as a factor; but it is not so much alcohol as speed.

The Hon. D. K. Dans: Hear, hear!

The Hon. N. E. BAXTER: That applies whether one lives in the city or the country. One can see people at any time, who are not under the influence of liquor—even in the early hours of the morning when they would not have access to alcohol—speeding on the main roads of Perth, travelling to the city or somewhere else. One can see the same thing in the country, wherever one travels. Such drivers go past, weave, and travel well over the speed limit. It is in this sort of situation that accidents occur. It is not the speed that kills, but the fact that the driver cannot control the car because he has not had the experience of driving in certain circumstances.

The Hon. Fred McKenzie: I agree with that; but it is when you combine alcohol and speed that you get trouble.

The Hon. N. E. BAXTER: Yes, but the accent of this legislation is on alcohol more than speed; and it is time something was done about it.

The Hon. Garry Kelly: The statistics do not bear that out.

The Hon. N. E. BAXTER: One sees no patrol officers on the roads in the early hours of the day. People travel willy-nilly at any speed they like.

During the evening, when the hotels are open, the police are about and any accident that happens is put down to alcohol. The Hon. Garry Kelly should go out into the country and see what happens there. He would learn what is responsible for the accidents in the country. They are caused, not by alcohol, but by pure speed when people cannot handle their motorcars. Often no patrol operates to control the speed.

One can go into the towns at night time, around the clubs and hotels, and one can see the traffic officers patrolling to pick up people who have had a couple of drinks. That has happened for a number of years. For a long time, some people have been able to drink their alcohol and drive a few miles home quietly, without any fear of an accident. They are not speedsters. They have been driving for a long time—perhaps not quite as long as the 55 years that I have been driving; but they have been driving for 20 or 30 years—and they are able to have a few drinks and still drive home without the slightest risk. They do not speed, because they know it is suicidal to speed.

The combination of alcohol and speed, I admit, is a killer; but many people are penalised because they have had a couple of drinks and have gone home; yet other people drive at 120 or 130 kilometres an hour, or more.

The Hon. Garry Kelly: Even if they do not speed, their reaction time is still affected.

The Hon. N. E. BAXTER: I do not think Mr Kelly has had much experience of country drivers. I have seen them over many years. At one stage I ran a hotel in the country in partnership. Farmers used to come into the hotel and take in a quantity of drinks. Every one of those farmers drove home without the slightest fear of an accident time after time, week after week. One would not hear anything about it.

I was in the hotel for more than three years, and I do not know of any accident recorded in that period in which a client of the hotel was involved. Our clients were sensible enough to drive safely when they had had something to drink. They were not aged 16, 17, 18, or 19, or perhaps a bit older; they were mature and they knew how to handle a car, whether they were sober or not. They were not the type of people who caused accidents.

We have to place more accent on the question of how we can control or stop people from speeding. A speedster deserves more severe penalties than those suffered by people who have a bit of alcohol in their blood. The people the Government should be trying to control are the ones who do not know how to keep to the speed limit. I will give a glaring example of that.

When I was the Minister for Health, I used to drive to my property up Greenmount hill; and the speed limit continued to be 60 kilometres an hour for seven-eighths of the Greenmount hill. I spoke to the present Premier, who was then the Minister for Police and Traffic, and I said to him, "It is a bit stupid, because going up Greenmount hill there are no cross-roads, only side roads, and the speed limit could be increased to 70 kilometres an hour without any danger of accidents." After two years, the speed limit was changed to 70 kilometres an hour; but now people travel at 80 kilometres an hour.

I tried to do a favour for people by obtaining a sensible, reasonable speed limit for vehicles going up Greenmount; but now they still travel above that speed. It is a safe, 70-kilometre an hour road to travel on—a quite wide four-lane road—but people travel at 80 kilometres an hour. I go up that hill regularly, and people pass me at 80 kilometres an hour, and sometimes higher speeds.

The Hon. D. K. Dans: Not only the cars, but also semi-trailers.

The Hon. N. E. BAXTER: The big truck drivers are getting away with murder. Time and time again I have seen traffic officers travelling one way and big trucks travelling in the opposite direction; and it would have been obvious to the traffic officers that the trucks were speeding, but they ignored them. What is going on with the whole business? Are we to tolerate a situation where speeding is to be allowed, irrespective of whether alcohol is involved?

If a person has a couple of drinks and is a bit over the 0.08 limit, he is heavily penalised. I have a neighbour who went to the races some few months ago. Admittedly he had a couple of drinks at the races, and later he was driving home quietly with his wife. He was going to turn to the left at a main road junction, and he did not put on his indicator light; and he was apprehended by a patrol car. Two officers were in the patrol car, and they pulled him up and asked him why he did not put on his indicator light. He said, "I sort of forgot it at the time. I didn't think it was necessary to put my left indicator light on." The younger officer said, "You have been drinking." He said, "I have had a couple of drinks." The older officer said, "He is okay. He has only got a little way to go. Let him go home." The younger officer insisted; they put the bag on him, and the reading was just over 0.08. He was fined $150 and his licence was suspended for three months. He was not even able to be granted an extraordi-

nary licence. My friend starts work at 4 o'clock in the morning three days a week, and at 7 o'clock two days a week, and he could not obtain an extraordinary licence for the period of his suspension.

In a similar situation, another person on his second offence was granted an extraordinary licence. I will not refer to that person by name; but it happened. All of the reasonableness has gone out of the situation. One can be driving along quietly, with little alcohol in one's blood, and be picked up. Members will recall that the Hon. Mr Gayfer was picked up because the tail light of his car was not lit; and he was charged because he refused to undergo a preliminary test.

We should have a jolly good look at the whole situation and be reasonable about the sorts of penalties we impose, and the sorts of action we take. We must have regard particularly for speed. The Government is concerned about the death toll; and we are all concerned about the accident rate. If we are sincere in introducing a Bill of this nature, and if we impose very strict penalties on drivers who have taken alcohol, we should impose strict penalties on people who speed. We should jump on the people who, every day of the week, speed willy-nilly on our city and country roads. The accent is too heavily on alcohol, and more should be done about speed.

At this stage, I believe that my main arguments should be dealt with in Committee.

THE HON. D. K. DANS (South Metropolitan—Leader of the Opposition) [5.11 p.m.]: Before I could give my unequivocal support to this Bill, I would like to have a couple of questions answered. Perhaps the Minister handling the Bill in this place will answer them when he replies to the second reading debate.

Like Mr Baxter, I am fairly apprehensive about this legislation. Most people in the Chamber would concede that it is a fairly difficult Bill to follow.

I view this type of legislation with apprehension. The last speaker, Mr Baxter, was the Minister who handled a previous Bill dealing with traffic. I will not go through all of the debates that took place on that occasion, particularly in the Committee stage; but I said that a number of things would flow from that Bill. At the time, Mr Baxter gave me all the assurances in the world; and when he gave them, he was convinced that he was telling the truth, and that none of the things I mentioned would happen. I am sure Mr Baxter would agree that many of the fears I expressed on that occasion have been realised.

The Hon. N. E. Baxter: I agree.

The Hon. D. K. DANS: The Government should realise that there is many a slip twixt the cup and the lip. This Bill has an over-emphasis on alcohol. While we may say a number of things about how the legislation will work and not work, in the ultimate it comes down to the patrolmen on the road.

I agree about the speed situation. Some years ago, the Road Traffic Authority took advantage of the services of Dr Kirkman of the university, who was an authority on traffic accidents and speed on highways, not only in this country but in the United States of America. In his report, Dr Kirkman made a suggestion that the speed limit on roads be reduced from 110 kilometres an hour to 100 kilometres an hour. I believe he recommended also that the speed limit in the metropolitan area, and particularly on suburban roads, should be reduced; but that did not happen.

I agree with Mr Baxter that nothing in this Bill suggests penalties for the drivers of heavy road vehicles who violate the rules constantly. I see them doing that every single morning when I come down Canning Highway on my way to work. No doubt they do so in other places. Some time ago I spoke on the adjournment of this House, and I addressed my remarks to the then Minister for Police and Traffic, asking if he would do something about the heavy vehicular traffic jumping the red lights, particularly on Canning Highway.

I made the statement then that I knew how difficult it was to control such things. I did not want another road offensive launched against the drivers of heavy trucks, but I believed they could have been given the message. I have not seen any improvement on that highway for the simple reason that our highways, particularly in the metropolitan area, were not built to accommodate heavy vehicular traffic carrying huge loads, and motorcars carrying from one to three passengers—the two are incompatible. If anyone doubts that statement he need only journey along Stirling, Canning, Albany, and Great Eastern Highways of a morning to ascertain its accuracy.

The Government has not addressed itself to that problem; it is more interested in shutting down railways and other modes of transport originally used to carry heavy traffic. All that Bills of this sort do is contain penalties. For centuries we have been hanging people, incarcerating people, and flogging people for all manner of misdemeanour, yet we have had no improvement, particularly in the road toll.

Experts tell us that in the United States fatal accidents are down to a level per 100 000 cars that will not go any lower. It is suggested also

that this level has been reached in Australia. Not for one minute am I suggesting we should stop trying to reduce the road toll, but if we have a very dispassionate look at some of the semi-trailers, road trains, push bikes, and pedestrians using our roads, perhaps we have not done so badly after all. However, we do not address ourselves sufficiently to the matters of education, speed and, more importantly, traffic control.

I agree that we must have a limit to the amount of alcohol permitted in the bloodstream. Perhaps the best test was when a person was made to walk along a white line. If a person could pass that test, yet be as full as a goog, he would be able to drive away, and that happened on a number of occasions. At the moment I am speaking in general terms and later I will comment on the social implications of the amendments contained in this measure.

New section 64A reminds me that I have been always of the belief that we are all supposed to be equal in the eyes of the law. Perhaps I am wrong; perhaps we are all supposed to be equal in the eyes of God. What will we really do to our probationary drivers? True, some may be 17 or 18 years old, but others may be 45 years old. As a person who has been known to take drink on a hot day, my capacity for alcohol—

The Hon. Robert Hetherington: Is enormous.

The Hon. D. K. DANS: I am afraid Mr Hetherington is mistaken. Perhaps when I was 18 or 19 years old my capacity may have been enormous, but at my present age alcohol has varying degrees of effect on me, and sometimes those effects are quite dramatic.

The Government is starting at the wrong end of the scale. The penalty for driving while having a detectable amount of alcohol in the bloodstream will be $100. This suggests that an 18 or 19-year-old who consumes one glass of beer can be apprehended by a patrolman, marched off to the police station, fingerprinted, and photographed. He will then have a police record. This is reprehensible. In a society that seems hell-bent on imposing as many penalties as possible we will now have a situation where our road patrol officers, already understaffed, will have more work to do. I might add that they do not always pull one over and say merely that one is a naughty boy. Sometimes they are a bit stroppy because they are tired and frustrated. We will build into our system a large group of people with a very biased opinion of the law.

I would not be opposed to our bringing back the situation where a person could not have a driver's licence until he was 21 years of age. That would equalise the law to some degree. I would not be opposed to our reducing the allowable amount of alcohol in the blood from 0.08 to 0.05 per cent.

We could have the situation now where a probationary driver might only drive his car up and down his father's driveway. As soon as his probationary period is finished he can set forth on the highways, have a few glasses of beer, and then not be subject to this new penalty.

I applaud the efforts of any Government to reduce the road toll. However, I do not think the Government should be concentrating on one section of the community. I am not saying that we should exclude the drinking driver from our deliberations, but the law must be applied without fear or favour.

Without a shadow of doubt, this legislation discriminates against the probationary driver. It is not correct to assume that all probationary drivers are aged between 17 and 20 years. This legislation could affect a dear old matron who has just received a probationary driver's licence and has been along to the local bridge afternoon and consumed a couple of sherries.

The Hon. J. M. Berinson: Or even a lot of fruit cake.

The Hon. D. K. DANS: I do not know if that would show up, but we need to be careful before we wave a wand and say that this measure is a good thing. The Tasmanian legislation does not give us any guide; I do not know whether it is good or bad. If I am any judge of past performances, our road toll will continue to go up and down.

Virtually what it all comes down to is that our society, through this Government, is trying to come to grips with two very important elements in the community; one is the hospitality industry, a very nice name for the people who sell alcohol, and the other is the motor vehicle industry. Those two enterprises in our society are responsible for a great deal of commercial activity and, hence, jobs. The motorcar is a very expensive luxury, if one considers the Federal and State moneys needed to service our roads and freeways.

When I have heard the Minister's explanations about this and other provisions of the Bill I might change my mind, but at present I do not want to be a party to a provision which discriminates against one section of the community. After all, if people have turned 18 years of age they have the right to vote; they can be called up and sent away to fight—their lives can be sacrificed. They should be able to enjoy the same norms of the law as any other person. As I said earlier, there is many a slip twixt the cup and the lip.

If we have over-zealous policemen we could alienate a whole section of our community. I can sympathise with the policemen who have the terrible job of picking up from our roads people involved in accidents. Nonetheless, the probationary drivers will have their views of the Police Force tainted if they are picked up, fingerprinted, photographed, heaved off to court and, in some cases, forced to spend some time in prison. If we consider what could happen in country areas we might realise that, for a variety of reasons, someone may upset someone else in the community, and we can bet pounds to peanuts that person will "go off".

Perhaps some very good explanations and examples will be given to me when the Minister replies, although I was probably given all those years ago by Mr Baxter. Nothing came of his assurances then and, really, what we do here is not important; it is what happens at the point of contact that counts.

What should happen in this very important area is that an independent body should carry out a comprehensive investigation into all our traffic laws. That would take a considerable time, of course.

Finally, the experts tell me that if a person wants to survive on the road he should drive a big car.

THE HON. I. G. PRATT (Lower West) [5.27 p.m.]: I share in part the reservations expressed by the Hon. Des Dans about the idea of probationary drivers not having any detectable alcohol in their blood. I have had reservations about this matter for some time and have expressed those reservations to members of my own party. I have not been satisfied by them that this particular amendment will make much difference to our road toll. The amendment seems to be a matter of our being seen to be doing something. Our law enforcement agencies, the Minister, and everyone involved in this area are under tremendous pressure from the public to do something to lower our road toll. This seems to be an attempt to be seen to be doing something, rather than doing something that will achieve anything.

If we are to consider the number of young drivers who are involved in alcohol-related accidents today, we should first consider what has occurred over recent times. When I obtained my driver's licence at the age of 17 I was not allowed to drink in an hotel until I turned 21 years of age. Of course, people did drink in hotels before they were 21; it was quite common to find 18 and 19-year olds drinking in hotels and getting away with it.

The Hon. D. K. Dans: Fourteen and fifteen-year-olds.

The Hon. I. G. PRATT: Yes, but not too many young people of that age were to be found drinking in hotels.

Most young people had perhaps two or three years' experience of driving while they were sober before they were allowed legally to consume alcohol, so they had a fair grounding in how to drive a car.

If we consider the situation today we realise that the legal age for drinking alcohol in hotels is 18 years, a reduction of three years from the previous minimum age. A person must be 17 years of age to obtain a motor vehicle driver's licence, so he has only one year before he can legally drink in an hotel. Now, instead of under-age drinkers being perhaps as young as 18, we find large numbers of young people aged 15, 16 or 17 years drinking in hotels and getting away with it because they can be taken easily to be 18-year-olds, and so legally allowed to drink in a hotel.

I have a young son who does not go into hotels but could easily do so, as some members would know, because he looks at least 18 years of age. He stands 6 ft. 4 in. and weighs about 14 stone. He is big enough to play in the senior football team. He would have no difficulty in passing himself off as an 18-year-old and so be allowed to drink in a hotel.

In days gone by people were experienced drivers before they could drink, but the opposite situation prevails today. Before drivers have a fair chance of learning the skills of driving a motorcar they have been involved with liquor for some time.

Sometimes, when we set out with our reforms to lower certain ages, we do not look at the ultimate result; the lowering of the drinking age is one action which has contributed to the carnage of young people on the roads.

I note that there will be a stiffening of the tests for a motor vehicle driver's licence. Mr Wells said yesterday that he was pleased to note that fact but felt it would be of no use if we did not have more staff to handle the written testing and the increased practical testing time that was proposed. We should look at our operating efficiency to see whether we are wasting time unnecessarily.

It is my understanding that a series of written tests are taken from the small booklet one studies before seeking a permit to learn to drive. I understand a test is selected at random. Let us consider the case of a young driver wishing to obtain his permit and the three stages he must complete, if he wishes to obtain a motorbike rider's licence, then a motorcar driver's licence, and finally a

truck driver's licence. He must sit for a written test in each case. He must first pass the written standard test, which is the same for each stage, and then pass a practical test.

If after obtaining a permit to learn to ride a motorbike he then passes the test to obtain a licence and he wishes to obtain a permit to drive a motorcar he must sit for exactly the same test. All this testing takes up his time and the time of the examining officer.

However, if after obtaining a licence to ride a motorbike he fails his test to obtain a licence to driver a motorcar, he does not lose his licence to ride a motorbike. We do not say that he does not know enough about the road rules so we should take his motorbike licence from him.

Perhaps members may think that riding a motorbike does not require as much skill as is required to drive a motorcar. In my younger years I spent a lot of time riding a motorbike and I assure members it requires some skill.

Perhaps after obtaining a licence to drive a motorcar a person wishes to obtain a licence to drive a truck. He will then have to sit for another written test. I understand that test is a little different because a person is allowed one less mistake than if he were sitting for a test for a motorbike or motorcar licence. Let us say he is set exactly the same test that he passed for his motorbike licence and his motorcar licence. We know that these tests are picked at random. If a person fails a test to drive a truck, we do not say that he does not know enough about the rules of the road to drive a motorcar or to ride a motorbike—

The Hon. D. J. Wordsworth: You are asked exactly the same questions for all tests; for example the speed limit in King's Park.

The Hon. I. G. PRATT: If we made the tests quite different we may come to grips with the problem. Specific tests could be set for a motorbike licence, a motorcar licence, and a truck licence. We might have a basis for this. If I am incorrect the Minister may correct me. Then we might look at a few case histories on the matter.

Perhaps we can make better use of the time of our existing staff by stating to a person, "If we have tested you already and you have passed that test, then you know enough about the road to sit for the practical test."

The Hon. R. T. Leeson: Are not you referring to the regulations?

The Hon. I. G. PRATT: I am referring to the fact that we have been told that the written tests will be stiffer and the comment of Mr Wells that he feels we should have more staff to examine people.

The point I am making is that we may not need more staff. By cutting out some of the nonsense we carry on with at the present time, we will have a more efficient system.

I support the Bill, although with some reservations which I share with the Hon. Des Dans. I hope the legislation will be workable and will contribute to the more orderly use of our roads and create less dangerous situations for our citizens.

THE HON. W. M. PIESSE (Lower Central) [5.38 p.m.]: I applaud the Government for attempting to do something about the road fatalities, but I am disappointed at the areas covered in the Bill.

The Minister told us in his second reading speech that the Bill is aimed at the area of danger in driving; namely, the inexperienced driver. I cannot see anything in the legislation which is aimed in a practical way specifically at the inexperienced driver. I support the comments made about the extended practical test, but not the imposition of a more difficult written test.

I am a nurse of long standing and in my training I learned things such as giving injections, taking blood, delivering babies, etc. I could write a book on how to do those things and give it to members, but I guarantee it would take a deal of practical experience before they could carry out those functions. Therefore, we must consider the written test for a driver's licence in this context.

I am disappointed that matters which could have been of great benefit to our inexperienced drivers have been omitted from the legislation. A further practical test after the probationary period would be a start.

I know of no area of education where one serves a period of probation and does not, at the end of that time, go before some person or persons for an examination to ascertain whether in fact anything of a practical nature has been learnt from that probationary period. This is one area upon which this legislation should concentrate.

I appreciate that an extended practical test and a more difficult written test will be carried out initially, but if we are serious about this matter we must have enough staff to test the experience the new drivers have acquired following their probationary period.

A person may obtain a probationary driver's licence and never drive off his property. That is the case in many country areas. It could be the case of an older person who has never driven more than the distance to one of the paddocks to take

her husband his lunch, and after 12 months she is set loose on the road without knowing how to drive in wet weather, on a hazardous road or how to take evasive action when a reckless driver veers across the road.

I have visited the safe driving course in the metropolitan area and I give it full marks. A relative of mine completed that course because although she had been driving for many years in the metropolitan area she realised that she could benefit from it. I am not suggesting that everyone is able to attend that course but something must be done for the young drivers.

Recently I was speaking to the mother of a young driver who said she was rather worried because it was raining and her son who had recently obtained his driver's licence had never driven in wet weather on country roads. She said he knew how to handle a car on a metropolitan road, but had never driven under adverse weather conditions.

When I drove back to the city along Albany Highway I came across a number of big transports which were travelling in the opposite direction. Everyone knows the kind of slush that is thrown across one's windscreen when driving in wet weather. One is absolutely blinded and if one has to move to the edge of the road it takes some holding onto the wheel, even in the car I drive, which is considered to be easy to handle.

The problem lies to a large extent with the young, inexperienced drivers. They do not have the proper practical experience. The last thing we want to happen, but which often does, is for them to panic when they realise the car is not responding to their handling, and they do not know what to do next. I am very disappointed that we have not included in this legislation that extra practical test, no matter how much it might cost.

I refer now to the blood and urine tests proposed in the Bill. I hope the Minister will be able to advise me what will happen to female drivers who are stopped for drunken driving or for driving while under the influence of drugs.

The Hon. H. W. Gayfer: They will need a potty.

The Hon. W. M. PIESSE: It takes more than a potty because this legislation—

The Hon. G. E. Masters: This is a very delicate area.

The Hon. W. M. PIESSE: It may happen, and there will have to be proof that the woman driver was unable to provide a specimen. There are policewomen in the Police Force, and I am glad about that. But what will happen in a country police station in a case such as I have mentioned? Perhaps women do not drink and drive and they are not under suspicion, and perhaps we have no cases of women driving dangerously and in which a test will be required.

The Hon. P. H. Wells: I doubt it.

The Hon. W. M. PIESSE: Another point about which I want some information is the machine the Minister mentioned which will be used for measuring speed. I know it is costly to carry out surveillance by helicopter, but what will be the cost of this speed-measuring machine? How many are we likely to acquire, and how difficult is it to use? The Minister said in his speech that it will be examined to make sure it is efficient. However, perhaps the cost will be greater than we are led to believe in the first instance. I applaud the Government for trying in respect of this legislation, but I am not very hopeful about the result.

THE HON. H. W. GAYFER (Central) [5.48 p.m.]: I gave a great deal of thought to whether I should speak tonight—

The Hon. D. K. Dans: That is a dangerous practice for you.

The Hon. H. W. GAYFER: —because unfortunately things seem to happen. I know it is coincidence, but I will try again.

The Hon. D. K. Dans: You are lucky you do not have a "P"-plate.

The Hon. H. W. GAYFER: It could be said that the Government has had a good look at some of the penalties and other terms that could be brought in, because it has said it could not agree to the impounding of a motor vehicle used by a driver whose licence has been disqualified, as it might inconvenience some other persons. It might also not have been his vehicle that he was driving. I thought that was a fairly sound and elementary comment, but it was one thing that the average person gained. It could have been included in this Bill. The recommendation that an extraordinary motor driver's licence should not be available during periods of disqualification associated with a second or subsequent drink-driving offence was not agreed to. I give credit to the Government for that because it could seriously affect a person's employment and would unduly penalise people in the country—

The PRESIDENT: Order! There is far too much audible conversation. I can hardly hear the member.

The Hon. H. W. GAYFER: —where public transport is not available. I suppose one could say that is a plus for the country people. The Government also has agreed not to reduce the present

0.08 limit to 0.05. It also considered and rejected random breath testing. In the Minister's second reading speech he said—

> In relation to random testing, existing legislation provides power for a member of the Police Force to test any driver who has been involved in a traffic accident or committed a breach of the traffic laws, or whom he reasonably suspects of having alcohol in his body. Using this legislation in conjunction with their existing powers to stop vehicles for inspection, or carry out drivers' licence checks, police in this State have legislation believed to be more effective than that in those States with random breath testing.

That is the greatest amount of gobbledygook I have ever heard in a second reading speech. It may be said, as the Minister implied when he introduced the amending Bill in 1974, that this Bill is not to be a vehicle or to be considered to be a vehicle for random testing. My association with the law and my observance of the law in practice since 1974, especially since the investigations into people driving under suspicion of having been drinking, is that we have random testing. The problem we have in this State compared with the other States is that none of us has ever had the right as a legislator to vote for random testing. Yet we condone it by the interpretations that are placed upon the legislation by magistrates and the people who administer the Act. We have never agreed to random testing.

If it is possible to stop a car because a tail light may be out of order, or for some other reason, and ask the driver for his licence and then get him out of the car and say, "We believe you have been drinking; please provide us with a test", that is random testing. If it is not, I do not know what it is. Random testing applies in Western Australia. If, as the Minister claims in his second reading speech, it does not apply, a furphy is being perpetrated under the Act. If this is the case, how can so many cars be pulled up on the highway, and how can so many people be subjected to a test because the police have reasonable grounds to believe they are under the influence of alcohol? Is the fact that a tail light is out of order reasonable grounds? I know from personal experience, this sort of thing happens and it is random testing. Will the Government be honest and stipulate that random testing shall apply in this State? I will not vote for it, but when it is carried by this House and becomes law, I will abide by it. So far, we have not had the right to vote for, or to vote against, random testing. Anyone who is subjected to this form of testing in the city or in agricultural areas is being subjected to an interpretation under the Act that was not intended by the Ministers in 1974 when they introduced the legislation.

The Hon. D. K. Dans: That is right.

The Hon. H. W. GAYFER: The present Minister is now trying to get over this point by saying, "We do not need random testing—we have something better." However, if one reads the gobbledygook on page 5, one sees it is random testing.

The Hon. D. K. Dans: If you go back through the copies of *Hansard* you will see another interpretation.

The Hon. H. W. GAYFER: The Hon. Norm Baxter introduced the Bill in 1974, and the Premier said in the Assembly that it was not to be a vehicle for random testing. However, the interpretation of random testing has been, and is being, placed on it by the people who interpret the Act and the courts which hand down the judgments. This Bill is nothing more than a further excuse to legalise the testing that is going on. The Minister has said that the powers are in the Act for random testing, and there is no need to do anything further in that respect. For God's sake, if we are to have random testing and people are to be pulled up during bigger blitzes on the road, the Government should introduce random testing so that neither the police nor ourselves are under any illusions. To use a colloquialism, the present situation is neither Arthur nor Martha. It should be straighened out. None of us likes the present rule whereby random testing is not a law; it cannot be, because I have never voted in respect of it. I have been here 20 years, and if it is not the law, why is it being applied?

If the police say there are reasonable grounds to believe a person has been drinking after they have asked for his driver's licence, and his breath does not smell of alcohol, and he does not blow up a bag and take a preliminary test, they may take him away and get a urine sample. Police will soon be equipped with lie detectors! This matter has reached a farcical stage. If the police have reasonable grounds to believe a person has been drinking, and he blows into a bag for a preliminary test, and it does not show anything, the policeman may take him away and give him the potty or the bottle to which the Hon. Win Piesse referred. What happens if no doctor is available—that is a doctor of one's own choice, or one chosen by the police? In front of whom does one then perform?

The Hon. D. K. Dans: Down at the local urinal.

The Hon. H. W. GAYFER: That may well be. But will an expert say that it is a properly pro-

vided sample, or that it is an actual sample and from the person who it is claimed provided it?

Sitting suspended from 6.00 to 7.30 p.m.

The Hon. H. W. GAYFER: During the course of the Minister's second reading speech I was interested to hear him say that the Government intended to achieve its objectives, firstly, through the administrative process and, secondly, through legislation. That seemed to me to represent the essence of the "big stick" in relation to the legislative powers the Government seeks now to implement.

I say that because, for nine years, I served as a member of the National Safety Council of WA Inc. During my time on that council it has maintained that the two major avenues through which road safety can be promoted are courtesy and education. Those were the two main planks the council insisted be used by legal administrators in an attempt to lower the road toll. However, it appears those two planks have been forgotten and neither courtesy nor education is considered now. By "education" I mean that, at the time of apprehension, the policeman should talk to the person involved.

This Bill contains the power to enforce education by compelling people to attend lectures on the misuse of drugs and alcohol; reference is made also to an offender attending five two-hour lessons. It seems the many courtesies which used to be extended in the implementation of the law have been lost.

In the course of his second reading speech, the Minister said it was proposed that persons convicted of second or subsequent drink-driving offences within a three-year period be referred to the Alcohol and Drug Authority and not be eligible for a motor driver's licence until cleared by that organisation. The Minister went on to say this would place an unfair burden on offenders residing in the country, paticularly those in very remote areas—I emphasise the words "very remote areas"—who would have to attend the Alcohol and Drug Authority in Perth.

The Minister then said—

> Provision is made in the Bill for a court to impose a community service order, by way of a penalty, on a first or second drink-driving offender. The Probation and Parole Service will administer that aspect of the penalty and, as a condition of that community service order, a requirement will be placed on the person to attend five two-hour educational lectures on alcohol and its effects before the order is discharged.

I am intrigued to know how such a course could be adopted in a country area. Initially a community service order will be imposed. Further on in his speech the Minister said that the option would be given to the courts to replace fines with community service orders where drink-driving offences were involved. That includes the refusal to take a breathalyser or blood test. This will apply in all cases except where the offence is a third or subsequent offence of driving under the influence or refusing to supply a sample for analysis.

My interpretation of that situation is that a person holding a respectable position in a country town may be served with a community service order and asked to do something in the town. I cannot imagine what that "something" might be. The person may have to clean the yards of pensioners' homes or clean out the gutters. We could have the position in which a person has been playing bowls on a Sunday afternoon and has one or two drinks. If he is apprehended because reasonable grounds exist to enable the police officer to believe that person has been drinking alcohol and the preliminary breathalyser test does not show a reading, and the police officer insists he has reasonable grounds for his suspicion, we finish up in the same position in which we found ourselves when dealing with the old urine test. I am baffled as to how the urine test will be administered, but I shall return to that in a moment.

The person to whom I have just referred who was apprehended by the police officer may then be told by the court, "Instead of paying a fine, you will be required to perform a community service." That is the utmost degradation to which one can expect a person to succumb. Might I suggest that, rather than wasting the time of the court in preparing a list of community services, we return to the days when offenders were put in stocks in the village square. Such a suggestion is not as silly as some of the material in the Bill. If one wants to really show up these people in the eyes of the community, one should set up the stocks, bolt the offenders into them, and make them stay there for a period so that they may consider their sins. The Bill seeks to require that such people be compelled to perform community services at the discretion of the court, which, in many country courts, means on the police officer's recommendation. If we require that such offenders be put in stocks, all we then need to do is amend the legislation so that tarring and feathering may be reintroduced.

This legislation refers to punitive measures and "reasonable grounds to believe". Those sorts of matters are highly subjective and will not reduce the road toll. However, they certainly will make

people apprehensive of the law and lawmakers. Indeed, we are reaching the stage where people, particularly in country areas, will not have any peace of mind. One is a fair cop in the city, because, with a population of 850 000, possibly only 80 traffic patrol officers would be on duty. The situation is different in a country town with only one road leading out of it. The 200 people who are in town on a particular day can be at the mercy of an officer who decides to set up "something" hoping he will have reasonable grounds to believe someone has been drinking.

I turn now to the urine test. Under the Act, if a doctor is not available within 40 kilometres, if the doctor of the patient's choosing is not available within a distance of 40 kilometres, or if a doctor recommended by the Police Force is not available for the purpose of taking a blood test, a person shall be required to take a breathalyser test. The amendment sought in this legislation indicates that, if within the parameters I have just set out a doctor is not available for the purpose of taking a urine test, a person is required to provide a sample of his urine to a medical practitioner for analysis and may provide that sample to a medical practitioner of his own choosing. I ask members: Where will that sample come from?

If a sample is not to be given in the presence of a medical practitioner, do I understand that, in all seriousness, somewhere in that little, country gaol the police officer will procure that sample? That is the position, as I understand it, if a doctor cannot be found within 40 kilometres or 24 miles. This seems stupid, particularly bearing in mind that the Bill indicates that, if an offender cannot provide a urine sample, it shall be part of his defence. I can well imagine all the taps being turned on and much whistling in that country gaol in order to obtain a sample. How far does one go? It seems very stupid to me. The person is locked up in the gaol and told, "Give me a sample!" How does one know whether in fact what is produced is the offender's sample? Something could be poked through the window of the gaol! This sort of thing is ludicrous!

I imagine the first court hearing of an offence under this provision would be thrown out by a magistrate of the type I happen to know, a magistrate who has the ability to understand the matters to which I have made reference. As I am sure the Attorney General will tell members, such magistrates are available; they are very good magistrates and very worthwhile citizens.

I do worry about the implications of this urine test. I worry about any woman who, say, has never had a drink in her life, but whose motor vehicle's tail light is out and she is pulled up by a policeman. The policeman will say, "Blow in this bag." If nothing shows, he might say, "I have reasonable grounds to believe you are under the influence of alcohol", and may take her by the shoulder to the police station. He would then telephone the doctor of her choice, although he might say that the doctor is not available, or is out of town, and that he wants a urine sample. Obviously the situation would become ludicrous with a potty placed in the cell of such a woman. It is unbelievable that this sort of situation could occur by way of the interpretation placed on this provision. Certainly some of us, and particularly those of us living in country areas, have experienced these situations. This provision must be reconsidered; it is not as clear-cut as it should be. The Hon. Winifred Piesse made mention of the provision, and it seemed she was as alarmed about it as I am.

The Hon. D. J. Wordsworth: There is nothing about potties in the Act; it is a prescribed object with a certificate.

The Hon. W. M. Piesse: How do you know it is not a potty?

The Hon. H. W. GAYFER: That is the part of the provision that gets to me; the utensil is a prescribed object accompanied with a certificate.

It is awkward for country people to attend the Perth office of the Alcohol and Drug Authority, and that is admitted by this legislation. It seems somebody will go to the country to conduct these five lectures of two-hours' duration. Who will be the person to become suddenly an authority on alcohol and drug addiction? Who will be in the country, or who will go to the country, to conduct these lectures? Who is to say the true gospel will be preached? It would not be practical for someone to fly every second day to a country area to give these lectures. Possibly our police officers will be regarded as "full bottles" on matters concerning alcohol and drugs. Such police officers would have to be bright boys. To my knowledge the Hon. John Williams has spent the last 10 years investigating this subject, and I do not believe he would profess to be a "complete bottle" on all matters associated with alcohol and drugs, or profess to be able to give satisfactory lectures throughout the State to individuals coming within the provisions of this legislation.

The Hon. R. J. L. Williams: You seem to be obsessed with the word "bottle".

The Hon. H. W. GAYFER: I cannot foresee this provision having any effect at all. To add weight to the fight against drink-driving it is proposed to make provision for the cancellation of motor vehicle drivers' licences for certain of-

fences. It is stated that it will be an offence within this category to have a 0.08 per cent blood alcohol level, or to refuse to provide for analysis a sample of breath, blood, or urine. So, here we go again. If a person detained by a police officer does not obey the summons of the water tap or the whistling, and could be said to be holding back on the demands of a police officer, that person will commit an offence resulting in the cancellation of his driver's licence.

Where the prescribed offence is a 0.08 per cent offence and the conviction is more than five years after the last prescribed offence, the current offence is not to be considered as a second or subsequent offence. I take it this provision is a consolation to the person who thinks he has been wrongfully done by—apprehended by somebody he believes to have been a little too strenuous in his interpretation of the law.

Perhaps the person convicted is not good at arguing in a country court. Perhaps he is regarded as a sitting duck, or well known as a sitting duck, and therefore is the type of person who should be made a spectacle in front of others, or brought to the attention of others in a way that could be likened to placing someome in the village stocks, a matter to which I made reference previously.

Some people might say that my making these remarks is stupidity, but I warn them not to worry about the stupidity of my speech because this legislation, when it finally becomes law, will be regarded by all as completely stupid. The queries I raise tonight will be raised again.

By amendment to the parent Act provision was made to limit the area in which a medical practitioner should be obtained. That limit was 40 kilometres. I live at Corrigin and the surrounding towns, where there may be a doctor, are 40 to 45 miles away. I would say that in no country area would there be another doctor less than 40 kilometres—24 miles—away. Plenty of doctors would be available within a 40-mile radius, yet we are to stick to this golden distance of 40 kilometres.

It is provided also in the Act that a test must be carried out within four hours of the offence being committed. That is a reasonable time in which to travel more than 40 kilometres to find a doctor available for the purposes of conducting a breath, blood, or urine test. We should give greater thought to the introduction of an amendment to the parent Act to alter the limit of 40 kilometres to the more realistic limit of 70 or 80 kilometres. Nowhere in country areas would an alternative doctor be found within a 40-kilometre radius. Certainly a doctor could be found in the city within a 40-kilometre radius, but my point relates specifically to country areas. The present provision needs close scrutiny.

Everything has been thrown into our laws to enable checking to be conducted. As I have said, we need only the introduction of lie detectors to complete this checking process. The air patrol section of the Police Force uses aircraft to check the speed of vehicles travelling over measured distances. We all know that.

The Hon P. H. Lockyer: If they get many more aeroplanes they will be qualified as an Air Force.

The Hon. H. W. GAYFER: Consideration now is being given to not using the white lines placed on roads to determine the distance over which the police officer in a plane measures the speed of a vehicle. An instrument is being considered, an instrument to measure the speed of a vehicle without the use of these white lines. If the police officer in the air determines that a driver is speeding he will radio to a policeman in a police car so that that policeman can apprehend that driver. To say the least, the use of such an instrument would be surreptitious.

Mention was made of the expense of painting these white lines on roads. Every time I pass over these white lines I note the speed I am doing. The white lines are a good indicator to drivers that they should check their speedometers. Anyone who travels along the Northam Road will notice these white lines, and I am sure will look instinctively at his speedometer. Once we had police cars parked behind trees and hedges, and now aeroplanes are to be used surreptitiously as well. We will have a police officer in the air, using an instrument over which no-one will have any control, or be able to check as to its validity. No-one will be able to check whether the instrument is calibrated correctly. A driver can demand that a radar gun be checked, but no-one will be able to have checked this instrument in the air. Drivers will be at the mercy of an instrument in the air—upstairs.

We are taking the desire to check just too far. Instruments and the men who operate them are not perfect. A car can be recognised from the ground just as well as it can be recognised from the air. I am concerned about the intentions of this aircraft detection unit. Such things as this instrument in the air and urine testing lead to all sorts of other checking on the basis that a police officer has reasonable grounds to believe a certain thing. The provision goes just too far.

The Minister representing the Minister for Police and Prisons can feel very secure in the knowledge that our performance roadwise is excellent, and that we all feel duty bound to stop the

carnage on our roads. But if it be the intention of the Government to gradually stop this carnage by stopping people, particularly those living in country areas, from using their motor vehicles at all by making them frightened to use those vehicles, it is evident that the Government in its zest to cut down our road toll has gone a little overboard.

The very sad case in the Merredin area that boosted the State road toll figures by 10 per cent was not a cause of this, but statistically, it will appear eventually to be part of an influence that was needed to bring in some very restrictive legislation.

I appeal to the Minister that if in the Committee stage any qualifying alternative may be brought in, he look at the various points to which I have alluded. I appreciate that the members of the Committee could give great weight to them. The Minister should take note because this Bill goes a little further than previous legislation.

THE HON. P. H. LOCKYER (Lower North) [8.02 p.m.]: I want to continue briefly from where the Hon. H. W. Gayfer left the matter of the air patrol section of the Police Department. In his second reading speech, the Minister said what the Hon. H. W. Gayfer just reiterated; namely, that the police will use a special instrument in their new aircraft. I take this opportunity to offer mild disapproval to the Government for even purchasing a new aircraft.

It has been my view for some time that the Police Department has been enlarging itself quietly and inconspicuously, particularly in respect of aircraft. It started off with a Cessna 182 which has been used for the last few years. For some time, it has been the wish of the road traffic patrol branch of the Police Department to get a twin-engined aircraft. I recall when I was a member of the Country Shire Councils' Association executive in 1979 the committee passed to the Government its disapproval of the Government's purchase of a twin-engined aircraft, stating the view that I share now; namely, that it is better to have more patrol cars on the ground.

The Hon. Robert Hetherington: Hear, hear!

The Hon. P. H. LOCKYER: I am very pleased that the Hon. Robert Hetherington, after a couple of years in this House, has finally agreed with me. In August I was surprised to read in the Press that the road traffic patrol of the WA Police Force finally had succeeded in obtaining a new aircraft. On Wednesday, 11 August I asked the Minister representing the Minister for Police and Prisons in a series of questions whether it was true that an aircraft had been purchased. The Hon. G. E. Masters replied that, yes, it was true; the Police Department had purchased a Partenavia P68 model twin-engined aircraft at a cost of $179 000. He went on to say that the aircraft was a demonstration model, that it had less than 200 flying hours, and was equipped with various items of equipment additional to the standard model.

The last part of my question was, "Will the pilots be members of the WA Police Force?" This is where the private airforce comes into being; it is similar to the Royal Flying Doctor Service of today. The Minister replied, "The aircraft will be piloted by serving members of the Police Force." He did not say whether they will be private pilots or professional pilots. I object to this type of thing, because next there will be a third aircraft.

Recently in answer to another question I asked in the House the Minister supplied me with information to suggest the department was looking at another aircraft to enable the police to patrol the central desert by air. I am pleased the authorities did not go on with that, as they would have been subjected to some very strong objections from myself and, I hope, from some of my colleagues, because it is terribly necessary that when the WA Police Force does its patrols, it does them on the ground. There is no question in my mind that to fly over the central desert at 10 000 feet will not do any good.

Exactly the same comment applies to what Mr Gayfer has just said about the road patrol aircraft. I find it objectionable to have this eye-in-the-sky situation. I cannot approach a pilot who is 2 000 or 3 000 feet away and object to the fact that some obscure instrument described in the Minister's second reading speech, says I am guilty of exceeding the speed limit. It is better, even though the Hon. Mr Gayfer objects to it, to have a private patrol car do this work. I cannot think of anybody who does not take his foot off the accelerator when he sees a patrol car.

That is the only input I want to make. If the police want to form an air force, they should give notice in this House. If there is any question of the purchase of more aircraft for the Police Department, it will be objected to strongly by myself and, I think, by my colleague across the Chamber who agreed with me earlier. He may support me on the matter.

I support the Bill.

THE HON. ROBERT HETHERINGTON (East Metropolitan) [8.07 p.m.]: Before I get onto the main burden of my remarks, I want to continue with the point about the aircraft because it does seem important that if we are to have respect for the law and to have laws obeyed, we have

people feeling that the law is fair and ensure that they do not have undue resentment. It seems to me that this new spy in the sky might produce an effect opposite to what is desired. After all, if there are two white lines on a road, one needs only a stop watch; one does not need complex electronic equipment to monitor the situation thousands of feet in the air. It might then seem to be a "fair cop", but I doubt if people who are caught by this new system will be very happy about it, whether they are right or wrong.

There could well be better ways of doing it and I am certainly less than happy about the introduction of new remote surveillance. I take the point made by the Hon. Mr Gayfer that if a person sees the white lines, he knows that they are there, and the mere fact that they are there, makes them worth while. After all, we have two white lines on the road, and they might slow people down. When I see legislation brought down by this Government and Governments elsewhere, I sometimes wonder if the main desire is to slow people down, to reduce the road toll, or to get convictions. We should think about this very carefully.

As I have followed two eloquent speakers, I want to pick up another point that this time Mr Gayfer did not make in relation to the blood test. I realise that tests are very necessary and that a person can blow in the bag and show some evidence of alcohol, but as yet, it is not possible to show evidence of drugs.

Although the Hon. Mr Gayfer is concerned about the provision of samples of urine—he is not quite sure, unless someone is watching the person very carefully, whose urine will be obtained—but there is no doubt about whose blood one receives in a sample. However, it necessitates an assault; the skin of the person has to be pierced and a blood sample taken. I have always found this worrying, even if it is necessary, but I suppose there is nothing we can do about it.

This is one area where we should be looking at more sophisticated equipment to detect drugs by, say, "litmus paper" tests or saliva tests. These tests are simpler than other tests because many people have a psychological aversion, which reflects itself as a physical aversion, to needles and to blood being taken from their bodies; they faint. This seems to be highly undesirable unless it is extremely necessary.

However, this was not the main thing I intended to say. I noticed that the first few speakers on this Bill—and I hope Mr Lockyer is satisifed that I am agreeing with him this time—seemed to be highly adulatory and, in fact, they showed a great deal of emotion in their discussion of the Bill and not much logic.

I refer to one previous speaker of whom I would have expected a great deal more logic. He was from my side of the House. We seem to have had arguments that say, "We are appalled at the road carnage", and we are; "Drinking and driving is bad", and it is; "There is some connection between alcohol and road accidents", and there is. "Therefore, anything we do that seems that it may make people not drink and drive must be good. We will cheer it and we will not look at the evidence." This, I think, is what has happened here, if one reads the second reading speech that was brought into this House to support the Bill.

I was tempted to make a cheap political speech, which would be terribly easy to do, and to say, "We are not going to reduce 0.08 to 0.05 because this would affect people of our age and our experience who have had driving licences as long as we have, so we are going to belt the youth and use them as the scapegoats." That would be too easy. I note that the Government has decided not to reduce the level of blood alcohol from 0.08 to 0.05. On page 4, the Minister's speech notes say—

> Accident statistics indicate that many persons with two or more years' driving experience have been involved in most accidents at blood alcohol levels well above the current legal limit.

In other words, there seems to be evidence that has been looked at. The evidence might even suggest that 0.08 is too low, that we could raise it a bit higher. I am not arguing that. The Government has looked at the matter and it has produced some evidence for its lack of action in not reducing the blood alcohol level from 0.08 to 0.05, and that is fair enough. We should look at hard evidence.

In respect of people in their first year of probationary driving—the 17-year-olds or older; some of them will be older as not everyone gets his licence at age 17; I got mine when I was 27 and I had been drinking for a long time then off and on; and I am not sure what that proves—the Government has decided that they should not be allowed to drive with any detectable level of alcohol in their blood and the argument suddenly ceases to be a hard argument based on evidence.

On page 12 of the Minister's speech notes he said, "This group has been found to have a high accident involvement and it is believed"—It does not say why it is believed—"the driving task itself is sufficiently complex during the first year without the added complication of coping with al-

cohol." It says, "it is believed". This is sort of an article of faith. There is no evidence at all.

I wonder—and I put this before the Minister now because I want him to have time to think about it, as I intend to raise the questions again during the Committee stage—whether the alleged high accident involvement of people in their first year of probation refers to serious accidents or minor accidents. What is the relationship and what are the exact figures? Reference to a "high accident involvement" is too vague. What is the percentage of first-year drivers who have no level of alcohol in their bodies when they have accidents? Are any figures available? Is there anything on which to base this statement, apart from this vague belief? Have tests been carried out? Are there figures to show that a relationship exists between alcohol and accidents amongst this group?

Apparently statistics are available for older people and they reveal that the people who have been driving for two years, and who have bad accidents usually have far more than 0.08 per cent alcohol in their bodies. That is what the Minister says and I believe him because I do not think he would mislead this House. What statistics do we have relating to people in their first year of driving? What is the basis of the Government's apparent belief?

The other question is: Are there other beverages or medicines a person might innocently consume that would give him a detectable level of 0.02 per cent? Some soft drinks, in fact, have 0.15 per cent alcohol. I believe one can have up to 0.02 per cent of alcohol in a soft drink and it is legal. Soft drinks are not regarded as alcoholic beverages. How much does one have to drink before one has reached the 0.02 per cent level? Is it fair for someone who has the capacity to drink soft drinks to become a criminal because he believed soft drink did not contain alcohol?

Some medicines contain alcohol. How much alcohol do they contain? How much medicine does one have to consume before there is a detectable level of alcohol in one's blood? I do not know, but I would like to know. Does the Minister know, or is this just cosmetic legislation to make the Government feel good? I want evidence and hard facts on this particular issue. On the face of it, this provision could be unfair.

The Hon. H. W. Gayfer: Do you think this legislation is likely to be retrospective? Could you find this out while you are at it?

The Hon. ROBERT HETHERINGTON: The medicine argument may not be significant. However, I would like some figures. Some people are addicted to cough medicine in the same way as some people are addicted to alcohol and drugs. Do we have to take this into consideration?

We come to the final powerful argument on page 14 of the Minister's speech which is as follows—

> Similar legislation has been in operation in Tasmania since 1970, and although the authorities there have not made an in-depth evaluation of its effectiveness . . .

The evidence that I have is that they have not made any evaluation of its effectiveness. The Minister's speech continues—

> . . . a significant over-all decrease in the fatal accident rate has occurred. Since 1971 the number of road deaths a year in that State has fallen from 130 to a figure of 100 in 1980.

That sounds fine, but was there a correlation of the other laws that have been passed in Tasmania that should influence that legislation? Are there any? The Government has just thrown that in to make it sound scientific. It would not stand up in a court of law. I would expect something better from a Minister for Police who happens to be a lawyer. I think he should put some evidence before this place to show what he is doing is sensible.

I will not vote against the second reading of this Bill. Perhaps what the Minister is doing is desirable, but I have not been convinced by the argument that the Minister in this House has been forced to read. I am not blaming him for it—I simply am not convinced by the argument put forward.

The Hon. G. E. Masters: It is my speech.

The Hon. ROBERT HETHERINGTON: In that case I do not like it at all and the Minister should learn to do something better. However, it is not unlike the speech made in another place and I am not happy with the kind of proof put before me. I do not really want to say any more on that matter except that it does seem to me that we may be doing a bit of scapegoating. After all, the causes of the road toll are well known. Today, accidents are caused through inexperience, speed, alcohol and overcrowded metropolitan roads that were built for the horse and buggy age and have not been brought up to date.

The Hon. P. H. Lockyer: Servetus Street is being fixed up.

The Hon. ROBERT HETHERINGTON: I know about roads because I live near the junction of Albany Highway and Leach Highway and the area which is known as the Wilson triangle. I am

surprised we do not have more deaths there than we have now because the roads are deplorable; but this, of course, is expensive to remedy. These are the factors: Alcohol, and the structure, engineering, and the inefficiency of roads for the jobs they have to do. But it is easy, of course, to slap down a $100 fine on some 17-year-old who has 0.02 per cent alcohol in his blood through the consumption of soft drinks or medicine or the combination of both. Perhaps he does not know he is drinking alcohol.

I am wondering if this is what might be described as a Diogenes' Bill because there is a story about Diogenes a Greek philosopher, who lived in Athens. When Athens was under attack there was a great deal of conflict and in the middle of it Diogenes rolled a barrel up and down the market place. They said, "Diogenes what are you doing?" He said, "So many people are doing so much I felt I had to do something."

When I look at the evidence that is not presented on this aspect of the Bill, I wonder whether the Government is so appalled at the road toll it feels it has to do something.

The Hon. P. H. Lockyer: You do agree we should do something?

The Hon. ROBERT HETHERINGTON: I agree we should do something, but I would be happier if the something that was being done was based on hard evidence and not just on belief. It is possible—and I am quite prepared to concede it—that the Government may be right, and that this may help the road toll, but I am not convinced. If my honourable friend and colleague, the Hon. Peter Dowding, were here he would have some harsher words to say.

The Hon. P. H. Lockyer: Where is he? Is he in Brisbane? A few of his mates are there.

Several members interjected.

The Hon. ROBERT HETHERINGTON: I think I should be able to say someone is not here without attracting such contemptible interjections. He is away on business, as are other members of this House. However, in future whenever a member of the Government is away I will mention it. I think the remarks of the Hon. David Wordsworth were contemptible.

The DEPUTY PRESIDENT (the Hon. V. J. Ferry): Order! Will the honourable member on his feet address himself to the Bill.

The Hon. ROBERT HETHERINGTON: Sufficient reasons exist for anything that happens in this House but I am sorry the Hon. Peter Dowding could not be here tonight because his arguments would be far more powerful than mine. No doubt he will put them before us at some time in the future.

The Hon. P. H. Lockyer: You are underestimating yourself. You have not done a bad job.

The Hon. ROBERT HETHERINGTON: I could do better if I were a lawyer.

Two other points worry me. One I will mention in passing because it is an extension of what is in the Act already. I do not like, and I never have liked, minimum fines and they are included in this Bill. I have heard of cases where a person is technically guilty and the magistrate has no choice but to fine that person a minimum fine. I find this undesirable because from my experience magistrates do not take driving offences lightly—they take them seriously and they know Parliament takes them seriously. In my opinion, they should be able to use their discretion in cases where there are special circumstances, and in which a person can explain that although he is technically guilty, he is not morally guilty.

The Hon. P. H. Lockyer: Illegal bookmaking is a good example.

The Hon. ROBERT HETHERINGTON: Another point I would like to mention is not in the Bill, but is mentioned in the Minister's second reading speech. I refer to the fact that if this Bill is enacted, a person who has two offences for drink-driving within five years is presumed to be an addict. I find this unbelievable. A person who has had two drink-driving offences could be someone who is gregarious and finds it hard to reject the extra beer he is offered. He is not necessarily an addict. Indeed, I am not sure what is an addict.

The Hon. John Williams said earlier in this debate that the Alcohol and Drug Authority could conduct a quick test and tell us if someone were an addict. I have heard alcoholics who belong to Alcoholics Anonymous say they are addicted. They do not drink alcohol and they may not have drunk for a year, but they cannot afford to take a drink because they are addicted to alcohol. They have broken a habit, but cannot afford to take a drink. Is this evidence of an addict? I think we need some kind of definition. I find it very odd that a person who has had two offences must be vetted by a medical authority—shades of the Soviet Union! I do not like it at all, but it is not in the Bill. It is to be done by administrative fiat—and that does not mean a Government car from Italy, Mr Lockyer. The Government will carry on through administrative processes.

This is what concerns me. I do not know when a person is or is not an addict. As my friend the

Hon. Joe Berinson mentioned earlier, under this legislation a person could have a drink-driving offence and a drug offence and be caught up by the provisions of the Bill. This is what concerns me, and I believe it needs justification. If we are going to do something like that, we should put it in the legislation so that it can be debated adequately in the House.

One of the things made clear by Mr Gayfer and Mr Baxter is that the intention stated earlier by Ministers about the provisions of the Road Traffic Act, and about how they would not mean the introduction of random breath testing has changed, again by administrative practice. Certainly, it would seem to me that the very argument of the Minister that we do not need random testing because we really have it already, suggests that since the breathalyser was first introduced we have progressed a long way towards something like random testing. It is very much an arbitrary thing, is it not? If a person happens to have left his licence in his other suit, and is pulled up by a traffic patrol officer, he could be given a breath test. However, if he happens to have remembered his licence, his car is in perfect mechanical condition, he is driving in a straight line, and is sucking peppermints, apparently he will not be tested. Or will he? I do not know. This is a matter which should be considered very carefully.

I am concerned also about the 0.02 limit proposed in the Bill. It seems to me that we may be going too far; we may be becoming obsessed and bringing down punitive measures against the people we can catch simply because we do not have the time, the energy, the number of police, or the finance to do all the other things necessary to reduce the road toll in Western Australia. Certainly, in regard to surveillance from the sky, no doubt the instructions will be followed; however, equally, there is no doubt the people will be heavily resentful. I believe the little extra expense to avoid that may be worthwhile. I do not welcome this provision in the Bill. Therefore, although I do not intend to oppose the second reading of this Bill, I have grave reservations about it and, during the Committee stage, I will seek from the Minister answers to a number of queries. I hope he can provide me with those answers, and that in due course he can provide me with some hard evidence which will convince me, instead of simply pious aspirations and beliefs.

THE HON. NEIL McNEILL (Lower West) [8.33 p.m.]: I wish to make a few observations not so much about the content of the Bill but, rather, in relation to the second reading contribution made by other members. I come in on the point on which the Hon. Robert Hetherington concluded: The Minister has been requested to provide some hard evidence, and to give serious consideration to the points raised by members. I will go a step further. The consideration of this Bill has occupied some hours today; this is the only business on the notice paper with which we have dealt since we met this afternoon. I do not say that by way of criticism but simply to illustrate not only the importance of the legislation and of somehow maintaining some control over road accidents and fatalities, but also the concern of members representing the people of this State about the contents of the Bill and the way the legislation will be implemented by the law enforcement authority in Western Australia.

I want the Minister to hear what I am saying. I do not speak very often in this House; however, I feel I must comment on this legislation. Apart from a few observations of the Hon. Robert Hetherington, this debate has been conducted along totally non-political lines. The debate has been on the content of the Bill, and members have expressed their concern about the way in which the provisions will be implemented in this State.

This is the point I want the Minister to take very seriously: I hope he will not reply to the debate simply on the basis of his understanding of the situation, but will think very seriously about the purpose of a debate of this sort. He should have regard for the comments made by members and ensure they are noted by the administrative authority.

The Hon. Mick Gayfer introduced a note of humour to the debate. However, I fully endorse his concern that the opportunity for those sorts of things to occur exists and, what is equally important, the people in the electorate at large may believe this is the way the provisions of the legislation may be enforced.

So, the law enforcement authority has two problems: One is to enforce the law as fairly as posssible, and the other is to assure the public that the provisions of the Bill will be implemented in such a way as to achieve the express purpose of the legislation, and will not be used too lightheartedly, or in a cavalier fashion by the law enforcement authority. That is what I am concerned about, and those are the sentiments the Minister should convey to the Minister responsible for this legislation in the hope—perhaps the vain hope—that the administration will take note of what has been said in the Parliament. We know that in a matter like this, the Minister may give all the assurances in the world. The commissioner may give assurances, on behalf of his officers. However, it all means nothing unless an understanding of the situation filters down to the force,

all the way to the one-man stations scattered around the State.

We are discussing serious matters; we are talking about penalties, and about the way the law is to be enforced. This law will be enforced not against criminals but against people who in all other respects would be beyond reproach and above the law.

That brings me to a situation which has irritated me for some time and which I encountered again as recently as last Tuesday. People talk about the inadequacy of our Police Force and about the need for surveillance aircraft, and other equipment. If that is the case, how on earth can the authorities justify setting up speed traps for the express purpose of trapping motorists who, because of the nature of the particular road, have a tendency slightly to exceed the speed limit? These speed traps take up the time of several men and vehicles, but they are often situated in such a way as to give very real reason for doubt whether they have been placed there for the purpose of curbing accidents along that stretch of road.

The example I have in mind is the speed trap which regularly is placed on Rockingham Road, just south of the traffic lights at the junction of Cockburn and Rockingham Roads. I know the reason for the siting of the speed trap. Travelling southwards, near the Alcoa of Australia Ltd. refinery, the speed limit remains at 70 kilometres per hour until almost to the top of the rise—say, a half-mile further on—when it becomes 80 kilometres per hour. The tendency is for people, knowing they are about to move into an 80 kilometre per hour speed zone, to increase their speed going up the hill. I believe the trap is simply to catch people exceeding 70 kilometres per hour in anticipation of the higher speed limit. What is the effectiveness of this sort of speed trap? I doubt that any accidents would occur along that stretch of road, yet several officers and vehicles are engaged in that exercise.

Each time I travel from Waroona to Parliament House, I see examples of discourtesy, bad driving, and wilful negligence, all of which have a far greater potential for causing accidents than the stretch of road to which I have just referred.

I use that only as a demonstration. One of the criticisms of this Bill is whether our law enforcement authorities are applying the right sort of priorities in their attempt to exercise control over traffic and to save lives. Those are the sentiments which should be conveyed to the Minister responsible for the legislation and to the commissioner, so that we may ensure our law enforcement officers have their priorities right in the enforcement of the provisions of this legislation.

Of course, there is no question the Bill will become law because of the overriding wish of all members of Parliament to do whatever they can to minimise the road toll. The only doubt we may have is whether, on behalf of the people we represent, we can be completely confident law enforcement authorities will implement the provisions of the Bill according to the right priorities.

I am one of those who believes that, almost without exception, our police officers are first-class, faithful, courteous people; indeed, I cannot recall encountering one who was not. They enforce the laws and regulations in the way they believe is required of them by the administration. If they are instructed to apprehend motorists who are speeding, does it really matter where those people are apprehended? I have seen many speed traps set up where the officer has said, "This area is very susceptible to accidents." I have no criticism of that sort of thing; however, many other speed traps seem to be quite unnecessary. Far worse things are happening on the road which the mere appearance of a patrol car would prevent. I support the views expressed by numerous speakers in this debate that the appearance of a patrol car would be far more effective than the presence of an aircraft which is not seen by the motorist.

Surely the prevention of accidents must be the prime object—the prevention rather than the later catching of the offenders. I know perfectly well that the catching and the penalties provide some sort of deterrent and have some effect in encouraging people to observe the law; but the fact is that the aim always should be the prevention of accidents before they have the opportunity to occur. A weapon in the prevention of accidents is the visible presence of patrol officers.

I will go no further, but I repeat, because it is so important in a subject such as this, that the Minister should not just pass on the comments that have been made and come back with stereotyped answers—"Because this is what is in the Bill"—but rather should give an assurance that all the remarks made in this House will be taken seriously and will be used as a means of advising the administering authority in order to ensure that the provisions are implemented in the way the Parliament would like to see them implemented.

I support the Bill.

Adjournment of Debate

THE HON. D. J. WORDSWORTH (South) [8.47 p.m.]: I move—

> That the debate be adjourned until Tuesday, 12 October.

Motion put and negatived.

THE HON. TOM KNIGHT (South) [8.48 p.m.]: I move—

That the debate be adjourned until the next sitting of the House.

Motion put and passed.

Debate thus adjourned.

JUSTICES AMENDMENT BILL

Second Reading

Debate resumed from 22 September.

THE HON. I. G. MEDCALF (Metropolitan—Attorney General) [8.49 p.m.]: I thank the members who have spoken on this Bill for their support. In voicing their support, they indicated reservations about one or two matters, and it is proper for me to deal with those matters with some care.

In the first place, the Hon. Mr Berinson referred to the possibility that, in some cases, 15 years from the date of commencement of proceedings might not be a sufficient time to justify the destruction of the ancillary papers other than the charge sheets. He referred to the report of the Law Reform Commission which indicated that perhaps there should be alleviation in some circumstances if a matter was not completed, to allow the clerk to extend the time by a year, and then to renew the extension from time to time. The Law Reform Commission made it quite clear, however, that it believed a period of 15 years from the commencement of proceedings would be a sufficient time to cater for all normal contingencies. That is not disputed.

I gave the House an assurance that files relating to matters which were not completed would not be destroyed—in other words, where a warrant was outstanding, or a matter was still pending for some reason or other, the file or the papers would not be destroyed. However, I would be the first to admit that was what one might call an administrative assurance; and the Bill makes no reference to any guarantees that the situation would occur. When one contemplates that the reports of petty sessions from all over the State might be held in various places, one has to accept that one cannot really guarantee that, administratively, there might not be an odd case in which the file containing the papers referred to was destroyed, although the matter itself might not have been completed.

For that reason, I propose in the Committee stage to move an amendment to provide that where a clerk of courts decides, of his own motion, that a matter has not been completed, or where any party to the proceedings wishes to retain the file because the case has not been completed, the clerk may order that the records be preserved for a further period of one year and, from time to time, renew that order. I have placed that amendment on the notice paper; but I add that no penalty is attached to that provision. I propose therefore that at the end of the amendment, a further line be added to proposed new section 236A, "Penalty: $100". That penalty is in line with similar penalties in the Library Board of Western Australia Act regulations in relation to the same type of thing. I believe that amendment would be appropriate.

I share the Hon. Mr Pendal's, concern in relation to the State Archives. Indeed, when this matter was first raised with me by the under secretary—of course, members will realise that this is necessarily an administrative Bill—I took exactly the same point as that Mr Pendal has taken: What about the archival situation? What about the need to ensure that historical records are preserved?

I became convinced, however, that most of the matters with which we are concerned are very minor matters. They deal with petty offences, and we could hardly be expected to retain the enormous volume of subsidiary or ancillary papers—not the charge sheets, but all the other papers which go with the proceedings—for virtually an indefinite period. Nor could we really justify the expense of making the microfilming of these papers compulsory. For those reasons, I acceded to the request.

We have provided in this Bill, as the honourable member recognised, that the provisions are subject to the Library Board of Western Australia Act. The provisions of that Act are quite strict. No public officer in charge of records can destroy any of those records without the approval, virtually, of the Library Board. The retention and disposal procedure has to be adopted with the approval of the Library Board. The board has the right to say whether it approves of the procedures to be adopted, and it has the right to microfilm files or retain them, if it wishes.

Having examined the amendments to the Library Board of Western Australia Act, which were passed in 1974, I am satisfied that the State Archivist has sufficient power to insist upon the retention of any papers which may be thought to have historical value. I have further comments to add to that. The State Archivist commented to the Law Reform Commission on this matter, and although I do not know exactly what was said, I

must assume that the Library Board and the State Archivist was not opposed to the findings of the commission.

I add also that when we are talking about these 15-year documents, we are talking about the minor documents on the files, and not the charge sheets. We are talking about proofs of service—the fact that the bailiff or someone else duly served the defendant or the accused. We are talking about warrants—the record of the warrant, and how much was to be paid, whether it was paid or duly collected, whether it was paid into court, and whether it was paid by cheque or cash. We are talking about that sort of thing, which is relatively unimportant.

The Hon. P. G. Pendal: I agree with that.

The Hon. I. G. MEDCALF: It is also possible that some of these records—perhaps one might say the more formal parts of them—are contained in other documents. They could be held in official records elsewhere—accounting records—or, in some cases, in legal offices or in other Government offices. We have a double check on this.

For instance, if we were dealing with prosecutions of the Marine and Harbours Department, I do not doubt that other records would be held which could prove how much was to be paid, or whether the proceedings were to be brought on in the Court of Petty Sessions at Fremantle, Perth, Albany, or Bunbury, and so on. Most of these matters are matters of detail, and although we may meet an odd occasion when it would be useful to a scholar in 150 years' time to be able to look at something to see whether so-and-so really was the bailiff, and if he did serve a document, and where he was at the time, these are matters of limited historical value which we might have to forgo in the interests of efficiency.

I hoard documents and papers, and sometimes I find them very useful—if I can find them. Nevertheless, I believe there are times when we have to reduce drastically the volume of papers.

Finally, I advise the Hon. Mr Pendal that the actual keeping of records always must be the responsibility of the Library Board rather than that of a department. Once a department has finished its work, or once the courts have finished their work, the retention of the documents must reside with the historical section of the Government. If that section does not have enough space, our duty is to provide it with sufficient space in another area in which to keep the records it needs to keep. However, we find in practice that the Library Board also takes a fairly drastic view of what records it should keep and what records it should not keep.

While I appreciate the arguments put forward by the honourable member, I have satisfied myself that that aspect is being taken care of so far as it is humanly possible to do so.

I commend the Bill to the House.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (the Hon. R. J. L. Williams) in the Chair; the Hon. I. G. Medcalf (Attorney General) in charge of the Bill.

Quorum

The Deputy Chairman called attention to the state of the Committee.

Bells rung and a quorum formed.

Committee Resumed

Clauses 1 to 3 put and passed.

Clause 4: Sections 235 and 236 repealed and substituted—

The DEPUTY CHAIRMAN: In order that the Attorney General may move the amendment on the notice paper, the Committee should vote against the clause.

Clause put and negatived.

The Hon. I. G. MEDCALF: The amendment on the notice paper in fact repeats what was in clause 4 of the Bill as printed but it adds a new section 236A which is referred to in both the new sections 235 and 236. The effect of new section 236A is that a clerk of petty sessions may, of his own motion or on the application of the complainant or defendant or any other person interested in any proceedings in the Court of Petty Sessions concerned, which proceedings have not yet been completed, make an order in writing that the court records be preserved for a period of one year and, subsequently, renew that period from time to time for a further period of a year and that a person shall not destroy a court record while that order is in force. My further amendment is to add after the word "force" the passage, "Penalty $100". I move an amendment—

Page 3—Substitute the following clause to stand as Clause 4—

Sections 235 and 236 repealed and sections 235, 236 and 236A substituted.

4. Sections 235 and 236 of the principal Act are repealed and the following sections are substituted—

Destruction of court records generally.

"235. Subject to sections 233A, 236 and 236A of this Act, a court record—

(a) which is a charge sheet may be destroyed after the expiration of 53 years; or

(b) which is not a charge sheet may be destroyed after the expiration of 15 years,

from the time when it became such a court record.

Destruction of court records when negatives held.

236. Subject to sections 233A and 236A of this Act—

(a) a court record may, if a negative thereof is held by or on behalf of the Court of Petty Sessions concerned, be destroyed at any time after the expiration of 3 years from the time when it became a court record; and

(b) a negative referred to in paragraph (a) of this section shall be held by or on behalf of the Court of Petty Sessions concerned until—

(i) in the case of a negative of a charge sheet, the expiration of 53 years from the time when the charge sheet; or

(ii) in the case of a negative of a court record which is not a charge sheet, the expiration of 15 years from the time when that court record,

became a court record.

Preservation orders.

236A. (1) A clerk of petty sessions may, of his own motion or on the application of the complainant or defendant or any other person interested in any proceedings in the Court of Petty Sessions concerned, which proceedings have not yet been completed—

(a) order in writing that all or any of the court records relating to those proceedings be preserved from destruction for a period of one year; and

(b) from time to time renew in writing for a period of one year an order made under this subsection.

(2) A person shall not destroy a court record to which an order made or renewed under subsection (1) of this section relates while that order is in force."

The Hon. I. G. MEDCALF: I move—

That the amendment be amended by adding after the passage "force." in the last line the passage "Penalty $100."

Amendment on the amendment put and passed.

The DEPUTY CHAIRMAN: The question now is that the new clause stand as amended.

The Hon. P. G. PENDAL: I am fairly sure that I now understand what is intended, but in relation to the very first part of the amendment as it appears on the notice paper—that is, the part beginning "235. Subject to sections 233A" and going down to "(a) which is a charge sheet may be destroyed after the expiration of 53 years"—I ask the Attorney General: Am I right in believing that the destruction of those records after 53 years is covered by the Justices Act and therefore there is no requirement to keep those records under the terms of that Act, but that before they would be destroyed they would at least come under the provisions of the Library Board of Western Australia Act and so a decision would be made whether the records would be retained for historical purposes, bearing in mind that the decision had already been made to destroy the record for the provisions of the Justices Act?

The Hon. I. G. MEDCALF: I can assure the Hon. Phillip Pendal that the provision is simply for the purposes of the administration of the courts under the Justices Act and that the whole of this part is subject to the Library Board of Western Australia Act. We might say that the superior authority is the Library Board of Western Australia Act as it affects the destruction of documents.

Amendment, as amended, put and passed.

Title put and passed.

Bill reported with amendments.

LEGAL AID COMMISSION AMENDMENT BILL

Second Reading

Debate resumed from 16 September.

THE HON. J. M. BERINSON (North-East Metropolitan) [9.10 p.m.]: Legal aid is now a well established element in the Australian social welfare system. It is important, independently, for its role in the proper administration of the law, particularly that part of the administration which is concerned with such notions as justice or equity. Equal rights are not much use if one is prevented by cost from exercising them.

The rapid growth in the number of legal aid clients to which the Attorney General referred is impressive but not surprising. If anything, the pressure on the system that now exists only makes it seem the more remarkable that it was so long in developing.

The Bill proposes substantial amendments to the parent Act and a number of these are merely formal or otherwise clearly unobjectionable. I would include in the latter—

> the proposed indemnity for private lawyers acting for the commission in a voluntary capacity;
>
> the clarification of the commission's ability to require clients to contribute costs in full in appropriate cases; and
>
> the imposition of a time limit in respect of appeals.

The more important aspects of the Bill, however, all go to an increase in the powers of the commission itself. These may be summarised under four main headings and I propose to deal with each of them in turn.

Clause 17, proposing a new section 49A, provides an additional step in the process of legal aid applications. At the moment, an application for aid is considered in the first place by the director of the commission, or a legal aid committee.

Point of Order

The Hon. H. W. GAYFER: With respect to Standing Order No. 73 dealing with rules of debate, I ask whether the President's leave was given for the member to read his speech?

The DEPUTY PRESIDENT (The Hon. V. J. Ferry): I understand no leave was granted. I have noticed that the member has been reading from notes and I remind him of the rules of debate.

Debate Resumed

The Hon. J. M. BERINSON: Mr Gayfer has a remarkable capacity to engage in petty nonsense when we are concerned with a serious Bill.

Withdrawal of Remark

The Hon. H. W. GAYFER: I ask the member to withdraw what he has just said, because I acted in full accordance with Standing Orders.

The Hon. J. M. BERINSON: Certainly. Mr Gayfer did act in accordance with Standing Orders and in doing so he was engaging in petty nonsense. He does it every time.

The Hon. I. G. MEDCALF: Mr Gayfer has asked for a withdrawal.

The DEPUTY PRESIDENT: I call on the Hon. Joe Berinson to withdraw. He did commence to make a withdrawal and I ask him to do so formally.

The Hon. J. M. BERINSON: In turn I raise a point of order.

The DEPUTY PRESIDENT: Order! I request that the member withdraw without qualification.

The Hon. J. M. BERINSON: Mr Deputy President, I object to that ruling. On what basis are you ruling that my statement should be withdrawn? I put it to you that it is not unparliamentary to say that a member is engaging in petty nonsense.

The DEPUTY PRESIDENT: I refer members to Standing Order No. 87 which reads—

> 87. No Member shall use offensive or unbecoming words in reference to any Member of either House, and all imputations of improper motives and personal reflections on Members shall be considered highly disorderly, and when any Member objects to words used, the presiding officer shall if he considers the words to be objectionable or unparliamentary, order them to be withdrawn forthwith.

The Hon. J. M. BERINSON: Certainly. If you regard the term "petty nonsense" to be unparliamentary, I withdraw it.

Debate Resumed

The Hon. J. M. BERINSON: Before that small interruption to the serious proceedings in which we were engaged I was referring to the process by which legal aid applications can be made. I trust Mr Gayfer will note that not only do I not use notes, but not even my hands as I explain to him what that process is.

The DEPUTY PRESIDENT: Order! The honourable member should address the Chair.

The Hon. J. M. BERINSON: Yes, I would prefer to do that.

The process involves an application, in the first place, to the director of the commission or a legal aid committee. If the application is rejected at that point, an appeal is open to a review committee, pursuant to section 49 of the Act. The decision of the review committee is expressed by section 49(3) to be final and conclusive. The commission apparently has expressed concern that this procedure is not sufficiently flexible and that it does not allow for the position where, after rejection by a review committee, an applicant is able to provide new evidence of the merits of his case, or evidence of some serious deterioration in his financial capacity.

To meet such situations, proposed new section 49A will permit the commission itself to reopen the application and remit it for the fresh consideration of a review committee. That proposal seems eminently reasonable, and the Opposition supports it. Nonetheless, it leaves two questions unanswered.

In the first place: Is this new process really necessary? I would have thought that a change of financial circumstances from, say, $50 000 in the applicant's bank balance to nil would not so much call for reconsideration of the original application as constitute the basis of an entirely new and different application.

Secondly, given the new general principle of flexibility to meet new circumstances, why is it proposed to have a provision in the form of new section 49A(3) which again introduces the notion of a final and conclusive determination, this time applying to the remitted application? What if vital and different evidence becomes available beyond that point? This would undoubtedly be the exceptional case, but in principle, why cut it out?

I turn next to clause 9(c), which proposes to amend section 37 of the Act by enacting a new subsection (4)(a). Section 37, as it now stands, sets out the criteria of the applicable means test in subsection (3), and the criteria of other considerations relevent to a grant of aid in subsection (4).

The latter group, in subsection (4)(d)(i), establishes the merit test; that is, a requirement that the legal aid committee should consider "whether or not the proceedings are likely to be determined in a manner favourable to the person".

As explained by the Attorney General, clause 9 (c) is meant to give power to the commission to direct that in a certain case or class of case the merit test should not be applied.

For practical purposes, this is saying that where there are cases with the order of penalty of, say, murder, rape or dealing in drugs, the aid committee should look at the means test alone and leave the merit test to one side.

In recent years there have been some hard and embarrassing cases where the merit test led to the defendants being denied aid on extremely serious charges, only to see them acquitted subsequently. On that specific experience, as well as the general principle involved, the policy expressed by the Attorney General should be supported.

Again, however, it is rather puzzling, firstly, that this amendment should be regarded as necessary to achieve the Attorney General's express purpose. After all, section 37(4) as it now stands, includes not only the merit test but also, in section 37(4)(c)(i), a requirement that the legal aid committee should have regard to the benefit, or detriment, facing the particular applicant.

I would have thought that at least where a charge carries the sentence of death or life imprisonment the potential detriment factor would be so overwhelming as to make the merit test inapplicable. If that has not been the case in practice, then so much the worse for the practice; but in any event, there can be no harm in ensuring that there is no room for doubt on this score in future.

A second puzzling feature of clause 9(c) is its verbosity. Surely all that is needed is a statement that "The commission may direct that in a case or class of case specified in that direction a legal aid authority shall not have regard to the matters set out in subsection (4)(d)(i)."

The Hon. I. G. Medcalf: What is it?

The Hon. J. M. BERINSON: Its verbosity. I am referring to the fact that it has about 13 printed lines when all that needs to be said can be accommodated in about four lines. I do not raise that as a serious matter but just wonder about the purpose of the circumlocution.

The Hon. I. G. Medcalf: There is too much verbosity throughout, I agree with that.

The Hon. P. H. Wells: The normal language of lawyers.

The Hon. J. M. BERINSON: That may be the problem, although I do not think our Parliamentary Counsel is paid on the basis of the folio count, so normal consideration should not apply in this case.

Yet another expansion of the powers of the commission is to be found in clause 12 of the Bill which seeks to amend section 40 of the Act. By way of preliminary comment, it can be said fairly

that this clause is as important for its connotations as for its direct effect.

Section 40 of the Act provides that where the commission determines, as it does in the great majority of cases, that an approved applicant for legal aid shall have the services of a private lawyer rather than a salaried lawyer from the commission's own staff, the assisted person may select a private practitioner of his own choice.

The selection is made from a panel of names collated by the commission on the basis of notification, by private practitioners, of their willingness to act. Clause 12 proposes to qualify the applicant's right to choose by giving the commission the power to override the choice of private practitioner thus made where it is considered to be not in the interests of the assisted person. In these cases, the legal aid authority, and not the applicant, may select a replacement lawyer from the panel. This provision is surprising in many respects.

From a self-proclaimed free-enterprise Government, the effective elimination of free choice in such an important and subjective area of judgment is noteworthy to say the least. Again, the Attorney General indicates that the proposal has the agreement of the Law Society and that is also rather surprising: Not that it is difficult to sympathise with the wish of the commission to protect its clients. That is natural and proper; but is it proper to set up the commission as a professional regulator? Is that a proper role for the commission? Is that a role it is properly equipped to play? I would think not.

Something very disturbing emerges from this proposal. What we are being told, in effect, is that there are lawyers in this State who hold themselves out as able and willing to take on certain legal work, when in the experienced view of the commission, and apparently of their professional peers in the Law Society, they are in fact not capable of properly performing that work.

If that is the case, the risks to a now unwary public are appalling. From the legal aid point of view, what really seems called for is a comprehensive review of the system of self-nomination by professionals, which is in fact the effect of section 40.

The Hon. P. H. Wells: You are talking about specialisation within the ranks of lawyers.

The Hon. J. M. BERINSON: It is really not a matter of specialisation, it is a matter of the commission holding a list of the categories of work and inviting practitioners to nominate themselves for the list on which they wish to appear.

The Hon. I. G. Medcalf: There is some specialisation in it of course.

The Hon. J. M. BERINSON: Of course, I accept that.

The Hon. I. G. Medcalf: Some do not.

The Hon. J. M. BERINSON: However, in accepting that interjection, I think I am not wrong in saying that it is the practitioner himself who nominates the categories of work for which he will be listed. He nominates his own speciality.

The Hon. I. G. Medcalf: He does not always understand his own weaknesses.

The Hon. J. M. BERINSON: That is precisely the point I am making, and the reason I make the suggestion that what may be necessary is a review of the system by which particular names appear on particular panels.

More generally the real case is that perhaps consideration should be given to the possibility of professional accreditation of practitioners to certain classes of work.

If clause 12 is justified, so are these further propositions; either that, or clause 12 is taking the powers of the commission too far.

I come finally to clause 8 (c) which gives the commission the power at any time to refuse an application for legal aid. This means that the commission may either pre-empt or override a decision by a legal aid committee or a review committee. Unlike the position of rejections by the director or a legal aid committee, a refusal by the commission is not subject to review.

This proposal is explained by the Attorney General as necessary to allow the commission to properly meet its obligations of financial control in situations where very large costs might be involved. I note in passing, however, that clause 8 (c) is expressed in completely general terms and not restricted to the case made out by the Attorney General. Especially when taken together with other extensions of the commission's power, I accept this further power with some reluctance. At the risk of being equivocal, I tend to regard it as acceptable for a trial run, with the prospect of review thereafter.

To enable such a review to be sensibly based, the number and nature of such exercises of power should be the subject of specific reference in the commission's annual reports.

The same consideration should apply to the exercise of the new commission power which is provided by clause 12. I add in parenthesis, so to speak, a question to the Attorney General. At page 7 of his second reading speech, the Attorney General said that the commission is empowered

by the Bill to refuse, or terminate, or vary aid. The power of refusal is provided clearly enough by clause 8 to which I have just referred, but I cannot find a provision to terminate or to vary. It would be helpful if the Attorney General in his reply would direct our attention to where those aspects of the new power might be found.

The rationale of clause 8(c) to which I have already referred, is the need to ensure that we get the best use out of the commission's limited funds. That is a matter of great concern, and the general question having been raised I draw attention to several respects in which the application of commission funds ought to be regarded as questionable.

On 29 April last year I suggested that the commission might well be overpaying private practitioners to the extent of many thousands of dollars per year as a result of an excessively generous approach to the costing of private practitioner accounts. The Attorney General's rejection of my comments was provided, eventually, at the very witching hour of midnight on the last day before the Christmas recess.

The Hon. I. G. Medcalf: I thought you would like some time to study it.

The Hon. J. M. BERINSON: Obviously, the Attorney General enjoyed the time to study my comments as he took seven months to reply.

The Hon. I. G. Medcalf: I had a few other things to do.

The Hon. J. M. BERINSON: I do not doubt that. The Attorney's response, when it came, was supported by a 15-page statement by the Director of the Legal Aid Commission. I trust that my silence on the subject since has not been taken as acquiescence—

The Hon. P. H. Wells: You have been studying the document.

The Hon. I. G. Medcalf: It has taken you 10 months to reply.

The Hon. J. M. BERINSON: —quite the contrary, and I make that clear without again covering the rather technical ground involved.

I have a high regard for the director of the commission but he will have to excuse me if I say that I found his report on this occasion rather less persuasive than usual. It was disappointing, in particular, that the Attorney General did not implement what I believed was a genuinely constructive proposal—to refer three or four accounts taken at random for the independent assessment of a taxing master of the Supreme Court.

That was taken as a suggestion that the taxing master should replace the existing commission procedures, and I was given a lengthy lecture to explain why that was not possible. Of course that is not possible. I did not suggest it, and it would not serve any purpose.

My proposal was to apply the taxing master's standards to accounts already approved and paid. The object of that exercise was not to attack particular accounts but to test the general procedures now applied. Such a test, by this or other appropriate means, remains in my opinion essential. That is all the more the case given the recent sharp increase in the level of fees payable by the commission, a matter to which I now turn.

In July this year the procedures and fees payable by the commission for legal aid work by private practitioners were completely changed by regulation. The regulations were tabled in this House on the first day of the present sitting and are now cited as the Legal Aid Commission (costs) rules 1982.

As we all know, it is not usual Government practice to issue any detailed explanatory statement in respect of regulations. That is reasonable enough as a general rule, but the new costs rules are a good example for the argument that the general rule should not be treated as a universal rule. These regulations are generous to the private legal profession and will be very costly to the commission. That means, of course, very costly to the public, and some public justification of them is called for.

I propose to refer to only three costly provisions of the new rules, but I preface those comments by acknowledging that they also include a very important cost-saving provision. This is found in new rule 6(1) which provides that where the commission does not have its own scale of approved charges, private practitioners should be entitled to 80 per cent of the scale fees which would otherwise apply in private practice. The rule which this replaces provided 90 per cent of private scale fees, so that this is certainly a significant change.

With due respect to some of my colleagues in the legal profession who are treating their agreement to the lower percentage as close to sacrificial, I am bound to suggest that it really does fall a fraction short of that point. Indeed, Western Australian practitioners might be comforted in the thought that they have had the higher percentage as long as they have. That it was anomalous emerges from the commission's annual report for 1980-81 at page 25 where it says this—

> As at 30 June 1981 this Commission and the New South Wales Legal Services Commission were the only two legal aid bodies in

> Australia paying private practitioners at a rate of 90 per cent of ordinary costs for legal aid work—and the New South Wales Commission does not operate in the area of Commonwealth law, including that of family law (the importance of this lies in the fact that family law work constitutes in excess of 50 per cent of the total assignment work paid for by the Western Australian Commission). All other legal aid commissions and bodies pay at a rate of 80 per cent of ordinary costs. Further, in family law matters this Commission is the only body to pay private practitioners' accounts on the basis of the fees prescribed in the Family Law Regulations—the Queensland, A.C.T. and South Australian Commissions and the Australian Legal Aid Office, have adopted their own scales of fees for family law cases. These scales all produce an overall reduction in the amounts payable.

This is not to deny the value of the lower percentage now adopted, but simply to put its significance into context. The increased costs arising from the new rules are by no means all equal in importance.

The provision for the first time of a 50 per cent loading for QC services should have relatively little effect on overall finances, and I mention it only in passing to inquire why it is now thought necessary when it was apparently not thought necessary earlier.

New rule 18 raises more important issues. Under the earlier rules, where a successful legally aided litigant was awarded costs, the theory was that to the extent that recovered costs exceeded 90 per cent of scale fees, the difference was payable to the commission. Under new rule 18, the director or a committee can authorise the practitioner to retain the difference.

No reason for that change has been given and it ought to be given. Simply on the basis of the feeling in my bones, I suspect that it is in the nature of a *quid pro quo* for the change in legal aid payments from 90 per cent to 80 per cent of private fees. I hope that is not so and that, in any case, the regulation will not be administered as though payment of 100 per cent in such cases should be the norm.

Acknowledging the obvious importance of the co-operative participation in the legal aid system by the private legal profession, it is equally clear that the system contributes to the well being of the profession as well, and that is where the real *quid pro quo* lies.

The third aspect of the new rules which calls for attention is the schedule of fees which it implements. I will deal with only the criminal scale in the schedule by way of example.

It should be noted, firstly, that the costs here approved replace a scale which was last reviewed in August 1979. A three years' updating was therefore required. Coincidentally, or perhaps not, the revision of the Supreme Court's scale of costs was tabled at the same time as the new legal aid scale and covered roughly the same period.

The Supreme Court regulations provide a 30 per cent increase, and I leave for another time the question as to whether that increase was itself appropriate. The least that can be said about it, however, is that it does not really call for explanation.

The reason for the increase is reasonably self-evident. About three years have passed, inflation has been at about the rate of 10 per cent a year, so about 30 per cent might reasonably be regarded as somewhere near the mark.

If the legal aid scale had gone up about 30 per cent in the same period the same thing might be said. In fact, one or two items have gone up by as little as 30 per cent, and I have nothing to say on those, but for the rest the increases are of an entirely different order.

The upper limit for an appeal against sentence in the Court of Criminal Appeal goes from $450 to $650. That is an increase of 45 per cent or 15 per cent a year. Attendance for various purposes goes from $35 to $58. That is an increase of 65 per cent or 21 per cent a year.

The upper limit for proceedings by way of prerogative writ before a Full Court goes from $600 to $1 040. That is an increase of 73 per cent or 24 per cent a year. Second and subsequent days for defended cases in a Court of Petty Sessions go from $150 to $292. That is an increase of 94 per cent or 31 per cent a year.

Getting up and first day in District Court criminal trials on the lower scale go from $450 to $975. That is an increase of 116 per cent or 38 per cent a year. On the higher scale payment for that work goes from $450 to $1 235, an increase of 174 per cent or 58 per cent per year.

I do not say that these increases, extraordinary as they may appear at first sight, are necessarily wrong. I do say that they call for something more than merely a silent slipping into the system. This view is fortified by a comparison with legal aid rates applying elsewhere. It is not as simple an exercise as it may appear to compare rates in different States.

Some other jurisdictions do not have our court structure; others have a strictly divided profession; others again do not set out their scales so that they cover the same work that our scales cover. There is also the fact that the scales in other States are about one year old already. All of this means that any comparative table must be approached with caution, and I acknowledge that fact readily.

However, at least as a basis for consideration, I distribute to members a table of net counsel fees in four situations, comparing the rates in Western Australia with those in New South Wales, Victoria, Queensland and South Australia. The term "net" in this context is to indicate that a 20 per cent discounting for legal aid work where applicable has been deducted already. The figures are extracted from information provided by the Attorney General yesterday, and the full details will appear in *Hansard* of yesterday's date.

By leave of the House the following material was incorporated—

Net Counsel Fees

	WA $	NSW $	VIC $	QLD $	SA $
District Court: 1st day including prepuration	975-1 235	196-260	245-360	363*	436
Subsequent days	390-520	132-260	164-240	165	240
Petty Sessions: 1st day including preparations	455	168-250	320	500**	292
Subsequent days	292	112-250	240	150	184
Date of last review	Sept. 82	Oct. 81	July 81	*Nov. 81 **July 81	Nov. 81

The Hon. J. M. Berinson: As appears from this table, the new WA rates, with one rather puzzling exception for petty sessions work in Queensland, are all much higher than the rest. In States where the profession is divided, this still appears to be the case, even where the fee for a solicitor appearing with counsel is added.

Because of the striking picture which emerges from the statistics, I considered at one stage the desirability of moving to disallow the regulations altogether. I came to the conclusion that that course should not be taken for several reasons. Firstly, the 1979 scale was years out of date and clearly inadequate by any standard. Secondly, there was a serious anomaly between the rates of payment for legal aid work for which an established scale exists, and work such as in the criminal jurisdiction where no such generally applicable scale exists. Thirdly, a comparison with other States might well be misleading without a proper understanding of those jurisdictions, an understanding I do not have.

Fourthly, there appears to be evidence that the inadequacy of the existing inadequate scale was having the effect of concentrating legal aid work in the hands of less experienced practitioners. That of course is undesirable, though I add at once that I am by no means convinced that the radically improved rates will have much effect on that position.

Lastly, and most importantly, if one is to condemn a scale, there is some obligation to suggest a more appropriate scale or at least a more appropriate basis on which such a scale might be constructed. That involves very fundamental questions to which I do not pretend to have a ready answer. These questions, amongst others, go to the way in which all legal fees—and not just legal aid fees—are established. They go also to a clearer analysis of precisely what purpose the legal aid system is intended to serve. Depending on our answer to that and the extent to which the private profession, including its more experienced members, is prepared to help in achieving that purpose, further questions must be faced as to the proper balance to be struck between the use of salaried and private practitioners on legal aid work.

These are not questions to be answered by a quick shot from the hip, but neither can they be put off much longer.

THE HON. ROBERT HETHERINGTON (East Metropolitan) [9.50 p.m.]: I do not intend to take very much time on this debate because I am not a legal practitioner. I am a member of Parliament who has become involved sometimes with the Legal Aid Commission in the service of my constituents. At times it has caused me some worry, and I welcome particularly the provision in this Bill which makes it possible that the review committee for legal aid work now no longer has the final say—its decisions can be reviewed.

One of the problems with the legal aid system in WA, as my friend the Hon. J. M. Berinson has pointed out, is that over 50 per cent of the cases in which legal aid is requested are Family Court cases. It seems to me that legal aid for family law cases has grown quite beyond what was expected when the commission was established. That is hardly surprising because both were initiated about the same time.

From my experience with my constituents it seems to me that people who seek legal aid, whose applications are rejected, and who then appear before the review committee, frequently represent themselves and are not capable of putting forward a correct argument. Sometimes such applications are rejected, and in my opinion, had the applicant

argued differently, his submission would have been accepted. Of course, that is a matter of opinion only, but it is an opinion which I hold rather strongly.

In family law cases it frequently happens that one of the partners will indulge in a great deal of litigation for one reason or another. After a long series of cases without merit, it appears to me that sometimes a person who is applying for legal aid no longer knows how to put forward a proper argument when his case does have merit. I wonder whether it is possible to have a duty lawyer available when a person is applying to the Legal Aid Commission.

In one case in which I was involved, the review committee rejected an application which I thought had merit. I believe that, had the applicant been represented properly, the result may have been different. Once this Bill becomes an Act, I will see whether something can be done about that case.

There are some problems with the measure. I am interested in the proposal that the Legal Aid Commission will now be able to decide that a lawyer to represent a client may not serve the best interests of that client. It is my experience that sometimes a client does choose the wrong lawyer, even though, *prima facie*, it is the right lawyer. I have in mind a case where an applicant appealed from a judgment of the Family Court. He applied for legal aid, and finally he persuaded the Legal Aid Commission to obtain the opinion of a senior and learned counsel. This opinion was to the effect that the case had no merit, but that was all the opinion was, as far as my constituent was concerned. Despite all the advice, this man took his case to the Full Court. The appeal was indeed rejected, not on the ground that the case had no merit, but on the ground that the Full Court was the wrong jurisdiction in which to bring the case. The ruling was that the case should have been returned to a single judge.

I was rather appalled that this should happen. A great deal of money was spent to obtain an opinion and the opinion seemed to be of little value; it was an opinion merely on the merit of the case. It seems to me there should perhaps be some method of sifting the wheat from the chaff. From this point of view I welcome the changes to be made.

I wonder whether it may be that the procedures of the Legal Aid Commission are based primarily on cases where applicants wish to appear before the criminal courts. It may be that some different procedures may be necessary for people involved in family law. I am not sufficiently experienced to know whether this may or may not be the case. I just know that sometimes to a layman, to a moderately informed layman in my case, there seem to be anomalies.

I am in no way criticising the personnel of the Legal Aid Commission. I have been in contact with the staff often, and I have never experienced anything but the utmost courtesy and help. Indeed, they have been most careful and considerate of any point of view I have put before them on behalf of constituents. I still believe it is a good move to allow applicants to go back to the committee after an application has been twice reviewed and rejected on the ground that the applicant may not have put the correct information before the commission, because after discussion later with some person more informed than he, he may want to return to put a better case.

As the Attorney will be only too aware, this is one of the problems when people conduct their own cases. It is also one of the problems of the adversary system. I sometimes wonder whether that is the best system to use in family law cases; we may have less problems if we use a different system. I am mentioning this only peripherally; in family law cases an application is quite often not as straightforward as one may be in a criminal case. I am not sure about that, because I have not represented anybody who is appearing in a criminal court on a criminal charge and who is seeking legal aid.

I welcome the changes which are being made. Room remains for greater review and I am sure the Attorney will say to me, as he always does, "Of course I am always reviewing these matters. We have to proceed slowly, but there is always room for improvement."

One of the problems is finance and some cases involve a great deal of money which, on the face of it, appears to be ill spent; for example, cases involving the custody of children, particularly when one looks at the participants rather than the children. Grave problems exist here, but at least this Bill takes a step in the right direction and I welcome it.

THE HON. P. H. WELLS (North Metropolitan) [10.01 p.m.]: The Legal Aid Commission provides a very good service. I am certain that, like myself, most members refer people to it from time to time. Indeed, I had occasion to do so earlier this evening.

In the 1980 report of the Legal Aid Commission it is indicated that 132 400 copies of the 13 pamphlets it produces, were distributed. Since that time the commission has increased the number of pamphlets it distributes to 14.

The Hon. Lyla Elliott will be pleased to note that the commission's report indicates that 52 per cent of the State's population are female and 52 per cent of the applicants awarded legal aid were women. That indicates the unbiased way in which the commission deals with people.

Clause 21 of the Bill seeks to indemnify the director or members of the staff of the commission from liability incurred for any negligent act or omission. This provision follows an amendment to the consumer affairs legislation which covered this area.

I ask the Attorney General: Why are we indemnifying the commission in this way rather than requiring it to be covered by insurance as occurs in private practice? I assume that, if a private practitioner gave incorrect advice he could be sued.

The Hon. J. M. Berinson: We are not freeing the commission from liability though, are we?

The Hon. P. H. WELLS: The clause refers to the director or members of his staff and I hope the Attorney can answer my query.

My next question relates to clause 12 which was referred to also by the Hon. Joe Berinson. I draw the Attorney's attention to the clause, because it may be necessary to amend it. Clause 12 refers to a situation in which a person has selected a private practitioner whom the commission considers to be totally unacceptable for the case and, therefore, indicates the person must accept a legal practitioner from its list.

Would it not be better to amend the clause in order that a person in that situation may select a legal practitioner who is acceptable to the commission or one that appears on the list? I am sure such a course would be adopted in relation to the medical profession. I hope the Attorney will consider amending that clause in order to cover the matter I have raised, because as it stands, the clause could leave the commission in the position of deciding which legal practitioners should represent people.

Apart from the two matters I have raised, I support the Bill. The Legal Aid Commission makes a major contribution to our society. If we intend to indemnify the commission from liability for giving wrongful advice, I ask the Attorney when it is intended to introduce a Bill to cover members of Parliament who give similar incorrect advice.

THE HON. I. G. MEDCALF (Metropolitan—Attorney General) [10.07 p.m.]: I thank honourable members for their comments on the Bill. The remarks which were relevant to the Bill were very helpful.

The Hon. Mr Berinson referred to costs and I had difficulty ascertaining exactly how they related to the Bill. I came to the conclusion that the honourable member was, some 10 months later, answering comments I made last November.

The Hon. J. M. Berinson: I thought it was directly relevant to the purpose of clause 8 of the Bill.

The Hon. I. G. MEDCALF: That is fair enough, because I agree those matters required some time to study. They were most carefully researched by the Director of Legal Aid who, of course, is the person most concerned in each of these amendments.

Honourable members might not be aware that, in the last annual report of the Legal Aid Commission there appears an almost complete summary of these amendments. Some are not referred to, because they have been put forward since that time. However, the last annual report of the Legal Aid Commission which was tabled in this House before the close of the session last year contains a reference to almost all of these amendments.

I can see Mr Wells has a copy of that report. He always studies his reports and he will find in the Legal Aid Commission report a reference to some of these matters, including quite a long dissertation on the very last matter he raised about the selected practitioner and the agreement negotiated between the Legal Aid Commission and the Law Society.

The private enterprise people certainly have been discussing that aspect with the Legal Aid Commission. Mr Wells will see also references by judges to the problem of an inadequate practitioner appearing for somebody in a court. I am sure the Hon. Mr Berinson must agree that some practitioners are inadequately cast in certain roles they accept in the courts.

The Hon. Robert Hetherington: I would certainly agree with that.

The Hon. I. G. MEDCALF: Clients have complained to me about lawyers assigned to them or lawyers they happened to obtain long before the Legal Aid Commission came into existence. They have said, "That man did not know a bee from a bull's foot about that subject" and sometimes they have been right. This problem has been recognised and, in order to complete my comments, I shall quote the statement made in this regard at page 9 of the last annual report of the Legal Aid Commission, which reads as follows—

Selection of Particular Private Practitioner by Applicant for Aid

On the various occasions since it first began operating, the Commission noted expressions of concern by Judges and some members of the profession to the effect that very junior and inexperienced practitioners were representing legally-aided clients in serious cases (particularly criminal cases) and that the client's best interests were not always being served as a consequence.

The Honourable the Chief Justice himself expressed such concern as early as March 1978 (i.e. even before the Commission assumed responsibility for providing legal aid in this State). Whilst the Commission took the view that much of this criticism and concern was a reflection of a wider professional problem and not one confined to nor caused by the availability of legal aid, it recognized that to the extent it did manifest itself in legal aid cases the Commission had a responsibility to endeavour to overcome it. Insofar as the Act required that effect had to be given to an applicant's selection of a particular private practitioner the Commission had no alternative but to comply, and this was seen as a real difficulty. Protracted discussions were had with the Law Society and a number of possible schemes were canvassed.

In the event the Commission and the Society agreed that the appropriate solution would be to seek an amendment to the Act to import into subsection (1) of section 40 the principle already espoused in subsection (3) of the same section, namely that in the selection of a private practitioner to act for a legally-assisted person the paramount consideration must be what is in the best interests of that person.

The Commission accordingly requested the Honourable the State Attorney-General to seek and support an amendment to section 40 so as to provide that, although the private practitioner selected by an applicant shall be appointed to act where possible, a different appointment may be made where it would not be in the best interests of the applicant for the selected practitioner to act. The amendment should further provide for an appropriate right of appeal to a Review Committee against such a decision.

That is exactly what we find in the Bill before the House. That statement was included because the commission had been made aware of what I can describe only as a "professional problem" whereby inadequate advice or assistance was given to people who were the clients of the Legal Aid Commission. The commission was concerned about that and did the best it could in this regard by making arrangements with the Law Society that the society would recognise the commission had a responsibility. That was the solution the Law Society and the commission decided was most appropriate at that stage. I hope that answers the question raised by Mr Wells on that point.

The Hon. Mr Berinson suggested that perhaps a better way existed to handle this. He indicated it pointed to a more general problem and undoubtedly it does.

The Hon. J. M. Berinson: That is precisely the point of your quote also.

The Hon. I. G. MEDCALF: Undoubtedly it points to a more general problem that people can choose who they like, and if they are not clients of the Legal Aid Commission they can make the same mistake and choose the wrong lawyer. I ask members: How does one overcome that?

I understand the Law Society is drawing up lists of specialists. The society in New South Wales has gone a little further in its recommendations and is allowing advertising on a much wider scale than is being permitted here. Various schemes may be adopted which might perhaps make people more aware of lawyers' abilities. However, at this stage evaluation is rather difficult. It is also very difficult to accept the responsibility which one has from time to time of suggesting to people whom they should consult.

When people say to a lawyer, "Perhaps you don't handle this work, but who should I see?" it is quite a responsibility on the lawyer to select another to do the work. The lawyer ought to know the best person because he is in the profession. Someone not quite inside the profession, or outside it, is not in the same position to give this advice. Who is to say who are the experts in a particular field? Many situations have arisen in which a so-called expert has been allotted to a person and later it has been discovered that in fact that referred person was not the best expert. Certainly he would not have suited the client had he lost the case. Of course frequently the lawyer gets the blame when it may not be his fault. Problems exist on both sides. I have said enough about that.

The Hon. Joe Berinson indicated his support for a number of provisions in the Bill. I gathered he was making observations. I give him credit for doing a lot of work on the Bill. I am sorry he did not give me a copy of his notes before making his speech, because they would have made his speech

easier to follow. I did not fully understand a couple of the points he raised.

The Hon. J. M. Berinson: I will get you an early copy of *Hansard*.

The Hon. I. G. MEDCALF: I would have liked to have a copy of *Hansard*; it would have helped me considerably. I could have followed the member with more particularity.

The Hon. D. J. Wordsworth: Why didn't you adjourn it to get a copy?

The Hon. I. G. MEDCALF: I could not have obtained a copy of *Hansard* while he was speaking. I believe I followed his speech adequately, but perhaps I would have followed it better had I been in possession of a prepared speech. I am not complaining that I did not have a copy of his notes; I am saying such notes would have been helpful. Previously I have indicated that if members wish to raise technical points on various matters it would be helpful to Ministers to have advance notice of those points so that they know more about matters to which they are requested to give serious consideration.

The Hon. J. M. Berinson: May I clarify in your mind that I support the Bill as a whole, and merely expressed certain reservations.

The Hon. I. G. MEDCALF: I commented to that effect. I had the impression the member supported the Bill, but was making general observations. I gave him credit for having gone into some detail.

The Hon. J. M. Berinson: Marks for effort.

The Hon. I. G. MEDCALF: I said I would have liked to have a copy of his prepared notes. I do not think anyone could take exception to my liking that.

I turn now to clause 17, which provides for the insertion of new section 49A, which deals with a new process for the consideration of granting legal aid in the situation of changed circumstances. The Hon. Joe Berinson wondered why the provision was necessary, and whether there is not now power under the Act to review the situation adequately. It has been held that this power is not available.

I understand the commission took advice. Certainly the commission advised me it had an opinion which indicated that the commission could not review a decision once a case had gone finally before a review committee. I was advised that if there was a change in circumstances nothing could be done about that change. I know about this situation. On one or two occasions I have been involved in situations of people applying for legal aid. One related to a constituent of the Hon. Margaret McAleer. I will not identify that person except to say that his circumstances had changed dramatically. Although he did not pass the means test when his case was first reviewed, he subsequently suffered such a fall in his financial position that he would have passed the means test had his case been re-reviewed, but the commission was unable to do that. The view was taken that it was inappropriate for another application to be made.

In such circumstances I was advised, and I felt constrained to accept the advice, that there should be a power to reconsider such matters and have them redirected to a review committee for further review, or direct them to one of the other committees. Such a course would be beneficial; it would be an extra way of obtaining proper consideration of the circumstances of legal aid customers, members of the public. But it was important that the commission should not set itself up as a final appeal tribunal within the legal aid establishment. If it did, all applications would go right through the process within the commission. So, the commission will reserve this power to refer back if necessary.

As to the ultimate finality and conclusiveness of these matters, one must draw the line somewhere, but now another step will be available between the initial application and the end result. It is a pragmatic solution to a problem. I hope the solution will alleviate the changing circumstances of legal aid customers. These circumstances change not only in terms of financial status—that is, a person going from being unqualified under the means test to being qualified—but also in relation to the merit test. In circumstances of there appearing to be no merit in the early stage, changes can occur whereby merit can be seen. It is important for that reason that this other step be provided. While the provision gives more power to the commission, it will be to the advantage of clients of the commission—it is to assist clients.

The next point the honourable member mentioned related to these merit tests. He referred to situations in which the commission has power to dispense with the merit test or any other test. I believe it could dispense with any test under the wording of this clause. If it wanted to I believe it could dispense with the means test. It can refer itself to any of those questions.

The Hon. J. M. Berinson: I don't think so. The clause would not open the way to dispense with the means test.

The Hon. I. G. MEDCALF: Perhaps we should not—

The Hon. J. M. Berinson: Be confused by the facts.

The Hon. I. G. MEDCALF: If the member wishes to take up the matter—

The Hon. J. M. Berinson: No, I am not being serious.

The Hon. I. G. MEDCALF: If the commission wants to dispense with the merit test, it can do so in a certain class of case. It may decide in regard to a particular kind of criminal case that the merit test should be dispensed with. Such a case might be a murder trial. As a result of the seriousness of the charge the commission might decide it can ignore the fact that there is not legal merit in the case; while it may be convinced that the accused will lose the case, it will be empowered to grant aid.

The commission takes a strict view on the interpretation of its Statute. That is understandable when considering that the commission consists largely of lawyers. It consists almost exclusively of lawyers except in regard to some of its review committees. It is natural that its lawyers take a strict view on how their guidelines should be interpreted, and they have taken the view that they cannot dispense with the merit test.

A member in this place mentioned that not granting legal aid may be to the detriment of an accused, and certainly if the accused is likely to be hanged, the not granting of aid would be to his detriment. But the commission must look at the merit of the case.

The Victorians have legislation similar to ours, but this power was included in their legislation. We think to have such a power will be good. It will enable the commission to decide whether merit should be considered. The decision will be left with the commission—and it is an independent body.

I remind the House that I respect the commission's independence. Perhaps one of the reasons for my sometimes feeling slightly resentful—that is not in any bitter sense—of criticism levelled at me or the Government in relation to the commission is that the Government cherishes the independence of the commission and the legal profession. Right from the beginning of the commission we have sought to ensure that there is no political interference with the commission. Nobody tells the commission to whom it should or should not give legal aid. Nobody has said to the commission, "Don't bring those proceedings against the Government." If the commission decides to bring proceedings against the Government it can. In fact, it has done so several times. Nobody objects or says to the commission, "You have no right to do that." We respect its independence, and I believe it respects the Government for its position on the matter.

For that reason it is not appropriate to blame the Government for things the commission does. I am not saying the Hon. Joe Berinson did that, but in talking about costs to the extent he did he implied that in some way this question of costs is connected with the stand of the Government. The only way it is connected with the Government is that regulations must have the final approval of the Governor.

The Hon. J. M. Berinson: That is not an inconsiderable consideration.

The Hon. I. G. MEDCALF: For the Governor to decline to approve regulations is quite a serious matter. The member said he had considered moving a motion to disallow the regulations, but for various reasons had demurred. Similar reasons have deterred the Government from doing much the same thing.

The Hon. J. M. Berinson: It would have been better for the Government to provide either itself or through the commission a statement explaining these very major changes.

The Hon. I. G. MEDCALF: The provision of such a statement basically would be up to the commission. Perhaps one way exists by which the Government has endeavoured to influence the commission. Talks have occurred from time to time between the commission and I to the effect that it should come into line with legal aid commissions in other States of Australia in regard to the question of costs. Our commission has endeavoured to do so, but this depends to a large extent on the legal profession in this State. The matter is delicate. Initially costs were on a 90 per cent basis, the percentage which applied to the Australian Legal Aid Office and the Law Society scheme. Our commission had to start on the same basis in order to get started. It has been able to negotiate that percentage down to 80 per cent.

Increases in the scales have occurred, and they will continue to occur. I have no doubt the comments of the member will be examined carefully. I am not in a position to dissect the costs from the various scales, not only because it would be a major undertaking considering that I would have to segregate the different scales and rates, but also because I would have to consider the varying amounts of work involved in different scales. A dissection of those costs is not something to be undertaken during the consideration of this Bill, and, in any event, it is irrelevant to the provisions of this Bill.

For those reasons I do not intend to say anything further on the question of costs except that I am sure the points made by the member will be examined. I would not agree with all the conclusions he reached because, quite frankly, I believe that on closer examination differences will be found, and the percentages he quoted may be found to have been based on fairly superficial figures. I know the figures supplied the other day were rudimentary, and I think he based his percentages on them.

The Hon. J. M. Berinson: No, not at all. The table was based on the rudimentary figures, and I acknowledge that. The percentages are a straight comparison between the 1979 and the 1982 scales of the commission itself. There can be no doubt about that comparison, except if I went wrong in the maths somewhere.

The Hon. I. G. MEDCALF: I suggest the member has only to think of other increases that have occurred in recent times in terms of percentages and he will realise that this is pretty common throughout the community.

The Hon. J. M. Berinson: At the rate of 58 per cent throughout the year?

The Hon. I. G. MEDCALF: One might find that it depends on what went before, and when they were increased prior to that. These are all factors which, if one is looking at a thing properly and fairly, must be looked at quite hard and in a little more depth than the honourable member has had the opportunity of doing.

One other matter that the honourable member raised was the power of the commission to refuse an application at any time. This, of course, is a new, very large power, as the honourable member suggested. It is brought about by reason of the fact that the commission has to depend upon decisions by one of its four legal aid committees, one of its three review committees, the director or one of the staff, or one of the authorised officers. If the commission is committed to some very substantial moneys it may find that this eats into its budget to such a degree that it cannot supply legal aid to other deserving cases. Not all cases require the same amount of funds.

By illustration I refer to the Wilsmore case which has been quoted to me by journalists in absolute horror at the thought of how public money can be allowed to be spent. I have not taken the same view myself because I take a pretty strict view of people's rights; but in the first Wilsmore case—the Electoral Act case, the one which challenged the legislative competence in relation to an absolute majority in the other House to the electoral law—the case went on two appeals and fortunately the Crown paid the costs of the second appeal to the High Court. Had it not done so the Legal Aid Commission would probably have had to pay those costs because the commission had granted aid to Wilsmore in the first place.

I am not saying that is wrong and I am not criticising it for a moment, but one of the committees or one of the staff—I am not sure who as I never went into it, nor did I want to—granted aid to Wilsmore to bring these proceedings challenging the Electoral Act on the ground that there was not a constitutional majority in the lower House. The case was lost and it went on appeal. Every lawyer knows that the minute he takes legal procedures of that kind he must not think only of the costs of those proceedings, but also about the future costs of an appeal and the costs of the next appeal—and there is many an unfortunate client who, before the days of legal aid, found himself to have won his case in the first instance, won on appeal, and then on a further appeal discovered that in the end, he was up for the total costs of the whole lot right through. So one thinks not only of the costs of the original case, but, in terms of a dubious case or a difficult argument, one thinks of what is going to happen if one loses or one wins the first, loses proceeding on appeal. This is what the Legal Aid Commission was thinking of.

With some appeals—I do not mean with every appeal—they may decide they do not want to get themselves into a situation where they will be up for these costs one way or another, having decided there was merit in the case, the man coming within the means test and so on; they hardly could refuse him on appeal if he lost in the first instance. There are all sorts of moral problems that come into this and for those reasons the commission has had to decide that it must have some overriding power to step in somewhere along the line. Whilst, as they indicated, they would not propose to use this power frequently, they believe they have to have some overriding control because it is the one which controls the purse strings, and to watch the purse it has to have overriding control in regard to the spending of the contents of the purse. That is really what it boils down to. They would not have to use it very often.

The Hon. J. M. Berinson: Do you agree with the suggestion I made that clause 8 does not limit this power to questions of financial overview, but that there is a power on it? I am referring to clause 8(c).

The Hon. I. G. MEDCALF: Did I not indicate that when I was talking about it?

The Hon. J. M. Berinson: You seem to be referring again, as you did in your second reading speech, to financial responsibilities of the commission alone. One of the points I tried to convey to you was that clause 8(c) seems to give the commission this overriding power without restricting it to acting on financial considerations.

The Hon. I. G. MEDCALF: Yes, that would be right. I follow the point. It is a general power.

The Hon. J. M. Berinson: Are there any other circumstances in which it has ever been suggested to you that the commission should exercise such a power?

The Hon. I. G. MEDCALF: There may be circumstances where the commission believes it should have that power but, generally speaking, it was done because it had to live within its budget. There may be other circumstances in which the commission would use that power. We should go along with it at this stage.

The honourable member suggested that this should be a trial run, and I believe that is right. I do not think for a moment that this is necessarily the end of the exercise. Obviously modifications will be made from time to time, but at this stage we must give the commission an overriding power in relation to the work of its various committees.

The honourable member suggested that perhaps the use of this power to revise an application at any time should be the subject of specific reference in the commission's annual report. That is a good suggestion and is one which probably the commission will take up. I cannot speak for the commission, of course, but I think it will take it up. The commission produces a comprehensive annual report and it goes into great detail in all sorts of areas and I would be very surprised if it did not take that up.

The honourable member referred to the second reading speech wherein reference was made to terminating or varying. I believe that the power to interfere at any time or to refuse an application at any time would in effect mean that it could terminate aid at any time because if it refuses an application, I see no reason why it cannot in refusing the application terminate the aid which the application sought.

The Hon. J. M. Berinson: Surely you can only refuse an application before it has been granted.

The Hon. I. G. MEDCALF: Yes, but I believe the aid could terminate.

If we turn to clause 14 we see that for the first time the definition of "responsible authority" is to include the commission. The commission previously was not one of the responsible authorities.

Under clause 15 a person affected by a decision—this is a new provision—may by notice in writing to the director request that the decision be reconsidered. Then it goes on to say that the request may go to the commission and the commission may have that decision referred to it for reconsideration under subsection 2(d) and under subsection 4. On reconsidering a decision a legal aid committee or officer of the commission may confirm, vary or reverse a determination.

The Hon. J. M. Berinson: Yes, but with respect, a person who has been granted aid is unlikely to put that process in motion by asking for a review, is he? He is not likely to do that.

The Hon. I. G. MEDCALF: All sorts of conditions are attached. There may be conditions attached to the granting of aid which could be varied. I am assured by the commission that it is satisfied that it gives it that power. On a quick reading of it, it did appear to me that it may be included there. At any rate, it has the power to refuse an application at any time and it can vary any determination made. It can revoke or vary a determination under another clause. We have given the commission that power.

The Hon. J. M. Berinson: Which clause is that? I do not want to push you if you have not got the reference there, but which is the clause enabling it to vary a grant already made?

The Hon. I. G. MEDCALF: It can revoke or vary a determination under clause 5. Under clauses 14 and 15 the commission now has the power to confirm, vary or reverse any decision on reconsideration and I believe that is what the commission intended. It can confirm or vary a decision. At any rate, it may be that it has not got the power to terminate a simple grant without conditions, but apparently it is not seeking that. I think what it means is that the commission has the power to vary and revoke decisions on reconsideration.

Members will notice that that matter was not elaborated on at all in the annual report. That is what the commission requested and this provision is exactly in the form that the commission has asked for it, and I think that is perhaps as far as it wanted to go.

The Hon. P. H. Wells raised the question of insurance under clause 21.

The DEPUTY PRESIDENT (the Hon. V. J. Ferry): Order! please. There is too much audible conversation in the Chamber.

The Hon. I. G. MEDCALF: There is no question but that the commission is responsible and liable for the defaults of its employees or the people carrying out its assignments, but presently private practitioners are not indemnified in any

way. That means that they are not covered by an indemnity. In a case where a private practitioner has no insurance of his own and is not covered whilst working for the commission, the commission is now authorised to indemnify the private practitioner. That means it will stand behind him and make good his defaults.

The Hon. P. H. Wells: What you are saying is that you can have a claim against the commission?

The Hon. I. G. MEDCALF: Yes.

The Hon. P. H. Wells: It is not just wiping them off and paying their debts?

The Hon. I. G. MEDCALF: No. That is my understanding of it. Its says, "The commission shall indemnify the director or a private practitioner." In subsection (3) the Act says, "No liability shall attach to the individual person or member of the commission who is doing his work in good faith." That refers to the individual only, but not to the commission.

The Hon. P. H. Wells: I gather that is like the secretary of a private practitioner? If the secretary of a private practitioner gave wrongful advice, the practitioner would be put off.

The Hon. I. G. MEDCALF: That is right. They are liable for the acts of their employees.

The Hon. P. H. Wells: Are you saying subsection (3)?

The Hon. I. G. MEDCALF: Subsection (2) makes the commission liable.

Question put and passed.

Bill read a second time.

FISHERIES AMENDMENT BILL

Second Reading

Debate resumed from 22 September.

THE HON. FRED McKENZIE (East Metropolitan) [10.46 p.m.]: The Opposition supports the amendments to this Bill, but says some points in it need clarification. Perhaps this could be achieved by way of questions to the Minister in the hope that he will reply to them.

The Bill seeks to simplify the licensing procedures and to reduce the number of licences required under the Fisheries Act, to improve certain enforcement procedures, and to update the Act in certain administrative areas. The Minister in his second reading speech said that, by obviating the issue of a multiplicity of licences, it is calculated that the wages of an officer, to the extent of $12 000, will be saved. I wonder if some loss of income will result from that saving of wages. I wonder whether there is a charge for those licences and, if there is, how much income will be lost?

The Hon. G. E. Masters: It is an overall saving—that is my understanding of it.

The Hon. FRED McKENZIE: The Minister has answered my question.

The Minister indicated that clause 5 of the Bill delegates powers to the Director of Fisheries and it is noted that the position of deputy director has been dispensed with on the basis that consideration has been given to restructuring the senior management of the Department of Fisheries and Wildlife. However, the Minister has not explained how it is intended to restructure the senior management of the department. Had the Minister given reasons for this in his second reading speech we would have been able to understand why it is necessary to dispense with the appointment of the deputy director. Perhaps the Minister will indicate the reason for the changes.

The Hon. G. C. MacKinnon: Do you think it is a good idea?

The Hon. FRED McKENZIE: I do not know; this is what I want to find out. However, clause 5 outlines clearly that the services of the deputy director will be dispensed with.

The Hon. G. C. MacKinnon: Doesn't that strike you as being odd when we seem to be putting deputies into every other Act?

The Hon. FRED McKENZIE: It does, and that is why I am asking the Minister to give a reason for this proposition. Perhaps there is a very good reason for it and there is a turnaround in respect of the appointment of deputy directors.

The Hon. G. E. Masters: There will be a restructuring of the department and I will explain the reasons for this.

The Hon. FRED McKENZIE: Maybe if the Minister does, not only will I understand, but also Mr MacKinnon will understand.

The next clause to which I refer is clause 6, which provides for an increase in the number of fishermen representatives on the rock lobster industry advisory committee. The Minister said in his second reading speech that the appointment of another representative on the advisory committee would result in more even representation throughout the rock lobster fishery. I am at a loss to understand what he meant by that. Perhaps he could provide the answer as to how that even representation is reached.

Clause 7 of the Bill provides for the term of membership of the committee to be reduced from five years to three years. The Opposition has no argument with this proposal and believes it is a

reasonable requirement. In my opinion three years is long enough for anyone to be appointed to an advisory committee.

The Opposition has no argument to the addition of the word, "molluscs" to section 6 of the Act. It is a minor amendment which, no doubt, is required.

The Hon. G. C. MacKinnon: Are the professional fishermen in your electorate happy with this Bill?

The Hon. FRED McKENZIE: I have had no representation from them. The information conveyed to me by our shadow Minister is that generally the professional fishermen are happy with this Bill, but there are some provisions in it which concern them.

The Hon. G. C. MacKinnon: What are they unhappy about?

The Hon. FRED McKENZIE: I cannot remember all the points, however, one that I do remember concerns the last clause in the Bill. That relates to the fact that there could be discrimination against professional fishermen at the expense of amateur fishermen, but I will refer to this matter at a later stage. Clause 8 provides for the insertion in section 6(1) of the following paragraph—

> (gaa) prescribing the duties and obligations of holders of licences, or licences of a particular kind, under this Act;

That is necessary in order that the Government is given the power to allow such regulations.

Clause 9 refers to the powers delegated to the director and I do not offer any comment in this regard.

The Opposition has no objection to clause 10.

With reference to clause 11, I ask the Minister whether the amendment is properly located because most of the matters relating to this section concern the environment.

The Hon. G. E. Masters: They are two different sections—26A and 26B. They are separate sections.

The Hon. G. C. MacKinnon: What did the Minister say?

The Hon. FRED McKENZIE: The Minister said that section 26A and section 26B are two separate sections. If one looks at the penalties provided under section 26A they are quite different from those provided under proposed new section 26B. I ask the Minister to explain whether he considers that this clause is correctly located.

The Hon. G. E. Masters: It was raised and discussed in another place.

The Hon. FRED McKENZIE: I realise that, but I am not allowed to refer to the debate in the other place. I was looking for an amendment on the notice paper, but it is not there.

In respect of clause 12 of the Bill the Minister in his second reading speech said there had been some disruption to salmon fishing operations. However, according to the advice I have received from the shadow Minister the professional fishing organisations said they were not aware of any disruption and I would ask the Minister to comment on this point.

Clause 13 provides that the onus is on the person being prosecuted to prove whether a boat is a foreign vessel, and the Minister explained the reason for this clause in his second reading speech. Placing the onus of proof on the person being prosecuted is against the principles of justice.

In his second reading speech, the Minister said—

> Some difficulty has been experienced in prosecuting Indonesian fishing vessels as, although they are obviously foreign boats, they carry very little in the way of identification papers. A provision has been included in the Bill which places the onus of proof on the defence such that a person charged with using a foreign boat in the commission of an offence, who wishes to advance the defence that the boat involved in the offence was not a foreign boat, will be required to produce evidence to that effect.

The onus of proof has been reversed from the normal requirement. Although it applies to a foreign fishing boat, and although there may be very good reasons, we ought to watch this type of move in legislation.

The Hon. G. E. Masters: The main difficulty is with some of the very small boats up on the north-west coast—little Indonesian fishing boats.

The Hon. FRED McKENZIE: I know the difficulties associated with this, but if we support this aspect, it might develop in other areas. Perhaps in reply the Minister could give an indication of why it is now necessary to reverse the normal procedure in respect of the onus of proof.

Then we come to clause 14 which provides for a proposed new section 49C as follows—

> 49C. A person shall not, without lawful excuse, remove or interfere with—

(a) any boat, plant, fish, equipment or other thing that is being detained by an inspector or the Director after having been seized by an inspector under this Act; or
(b) any boat that is under the control of an inspector pursuant to section 49B (2) (c) of this Act.

It is quite clear from the Minister's second reading speech that large items cannot be placed in safe keeping, and people can remove them.

In clause 15, the Minister is seeking a provision to enable a two-year period before a charge is laid; but once the items are seized, one wonders whether there is any period during which the owner can have the goods returned. It this is to be the case, the owner could be without the equipment for an unusually long period. I raise that matter merely because I cannot see any provision in the legislation requiring that the goods be returned to the owner—

The Hon. G. E. Masters: Within a certain time.

The Hon. FRED McKENZIE: —either before or after the case is concluded. For how long after the items have been seized can they be held pending the hearing of a charge, or even the laying of a charge? It seems that the two-year period before charges are laid is unreasonable. A more reasonable period would be six months; surely six months is time enough in which to determine what charges should be laid and action taken accordingly.

Clause 16 makes provision for the Minister to have power to serve on a person a notice in writing, and to prohibit that person from being on any fishing boat if he has been convicted of an offence. As Mr MacKinnon asked earlier, was there any objection from the professional fishermen? The advice from the professional fishermen to the shadow Minister was that this clause would act unfairly so far as they were concerned because an amateur fisherman could be convicted of an offence and fined—say, $100—and then he could immediately go back into the fishing industry, whereas a professional fisherman could be prohibited by the Minister from doing so.

The Hon. G. E. Masters: He would probably have to be an habitual offender.

The Hon. FRED McKENZIE: If that is the intention—

The Hon. G. E. Masters: Very, very few.

The Hon. FRED McKENZIE: —it puts a different construction on it. When an amateur fisherman is convicted, there is nothing to stop him from going straight back into the waters and fishing. This clause does not spell out that it applies to habitual offenders; but if that is the intention, it is accepted at face value.

The Hon. G. E. Masters: Some of them do build up considerable records.

The DEPUTY PRESIDENT (the Hon. V. J. Ferry): If members wish to make contributions to the debate, I suggest that they use a tone of voice loud enough for all members to hear them.

The Hon. FRED McKENZIE: With those comments, I indicate our support for the Bill.

Debate adjourned, on motion by the Hon. P. H. Lockyer.

ADJOURNMENT OF THE HOUSE

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [11.07 p.m.]: I move—

That the House do now adjourn.

The Hon. H. W. GAYFER: Mr Deputy President—

The DEPUTY PRESIDENT (the Hon. V. J. Ferry): In view of the fact that the time is after 11 o'clock, under Standing Order No. 117 the House is obliged to adjourn without the raising of new business. The question is that the House do now adjourn.

Point of Order

The Hon. P. H. WELLS: On a point of order, Mr Deputy President, Standing Order No. 120 reads as follows—

> 120. Any Motion connected with the conduct of the business of the Council may be moved by a Minister of the Crown at any time without notice.

Under Standing Order No. 115, the motion to adjourn the House is not listed as the business of the House. I therefore suggest that the motion to adjourn the House interrupts or stops, and is not necessarily the business of the House.

The DEPUTY PRESIDENT: I acknowledge the point raised by the Hon. Peter Wells. I reserve my ruling on that point, and I will let him know my decision at a later date. In the meantime, the question is that the House do now adjourn.

Question put and passed.

House adjourned at 11.09 p.m.

QUESTIONS ON NOTICE

STATE FINANCE: CONSOLIDATED REVENUE FUND

Department of Labour and Industry

525. The Hon. D. K. DANS, to the Minister for Labour and Industry:

(1) What categories of expenditure for 1981-82 were contained within the CRF Department of Labour and Industry item, administration expenses?

(2) For each category in (1), what was the allocated expenditure for 1981-82, and what was the actual expenditure figure?

The Hon. G. E. MASTERS replied:

(1) The information being sought by the member is available in the Estimates of Revenue and Expenditure, which is a public document.

(2) I am not prepared to have my staff engage in a lengthy and costly exercise by requesting them to furnish such fine detail. Should the member, however, have a specific problem in mind I will have that matter investigated and report the result to the House.

FUEL AND ENERGY: GAS

North-West Shelf: Dampier-Perth Pipeline

526. The Hon. TOM STEPHENS, to the Leader of the House representing the Minister for Fuel and Energy:

Can the Minister advise—

(1) The total cost of the Dampier to Perth pipeline for the North-West Shelf project?

(2) Details of the SEC's purchase price of the gas from the project?

(3) Details of the proposed SEC selling price of the gas—

(a) in the Pilbara; and

(b) in Perth?

(4) Details of the amount of gas to be purchased daily by the SEC, and details of the total daily amount that the SEC is contracted to sell?

The Hon. I. G. MEDCALF replied:

(1) to (4) I refer the member to the answer given by the Minister for Fuel and Energy to question 517 of 20 April 1982 in the Legislative Assembly, and to the article by Brian Wills-Johnson, published in *The West Australian* on Friday, 7 August 1981.

527. *This question was postponed.*

COURTS: DISTRICT AND SUPREME

Addresses: Transcription

528. The Hon. J. M. BERINSON, to the Attorney-General:

(1) Is it a fact that there has been discontinued the long-standing practice in the Supreme Court and/or District Court of transcribing and making available to defence counsel all or any of the following parts of criminal trials—

(a) opening address by the Crown;

(b) address to jury by both counsel; and

(c) judge's charge to jury?

(2) If so, when and why?

The Hon. I. G. MEDCALF replied:

(1) (a) to (c) Yes.

(2) The original practice of transcribing the trial in full had been requested by the judges.

However, because of the increasingly high cost of providing this service, the Government sought the views of the judiciary committee, comprising the Chief Justice, the Chairman of Judges of the District Court, and the Chief Stipendiary Magistrate.

That committee recommended that in criminal cases both in the Supreme Court and in the District Court there should be a running transcript of the evidence. The committee recommended that in future the addresses of counsel be not transcribed except for the purposes of an appeal, and then only upon special circumstances being shown and an order of the trial judge being obtained. The committee considered that the direction of the trial judge should be transcribed only upon the request of one or other of the parties.

The Government accepted these recommendations; and the revised practice was implemented in mid August.

EDUCATION

Appointments: New

529. The Hon. D. K. DANS, to the Chief Secretary representing the Minister for Education:

In respect of the $2.18 million allocated for new appointments within education in the 1981-1982 Budget—

(1) What was the actual amount spent in the provision of new appointments for 1981-1982?
(2) Within which divisions were new appointments made?
(3) For each division in which a new appointment was made, how many such appointments were made?

The Hon. I. G. Medcalf (for the Hon. R. G. PIKE) replied:

I am advised as follows—

(1) to (3) The 1981-82 Budget contained a provision of $2.18 million as a part-year cost of new appointments spread over divisions as follows—

	$	$
Administrative division		14 000
Schools and Services division—		
Pre-primary and primary education	405 000	
Secondary education	782 000	
Guidance and special education	433 000	1 620 000
Technical and further education		546 000
		2 180 000

New appointments to teaching and non-teaching staff are treated as additions to establishment numbers. In most cases staff are not appointed to a specific new item. In view of the size of the department's total establishment, it is impractical to record expenditure as being related to a new position.

HOUSING

Homeless People

530. The Hon. ROBERT HETHERINGTON, to the Chief Secretary representing the Minister for Housing:

Can the Minister advise what arrangements are made by the State Housing Commission in the case of homeless people who are unable to provide an address where they can be inspected by the Commission?

The Hon. I. G. Medcalf (for the Hon. R. G. PIKE) replied:

In all applications for rental housing assistance, the State Housing Commission endeavours to arrange an interview with the applicant at the address stated on the application form with the view to establishing housing need. In the exceptional case of the applicant's being homeless, the interview can be carried out at the office where the application is lodged.

FRUIT AND HORTICULTURE

Ord River

531. The Hon. TOM STEPHENS, to the Minister for Labour and Industry representing the Minister for Agriculture:

(1) Does the Government recognise that a small number of banana growers and other horticulturists have established an excellent fledgling fruit industry with considerable potential for future development in the Ord Valley?
(2) Has the Government ever discussed with the banana growers and the other horticulturists in the Ord Valley whether there is a need for establishing a compensation trust fund for this emerging industry such as that which is currently available to banana growers in the Carnarvon area?
(3) Does the Government consider that such a fund would be appropriate for the future needs of the Ord River horticulturists?
(4) If "Yes" to (3), why hasn't the Government already established the fund?
(5) If "No" to (3), why not?

The Hon. G. E. MASTERS replied:

(1) Yes.
(2) to (5) The Government has not received any representation from Ord growers on this matter. It should be noted that the Carnarvon scheme exists primarily to insure against losses from cyclones, which are much less of a hazard in the Kununurra area.

TRANSPORT: BUSES

MTT: Fleet

532. The Hon. FRED McKENZIE, to the Minister for Labour and Industry representing the Minister for Transport:

Referring to the Metropolitan Transport Trust bus fleet, will the Minister advise—

Since 1974, and in each make—

(a) how many buses have been purchased;
(b) from whom were they purchased;
(c) where did the chassis originate;
(d) who manufactured and assembled the bodywork;

(e) what proportion of bodies were produced by MTT staff; and
(f) how many buses were written off, or traded in to the supplying firms?

The Hon. G. E. MASTERS replied:

(a) 153 purchased; 164 leased;
(b) 1 Scania
11 Leyland Australia
1 MAN Germany
140 Mercedes Australia
164 Mercedes Australia—leased;
(c) Scania—Sweden
Leyland—UK
MAN—Germany
Mercedes—Germany;
(d) Scania—Boltons
Leyland National—purchased complete
MAN—purchased complete
Leyland B2J—Hillquip
Mercedes—Boltons, Porters, Hillquip, and Freighters;
(e) approximately 10 per cent; this was the finishing work on the bus bodies which was undertaken by the MTT;
(f) no buses have been traded in to supplying firms; however, the MTT has sold or dismantled some 260 old buses in the period referred to.

ABORIGINES: ABORIGINAL AFFAIRS PLANNING AUTHORITY ACT

Deceased Estate Fund

533. The Hon. TOM STEPHENS, to the Chief Secretary representing the Minister for Community Welfare:

(1) Can the Minister advise what is the total amount of funds that have been received in the deceased estate fund under the Aboriginal Affairs Planning Authority Act?
(2) Have there ever been any amounts paid out from this fund?
(3) If so, to whom, and for what purpose?
(4) Who makes decisions on payments from this fund, and on whose advice are these decisions made?
(5) Have any requests been received by Aboriginal groups or individuals for these allocations to be reimbursed into the fund in order that these amounts be available for claim by the relatives of deceased persons?
(6) If so, would the Minister detail—
(a) the date;
(b) from whom; and
(c) how much was sought?
(7) In respect of any payment, would the Minister specify—
(a) the date;
(b) to whom; and
(c) the amount?

The Hon. I. G. Medalf (for the Hon. R. G. PIKE) replied:

(1) to (7) This information will take some time to collate and the Minister will write to the member on this matter in due course.

RAILWAYS: RAILCARS

Safety

534. The Hon. FRED McKENZIE, to the Minister for Labour and Industry representing the Minister for Transport:

Referring to a report in *The Sunday Times* of 26 September 1982, page 13, wherein it is reported that the Deputy Premier and Minister for Transport "has asked that a Westrail report on the structure and safety of some of its railcars be speeded up", will the Minister advise—

(1) In each of the years since 1974, how many individual reports indicating a lack of safety to the public have originated in Westrail in relation to any rail passenger-carrying vehicle?
(2) What were the vehicle numbers and class?
(3) What was the part concerned?
(4) Who signed the original report?
(5) What proportion of maintenance labour had been employed in maintaining the part concerned?
(6) Was there any reason for the vehicles suddenly becoming unsafe?
(7) What testing procedures have the vehicles and parts been subjected to as a means of measuring their safety margin?
(8) What is the margin?

The Hon. G. E. MASTERS replied:

(1) to (8) Bearing in mind the multitude of sources from where reports of this nature could originate daily, and the number of vehicles and parts involved, it is impracticable to provide answers to these questions.

The nature of the member's questions suggests he is under the misapprehension that statements have been made indicating that some passenger rail vehicles have suddenly become unsafe.

Vehicles do not suddenly become unsafe, but they do deteriorate in time; and unless corrective action is taken they become unserviceable.

During the life of the vehicles they are withdrawn from service periodically for minor or major overhauls when all components are checked and repaired or replaced as necessary.

As the vehicles age it becomes increasingly difficult and expensive to maintain them in a safe condition. The extent and cost of the necessary overhauls increase to the point where it becomes uneconomic to retain the units in service. This situation has been reached with the vehicles in question.

It is the policy of Westrail that no rolling stock is operated in an unsafe condition. In the case of suburban passenger cars, they are examined daily and any vehicle found unsafe is immediately taken out of service and sent for repairs.

ARGENTINE ANTS

Infestations

535. The Hon. V. J. FERRY, to the Minister for Labour and Industry representing the Minister for Agriculture:

(1) (a) How many metropolitan local authorities have infestations of Argentine ants in their areas; and

(b) what is the total area affected?

(2) What country local authorities have infestations of Argentine ants, and what area of land is affected in each locality?

(3) For the 12 months ended 30 June 1982—

(a) how many hectares were sprayed;

(b) how many man hours were worked;

(c) how many litres of spray were used;

(d) what type of chemical spray was used;

(e) what was the cost per hectare;

(f) how many man hours were involved per hectare; and

(g) what was the total expenditure?

The Hon. G. E. MASTERS replied:

(1) (a) Six;

(b) 273.0 ha.

(2) Albany Town Council (36.5 ha).

(3) (a) 649.5 ha.;

(b) 11 388;

(c) 1 183 625;

(d) Heptachlor, except for 700 litres of Oftanol sprayed experimentally;

(e) $415.19;

(f) 18.53;

(g) $269 699.

536. *This question was postponed.*

GOVERNMENT EMPLOYEES AND PUBLIC SERVANTS

Retirement: Early

537. The Hon. FRED McKENZIE, to the Leader of the House representing the Premier:

(1) Has the Government been giving any consideration to voluntary retirement from the work force of Government employees prior to their reaching 60 years of age?

(2) If so, can details be supplied?

(3) If it is intended to lower the retiring age—

(a) to what age will it be lowered; and

(b) on what date will it commence operation?

(4) What effect will it have on superannuation payments or employee contributions?

The Hon. I. G. MEDCALF replied:

(1) Yes.

(2) The Government has announced that it is prepared to consider proposals for voluntary retirement from age 55 provided

that there is no additional cost to the Government. As the practicability of early retirement arrangements depend largely on superannuation provisions, the matter is being examined by a committee comprising representatives of the Treasury, Public Service Board, and the Superannuation Board, including the contributors' representative on the board.

The committee is also considering other possible changes to the superannuation scheme in line with the Government's undertaking that the present scheme would be thoroughly overhauled. In this respect it should be appreciated that the introduction of an early retirement option into an existing superannuation scheme is not a simple matter, as many interrelated aspects of the scheme can be affected.

An initial report on the feasibility of an earlier retirement option having regard to the effect on superannuation payments is expected shortly.

(3) and (4) Answered by (2).

PORT: BUNBURY

Exports and Imports

538. The Hon. V. J. FERRY, to the Minister for Labour and Industry representing the Minister for Transport:

(1) What quantities of cargo were exported through the Port of Bunbury for the year ended 30 June 1982 in the following commodities—

(a) alumina;
(b) ilmenite;
(c) zircon;
(d) leucoxene;
(e) rutile;
(f) woodchips;
(g) wheat;
(h) oats;
(i) timber;
(j) live sheep; and
(k) any other goods?

(2) What quantities of cargo were imported through the Port of Bunbury for the year ended 30 June 1982 in the following commodities—

(a) chemical fertiliser;
(b) phosphate rock;
(c) sulphur;
(d) petroleum products;
(e) vegetable oils; and
(f) any other goods?

The Hon. G. E. MASTERS replied:

Tonnes

(1) (a) 1 196 143;
(b) 621 008;
(c) 665 550;
(d) 14 708;
(e) 1 649 (rutile);
38 412 (synthetic rutile);
(f) 538 164;
(g) 48 352;
(h) 7 555;
(i) 12 361;
(j) nil
(k) 1 694.

(2) (a) 21 584;
(b) 92 176;
(c) 43 900;
(d) 165 762;
(e) 1 451;
(f) 3 173.

FUEL AND ENERGY: GAS

North-West Shelf: Dampier-Perth Pipeline

539. The Hon. FRED McKENZIE, to the Leader of the House representing the Minister for Fuel and Energy:

Referring to question 434 of Tuesday, 14 September 1982, relating to supplying North-West Shelf gas to Alcoa, and the statement that Alcoa will pay appropriate reservation charges and costs on the pipeline over a period of 20 years, will the Minister advise—

(1) Will Alcoa pay in the order of $55 million each year?

(2) On the basis of the concessions to the oil and gas industry, and allowing that the sum could be totally tax deductible, will the public be paying about $35 million yearly towards Alcoa's tax bill?

(3) By such methods, will the supply of gas to Alcoa be a little above half cost price delivered?

(4) If refinements to the figures are required, will the Minister please advise?

The Hon. I. G. MEDCALF replied:

(1) This is commercial confidential information.

(2) No.

(3) No.

(4) I am advised that the member's figures are neither relevant nor accurate.

RAILWAYS: FREIGHT

Joint Venture: Assets

540. The Hon. FRED McKENZIE, to the Minister for Labour and Industry representing the Minister for Transport:

(1) Has the lease of Westrail assets required for utilisation by the Total West joint venture been the subject of a leasing arrangement?

(2) If so, has a lease agreement been signed?

(3) If there is no lease agreement, will the Minister explain why there is not one?

(4) If there is one, will the Minister table it?

The Hon. G. E. MASTERS replied:

(1) Yes.

(2) No.

(3) Negotiations between Total West and Westrail regarding details of the lease agreements are proceeding.

(4) Not applicable.

RAILWAYS: FREIGHT

Joint Venture: Government Contribution

541. The Hon. FRED McKENZIE, to the Minister for Labour and Industry representing the Minister for Transport:

(1) From what source was the Total West joint venture funded insofar as the Government contribution is concerned?

(2) Does the Government provide any other guarantees?

(3) In the event of failure, would the loss be debited to Westrail's account?

(4) If not, where would the debit for such loss be raised?

The Hon. G. E. MASTERS replied:

(1) The shares acquired by the Railways Commission were paid for from the General Loan Fund and a transfer of Westrail equipment.

(2) No. The Government's contribution is limited to Westrail's shareholding.

(3) As a joint shareholder in a limited liability company, the accounts of Westrail would show the amount of loss proportionate to the shareholding. In the event of failure, Westrail's loss would be limited to the amount of its shareholding.

(4) Not applicable.

RAILWAYS: FREIGHT

Joint Venture: Kewdale Terminal

542. The Hon. FRED McKENZIE, to the Minister for Labour and Industry representing the Minister for Transport:

(1) Has Total West, or any of its agents, handed back to Westrail the use of the inwards shed at the Kewdale freight terminal?

(2) Does Westrail stand to lose $100 000 per annum in lease or rental fees as a result of this action?

(3) If not, how much?

(4) Was the lease or rental of the shed subject to a signed agreement?

(5) (a) If "Yes" to (4), what are the details; and

(b) if "No" to (4), why not?

The Hon. G. E. MASTERS replied:

(1) No.

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

(4) No.

(5) (a) Not applicable;

(b) negotiations between Total West and Westrail in regard to details of lease of Westrail premises are proceeding.

HOSPITAL: FREMANTLE

G. J. Rayson

543. The Hon. H. W. GAYFER, to the Chief Secretary representing the Minister for Health:

I draw the attention of the Minister for Health to question 513 of 28 September 1982 and ask—

(1) Is the Minister aware that account No. L2065623/210419 from the Fremantle Hospital was addressed to H. W. Gayfer & Son, Box 5, Corrigin?

(2) Is the Minister aware that receipt for this account was also forwarded to H. W. Gayfer & Son, Box 5, Corrigin?

(3) Was the Minister made aware that, under date 30 August 1982, H. W. Gayfer wrote to the accountant, Fremantle Hospital, reference account No. L8065623, asking—

(a) time and date G. J. Rayson was admitted;

(b) time and date G. J. Rayson was discharged;

(c) type of ward admitted to; and

(d) full details of account?

(4) Was the Minister advised by Fremantle Hospital that, under date 3 September 1982, the administrator of that hospital did divulge to H. W. Gayfer some of the information requested?

(5) In the light of this detail, will the Minister now confirm that—

(a) G. J. Rayson was admitted to a four bed ward B72 at 1.00 p.m. on 29 July 1982;

(b) G. J. Rayson was discharged from the same ward at 8.00 p.m. on 29 July 1982; and

(c) that the charge of $200 is claimed to be a standard one day charge?

The Hon. I. G. Medcalf (for the Hon. R. G. PIKE) replied:

(1) Yes.

(2) Yes.

(3) (a) to (d) Yes.

(4) Yes.

(5) (a) to (c) The comments made in an earlier answer were that it is not for the Minister to provide such particular details in a public forum. As the person responsible for the account, the member may obtain the required information by making direct contact with the administrator of the hospital.

It also should be stated that the appropriate standard daily bed rate is charged in respect of any patient who is formally admitted to a bed in the hospital for treatment. The minimum charge is the appropriate daily bed rate.

In respect of the particular case in question, the patient was admitted as a worker's compensation case for which the current standard daily rate is $200 per day. This charge is reviewed each year and has a relationship to the average daily cost of treatment in a teaching hospital.

QUESTIONS WITHOUT NOTICE

HOSPITALS

Cancer Patients

125. The Hon. LYLA ELLIOTT, to the Minister representing the Minister for Health:

Will the Minister advise how many beds especially for patients with cancer are maintained at each of the teaching hospitals in this State?

The Hon. I. G. MEDCALF replied:

I am obliged to the honourable member for supplying particulars of the question, the answer to which is as follows—

It is not customary for teaching hospitals to allocate beds exclusively for specific treatment of cancer.

Cancer patients are accommodated in wards appropriate to treatment requirements.

COURTS: MAGISTRATE

Appointment

126. The Hon. J. M. BERINSON, to the Attorney General:

With reference to the announced appointment of a magistrate without legal qualifications, can the Attorney General advise—

(1) When were applications invited and by what means?

(2) How many applications were received and of these, how many were by legally qualified practitioners?

The Hon. I. G. MEDCALF replied:

I am obliged to the member for supplying particulars of the question, the answer to which is as follows—

(1) A general block advertisement was inserted in *The West Australian* on 8 May 1982.

In addition the Law Society, the Bar Association and Stipendiary Magistrates' Society were advised of the calling of applications because of the impending retirement of Mr W. G. Wickens, City Coroner.

Before a replacement for Mr Wickens was selected, advice was received that another magistrate intended to retire in October.

Both vacancies were filled from applicants who responded to the advertisement in May.

(2) Twenty-one were received of which one was not eligible for appointment and 17 were legally qualified. Of the legally qualified applicants, three did not wish to serve outside the metropolitan area.

One of the two appointed is legally qualified; the other has completed the examination set by the Stipendiary Magistrates' Examination Board, the chairman of which is a Supreme Court judge.

COURTS: LEGAL AID COMMISSION

Costs

127. The Hon. J. M. BERINSON, to the Attorney General:

In the last year for which figures are available, what amount was received by the Legal Aid Commission as representing the difference between costs awarded to successful legally aided litigants and the 90 per cent of scale fees to which private practitioners representing such litigants were entitled?

The Hon. I. G. MEDCALF replied:

I am obliged to the member for supplying particulars of the question, the answer to which is as follows—

I presume that the member's question refers to recovered costs.

During 1980-81 recovered costs amounted to $40 838 which included costs recovered on director assignments as well as private practitioner assignments. Director assignments made up approximately 18 per cent of the total assignments.