

Legislative Council

Thursday, 29 April 1982

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

SALARIES AND ALLOWANCES ACT

Tribunal: Statement by President

THE PRESIDENT (the Hon. Clive Griffiths): I feel that I should advise honourable members of the following action I have taken in regard to the Salaries and Allowances Act: Pursuant to section 10 (4) (a) of this Act, it is necessary for a person to be nominated by the President of the Legislative Council and the Speaker of the Legislative Assembly to assist the tribunal in an inquiry, in so far as it relates to the remuneration of the Ministers of the Crown, the Parliamentary Secretary of the Cabinet, and the officers and the members of Parliament.

As honourable members would be aware, Mr J. G. C. Ashley, the previous Clerk of the Legislative Council, has served in this position since 1975. Mr Ashley has indicated that he no longer wishes to act in this capacity. I have conferred with the Hon. Speaker and I wish to advise you that we have nominated Mr W. F. Willesee, of 56 Bradford Street, Coolbinia, to be appointed to assist the tribunal. Honourable members will be aware that Mr Willesee is a retired member of Parliament. We feel that he is admirably suited to act in this capacity, bearing in mind that he has served both as a country and city member of Parliament, and that he has served on the back bench and as a Minister, and was Leader of the Opposition and then Leader of the Government in the Legislative Council. We believe his former vast parliamentary experience justifies his appointment. I wish to advise honourable members that the Premier has concurred with this nomination and Mr Willesee's appointment has been confirmed.

QUESTIONS

Questions were taken at this stage.

REAL ESTATE AND BUSINESS AGENTS AMENDMENT BILL

Introduction

Bill introduced, on motion by the Hon. R. G. Pike (Chief Secretary).

ACTS AMENDMENT (CRIMINAL PENALTIES AND PROCEDURE) BILL

Second Reading

Debate resumed from 27 April.

THE HON. I. G. MEDCALF (Metropolitan—Attorney General) [2.49 p.m.]: This very significant Bill has received considerable attention from the ranks of the Opposition. Although we have had only one speech on it, by the Hon. J. M. Berinson, his comments did reflect a great deal of attention and thought to the provisions contained in the Bill. Therefore, it is quite apparent that the Bill received a good deal of study by the honourable member and by anyone to whom he may have referred it. It has been useful to receive his comments and I have given them a great deal of attention.

On his first proposition, that we should defer or withdraw the legislation, I am afraid the Government is quite unable to agree. The basic reason which he put forward as to why the legislation should be deferred or withdrawn was that the report which has been prepared, or which is in the course of final preparation by the Crown Counsel, Mr Murray, is likely to be presented within the next three or four months. Whilst commending the Government for having taken the initiative in requesting Mr Murray to make this report, and also for having made the decision to make the report public, the honourable member felt this would provide a sufficient reason for not proceeding with this legislation now.

The real problem about that suggestion is that the report, which Mr Murray has almost finalised and which will be put before the public as soon as it is in a ready and convenient form, will comprise at least two substantial volumes of some 600 to 700 pages. It is a very comprehensive report on the Criminal Code generally. It is quite apparent that it will take a long time for the public to adequately study the report. When I say "public", I mean not only members of the public who want to study it in aspects or in detail, but also particularly law reform bodies, professional and political groups, perhaps, and certainly interested sections of the community. Many groups in the community are interested in certain aspects of the Criminal Code and it will be necessary to allow them appropriate time to study it.

The Government commissioned this report. It is the first major study since 1913 and the Government does not propose to debar anyone from having an adequate opportunity of studying the report; so I cannot say when the report might form the basis of legislation. It may be that the

legislation could be introduced perhaps even sooner than I think it will be, but I have a sneaking feeling that it will not be because there is a natural aversion by informed people in the community to legislation entailing such substantial matters as the entire Criminal Code being brought in too hastily.

This report will raise many issues and I do not propose to go into them now; but they should be quite apparent to honourable members. Over the years we have debated many things in relation to the Criminal Code, and there will be many interested people, many comments, and different opinions which will all have to be sorted out; and discussions will need to be held. For that reason, no-one can say when the Murray report might in fact become enshrined in legislation and it is not possible to defer this legislation.

The reason is that the legislation contains a number of quite important matters which have caused concern over a period of time, some longer than others, and it is felt that the time has come for appropriate amendments to be made to the Criminal Code. For those reasons, it is not really open to the Government to abide by the suggestion that has been made by the Opposition.

Having decided that it is necessary to proceed, I propose to deal with the major points of opposition which were expressed by the honourable member. I firstly refer to the first amendment in the Bill which will increase the power to fine from \$1 000 to \$50 000. In 1902 the figure of \$1 000, then £500, was put into the first Criminal Code and 80 years later we are proposing that the amount should be \$50 000. This is not a matter which should be left any longer. There has been considerable pressure from the courts that the power to fine should be increased.

I think I mentioned two reasons in the second reading speech, but the basic reason which could have been more happily or adequately expressed is that it will provide another option to the courts as an alternative to imprisonment; in other words, the courts will be able to impose a substantial monetary penalty in lieu of imprisonment, on people who have the capacity to pay. A substantial penalty will inflict considerable punishment on those people, particularly if they have derived profit from their ill-gotten gains. I speak of people who have been convicted and are not simply on trial.

If a person has been convicted of a serious offence relating to property, there is every reason that that person should have a severe penalty

inflicted on him in terms of monetary loss. The amount of \$1 000 is totally inadequate. I do not mention this because I am attempting to convince the honourable member, in view of his indication that he agrees with this; I simply give it as a reason that we should proceed at this time. We will provide another option which the courts need. The courts have needed it for many years and it should not be left any longer. Perhaps it should have been done previously. This is the first time it has been drawn to my attention, but if it is worth doing—as it is—it should be done now.

This penalty will then be able to be used by the courts, either as an alternative to imprisonment or together with a term of imprisonment. It has a special virtue in its being an alternative to imprisonment and it will come into effect the day this legislation has the force of law. That is very important and, for that reason alone, we should be proceeding with the amendment to the Criminal Code.

The question of the amount of the penalty is one on which there will be as many opinions as there are people. I will be quite frank with the House and say that there was some debate amongst my officers in the Crown Law Department as to what might be the penalty. The reason for the debate was fairly obvious as the committee on the rate of imprisonment had recommended that the amount be unlimited and that the sky be the limit. Other people would share that view. There were others who felt that \$20 000 might be enough. It was a case of plucking a figure out of the sky.

The basic reason that \$50 000 was accepted was that it coincided with a recent penalty which had come into effect Australia-wide in relation to the uniform securities legislation. Here again it deals with property offences, and white collar crime, amongst others, and it did seem appropriate that we should equate the figure to the national legislation. Perhaps that was the reason this figure was decided upon.

I mentioned in my second reading speech that there will be sufficient opportunity for this penalty to be reviewed because when the Murray report is made public this matter will again be under discussion and if people have a view on this matter, or if experience shows that it is not the right figure, we can have another look at it. I need not remind the Hon. J. M. Berinson that this is a maximum figure and, at the discretion of the court, the fine can be adjusted at any figure up to \$50 000.

The Hon. J. M. Berinson asked in a kind of inverted way whether I would concede that, with

the pressures of office, the advice of my assistants in the Crown Law Department might be crucial. I concede that most readily. Even without the pressures of office, the department's advice would be crucial and essential to an exercise of this kind; I most certainly would not be without it.

In fact, this Bill has been prepared by experienced parliamentary counsel in response to views put forward by a very expert committee comprising possibly the three most senior officers in this field in the Crown Law Department. Their advice has been carefully considered, and is the result of experience over a period.

As I have mentioned, some of the matters are of more recent origin than others—notably, of course, the Di Simoni case in relation to circumstances of aggravation. The question of the inadequacy of fines has been with us for a number of years. All these matters, with the exception of the proposed amendment to section 233, which relates to the powers of police in certain cases, have come from the committee.

As I indicated during my second reading speech, the request in connection with section 233 came from the Commissioner of Police, who was concerned that in the change of jurisdiction last year he had lost some of the protection previously enjoyed by his officers, the loss of which protection might place them in some kind of jeopardy in the event of their having to exercise a severe force which might cause grievous bodily harm or even death in the course of their attempting to prevent a person from escaping arrest.

The Commissioner of Police suggested this section be amended. I must confess that on closer examination of this matter I felt some of the misgivings expressed by the Hon. J. M. Berinson because it appeared some of the offences which were referred to and which would have been affected by this section were not offences which would call for the use of the severest form of force. Therefore, I have taken up the matter with the Commissioner of Police. He is happy that the matter be left for the further consideration of the Murray inquiry, so that item might be more adequately dealt with.

All the commissioner was seeking to do was to restore the status quo; he was not asking for any more powers than he had before we amended the Act last year. He was simply saying, "I had these powers in relation to all these crimes, and you have taken them away without giving it a thought." Indeed, I think that is what happened; I think it was done without giving a thought to that section of the Criminal Code. He was simply

saying, "Why did you do it?" and, on closer examination, Parliamentary Counsel was not able to give a simple explanation. For those reasons, I agree the matter should receive further consideration and, during the Committee stage of the Bill, I will move to delete the relevant clause.

I have discussed this matter with Mr Murray, who agrees it could be more adequately dealt with in his report on the basis that some of these offences clearly appear to require that the police have maximum protection.

The offences to which I am referring are, for example, where a person is causing an explosion likely to endanger life, or where a person is intentionally endangering persons on an aircraft. In those circumstances, one could well imagine that, if called upon to effect an arrest, the police may be required to use a very high degree of force. Provided they use it in a reasonable way and in good faith, I believe they should receive the full protection of the law.

The Hon. J. M. Berinson: In retrospect, you may even have been justified in retaining life imprisonment in those cases; they are very serious cases.

The Hon. I. G. MEDCALF: True, they are very serious cases. However, the alternative would be for me to move an amendment which would contain a schedule; it would require me to evaluate those matters in the short time available. While, personally, I would be happy to dash off my opinion and give my views on the seriousness of these matters, there would be others who would differ from me, and they may be right.

I have looked at these items. To give an illustration of the point I am making, I refer members to the offence of breaking and entering a dwelling in the night time. In my opinion, that is an occasion when the maximum use of force should be permissible. In other words, if someone is being arrested in the course of breaking and entering a dwelling by night, I believe the police, along with the householder, are entitled to use the maximum force. Indeed, I have spoken to many farmers and countrymen and I know that in most country areas, particularly in lonely farm houses, it is well accepted that if anyone breaks in at night he is likely to get a bullet. These people are on lonely farms and they believe there is only one way to deal with a person who breaks a door or a window at night in order to effect entry: They would pull out their rifle, and shoot him.

The Hon. P. H. Wells: It happens, too.

The Hon. I. G. MEDCALF: A great number of people would subscribe to the view that, in such cases, the police should be entitled to use the

maximum degree of force; however, others would disagree. Some 15 or 20 such offences are involved. For those reasons, I believe the matter should be evaluated by a proper committee and some time should be allowed to discuss it. I admit that during the interim period we face the prospect that the police are not protected in the case of one or two serious offences, should they decide to use the maximum degree of force. It is unfortunate, but that is the situation. It is a matter on which we may need to hasten, in advance of the Murray report.

It may well be we must bear in mind the prospect of another amendment to this legislation in the next part of the session; I take it on that occasion we would receive the co-operation of the Hon. J. M. Berinson.

The Hon. J. M. Berinson: As always.

The Hon. I. G. MEDCALF: I turn now to clause 6, which deals with sections 582 and 656 of the Criminal Code; these sections relate to the circumstance of aggravation. The High Court of Australia only last year held that in the case of *Di Simoni* if the circumstance of aggravation is not pleaded in the indictment, regard may not be had to it in sentencing. All that means, of course, is that when the pleading is drawn up in the indictment, if it contains no specific reference to the aggravating circumstances of the crime, when the court comes to sentence the convicted person, it is unable to take any note of or bear in mind the fact that circumstances occurred—even though the fact might have been brought out in the evidence, and it might be apparent that it occurred.

This is not in accordance with the practice of the courts in Western Australia over the last 80 years. Western Australia is what is known as a code State. We have a Criminal Code. There are three code States in Australia and there is about to be a fourth code area because the Northern Territory is going to join Queensland, Western Australia, and Tasmania in having a Criminal Code. The other States are common law States and they have different rules and laws in relation to a substantial number of criminal offences.

The High Court in this case has applied the common law principle, which applies in the other States, to a code State which had always acted on a different principle. We had always taken the view that it was not necessary to plead in the actual indictment the circumstance of aggravation, so long as it was brought out in the evidence. But the convicted person was not given a sentence higher than the lesser one which was provided for the offence without the circumstance of aggravation.

If I may illustrate that to members, I refer to the crime of robbery which carries a penalty of 14 years' imprisonment. But if it is armed robbery—that is, with a circumstance of aggravation, or robbery in company, or when someone is wounded—that carries a sentence of life imprisonment, the maximum sentence.

These offences are graduated. There is the ordinary offence of robbery and the circumstance of aggravation when the penalty goes from 14 years' imprisonment to life imprisonment. What the High Court has said is that unless in the charge or indictment the fact is specified, that the person was armed or that he was in company with others, the court cannot take that into account when sentencing the accused, although the evidence may clearly demonstrate that he was armed or in company.

For the last 80 years under our code, our courts have interpreted that differently. It has been permissible here not to refer to the circumstance of aggravation in the indictment, and indeed, the Crown Law Department has taken the view that it refers to the circumstance of aggravation only if it seeks the maximum penalty which goes with that more serious offence.

The Hon. J. M. Berinson: Why should the department make that judgment? If there is aggravation, why shouldn't that charge be laid?

The Hon. I. G. MEDCALF: That is a good question. Perhaps we might more adequately discuss it in Committee. The answer may be that the officers of the department do not always know. They cannot always tell and they do not always have the evidence. They cannot put in the charge facts which they cannot produce evidence to establish. They cannot do it on the basis that perhaps the evidence might come out in cross-examination of the other side. Even though they might know someone was armed, they might not know who the armed person was. It has always seemed in Western Australia that this proposition of the common law was an artificial one and, if I may speak plainly, devoid of common sense.

We have never been in favour of the common law proposition. Our courts have never adopted the interpretation that we are required to use that proposition nor has it been the practice to follow it. I am informed that this also applied in the other code States which had much the same view before the *Di Simoni* case. We are seeking here to restore the position that always applied. What we did before we should be able to continue to do, so long as we do not penalise the prisoner by failing to mention the circumstances and then giving him a higher penalty.

There is a safeguard in this legislation which provides that if the circumstance of aggravation is not mentioned the prisoner cannot get the higher penalty which goes with that aggravated offence; but the judge can take into account what has come out in the course of the trial if there was aggravation, when imposing the lesser penalty of 14 years' imprisonment—to take the case of robbery.

Why on earth should we not modify the common law if we want to? After all, we have modified it many times and in many ways. The code has been modified in innumerable situations because for various reasons it has been decided we needed to take some statutory action to change the traditional common law. If the High Court says there is a gap or loophole and says it thinks it should be put right by the common law, there is nothing to stop us saying we have always done it a particular way and we propose to continue doing so. That is what I am saying now.

But we have the safeguard that the person who is convicted in a case where the circumstance of aggravation is not pleaded in the indictment shall not receive any greater penalty than for the lesser offence without that circumstance. That seems to us to be eminently suitable and sensible and I believe it is something the House should endorse.

If I may give an illustration of the way in which the common law has been modified previously, we did so to our advantage in a number of situations, and one which has received a considerable amount of public acclaim was that made under section 28 of the code. It was a case decided by the High Court about two years ago, arising in Victoria, a common law State. The decision was that if one is sufficiently intoxicated—sufficiently drunk—one cannot form an intention to commit a crime.

That does not apply in Western Australia or the other code States because our code provides to the contrary unless there is a specific element of intention in the offence. We have overcome the problem that Victoria faces in relation to offences involving drunkenness. Recently there was a case in NSW involving this precedent in which it was held that a person was too intoxicated to be criminally responsible for drunken driving. We do not face that situation here.

The Hon. P. H. Wells: Nor should we.

The Hon. I. G. MEDCALF: Drunkenness is no excuse except in certain rare circumstances. Why should we not modify the common law if we want to? It is the common law of England which has been handed down through the centuries, and no one is a greater admirer of it than I am; but I do not believe we should follow it slavishly. I am sure

the Hon. P. H. Wells would agree with that observation.

This brings me to another item to which objection was raised: that is, clause 7 which deals with the joinder of various offences, such as wilful murder, murder, or manslaughter, with other offences. If the amendment we are seeking to be passed is passed by the Chamber, and if two offences of wilful murder occur in the same circumstances, they can be included in the one charge and only one trial need be held. For example, if several murders and another crime occurred, they could be dealt with together, provided they were factually and legally similar.

This provides the means whereby, for example, we can try, at one trial, a person who has committed a double murder. If a person rushed into a house with a machine gun, murdered a husband and wife, and rushed out again, why should not he be tried on both murder counts at the one trial? Why can he be tried for only one of those murders, making it necessary for a second trial to be conducted for the other murder?

The Hon. J. M. Berinson: What is the point of the second conviction for wilful murder?

The Hon. I. G. MEDCALF: I thank the Hon. Joe Berinson for that interjection.

The Hon. J. M. Berinson: I am giving you all the right leads.

The Hon. I. G. MEDCALF: I was hoping the honourable member would ask that question, because I have been itching for an opportunity to answer it. The Hon. Joe Berinson gave the illustration of a man being hanged, drawn and quartered. I think he used the word "hung"—

The Hon. J. M. Berinson: That was in the correspondence. I would never have used it.

The Hon. I. G. MEDCALF: It is true, if a man is to be hanged, drawn, and quartered, he might as well only be hanged, or drawn, or quartered. If a man rushes in and murders two people and is convicted and sentenced to death for one of those murders, there is little point in sentencing him to death a second time. I would agree wholeheartedly with that hypothesis, but the situation is not always as simple as that.

In many cases the situation arises where a person is charged, say, with a homicide in the course of an armed robbery. In other words, a robbery attempt occurs and a cleaner, caretaker, or someone in the building is murdered. Unfortunately hundreds of these situations occur. I remember very vividly the murder which occurred in the course of a robbery at Caris Bros. in Hay Street. Under the existing law, the murder

cannot be joined with the armed robbery in one indictment, although both offences happened at the same time, the offences and the witnesses were the same, and probably counsel on both sides were the same. Regardless, two trials must be conducted.

The honourable member asked: Why bother? It is necessary simply because success may not be achieved on the homicide charge as a result of a technicality or even without a technicality and the defendant may be acquitted. However, it may be quite apparent, in the course of the homicide charge, that an armed robbery occurred. One is faced with the prospect that, having failed on the homicide charge, one does not intend to let the fellow off, because all the evidence tends to show he in fact committed a robbery or intended to do so and he can then be convicted on the lesser charge.

As a result of this amendment, it will be possible to do this at the one trial. Instead of saying, "Right, all you witnesses come back from Kalgoorlie or wherever in three months' time, because we are going to have another trial", the defendant may be tried on both counts at the one trial.

Previously the defendant either would be remanded in custody or allowed out on bail for three or six months until another trial occurred. Not only does that involve the time of the courts and the witnesses, but also it causes a great deal of mental anguish, if not for the defendant—although the defendant usually suffers to some extent—certainly for his relatives and friends, those that he may have.

Bearing in mind the circumstances, it is obviously necessary to change the procedure. Adequate safeguards are provided in that the judge's discretion must be exercised and is always available. If a judge believes separate trials should be conducted, he may order accordingly and no doubt counsel would have something to say about that. If counsel believes separate trials should be held, I am quite certain counsel would make his or her representations very apparent to the court. It could also be a ground for appeal were the person convicted and prejudiced in some way because of the joinder of these matters.

We do not believe judges of the Supreme Court are not to be trusted in this respect. I know the honourable member did not say judges of the Supreme Court were not to be trusted, but I felt he implied he was not satisfied their discretion was a sufficient safeguard. We reject that view.

The Hon. J. M. Berinson: I actually quoted practitioner opinion to that effect.

The Hon. I. G. MEDCALF: Yes; I can imagine whose opinion that was, too.

The Hon. J. M. Berinson: Whose opinions they were.

The Hon. I. G. MEDCALF: The Association of Labor Lawyers.

Some very useful opinions were contained in those views, but there is a very valid reason for rejecting them. Therefore, I submit we should accept clause 7.

The final matter on which the Hon. Mr Berinson voiced an objection was in relation to juries. It is proposed in the Bill that juries should be permitted to separate in the course of capital cases. At the present time they cannot do so, although they can separate in all other trials, including rape trials. However, juries are unable to separate in a homicide trial, because the code specifically says they cannot. We believe that provision is outmoded and should be changed.

A considerable amount of judicial pressure has been exerted for this change and, indeed, in most of the other States I am informed that, at the judge's discretion, juries may separate in capital cases. As I said, judicial pressure has been exerted to move in that direction so that juries are not locked up and confined for the entire period of a homicide trial.

The honourable member put the argument that jurors might watch television were they allowed to go home. It is quite true, they might do so, but they can do that now if they are involved in trials other than homicide trials. Jurors may watch television if they are involved in rape trials. I am led to believe the average juror is not so stupid as to be led astray by something he might happen to see on "Nationwide".

The Hon. J. M. Berinson: Which particular society of lawyers led you to that conclusion?

The Hon. I. G. MEDCALF: I will not answer that question.

There is no reason this discretion should not be given to the judge who can, if he wishes, order that the jurors remain together. We are concerned for the jurors themselves, because they prefer to go home. They are not very keen about being locked up in the Criterion Hotel or the Park Towers Hotel, where I believe they are accommodated now. Greater difficulties are experienced in this regard in country areas. Jurors have family responsibilities and we must be a little more realistic about this provision and allow the discretion to remain with the judge as it is in all other cases.

Counsel may make representations if they believe the jurors should remain locked up. No doubt the provision can be changed if it is felt there is anything in the argument that television is so biased and so liable to influence jurors these days that it might prejudice the course of criminal trials.

In order to minimise the inconvenience to jurors, in order to ensure jurors in homicide trials will not be dealt with more severely than those in other trials, and subject to the safeguard that the judge has the ultimate discretion and can order otherwise, we believe jurors in homicide trials should be allowed to separate.

I think I have answered all the main points. A number of important amendments were dealt with in the second reading speech, amendments to which the member indicated he did not have any objection, and which will effect some important advances. Little reference was made to the alibi provisions—

The Hon. J. M. Berinson: I said that we agreed with them positively.

The Hon. I. G. MEDCALF: Yes, indeed; I merely mention that the amendment is a considerable advance on the position in other States. It will preserve to an accused the right to produce his alibi at his trial. This does not apply in other places where an accused is debarred from putting his alibi if he has not given notice of it. We will allow an accused the right to produce his alibi, and in such circumstances provision is made for an adjournment.

In the circumstances I have outlined, the House should support the Bill.

Question put and passed.

Bill read a second time.

In Committee

The Chairman of Committees (the Hon. V. J. Ferry) in the Chair; the Hon. I. G. Medcalf (Attorney General) in charge of the Bill.

Clauses 1 to 4 put and passed.

Clause 5: Section 233 amended—

The Hon. I. G. MEDCALF: As indicated in the second reading speech, and for the reasons then given with which I will not bother the Chamber again, the Government wishes to vote against this clause.

The Hon. J. M. BERINSON: I will be happy in this case to follow the lead of the Government. I take the opportunity of this clause to make some more general comment.

I appreciate the care and the thoroughness of the Attorney's attention to the various objections raised by the Opposition to the Bill as a whole. I appreciate also his flexibility on this clause, though I can only regret that the flexibility did not go further to some additional clauses on which I will have something to say in a few moments.

The Opposition's objection remains to the procedure which involves our pre-empting in a certain sense the tabling of the Murray report. The reason for our objection is that nothing has emerged from the Attorney's reply to suggest a degree of urgency on any of these proposals that requires us to proceed now rather than in three or four months. We have not suggested that no action on the Criminal Code should be taken until the whole of the Murray report is digested, and substantial amendments incorporating many of the Murray recommendations introduced; we have said though that we should wait on the report because it provides the first opportunity in many years for a comprehensive look at this very long, detailed and technical Act.

So far as we are concerned the very measures with which we are dealing in this Bill could be dealt with in isolation in a few months, and against the background of the Murray report and without necessarily waiting for the very many other amendments which that report might justify. I do not propose to expand on that any further, but simply make the point that our original request that these matters be considered in the light of the Murray report rather than in anticipation of it, still seems to represent the proper approach.

As to clause 5, I welcome the Attorney's initiative in setting it aside. I agree with him that further review might show that some of the offences which were sought to be caught by clause 5 should in fact be caught by the provisions enabling the police to use extreme force in given circumstances, but that, as the Attorney says, is something which can be remedied easily at a subsequent time.

I support the proposal that this clause be deleted.

The Hon. I. G. MEDCALF: The Government is proceeding with the Bill because it believes there are a number of amendments of which the courts ought now to have the benefit. I do not want that to be misinterpreted; I do not mean there are matters in hand which might be affected by this legislation. I do not mean that for a moment; there is no intention to change anything that is going on. I thought I made it clear that the Government believes we should have forthwith

the benefit of the unlimited power to fine, and some of the other proposals.

As to waiting for three or four months, or a few months, I believe it is better to be sure than sorry. It is a much better prospect that we should do this now, and cover matters that are far more pressing than some of the matters which will come out of the Murray report.

Mr Murray has been intimately concerned with these amendments, with the exception of the one in relation to the police. I anticipate the Hon. Mr Berinson's remark; I have not said that for his information, but for the information of the Committee.

Clause put and negatived.

Clause 6: Section 582 amended—

The Hon. J. M. BERINSON: This is the clause the effect of which is to reverse the effect of the High Court decision in the *Di Simoni* case. I will not go over the whole argument presented in the second reading speech except to say it is disappointing the Government is still intent on retaining clause 6 to reverse the effect of that decision. A certain inconsistency is involved, if I may say so, between the argument in support of clause 6 dealing with the *Di Simoni* effect, and the argument in respect of the provision later in the Bill which permits juries to be separated in capital cases.

As the Attorney quite correctly pointed out, it is the practice in a majority of other States to permit jurors to be separated, subject to judicial discretion in all cases. He relies on the majority practice elsewhere to support the change to the jury practice here. When we come to clause 6—and where the Government insists on reversing the effect of *Di Simoni's* case—it relies on the attitude of the minority of States and the minority of jurisdictions which have to deal with this sort of problem. Admittedly, the reason that arises is that so many jurisdictions do not have a codified criminal law as we do and are dealing in common law standards. Nevertheless, it remains a fact that the majority of jurisdictions in the Australian States and the sort of countries we most commonly compare ourselves with, would follow the practice in *Di Simoni's* case rather than the original practice in this State which this Bill seeks to reintroduce.

I asked the Attorney in the course of his comments just why it was that the factor of aggravation should be omitted from an indictment, and the Attorney welcomed that question. He was even kind enough to say it was an important question—I suspect he conceded it was important because he had his reply ready.

The reply was that the reason the factor of aggravation is not always included in an indictment is that the prosecution does not always know before a trial that it can establish the factor of aggravation. There is the converse to that argument, and that is, that the defendant faced with an indictment which does not include the element of aggravation can be prejudiced to that extent in the preparation of his defence.

Another factor has been put to me by counsel, and I confess that in this area of the Bill I rely entirely on advice. I have had no personal experience in this area but this further factor is put to me as important. It relates to the basis on which counsel can give advice to a defendant in respect of admissions; that is, in respect of his advice as to whether or not the defendant should plead guilty. For instance, I take the example provided by the Attorney General of robbery and armed robbery carrying respectively 14 years' imprisonment or life imprisonment. Counsel could inform his client that the maximum penalty for robbery was 14 years and the going rate—so to speak—for convictions on that charge was five or six years. That is what he could expect. He goes into court and pleads guilty on the basis of that advice, and the statement of facts, includes a reference to aggravation, and the judge is entitled—admittedly still within the 14-year maximum rather than the 20-year maximum—to take into account the element of aggravation, what the defendant needs to know is that the going rate is no longer five or six years. The going rate could well be of 10 to 12 years.

Sitting suspended from 3.45 p.m. to 4.00 p.m.

The Hon. J. M. BERINSON: In his reply to the second reading debate, the Attorney General was uncharacteristically unkind. He said, as I have recorded it, that the attitude of the Opposition to the question of the proper treatment of aggravation as it affects sentencing is devoid of commonsense. I hope that some of the consideration to which I have referred, both in Committee and in earlier debate, will be enough to indicate, at least, that there are serious considerations in support of the common law standard.

Apart from that, all I would want to add is that it is a shame to see how the Attorney General and the Chief Justice of the High Court of Australia disagree on what constitutes a proper standard of commonsense. When one reads the decision of the Chief Justice in *Di Simoni's* case, one finds his reference to the principle which this Bill will overturn as a fundamental and important principle. I suppose that might be taken simply to indicate that, as an historical fact, the common

law has regarded it as a fundamental principle. I would think, however, that the connotation of his comment goes further than that; so that when the Chief Justice referred to the principle as "fundamental and important", he described it in those terms because he wanted to express the opinion that this was a principle which ought to be preserved.

The Opposition believes that, this having been established by the High Court test, it is indeed a principle which ought to be reflected in this State's administration of the criminal law. I indicate again to the Committee that clause 6 is one of the aspects of the Bill to which the Opposition is fundamentally opposed.

The Hon. I. G. MEDCALF: While it is true that I did say that a majority of States had allowed separation of juries in homicide cases, and I did not expand that argument in this case, it was not because a majority of States think that way. Indeed, I believe that about an equal number of States have the situation which we have had here traditionally; but that is not necessarily a good reason for adopting the suggestion that we should act, even if the majority were against what we are now proposing.

There are other reasons, and I have given them; but particularly, when for 80 years since we have had the Criminal Code, had particular provisions and a particular understanding of the law, that is a good reason for differing from what might apply in some of the other States. I reiterate that there is no reason why we should not improve upon the common law if it does not fit in with the reasoning which we have always understood here.

In regard to the suggestion or the statement I am alleged to have made that the Opposition was devoid of commonsense, I did not say that. I said the proposition was devoid of commonsense. Nor would I have said that the Chief Justice of the High Court was devoid of commonsense!

The Hon. J. M. Berinson: No. It just follows!

The Hon. I. G. MEDCALF: I have the greatest respect for the Chief Justice of the High Court. Indeed, I respect the proposition that has been put by the Opposition. However, I believe that the kind of case to which the honourable member was referring is a very rare one. I am not really qualified to say whether the situation to which he has referred is a likely one, in any event. When somebody pleads guilty, I doubt whether this situation could arise.

I would like to mention the kind of case which the Government has in mind in relation to this

amendment. Take the situation in which three people decide to rob a bank, and one of them is armed. We do not know who is the armed person. They go into the bank, and in the course of robbing the bank the bank manager is shot. If the circumstance of aggravation is pleaded in the indictment, and only one circumstance is pleaded, under the common law reasoning that could be used. For example, if the indictment said that so-and-so, in company, did so-and-so, the circumstance of aggravation is being pleaded. The reference to being in company is a circumstance of aggravation. However, if there is no record of a person being armed, when the judge is considering the sentence he cannot make use of the evidence which comes out that somebody was armed, and the bank manager was shot. All he can consider is that these people were in company, because that is what was pleaded in the indictment.

That is the kind of difficult situation which the Crown faces. The Crown acts in the interests of the public, because the public have an interest in seeing that people who commit such crimes while armed are in fact punished for having committed a crime while armed.

I suppose it is a difference of interpretation, whether one is looking at it from the point of view of the defence or the point of view of the Crown. Quite frankly, from the point of view of the Crown, one is looking at it from the point of view of protection of the public, if one is looking at it properly.

For those reasons, I ask the Committee to support the clause.

Clause put and passed.

Clause 7: Section 585 amended—

The Hon. J. M. BERINSON: Clause 7 deals with the joinder of offences, and seeks to treat wilful murder, murder, and manslaughter charges in this respect the same as any other charge. The Attorney General says, "Why should we treat them differently?" As I tried to indicate in my speech on the second reading, we should treat them differently because a special seriousness is attached to homicide and to the possible penalties applicable to it. That is the basis of our attitude to clause 7, and also to the later clause which deals with the separation of juries.

This is the aspect of the Bill in respect of which, in my speech on the second reading, I referred specifically to the advice and experience of a number of members of the criminal Bar. For the information of the Committee, those members were not necessarily members of the Labor Lawyers Association. Indeed, in my state of relative ignorance as to criminal law procedures, I

was surprised at the vehemence with which all practitioners with whom I discussed this Bill approached this aspect of it. I admit that freely. I was most surprised that this joinder question concerned them almost more than any other aspect of the Bill.

The Attorney dealt with the case where robbery led to murder, and I believe he was referring to the Caris Bros. case. The problem practitioners put to me is that the joining of cases too often operates with what may be referred to as a shotgun effect: One sprays the pellets in all directions knowing they will hit something; or one goes before a jury accusing a man of a whole series of offences including homicide with the idea that the jury will accept that he may not have done all those things but he must have done something. That is a detriment to the defendant which, it has been put to me, ought particularly to be avoided in these most extreme cases; namely, the capital cases.

I summarise by saying that it is the special nature of the capital cases and the extreme nature of the penalties applicable that form the basis of our opposition to the proposed change in the joinder provisions and the separation of the jury provisions.

The Hon. I. G. MEDCALF: The situation to which the Hon. J. M. Berinson has referred is one that has been with us for a long time; namely, the ability of the prosecution to join a number of charges. That has come under criticism in one or two cases. One magistrate in Kalgoorlie—who is no longer there, because he elected to resign—frequently made these comments, particularly in relation to the Road Traffic Authority, which has the same principle but in a different Act. Admittedly there could be instances where the joining of numerous charges could be overdone; however, I do not believe in this situation such considerations should deter us from proceeding with this amendment.

I have given the illustration of the tremendous saving in time alone quite apart from the costs and expenses, both to the Crown and to private people, by avoiding numerous trials involving one set of facts only. Clearly there are so many considerations in favour of this move that one must be forced to go along with it, not only on the ground of economy but also for many other reasons which make this a very useful arrangement.

Perhaps I could extend the illustration of the three robbers who rob a bank, in the process of which the bank manager is killed. If we cannot join the robbery and the murder offences there could be difficulty, because one of the three robbers

might have stayed outside the bank keeping "nit" in a car waiting for the other two to bring out the money. That man did not shoot the bank manager, but he was an accomplice of the two who entered the bank. He will be charged with murder although it is not likely he will be convicted of the murder. If we can join the other charges, he may well be charged with a lesser offence and be convicted of robbery. These things are all very significant in the expedition of justice.

When the Hon. Joe Berinson refers to the number of lawyers he found who had vehement views on this matter, one can understand that, because basically it depends on the point of view. The defence point of view was ingrained in me and I have always looked at things from that point of view. But there is another point of view—the public point of view. We have to find the right balance, and I believe this is it.

Clause put and passed.

Clauses 8 to 18 put and passed.

Title put and passed.

Report

Bill reported, with an amendment, and the report adopted.

Third Reading

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

GOVERNMENT RAILWAYS AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by the Hon. I. G. Medcalf (Leader of the House), read a first time.

Second Reading

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [4.19 p.m.]: I move—

That the Bill be now read a second time

This Bill represents a further progressive step in the Government's land freight transport policy, which has the aim of developing an efficient transport industry in Western Australia and providing users with the benefits of competition and freedom of choice.

The main objective of this legislation is to have a joint venture company commence functioning on or about 1 July 1982. The exact date will be dependent upon the time taken to finalise the legal and administrative details after Parliament has dealt with this legislation.

To achieve this target it is essential the joint venture organisation be formed and functional in sufficient time to enable a smooth transition thereby ensuring a continuing satisfactory transport service for the people of Western Australia. Therefore 1 July has been decided upon for implementation of the next stage of the deregulation process of the Government's freight transport policy. Members are informed also that the Government has decided to allow farmers to cart their own wool, mohair, and chaff in their own vehicles from that date.

Essentially, the new Bill does three things: It makes provision for the Railways Commission to participate in a joint venture freight forwarding company; it allows Westrail to give credit to customers or suppliers in the course of the railways normal business; and it authorises the commission to construct and maintain sidings both within and outside the limits of the railway.

The joint venture proposal is for a proprietary limited company 50 per cent Westrail owned and 50 per cent owned by Mayne Nickless Ltd.

The joint venture option was decided upon after receiving the Commissioner of Railways' recommendation that it would be the best and most effective way to complete the deregulation of smalls freight in Western Australia.

The Commissioner considered it to be in the best interest of Westrail to participate in the handling of smalls freight and keeping down Westrail's deficit.

The joint venture operation is expected to remove from Westrail's annual deficit in 1984-85, some \$7 million per annum—1981 dollars—a course which significantly benefits users and taxpayers.

The joint venture company will handle smalls traffic—that is, parcels less than carload, and some wagon load, excluding private sidings traffic—in competition with any other transporters.

The smalls traffic involves approximately 325 000 tonnes per annum or about two per cent of Westrail's freight. It does not include the bulk hauls.

Smalls consignments have been regulated to rail for many years. However, the current method of handling these traffics is not the most efficient.

Under conditions of free competition, rail cannot compete by the existing methods. This has been proved in other countries and by Westrail's own experiences. Deregulation of smalls has been decided upon, but this was inevitable because people will not accept regulation when there are better alternatives.

The joint venture company will work like any other freight forwarder, consolidating smalls and forwarding it by rail or road—whichever is the most efficient. It will have country depots, operate comprehensive services and use local carriers extensively. The company will not have any unfair advantage over others. Deregulation of smalls traffics will be implemented without tonnage limitation on or about 1 July 1982, to open up marketplace competition between transport operators.

The joint venture proposes to offer smalls services to all possible destinations presently served by Westrail at similar frequencies.

As the company will operate at a lesser cost using about half the staff as the old method and will be subject to competition, it follows that average prices and services will improve.

As part of the implementation of the Government's freight policy the joint venture move will be closely monitored. The assurance is given that adequate transport services will be maintained to remote areas, if necessary under franchised arrangements.

The joint venture will result in Westrail's having about 780 fewer employees—this is less than 10 per cent of the organisation's present work force. About 400 staff will be required for the joint venture and the company proposes to recruit 250 from Westrail and 150 from Mayne Nickless.

The assurance has been given that no Westrail people will be dismissed as a result of the change. The remaining Westrail positions which are affected—that is, those not transferring to the new company—will be absorbed by the usual reduction procedures; that is, through productivity improvements and a policy of non-replacement.

The Government's land freight transport policy is progressively enabling the transport requirements of the people of Western Australia to be met in the most efficient and lowest cost way.

In regard to the final two aspects of the Bill, the intention is to confirm the power of the Railways Commission to advance credit to clients in the normal course of business.

A consequential amendment adds the specific authorisation for the commission to construct sidings outside the railway property; for example, where a private landowner requires a siding into his property.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. Robert Hetherington.

ACTS AMENDMENT (MISUSE OF DRUGS) AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by the Hon. I. G. Medcalf (Leader of the House), read a first time.

Second Reading

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [4.24 p.m.]: I move—

That the Bill be now read a second time.

THE HON. J. M. BERINSON (North-East Metropolitan) [4.25 p.m.]: I rise to indicate that the Opposition supports this Bill.

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [4.26 p.m.]: The purpose of this Bill is to rectify an anomaly that occurred with the passage of two separate pieces of legislation during the last session of Parliament, dealing with the criminal jurisdiction of the District Court of Western Australia.

Members will recall that the Acts Amendment (Misuse of Drugs) Bill, Act No. 57 of 1981, was introduced to facilitate the operations of the Misuse of Drugs Act 1981.

Part III of Act No. 57 of 1981 was intended to extend the jurisdiction of the District Court to enable it to deal with drug offences that were punishable with up to 25 years' imprisonment.

Section 42 of the District Court of Western Australia Act was amended to achieve that objective as previously the jurisdiction of the court was confined to offences punishable with 14 years' imprisonment or less.

At a later date, and as a completely separate exercise, the Acts Amendment (Jurisdiction of Courts) Bill, Act No. 118 of 1981, was introduced. That Bill also amended Section 42 of the District Court of Western Australia Act so that the District Court had jurisdiction to try all offences other than those punishable by death or life imprisonment.

This latter amendment proclaimed on 1 February 1981, removed entirely the necessity for the amendments contained in part III of Act No. 57 of 1981 which has not yet been proclaimed.

The Bill now before the House rectifies the anomaly by repealing part III of the Acts Amendment (Misuse of Drugs) Act 1981.

I commend the Bill to the House.

Question put and passed.

Bill read a second time.

In Committee, etc.

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

Third Reading

Bill read a third time, on motion by the Hon. I. G. Medcalf (Leader of the House), and passed.

FAMILY PLANNING ASSOCIATION

Funding: Motion

Debate resumed from 28 April.

THE HON. R. G. PIKE (North Metropolitan—Chief Secretary) [4.28 p.m.]: In speaking to the motion moved by the Hon. Lyla Elliott, I indicate that the following comments have been supplied by the Minister for Health: There is no need for this motion. The actions with respect to funding proposed in Miss Elliott's motion already have been carried out by the Government on the representations of the Minister for Health (Mr Young) who has been in contact with the Family Planning Association on this matter for some time.

I want to make it clear that the Government acknowledges and supports the general activities of the Family Planning Association and that is why the Premier has acceded to the association's request for top-up funding in 1981-82 to the extent of up to \$27 000, and prior to this had already advanced \$22 000 for this financial year, which the association uses in non-clinical areas of education and training.

The Minister for Health has advised the association and publicly stated that he will be applying for an increase in the association's funding out of State resources in 1982-83. The Government would like to ensure that the operations of the association are at least maintained at the existing level.

The funding for the clinical activities of the Family Planning Association in the past has been provided wholly by the Commonwealth Government and the association anticipated this arrangement to be maintained for the current financial year.

In December 1981 the Commonwealth advised the Family Planning Association that a fixed grant of \$242 000 would be allocated for the 1981-82 financial year. The grant was to be based on the actual expenditure figure for the previous financial year. Because of inflation and increased salary award payments, the association was facing an anticipated deficit of some \$27 000 to \$29 000.

The association undertook to review its operations to effect economies.

I make the point here that there has been an 11.98 per cent increase in costs due to wage increases. I ask all members, particularly members of the Labor Party, to note that when any claims for wage rises take place in this State, the Labor Party always says, "Yes, we think there should be a wage increase; it is reasonable." That could be interpreted as being a fair argument. However, it is very proper for the House to note that here we have an actual figure on which to work; the association's wage bill has increased by 11.98 per cent. The result of such wage increases is always an increase in charges. In this case, the wage increase will result in an additional \$27 000 to \$29 000 having to be found.

I remind the House that when we are looking at increased charges because of increased wage structures, we cannot be as one-sided as some members are wont to be. If members are going to support wage increases, they cannot in the next breath oppose reasonable increases in charges.

The Minister for Health has had a close involvement with the association, especially recently by way of correspondence and by deputation, and it was out of these representations that the favourable consideration for financial assistance arose.

Following consultations with the Minister for Health and exchange of correspondence on the matter, the association on 5 March made a written request to the Under Treasurer for a grant to cover the shortfall in operating costs due to the reduction in the level of Commonwealth support for the current financial year.

In response to this submission for top-up funding for the current financial year, the Premier on 7 April advised the Family Planning Association that all State funds had been committed and that he was unable to assist.

Following a review of expenditure levels as at 31 March and known commitments as at 14 April—I ask members to note that date—it appeared the Public Health Department would be able to assist with some extra funding.

On 20 April the Minister for Health approved an approach to the Premier for a review of the situation and the Premier has agreed to the payment of up to a further \$27 000.

I hope members forgive the pun when I say this may be a bitter pill for the Hon. Lyla Elliott to swallow! I would not like Miss Elliott or members of the Opposition to think I am being unkind if I were to say that the motion is now meaningless and in view of the fact that action already has

been taken by the Government on the major thrust of Miss Elliott's propositions, I advise the House to vote against the motion, unless of course Miss Elliott would care—in view of this explanation—simply to withdraw it.

THE HON. LYLA ELLIOTT (North-East Metropolitan) [4.34 p.m.]: I am astounded at the information given by the Chief Secretary that the Government has relented and has agreed to make this extra payment to the Family Planning Association. Naturally, I am delighted at the news.

The Hon. Robert Hetherington: You did not find it a bitter pill at all.

The Hon. LYLA ELLIOTT: Not only am I surprised, but also I am sure the executive officer of the Family Planning Association would be surprised because as recently as today he was unaware of the fact that this decision had been made by the Government. It seems very strange that until this motion was moved in the House the situation had been as it originally obtained; namely, the Family Planning Association was advised by the Government that only \$22 000 would be made available this financial year. I do not know what happened—apart from the moving of this motion—to make the Government change its mind. However, it has happened, and I am very pleased to hear it. The State has been getting out of the situation very cheaply up until now.

The Chief Secretary quoted a lot of figures which I am sure were difficult for members to assimilate.

The Hon. I. G. Pratt: I thought he was quite lucid.

The Hon. LYLA ELLIOTT: He referred to the amount of money made available by the Commonwealth for clinical activities, and amounts made available by the State for non-clinical activities. The fact is that, because of the previous system of funding by the Commonwealth—that is, deficit funding—the State has been getting out of it very cheaply.

The association, under the heading "Clinical Activities", has been able to list many of the administrative costs which should have been listed under the heading "Non-clinical Activities". However, when the system changed, it meant that the association no longer received adequate funds to keep up with inflation, increases in wages, and so forth. So it is now having to look to other ways of adjusting its bookkeeping so that it can keep its head above water because of this, in effect, 20 per cent cut in funding from the Commonwealth and the fact that it is not able, as it were, to pass over

so many of the administrative costs to the clinical activities heading.

I do not believe that, because at this late hour the State has agreed to pay over the sum of \$27 000, the motion should be withdrawn. Certainly the State has acceded to part (a) of the motion, and I am very pleased about that. However, the motion contains a second part; that is, that the State Government should approach the Commonwealth Government to urge a return to the previous system of funding—namely, deficit funding—to enable the services offered by the association to be restored and maintained. If we do not now carry the motion, it means we are not calling on the State Government to take this action. Therefore, I do not intend to withdraw the motion, and I hope that members will see fit to support it.

Question put and negatived.

Motion defeated.

LAND TAX ASSESSMENT AMENDMENT BILL

Second Reading

Debate resumed from 28 April.

THE HON. D. J. WORDSWORTH (South) [4.38 p.m.]: When I had the privilege of taking over the portfolio of Forests, probably the first point I appreciated was that the Government controls the entire forest resources of this State. It is understandable that this should be so when one understands the history of our forests. Probably when the first settlers arrived here, they thought that their main export would be agricultural products. However, they soon found that timber exports were far more profitable. Swan River mahogany soon became a major export from this State. It was used not only for ship building, but also, later, the streets of London were paved with it. It became the basis of sleepers for the railways.

The northern hemisphere was blessed with softwoods but, perhaps apart from the oak tree, it was short of hardwood. So this hardwood timber contributed a great deal to the early development of Western Australia.

Although there was plenty of timber in the south-west in the early days, regrettably the forests were soon over-exploited and the Government found it necessary to control this resource before it was depleted completely. Nevertheless, the Government was not able to prevent overcutting and it is only in the last few decades that the trend has been reversed. The Government now has a definite policy; by the year 2010 it will have replaced with softwoods two-

thirds of the present timber cut, and for some years now the Government has been planting approximately 3 000 hectares a year of pine.

Unfortunately the royalty payment on timber is very low, and this fact has created many of our difficulties. Needless to say, people who have land under timber have been forced to find an alternative use for their holding so that they can pay the various taxes on the land and still make some sort of profit.

With the low royalties on hardwood, it did not offer much of a profit. It was all very well for the Crown to set a low royalty on this type of timber, but it made it nearly impossible for landowners to conduct a business of growing hardwood in this State. Fortunately, the Government found it had to set a different royalty rate for softwood, and it is rather interesting that the royalty rate for softwood is three times that of hardwood, and yet softwood takes only one-third of the growing time. Perhaps I have illustrated the difficulties we have in regard to private forestry in this State, particularly for hardwoods.

It is easy enough for the conservationists to say, "Why does not the Government increase the royalty on hardwood up to the level applying for softwood?" If we did this, towns such as Pemberton would soon close down and the timber industry would be in chaos. The best policy to follow is one of gradual implementation of higher royalties on hardwood.

To encourage the planting of softwoods I recommended to the Government that changes be made in regard to land taxes. I had received representations from various organisations and private foresters—including the Australian Private Forests Development Institute which does a great deal of work in this direction throughout Australia. It is rather interesting to read the following in the Minister's second reading speech—

There is no valid reason for forestry activities to be denied the exemption which, incidentally, is available to landowners in most of the other States.

At present the Land Tax Assessment Act provides an exemption, under certain conditions, for most types of primary producing businesses with the exception of forestry businesses.

It is remarkable that it has taken as long as it has for the timber producers in this State to be put on a footing equal with other agricultural producers. The Minister pointed out that, in the past, under certain circumstances, those who

produced timber on their land were able to have a rebate of up to 50 per cent of their land tax.

The Minister went on to say that it was virtually impossible for any of the landowners involved in this type of business to comply with the requirements of the Act. While the amendments in this Bill appear to satisfy the needs of places outside the metropolitan area and those zoned under a country town planning scheme, some confusion and difficulty arise with those within such areas.

The requirements for a person to be exempted from land tax if his land is within the metropolitan region or a country town planning scheme, are threefold. Firstly, if the land is zoned other than rural, it must be used solely or principally for that purpose. In other words, if I have 100 acres for forestry as my sole business—

The Hon. I. G. Medcalf: Hectares.

The Hon. D. J. WORDSWORTH: It does not have to be. We will become confused. I will talk about five acres, a small area, because it does not have to be 100 hectares at this stage.

The land has to be used solely for forestry. I notice that the Minister said "solely" or "principally". I find that difficult to understand, because "solely" is 100 per cent, and I would have thought "principally" would be about 50 per cent.

The Hon. H. W. Gayfer: 51 per cent.

The Hon. D. J. WORDSWORTH: That is a very wide divergence of definition. I would like the Minister to comment on how this is interpreted.

I find it difficult to understand that, because if one is going to plant over a period and harvest over a period—that is usually the case, because if one harvests all in the one year, one's income is all in that year, and one loses a lot by income tax, so obviously one harvests over a period. Yet as the timber is phased in or out, one is back in the land tax situation. The word "principally" is the right one to use; and if the definition of "solely" is applied, it would exclude a lot of people.

Having passed the fact that the land is used principally or solely for the business of forestry, the second requirement is that the person using the land must be the owner. This is unusual. Certainly, in the metropolitan area, it is unusual to have a requirement that the user of land must be the owner. It certainly does not apply to most businesses around the town. Very few people who run businesses own the land on which the business is situated. However, this is one of the qualifications of this requirement. The Minister

said this is reasonable and realistic. Perhaps he would expand on it.

The third condition is that the owner must derive in excess of one-third of his total net income from the business. This is a very difficult condition. I am against income qualifications for these sorts of things. In other words, one is a primary producer if one derives a high proportion of one's income from farming. Anyone who plants trees will do so as an income tax deduction—in other words, it will be taken from his income. That will be part of his expenses, so he will not gain income from primary produce or from the growing of timber.

If one starts applying this sort of definition to primary producers, it will exclude a lot of people. Let us take a member of Parliament who retires from this place and has a superannuation payment.

The Hon. H. W. Gayfer: You are not suggesting a taxation lurk, are you?

The Hon. D. J. WORDSWORTH: He could find that, however small his superannuation benefit may be, it could be twice as great as the income he derived from his land. If that was so, he would not be able to claim an exemption from land tax, and he would be penalised to that extent. That would apply also to anyone who was borrowing to plant the trees, or who was living on his savings while he was doing so.

The Minister went on to say that it is realised that people could have difficulty in meeting these statutory requirements. Under certain circumstances, a taxpayer could appeal to the Treasurer. When I see some examples of taxpayers appealing to the Treasurer, I find often the taxpayers have found the Treasurer not to be a very sympathetic person to whom to appeal. Perhaps I will give an example of that later.

If one cannot fulfil the requirements that the land is used solely or principally for the business, that the person using the land is the owner, and that the owner derives in excess of one-third of his total income from the business, one could be exempted from land tax in one other way, and that is by planting 100 hectares.

If one planted 1 000 trees to a hectare, on my calculations 100 hectares with 1 000 trees per hectare is 100 000 trees. If a tree is worth \$50, one would have to be a millionaire five times over before one could obtain an exemption from land tax. That would indicate this legislation is confined to a few very wealthy people or companies. Therefore, few people will be able to meet the condition of 100 hectares.

One of the difficulties I see in this condition arises from the provisions in clause 12 of the schedule to the Land Tax Assessment Act, to which it is proposed to add the following passage—

or, where the land is used for a silvicultural or reafforestation business, either that income requirement is satisfied or the lot or parcel so used has an area of not less than 100 hectares which is fully stocked for that business.

One wonders what is meant by the words "fully stocked". Is it to be assumed from that, that one must have what used to be regarded as the normal planting in forest areas of at least 1 000 trees a hectare? If that is the case, it excludes new concepts in forestry such as agroforestry and the type of planting which occurs where the natural rainfall is insufficient to maintain 1 000 trees a hectare. When the normal number of trees were planted in some of the pine plantations north of Perth, the land was not able to sustain maximum growth until they were thinned out.

In the case of agroforestry, only a quarter of the normal number of trees are planted and this type of forestry is one of the recommended tools for salinity control. I wonder whether agroforestry fits the definition of "fully stocked" which the Minister proposes to insert in the legislation.

Parkland clearing also requires a reduction in the number of trees and it is another tool in the control of salinity which should be encouraged. On several occasions recently the Hon. Lyla Elliott has referred to land north of Perth which has been cleared, but should not have been. The Minister for Agriculture has indicated that changes to the soil conservation legislation will mean that in future we will be able to stop the clearing of such land.

It is necessary to read this Bill in conjunction with amendments to that Act, because landowners could be prevented from clearing land and will be required to leave it in a parkland situation.

It is proposed that section 23 of the principal Act be repealed. Subsection (1) of that section reads, in part, as follows—

Where the Conservator of Forests appointed under the Forests Act, 1981 certifies in writing with respect to any land that—

The subsection then lists three conditions which include—

the land carries an average stocking of trees not less than forty per centum of a fully stocked stand and the trees with which the

land is stocked are of an acceptable species suitable for commercial forestry purposes.

Therefore, under the principle Act the land may carry an average stocking of not less than 40 per cent of a fully stocked stand, whereas, as a result of the proposed amendment, it will be necessary to have a fully stocked stand. I am not aware whether, under the principal Act, it was possible for a person to obtain a deduction in land tax if he owned land cleared for parkland. My experience of the land tax commissioner would lead me to believe he would not be able to. Perhaps the Minister could explain the way in which section 23 of the Act, which it is proposed to repeal, worked.

It is necessary for one to have 100 hectares of forest before one can obtain a reduction in land tax within the metropolitan area or a country town planning scheme. That is a great deal of land and it should be appreciated that, frequently, it is possible to plant only 60 or 70 per cent of a block. I do not think there would be many blocks large enough to allow for continuous planting of 100 hectares of forest. That factor, along with the considerable cost involved, leads me to ask the Minister for an explanation.

In the past the Government has planted pine trees in the metropolitan area with great success, and I refer to the Collier plantation. The Forests Department has located its headquarters at a forestry project in the metropolitan area. However, we are going out of our way to exclude the private developer from doing the same thing. The Hon. Phillip Pandal was the first to attack me for allowing some of those trees to be chopped down. He would be one of the first to point out that it would be preferable if we had more land, which is not being used for industrial or residential purposes to be planted with trees with the minimal clearing when the land is required to be used for its original purpose.

I am concerned as to whether the proposed amendments will be unreasonably hard on a forestry business. Amendments are to be made to the provision which relates to land that can be excluded from the requirement to pay land tax, so that the exclusion clause of the schedule will now read—

(b) Class of land.

land used solely or principally for all or any of the following businesses—

- (i) an agricultural, silviculture, or reafforestation business; and
- (ii) a grazing, horticultural, viticultural, agricultural, pig-raising, or poultry farming business.

It will not matter how uneconomic is the size of a person's pig farm, vineyard, or poultry farm statewide; but if he is involved with forestry in the metropolitan area he has to have 100 hectares because the Minister believes that to be an economic unit. That is certainly making things difficult for forestry.

The Hon. I. G. Medcalf: You do not have to earn one-third of your income from forestry land, whereas with pig-raising you do. That is the difference.

The Hon. D. J. WORDSWORTH: There are two ways in which a person can apply for exemption under the Act: By earning less than one-third of his income from the forestry land or not having less than 100 hectares. The Government has endeavoured to lay down what is an economic forest, and it is interesting to look at the Forests Act because that contains a definition required for local government rating purposes. While most local government rates are based on unimproved value, in some cases the shires are able to rate on improved value. Members can imagine that a person who has his land under trees which are valued at \$1 000 an acre when the local government decides to rate on improved values, will be out of business very quickly, because he does not have the income to pay the rate until he harvests his trees. Section 71 of the Forests Act states—

When any area of land of not less than four hectares in extent is planted, after the commencement of this Act, with forest trees approved of by the Conservator as being suitable for commercial purposes, the number of trees not being less than one thousand two hundred (1 200) to the hectare then in computing the value of such area of land as rateable property within the meaning of any Act relating to local government, the increases in the value of such area of land by reason of the trees so planted shall not be taken into consideration.

In other words, the Conservator of Forests and the Government already have had to make a ruling on what is considered to be an economic forest, and the decision was four hectares. However, for land tax purposes that area has suddenly become 100 hectares.

It might appear that I have been a little critical of this legislation, but my criticism has been meant for that part of the Bill which affects the metropolitan area, because we should encourage more plantings within the metropolitan region so that we have a better place for future populations in which to live. Even should this be uneconomic

as a forest project, we should encourage the planting of trees. The changes will make a very great difference to the planting of forestry areas in rural zones, and this is to be commended.

It is rather poor that each year we plant only about 4 000 hectares of forest in Western Australia when New Zealand plants 55 000 hectares, of which half that amount is planted privately. Even in Australia the private plantings exceed the combined Government plantings in the ACT, Tasmania, South Australia, and Western Australia. So there are considerable private plantings in States other than Western Australia. Tasmania considered private plantings to be so important that it appointed a Deputy Conservator of Forests just to look after private forestry. It was found that the biggest deterrent to private forestry in Tasmania was the Government.

It is interesting to compare the different outlook of the Forests Department and the Department of Agriculture. The Government has an obligation to ensure there is enough pulp wood for the particle board factory in Dardanup. The Forests Department feels it has a responsibility to fill that entire quota. It considers that private forestry would not be able to meet that responsibility. If the Department of Agriculture had the same outlook, no-one would be trusted to plant enough wheat to meet Western Australia's requirements. However, the department does not consider that farmers are unable to cope with this requirement.

The Government does not have to do all the planting it is doing. It should be encouraging more private forestry. The money it is using to plant its own forests should be used to subsidise and encourage private plantings.

I am pleased to see this major amendment being made to the Act.

Debate adjourned, on motion by the Hon. N. F. Moore.

House adjourned at 5.13 p.m.

QUESTIONS ON NOTICE

NATIONAL WAGE HEARINGS

State Government Submissions

212. The Hon. D. K. D'ANS, to the Minister representing the Premier:

In respect of all national wage hearings, between February 1976 and May 1981 inclusive, before the Australian Arbitration Commission—

- (1) At how many such hearings did the State Government make submissions?
- (2) At how many such hearings did the State Government submit that no indexation be granted?
- (3) Will the Premier give the dates of the hearings referred to in (2)?
- (4) For those hearings other than in (2), what percentage indexation did the State Government submit should be granted?

The Hon. I. G. MEDCALF replied:

- (1) All hearings—16 in total between February 1976 and May 1981.
- (2) Seven.
- (3) 24 May 1977
22 August 1977
12 December 1977
28 February 1978
7 June 1978
27 June 1979
14 July 1980.
- (4) 13 February 1976, unspecified discounting for budgetary factors.
28 May 1976, flat increase calculated by applying Consumer Price Index percentage increase to minimum wage.
12 August 1976, no increase on economic grounds or increase equating to 30 per cent indexation.
22 November 1976, no increase on economic grounds or small increase to protect low income earners.
31 March 1977, \$2.90 to account for increase in health insurance costs.
12 December 1978, no increase or small increase.
4 January, 1980, 3 per cent
9 January 1981, less than 4.7 per cent.
7 May 1981, 3.6 per cent.
Dates shown are the dates of decisions issuing in respect of each hearing.

226, 233 and 239. *These questions were postponed.*

HOSPITAL

York District

247. The Hon. H. W. GAYFER, to the Minister representing the Minister for Health:

- (1) Is it correct that certain items of equipment have been removed from the York District Hospital in recent times?
- (2) If this is so, what was the nature of such equipment?

- (3) Has any new medical equipment been installed in recent times?
- (4) If so, of what nature?
- (5) Is the present equipment at the hospital sufficient to assist in the provision of satisfactory medical care?

The Hon. R. G. PIKE replied:

- (1) Yes.
- (2) A number of theatre instruments were transferred to Northam Regional Hospital in mid 1981. These instruments were surplus to the requirements of York Hospital.
- (3) Yes.
- (4) An emergency resuscitation trolley was provided earlier this year. In 1981 the York Hospital welfare committee shared the cost of providing the following equipment—
a birth room lamp; and
a foetal pulse detector.
- (5) Yes.

ROAD

Mandurah: Bypass

248. The Hon. NEIL McNEILL, to the Minister representing the Minister for Transport:

In relation to the eventual completion of the Mandurah bypass road and including the construction of a new traffic bridge—

- (1) What stage has now been reached in the planning studies?
- (2) What amount of the land south of Pinjarra Road has been acquired?
- (3) If land subdivisions are required for the purpose, what steps are being taken to expedite these subdivisions?
- (4) To what extent, if any, are environmental factors involved in the construction of this by-pass?
- (5) What is the current estimated cost of the completed work?
- (6) What were the average daily traffic counts on the existing bridge in each of the last three years during—
(a) New Year holidays;
(b) Australia Day weekend;
(c) Easter weekend; and
(d) on any non-public holiday period;

and in each case what proportion of the traffic is estimated to be attributable to areas south of Mandurah Shire?

- (7) What is the present estimated population of that part of Mandurah west of the Peel Inlet?
- (8) What is the estimated population of all areas of the south-west beyond Mandurah Shire for whom the existing bridge is reasonably expected to provide the most direct and convenient connection through to the metropolitan area?
- (9) What is the average daily traffic count on—
 - (a) Pinjarra Road east of Mandurah townsite; and
 - (b) the present by-pass?
- (10) What contingency plans have been drawn up to provide alternate traffic communication in the event of emergencies, particularly during public holidays pending the completion of the new by-pass?
- (11) When is it anticipated that construction will commence on the new by-pass road and bridge?

The Hon. G. E. MASTERS replied:

- (1) Planning is complete. The project is in the very preliminary design stage.
- (2) Nil.
- (3) The Main Roads Department is now preparing land requirement drawings.
- (4) The only environmental issue considered of concern is the Sandfire Flats. The Department of Conservation and Environment has accepted the proposal.
- (5) Seven million dollars excluding land.
- (6) (a) Not available;
- (b) not available;
- (c) 1981 Friday to Monday average daily traffic on the Mandurah Bridge was 18 235 vehicles; no information is available on the proportion of traffic attributable to areas south of Mandurah Shire;
- (d) not available, but is estimated to be of the order of 11 000 vehicles in 1980-81.
- (7) 1981 preliminary estimates for the Mandurah Shire show a population of 12 700. Information is not presently available for the population west of Peel Inlet.
- (8) 53 000 persons based on 1976 census.

- (9) (a) 1981-82 average daily traffic is 6 256 vehicles;
- (b) 1980-81 average daily traffic is 3 440 vehicles. 1981-82 figures are not available.
- (10) It would be expected that in very extreme circumstances traffic would be encouraged to use South Western Highway.
- (11) No firm date has been fixed.

HEALTH: WATER SUPPLIES

Beverley

249. The Hon. N. E. BAXTER, to the Minister representing the Minister for Water Resources:

- (1) Is the Minister aware—
 - (a) of a report by the health surveyor of the Beverley Shire on the atrocious quality of the water supply to that town and area;
 - (b) that the quality of water has deteriorated throughout the summer months;
 - (c) that the swimming pool has been closed since early in March because of the presence of *Naegleria-fowleri* found in water samples;
 - (d) that recent sampling of the mains indicated that the water is absolutely laden with *Naegleria* and other bacteria despite chlorination; and
 - (e) that early in March the health surveyor had a long conversation with a senior engineer from the PWD who, although sympathetic, advised that the department did not know what to do about the situation?
- (2) Has any of the main pipe line which was installed many years ago, been replaced?
- (3) If not, does the department intend to replace the main in an endeavour to solve the problem?

The Hon. G. E. MASTERS replied:

- (1) (a) Yes, but it has only recently been received from the Public Health Department; the report deals with water quality as affected by the presence of amoeba and not in respect to any other aspects:

- (b) no, it has been extremely difficult to completely and permanently eliminate *Naegleria amoeba* from the water distribution system at Beverley, but there is evidence to suggest that there has been a reduction in the numbers of amoeba occurring; remedial measures have been taken in accordance with advice from the Public Health Department.
- (c) yes;
- (d) no;
- (e) yes, however, the senior engineer concerned did not state that the department did not know what to do about the situation; he described the remedial measures that were being taken.
- (2) Yes, but this was not for reasons associated with the presence of amoeba.
- (3) The department does not intend to replace any mains for reasons connected with the presence of amoeba. However, some main replacement may occur next financial year, subject to the availability of finance, for other reasons.

EDUCATION: HIGH SCHOOL

Karratha

250. The Hon. PETER DOWDING, to the Minister representing the Minister for Works:

I refer to the Minister's answer to question 85 of Wednesday, 31 March 1982—

- (1) What were the names, addresses and tender price of each of the tenderers?
- (2) What material was available prior to the acceptance of the tenders about the financial stability of the successful tenderer?
- (3) From whom and to whom were representations made, and what was the substance of the representations?
- (4) Is it a fact that—
 - (a) the successful tenderer was known to be in some financial difficulties; and
 - (b) the Minister requested that the tender be nevertheless given to that firm?

The Hon. G. E. MASTERS replied:

- (1) Keywest Building Co. Pty. Ltd., 182 Rutland Avenue, Carlisle—\$1 179 000.00 (Withdrawn)
J. R. & A. H. Farrell, 12 Brookton Highway, Roleystone—\$1 318 131.00
A. Walters & Sons (1979), 4 Stack Street, Fremantle—\$1 363 379.00
Jaxon Watson Joint Venture (No. 6), Hamersley, 155 Adelaide Terrace, Perth—\$1 443 777.00
Scaffidi Developments (Designs and Constructions), 116 Hobart Street, Mt. Hawthorn—\$1 500 000.00
Citra Constructions, 5 Mill Street, Perth—\$1 789 236.00.
- (2) The normal trade financial reports.
- (3) Representations were made by the successful tenderer to the Premier and the Minister for Water Resources. It is pointed out that representations from tenderers are not an uncommon experience.
- (4) (a) and (b) No.

QUESTION WITHOUT NOTICE

POLICE: CRIME

Commission

58. The Hon. P. G. PENDAL, to the Minister representing the Minister for Police and Prisons:

I refer to a news report in today's *The West Australian* which suggests that the Federal Government is on the verge of establishing a national crime commission whether or not the State Governments agree to co-operate.

I ask—

- (1) Has the Western Australian Government been consulted by the Federal Government on this matter?
- (2) If not, how can the State Government have been expected to move co-operatively with Canberra if it has not been consulted?
- (3) Does the Minister in any way find offensive the Prime Minister's assertion that young MPs would be grey with age before all States agreed on a crime commission?

(4) Will the Minister remind the Prime Minister of the successful co-operative Commonwealth-State negotiations—leading to the creation of a Joint National Securities Commission—which were concluded without fear that young members would turn grey before an outcome was achieved?

(5) Are the Minister and the State Government prepared to co-operate with Canberra in this matter and, if so, has there been any need for the Prime Minister to use the extravagant language he has used as far as Western Australia is concerned?

The Hon. I. G. MEDCALF replied:

(1) No; there has been no formal submission to the Western Australian Government from the Federal Government or the responsible Federal Minister, Mr Kevin Newman. The first information we have had on the matter has been Press reports in the last couple of days.

(2) The Government is surprised, to say the least, that it has not been consulted on a matter of such national importance.

(3) We are disturbed by the Prime Minister's implication that the States have been unwilling to co-operate on national strategy involving various State Police Forces and the Federal Police.

There has been considerable co-operation in this area of late, including the formation of the Australian Bureau of Criminal Intelligence, and we are close to establishing a national police research unit.

(4) and (5) If the Commonwealth approaches this issue in a genuine spirit of co-operation, the Western Australian Government is prepared to give positive consideration to any Commonwealth proposal aimed at fighting organised crime.

The fact remains that there is no evidence to suggest that the Commonwealth Government and its advisers have any greater capacity in this area than the long-established and highly experienced State police of Western Australia.

Also, the Commonwealth must be aware that it lacks the necessary constitutional responsibilities and powers to make unilateral action truly effective.

