

Legislative Council

Tuesday, 26 October 1982

The PRESIDENT (the Hon. Clive Griffiths) took the Chair at 4.32 p.m., and read prayers.

BILLS (3): ASSENT

Message from the Governor received and read notifying assent to the following Bills—

1. Settlement Agents Amendment Bill.
2. Veterinary Preparations and Animal Feeding Stuffs Amendment Bill.
3. Fisheries Amendment Bill.

QUESTIONS

Questions were taken at this stage.

HEALTH: PENN-ROSE NURSING HOME

Judicial Inquiry: Motion

THE HON. FRED MCKENZIE (East Metropolitan) [5.06 p.m.]: I move—

That:

- (1) This House regards the report prepared by the Minister for Health relating to the circumstances surrounding the death of Reginald Berryman and certain other matters concerning Penn-Rose Nursing Home, or Lodging House (as the case may be) the Mental Health Services and the Mental Health Act, as an unsatisfactory and inadequate document which does not resolve the many important questions raised in connection with this matter.
- (2) This House is of the opinion that a judicial inquiry is warranted to investigate the circumstances surrounding the death of Mr. Berryman, the care and treatment he received whilst a resident at Penn-Rose and the general operation and administration of Penn-Rose.

This matter was raised initially by me following my discharge from the Swan District Hospital where I had seen the patient, Reginald Berryman. It was about 24 February of this year that I was able to view Mr Berryman, and I did so at the request of one of the staff at the hospital. I was shocked at the condition of the patient, but I became even more concerned when a member of the staff said to me that this was not the first such patient who had been admitted to the hospital

from a particular nursing home. It was the opinion of this staff member that the nursing home ought to cease operation.

As a result of those comments and my own observation, upon my discharge from the hospital I wrote to the Minister for Health in the following terms—

As a patient in Swan Districts Hospital, Eveline St., Middle Swan, an elector drew my attention to the condition of a Mr. Reg Berryman, who had been admitted to the hospital a few days earlier. This patient is virtually covered in bed sores from the bottom of his neck to his ankles and is in a shocking condition; all that the hospital's nursing staff can do for him is to make him as comfortable as possible and I am satisfied that they are carrying out this task well. Quite naturally, the nursing staff were reluctant to provide me with any information concerning Mr. Berryman, but I understand that he is mongoloid and has no next of kin, or if he has, then they care little about him.

My main concern is that this man is the subject of dreadful suffering because of the neglect of Penn-Rose Hospital, Guildford, and one can reasonably assume that if one patient at a hospital has been neglected, then there may well be others.

When I questioned a member of the Swan Districts Hospital's nursing staff about Mr. Berryman's condition, I was assured that this was not the first case of this nature that the hospital had received from Penn-Rose and was further informed by nurses and patients alike, that some years ago this particular hospital had been the subject of a controversy alleging that a patient had been locked in a cage at the hospital.

I have also been told (but have no evidence) that the Mental Health Services provide this hospital with some patients.

If this is the case, then, I think the matter should be further investigated. In fact, I would welcome your enquiries and investigation into Mr. Berryman's case, but more importantly, into the Penn-Rose Hospital itself, because, thus far, I have seen only one patient, but his condition indicates to me a case of shocking negligence.

Before Parliament resumes I shall make further inquiries and the results will determine whether the matter will be pursued further in that forum. Your investigation of this matter and comments would be most appreciated.

I wrote to the Minister on 26 February, and the Minister was not very long in replying; his letter is dated 10 March. I would like to read the Minister's letter to the House; it is as follows—

I write to acknowledge your letter of February 26, 1981 concerning Mr. Reg Berryman, about whom I have subsequently received reports from officers of Mental Health Services.

Your comments on Mr. Berryman's physical condition are essentially correct. He was admitted to Swan District Hospital on February 21, 1981 and was transferred to Midland Convalescent Home on February 26, 1981.

Penn-Rose is not a hospital, but is licensed by the local Government authority (Shire of Swan) as a lodging house. Penn-Rose has been a source of controversy on two occasions during the past five years and following problems in 1977 was not relicensed as a psychiatric hostel. Subsequently persons having "patient" status (i.e. on after-care) under the Mental Health Act were not referred to Penn-Rose.

In the case of Mr. Berryman, he was discharged with the knowledge and consent of his brother from Pyrtton Hospital to Penn-Rose on July 10, 1980, essentially because his needs were for accommodation and general care without specific treatment or training. It should be said that, irrespective of previous difficulties with the proprietors of Penn-Rose, no criticism has at any time been made of the physical standard of care extended to residents. The proprietors are Mr. and Mrs. Herron, the latter being a trained nurse.

Berryman was visited approximately two months after transfer by staff of Pyrtton Hospital and is reported to have seemed quite happy. I am also informed that some fourteen days ago one of the staff of the Division for the Intellectually Handicapped (Dr. Sivasithamparam) telephoned Penn-Rose, enquired about Mr. Berryman, and was informed that he was fit and well.

Berryman, who has Down's Syndrome, is sixty years old. Breakdown of skin occurs more readily with elderly Down's Syndrome subjects. Nevertheless, Berryman's case does appear to give cause for concern.

I stated earlier that no previous complaints regarding standards of physical care had been received in respect of Penn-Rose. In the course of present investigations, however, two

complaints have been made by a Sister at Swan District Hospital relating to two patients admitted (1) in October 1979 and (2) in October 1980.

Departmental officers are making further enquiries, with particular reference to the possibility of having the conduct of Penn-Rose investigated. Penn-Rose is not a hospital and Berryman, his after-care status not having been extended subsequent to his moving there, was not a patient under the Mental Health Act in recent months.

It is not Departmental policy to provide Penn-Rose with residents and all units will be reminded of this.

I will inform you of developments and I thank you for informing me of the situation.

Upon receipt of that letter I noted that Mr. Berryman had been moved from the Swan District Hospital to the Midland Convalescent Hospital, and that was the first action of the Minister with which I take issue. I do not believe that Mr. Berryman, in the condition in which I saw him, should have been moved from a public hospital to a convalescent home. The Minister did not refer to this point in his report, but in my opinion, had the Minister inquired fully into this matter upon receipt of my letter, Mr. Berryman would not have been transferred to the convalescent hospital. I will produce evidence to show that Mr. Berryman was in the condition to which I have referred. It was most unfair that Mr. Berryman should have been moved from a public hospital, although the staff at the convalescent home undoubtedly did all they could for him.

When I received the reply from the Minister, I wrote to the Matron of the Midland Convalescent Hospital enclosing a copy of the Minister's letter to me. In my letter I said—

Since the Minister for Health has advised me that Mr. Reg Berryman is now a patient at your hospital, I am attaching correspondence which may interest you.

It is not the individual which worries me so much, but from reports given to me when I was a patient at Swan Districts Hospital, there may have been others.

As a result, I decided to investigate those reports to ascertain their correctness or otherwise. If correct, the matter will be pursued, if incorrect, no further action will be necessary.

If you have any comment, please feel free to telephone me.

Instead of a telephone call, on 24 March I received a letter from the Midland Convalescent Hospital. It was signed by the deputy matron, and it read as follows—

Mr Reginald Berryman was admitted to the Midland Convalescent Hospital on 26th February, 1981 with a diagnosis of 1) Downes Syndrome, 2) mal united fracture of the right upper femoral shaft, 3) Multiple decubitus ulcers.

Mr Berryman had been bed ridden, wholly dependant on the nursing staff for all care.

The main nursing care has been directed to the severe decubitus ulcers or pressure sores.

On admission the following areas were noted.

Right hip open area approximately 5 cm. x 7.5 cm surrounded by blackened tissue. A pin and wire protruding from bone approximately 2.5 cm. and visible.

Sacrum open area approximately 5 cm. diameter, 3 cm. deep.

Coccyx shallow broken area approximate size 50c. piece.

Left hip small broken area approximate size 20c. piece.

Left and Right knees—Both knees had surface breaks size 2.5 cm.

Left ankle outer aspect open deep break 2.5 cm. size.

Left big toe small break.

Right ankle pressure sore developing.

At time of writing this letter all areas are responding to treatment. Some of the smaller pressure sores have healed over. Mr Berryman receives Pethidine 50 mg. prior to his main daily dressings due to the severe pain felt during the procedure.

In our opinion Mr. Reginald Berryman's condition is due to gross neglect to pressure areas. The nursing staff have kept a close watch to detect any possible skin blisters mentioned in Mrs. Herron's letter (a copy of same was enclosed with his admission notes here) but none were detected.

Bearing in mind that quotation, members will understand why I am disappointed with the Minister's report. Indeed, it fails on a number of counts and leaves many questions unanswered. No satisfactory explanation is contained in the report of the claim that boxes full of pharmaceuticals were regularly delivered to Penn-Rose and administered to people other than those for whom they were ordered. No comment was

made on the allegation that Mr Berryman was forced to sleep for a period on the bathroom floor. The report made no comment on the claims of poor or rotten food being served or residents being punished by compulsory cold showers.

The report contained no comment as to why Mr Berryman was sent from Pyrtton Hospital to a lodging house when he was in such poor health, as described in the report. No comment was made as to why, when Mr Berryman refused to exercise and began to develop lesions, he was not sent to a hospital or other institution with the staff and expertise to care for him adequately.

None of those questions has been answered in the Minister's report and the only alternative is to refer the matter to a judicial inquiry, because the report is inadequate not only in the areas to which I have referred, but also in relation to other matters.

It may be true the Minister lacked the powers of a judicial inquiry, but his report is unsatisfactory. We cannot let a matter such as this lapse. Had it not been for the finding in the death certificate being reported in the *Daily News*, this matter would not have seen the light of day. Following a series of articles on nursing homes in the *Daily News*, I telephoned a reporter and it was decided that the *Daily News*, should look at my papers and, from that time, the newspaper vigorously pursued the matter. As a result, much evidence of which I was not aware was produced and supported by statutory declarations. The transcripts of that evidence are available.

In his inquiry, the Minister for Health attempted to investigate some of that evidence, but the investigation was not carried far enough. A number of people are involved in this case, including officers of the Mental Health Services, and many questions remain unanswered. Many questions should be asked of the medical profession, in particular of Dr Lyon and other doctors who were regular visitors to Penn-Rose Nursing Home.

I turn now to the Minister's report, on page 7 of which the following statement appears—

A psychological test conducted on Mr. Berryman on the 21st November 1973 apparently revealed him to have an I.Q. of 30 and a mental age of five years and three months.

Although Mr Berryman was 60 years of age, it must be borne in mind he had the mental age of someone aged five years and three months. That indicates he was incapable of making decisions for himself. Problems associated with these sorts of people cannot be swept under the carpet. We need to investigate this matter in depth.

In relation to Mr Berryman's admission to Swan District Hospital, the Minister's report had this to say—

On the 21st February 1981 at the direction of Dr. Lyon, Mr. Berryman was transferred from Penn-Rose to the Swan Districts Hospital for examination by a surgeon, Dr. David Lucas, whose opinion was that it would be unwise to attempt an operation upon Mr Berryman. In view of this opinion, it was resolved not to operate upon Mr. Berryman at this time and he was then transferred to Midland Convalescent Hospital, . . .

I ask members: If Mr Berryman was not in a fit condition to be operated on, why was he transferred from an "A"-class hospital to a convalescent home? Surely some questions ought to be asked about that, because, given Mr Berryman's condition, there was no reason that he should have been transferred from Swan District Hospital where he had access to doctors and trained staff and was receiving top-class treatment. It must be admitted that, because of his condition, little could be done for Mr Berryman, but he could have been nursed back to reasonable health so that he could withstand the operations which were attempted later in Royal Perth Hospital.

From 1977 onwards, Penn-Rose Nursing Home was not licensed as a hostel under the Mental Health Act. However, it continued to operate as a nursing home and little or no action was taken against it. We should investigate this matter to ensure a similar situation does not arise in the future. If Penn-Rose Nursing Home can operate to all intents and purposes as a hostel and yet not be licensed as such, it appears a weakness exists in the legislation. There is no logical reason Penn-Rose Nursing Home should have been allowed to continue to operate in that way, but it is clear from the evidence it continued to do so, although in fact it was only a lodging house. One of the proprietors of Penn-Rose, Matron Herron, was a registered nurse and she, with the assistance of others, carried out nursing procedures. A number of witnesses provided ample evidence to that effect.

On pages 35 and 36 of the report the Minister made the following comments—

. . . although Drs Lyon and Hollyock assured me that had they felt that the standard of nursing care available to Mr Berryman at Penn-Rose was not satisfactory, they would have arranged his transfer to another and more suitable place, I do not think that I can avoid the conclusion that Penn-Rose, staffed only (leaving aside the cook and the

gardener) by one qualified nursing sister, and by her husband and two young women, who were, in effect, employed as domestics, and without qualified staff on duty in the nights, was a less than satisfactory establishment at which to nurse a man such as Mr Berryman, particularly when the lesion on his hip developed in early 1981. I appreciate and accept the inevitability of Mr Berryman's sad decline, which had clearly commenced before the end of 1980, but I remain concerned as to the capacity of Penn-Rose, when viewed as a total unit, to cope with the demands imposed upon it.

A fundamental issue that must be considered is whether Mr Berryman's transfer to a hospital or similar establishment was unnecessarily or improperly delayed.

Miss Uusimaki said that Matron Herron often said of Mr Berryman and his serious lesion "We can't send him away like that" thus indicating a reluctance to transfer Mr Berryman to another establishment until his condition improved.

If one bears in mind the Minister's comments, it appears that because of Mr Berryman's condition Matron Herron was afraid to have him admitted to a public hospital, and quite rightly so.

Penn-Rose Nursing Home applied for a licence to operate as a hostel under the Mental Health Act, but that application was rejected. In setting out his reasons for that rejection to Mr Herron, Dr Bell made certain comments which will indicate to members the nature of Penn-Rose. On page 51 of the Minister's report Dr Bell's comments are reported as follows—

The reasons underlying the recommendation that licences should not be issued to you or your staff were discussed at length with you at yesterday's meeting. Essentially these can be subsumed under the heading of attitude—attitude towards patients, towards involved professional and paramedical staff, and towards the aims of the Community Psychiatric Division which is charged with the care and welfare of this Department's clients residing in psychiatric hostels.

It is considered that, despite attempts by the Division to modify your attitude to the management of residents, the atmosphere at Penn-Rose has remained unacceptably rigid and institutional, that free and unchecked access by community care nurses has been obstructed, and that resocializing and rehabilitation activities are held by your staff in scant regard. Your hostel has the lowest level

of attendance at either occupational therapy or industrial units of any psychiatric hostel in the metropolitan area. Numerous incidents have been recorded of unpleasant incidents involving both patients and staff of the Community Psychiatric Division, and of obstructive and negativistic behaviour, remarks and attitudes on the part of your staff.

It is considered that the attitude of your staff has seriously impeded the efforts of the Community Psychiatric Division of this Department in promoting the welfare of residents. For this reason the decision was reached that granting of a licence could not be recommended.

The report continues—

Mr and Matron Herron, both directly and through their solicitors, took issue with the reasons given for the rejection of the applications but the fact remains that appropriate licences were not issued. Subsequently, a number of residents of Penn-Rose who were on aftercare were discharged. As Matron and Mr Herron frankly admitted to me, Penn-Rose continued to accommodate varying numbers of intellectually handicapped and/or socially dependent persons. Further more, this fact was known to senior officers of the Mental Health Service including, in particular, Dr Hamilton and Dr Bell. There was obviously an absence of effective communication between Dr Hamilton and Dr Bell upon the subject of the enforcement of the 1976 amendments both in relation to Penn-Rose in particular and, in relation to other similar establishments, generally.

You, Sir, can see from those remarks that, notwithstanding the fact that Penn-Rose was not licensed to operate as a psychiatric hostel, patients of that nature were resident there and no attempt was made to move them. The report continues—

Although senior officers of the Mental Health Services knew in a general way, of the situation at Penn-Rose, specific evidence of the kind required to sustain a prosecution was not readily available and in view of the attitude of the Herrons to the Mental Health Services those officers were reluctant to risk exceeding statutory powers in an attempt to gather the necessary evidence.

The Director of Mental Health Services commented on the difficulty experienced by members of his department when trying to visit places like Penn-Rose in an endeavour to make inquiries in relation to intellectually handicapped people re-

ceiving board and accommodation at those centres.

[Resolved: That motions be continued.]

The Hon. FRED McKENZIE: The recommendations in the Minister's report fall far short of what should be required because the matter goes further than the jurisdiction of the State Minister for Health. Other matters relate to Mr Berryman's pension when he was transferred to Pyrtton because of a motor accident in 1977. He was away for almost three years and during that period his pension continued to be paid to the proprietors of Penn-Rose. Some adjustment was made in respect of board and lodging which was paid to Mental Health Services for his accommodation at Pyrtton, but not all the pension paid to the proprietors of Penn-Rose was forwarded to Mental Health Services.

There is a discrepancy of approximately \$1 700 between the amount of Mr Berryman's pension and the amount actually paid to Pyrtton. So apart from the State matters, other matters are involved which affect the Commonwealth.

According to the transcript available to me, a fairly loose arrangement operated in respect of doctors providing prescriptions and those who received the benefit of them. I was given some transcripts of questions posed to Miss Maija Uusimäki by the *Daily News* and I will refer to some of these to support my arguments. Miss Uusimäki was employed at Penn-Rose for a number of years. The transcript reads as follows—

DN—was it a very large wound?

It was very large, it was shocking.

DN—how big would you describe it then?

Well—

DN—as big as the top of a tea-cup?

Yes—as big as that ashtray there—and the deepness. It was not a matter of how big it was, it was the deepness—it was very very big, to pack the whole thing, the wound, we would have had to use at least six dressings, pads, those square pads, about six in the beginning, and pack it in.

DN—could you see the pin at that stage?

Oh yes—you could see the pin?

DN—when was this?

When was this . . . just before they left it was about two weeks before they left

She was referring to a trip the Herrons embarked on overseas. The transcript continues—

DN—about January February?

I can't remember the dates, I'm sorry

DN—not to worry—it was early this year though

Yes—just before Reggie was left

DN—do you remember anyone at all perhaps suggesting that he should go to hospital to get this treated?

No, matron in the beginning did not want to send him—you don't send patients from a private hospital with bed sores, it doesn't look very good. We were trying to get them as much healed as possible before sending them away because it doesn't look very nice . . .

We now come to the questions asked in relation to the food served at Penn-Rose. The *Daily News* put these questions to Miss Uusimaki—

DN—what about the hours that these residents kept there—you mentioned to me on the phone

Well, they get up around about 7 o'clock, their breakfast is served at 7.30 there are patients that put out the breakfast, that is Dick and Ken Vaughan, Ken is a schizophrenic and Dick is just a little bit mentally retarded I would say, a bit slow but that's all—capable of doing that. And then they have morning tea around about 9.30 which consists of just a cup of tea nothing more, then lunch which is quite good and then afternoon tea about 3 o'clock and their evening meal at 5 o'clock and that is the last meal they get until 7 o'clock in the morning, or 7.30 and that sometimes consists of what is left from lunch, which is disgusting. I wouldn't eat it myself but the patients ate it, they never actually complained. I was amazed. When they complained about Killara's food, I wondered what the hell they were talking about because Penn-Rose food at night time is just disgusting. Sometimes they might be lucky, it depends, but most of the time it isn't very nice.

DN—if anybody left something on their plate, would that go in?

Oh no—definitely, just left overs from lunch and they add maybe rice or something to thicken it up, but it was definitely not—did I mention they pay about \$20 for them? Mum counted, because she didn't think you would believe her, but they actually paid about \$15 during the day, but put \$20 to make it sound better, that's for all meals for a whole day, but it's usually \$15 and maybe \$20 on the weekend.

DN—they tell us there are 24 people living there . . .

Yes,

DN—that is less than a dollar a day . . .

Yes, that is true, my mother

DN—30c a meal . . .

That's right. My mother did the cooking there for over a year and that is how she counted it out because they were always whinging cut that down, cut that down, and Mum working at Killara doing the cooking there before, she just did not how to cook—

DN—your mother worked at Killara?

Yes, she worked there for about four years off and on and Killara's food and the place there is 10 times better, people shouldn't whinge about places like that, because they are good.

DN—what about . . . ?

. . . maybe a little bit happened that is bad, but they should look more into private places where things like that does happen.

DN—what would a normal meal, say breakfast lunch and tea . . .

Well, for breakfast everybody gets porridge, that's all, they did have weeties but now they have cut that down . . .

DN—they only get porridge for breakfast?

The fact that the proprietors at Penn-Rose fed people at an average cost of 30c a meal is absolutely shocking. Plenty of evidence was gathered by the *Daily News* in regard to this. No doubt the Minister examined some of that evidence. Many questions remain unanswered in relation to this matter; and a judicial inquiry should be held into it. People should be free to give the evidence they want to give. We in this Parliament have a responsibility to these people. It has been suggested that places such as this should close down, but if a place such as Penn-Rose is closed down, where will these people go? That is a responsibility that we in society must accept. There must be somewhere for these people to go, and it is not good enough to tolerate places like Penn-Rose.

Evidence was even presented to the Minister indicating that Mr Berryman was not the first case of maltreatment at this establishment. Many people have been in the establishment and have died as a result of being there. I have not got proof to that effect, but the matter should be inquired into. It seems to me that initially Penn-Rose was regarded as a dumping ground for

people from the Intellectually Handicapped Division of Mental Health Services.

This inquiry definitely has not gone far enough. It has not satisfied me. Cases such as this greatly concern our society and must be brought out into the open. The Minister did not call on me to give evidence in relation to this matter. No-one from Swan District Hospital was called to give evidence, and many serious discrepancies occur in the evidence.

I move the motion in the hope that this Parliament will take note of it and that it will pursue the matter by way of a judicial inquiry under which everybody can come forward and give evidence. A proper and full inquiry should be conducted into whether this establishment ought to continue to operate.

I make the final point that my motion, if carried by this House, will enable that to be done.

THE HON. PETER DOWDING (North) [5.42 p.m.]: In seconding this motion, I seek to support it and raise three issues in relation to the report.

The first issue is that it is quite inappropriate that the Minister for Health should be in a sense both the accused and the judge. That is what has happened in respect of this report because it was the Minister's department and its administration that were under fire; hence it was quite inappropriate that he should have been the person responsible to the public for the performance of his department and also the person making the inquiry on behalf of the public. It is one thing to have a ministerial inquiry to determine whether matters of internal administration need to be tightened up; it is quite another thing to inquire into a matter as serious as this on the basis that it is the inquiry that the public seek and are entitled to.

We must not forget that this inquiry and this report raise some very serious although subtly stated criticisms of Mr Herron and Matron Herron. Their culpability in the death of Berryman is hinted at by this document, but is never sheeted home. Undoubtedly these are very serious allegations and indeed findings which must give rise to considerable disquiet; they indicate the seriousness of the inquiry and support the proposition that it is inappropriate for the Minister to be both the "inquired into" and the "inquirer". Fairly significant criticism of the Minister's department is voiced in this report. That emphasises the point I am making.

The next point I wish to make is that this was simply a ministerial inquiry assisted by a most able barrister—and I do not want it to be thought for a minute that I would be critical in any way of

either the integrity or the performance of that barrister because he is a man whose reputation is well known. However, the Minister stated the shortcomings of the inquiry on page four of the report as follows—

In the course of the inquiry I interviewed 17 witnesses and considered many files and documents. I had no power to require witnesses to attend interviews or to compel them to answer questions but each person who was asked to co-operate in an interview did so voluntarily and fully. I was not empowered to and did not administer oaths to the witnesses. . . .

In other words, the people who came along could have lied their heads off; there was absolutely no sanction at all. I suggest that, on the basis of this report, one witness did lie his head off—Mr Herron fabricated and told a tissue of lies to Mr Young on a most important issue for which there was absolutely no comeback at all.

Mr Herron could not be charged with perjury, he could not be found to have lied on oath, and he could not be regarded as a man who set out to deceive a court under oath because he was never administered an oath; he was permitted to say what he liked. Most serious evidence of the tissue of lies from that gentleman may be found in the evidence recorded by the Minister on page 26 of the report. Mr Herron said—

Sure, I smacked Reggie because he would continue to put his hand up the skirts of the female staff and up the skirts of Bridgie or the Matron—Mem—when this treatment was going on.

It appears this treatment was being administered to a man who was almost *non compos mentis*, and I will show references to this. He was a man who was having dead skin cut away from a fissure on his hip; a man who was incontinent, left at night without medical supervision. The skin was being cut away by unskilled people and Mr Berryman was not administered any form of anaesthetic, yet Mr Herron had the temerity to tell the Minister that if he had acted in this way it was because when undergoing this treatment, Mr Berryman, was busy putting his hands up the skirts of the female staff. In my view this is just a palpable falsehood, and it is borne out by the evidence of the medical people who support my view.

I make reference to the report on page 39 where Dr Hollyock referred to Mr Berryman's condition. According to Dr Hollyock, Mr Berryman was a very elderly person and also a very sick man in a long, slow and terminal decline. A man in this condition does not go around

putting his hand up women's skirts. If I were a man having to come to a conclusion about the honesty of Mr Herron I would say in that instance he revealed himself as a man incapable of telling the truth.

I regard that as a serious comment to make, having the inadequacies of this inquiry in my mind—that is, that the man was not forced to give evidence or think of the penalties attached to lying in those circumstances.

I refer members to page 27 of the report which indicates how the Minister handled this situation. The Minister is not a man with judicial training and he has no expertise in determining the credibility of witnesses. It appears he was not present on every occasion when counsel was questioning the witnesses because on page 33 of the report the Minister states—

As has been indicated, Dr. Lucas examined Mr Berryman and Dr. Lucas told Mr Zelestis, who spoke to him on my behalf, that he advised against operation. . .

In other words, the Minister did not see everyone who gave evidence—he just received reports from counsel. If the Minister was the person to determine the credibility issue he should have been present when each witness was questioned. He is not a man of judicial ability and he certainly is not a person trained in making that sort of judgment in relation to witnesses. The Minister's comments about Mr Herron do not reveal that Mr Herron is a man capable of palpable falsehoods, because on page 26 of the report he states—

Whilst such treatment of Mr Berryman cannot be condoned and, indeed, can justifiably be deplored, it is important that this form of restraint be considered in the context of Mr Berryman's potential to detract from his treatment and care with demonstrably forgivable, but very distracting, behaviour.

Mr President, I suppose it is difficult for a person who is not a lawyer, judge, or magistrate to write this sort of report. On page 29 of the report the Minister states—

Dr. Lyon confirmed that when he saw Mr Berryman again in mid-1980 Mr Berryman's general health had deteriorated when compared with his health during the period 1973 to 1977. Upon his return to Penn-Rose, Mr Berryman was suffering from pneumonia.

It continues—

In these circumstances, Dr. Hollyock said that over a period around September 1980 it

was recognized that attempts to encourage or force Mr Berryman to walk were becoming futile and it was gradually resolved that such attempts should not be pursued. Thereafter Mr Berryman spent his time in bed or in a chair.

Further on the report states—

Late in 1980, and after Mr Berryman had ceased ambulating, he developed what Dr. Hollyock described as a decubitus ulcer on the sacrum, caused by Mr Berryman continuously lying on his back.

This is not the description of a man who was putting his hand up women's dresses. On page 30 the report states—

But other pressure areas began to develop as did the lesion on the right hip at the site of the pin. The treatment of Mr Berryman's lesions was not helped by his urinary incontinence.

This is a tragic picture of a man; not a man who was to be slapped around by a proprietor of a boarding house posing as a person with some medical ability, taking money for 18 months without giving anything in return. It is my submission that the Minister should have said, "I cannot deal with a man who has come here to tell lies, the matter ought to go before a judicial inquiry; the finding could put him in gaol for telling falsehoods." However, it never got to that stage and the matter now should be dealt with by a proper judicial inquiry.

The question of money is of some concern to the Opposition. On page 27 it is reported as follows—

... Mr Berryman was absent from Penn-Rose between about mid-1977 and mid-1980, his pension was paid to Penn-Rose where one-third was deducted and paid into the general revenue of Matron and Mr Herron. . .

One-third was taken for what reason? The explanation given on page 27 is that the Herrons kept his room available during this period—mid-1977 to mid-1980. The report continues—

Matron and Mr Herron explained that during this period they understood that Mr Berryman was on "short term stay" at Pyrtan with the result that he could have been returned to Penn-Rose at any time and could have required his room.

Really, Mr President, one would have to be a nincompoop to accept that explanation. The Minister either simply was not in a position to do anything about it, or did not do anything about it. A

judicial inquiry would have explored whether that action constituted fraud and would have had some idea about alternatives and recommended action. It may have even suggested that the Crown Law Department be asked for an opinion.

It is suggested that the Minister could not determine what action he should take in what really amounted to stealing.

The next point to look at in determining whether an adequate inquiry was conducted was how the Minister dealt with these sorts of allegations. On page 21 of the report the Minister made the following finding—

The undoubted fact, confirmed by both doctors, Matron and Mr Herron and Miss Hayes is that the lesion on Mr Berryman's hip did not develop until January 1981.

With respect, that is a critical finding of fact which the Minister was not entitled to make on the evidence presented to him because the evidence was that two general practitioners who were attending Mr Berryman for reasons known only to them could not say when they first observed these lesions. On page 22 of the report the Minister stated—

There can be no doubt but that the truth is that during the critical period around late 1980/early 1981 each of Dr Lyon and Dr Hollyock regularly saw and fully examined Mr Berryman.

If that is the truth, why did not the doctors have a record as to when these lesions first appeared? The usual practice when examining a patient is for the doctor to make a record of the patient's condition and note major changes as they occur. A record should have been kept as to when the lesions on Mr Berryman were first noticed, but neither doctor had any record of this and no record was kept at the nursing home. However, the Minister said, "There can be no doubt but that the truth is that during the critical period..." There can be no doubt. There is doubt, and any judicial officer would know that.

The absence of evidence and the absence of a record noting those lesions must be viewed critically in the light of whether these people were doing their job properly.

The next matter is that where the Minister comes out with a little slap on the hand to Mr Herron and Matron Herron in relation to the staffing of their boarding house—their so-called nursing home. On page 25 the Minister said—

I cannot accept that it was proper to leave Mr Berryman virtually unattended overnight,

particularly after the lesion on his hip became apparent.

He could not accept that it was appropriate. Further on the Minister made reference to this neglect and to the fact that it was regrettable that it had occurred. He did not censure Mr Herron and Matron Herron for what must have amounted to very close to criminal negligence. Mr Berryman was a man who was known to be at risk and evidence shows that people in this condition have very critical problems. At page 31 the report states—

It is accepted by medical science that Down's syndrome sufferers have abnormal skin. Their skin, apparently, lacks elasticity, with the result, in Mr Berryman's case, that in 1980-81 when his chronological age was about 60, his physiological age was about 80 or 90 and he had extremely fragile skin which would abrade at a touch.

There are other findings in this report which I will not outline. A person in this condition cannot be operated upon, yet we are told this man who spent his time on his back and incontinent was left unattended overnight—all night—with major lesions which doctors and Matron Herron could not control and had no idea how to control. He was known to be a person who could develop serious problems which in healthy people would be minor problems.

On page 30 of the report Dr Lyon's evidence states—

In a thin and ailing person, a piece of stainless steel moving up under the skin is obviously going to increase pressure on the skin—unnatural pressure. It was for that reason, in my opinion, that the skin broke down in that particular area and the ulcer which seems to have become a subject of discussion formed in that way.

On page 31 the report continues—

Well before the time when the skin broke down Drs Hollyock and Lyon had suspected that the cause of this lesion was infection around the pin. Each doctor was aware of the pin and had previously seen X-rays of it showing a low grade infection around the pin.

On page 32 it states—

... Dr Lyon remained hopeful that the lesion would heal ...

I could go on with quote after quote; but we come to the conclusion that this was a man who by the end of 1980 and early 1981 suffered from a condition known to be extremely dangerous in terms of fragility of the skin and in terms of the limi-

tation of medical treatment that could be offered to a person with his problems. Effectively if something serious occurred he was inoperable and yet he was left all night unattended with weeping sores, so much so that one could see the head of the pin inserted in his hip. How on earth is it consistent to administer a rap on the knuckle to Mr Herron and Matron Herron and the general practitioners regarding their lack of attention to this man? I cannot accept that the Minister has understood or been prepared to make proper findings of the facts and see that these people are dealt with if necessary in a criminal court for criminal negligence.

I know only what is in the report. I am not reading from what Miss Uusimaki said, or from what the *Daily News* took in a transcript, or anything but the facts that are documented here. I am appalled that the Minister did not come to the most serious conclusions with the weight of the evidence contained in this report from the facts that the Minister recorded. I have not even seen the transcript.

Given the evidence that Mr Herron clearly fabricated the matter, and the evidence that Mr Herron and Matron Herron took money from mid-1977 to mid-1980 when there was no justification for the retention of the money; given that they were doing medical procedures on this man, and that they were leaving him without supervision at night; and given that he had serious medical problems that were known to be potentially terminal, how can one conclude the Minister has adequately protected the interests of people like Mr Berryman by giving a superficial rap on the knuckle to Mr Herron and Matron Herron, and not sending the papers for a full judicial review, and arranging if necessary, for these people to be indicted on the criminal offence that on the face of it would appear to arise from this report?

I support the motion.

Sitting suspended from 6.02 to 7.30 p.m.

THE HON. R. J. L. WILLIAMS (Metropolitan) [7.30 p.m.]: We are dealing with a very serious matter. It is only appropriate that I should sit down and call upon a former Minister for Health who knows this business backwards.

THE HON. N. E. BAXTER (Central) [7.31 p.m.]: I apologise for being a little late. Unfortunately, at this end of the Chamber, the Hon. Fred McKenzie could not be heard well because his voice was rather low, and much of the material he read I found difficult to comprehend. However, I have a fair idea of the trend of Mr McKenzie's speech on this motion.

I have examined the report of the Hon. Ray Young (Minister for Health). It is a factual report, and one that he was placed in the position of making on the recommendation of the Cabinet after the unfortunate death of Reginald Ernest John Berryman on 9 May 1981. The terms of reference of the report were as follows—

- (1) What were the terms of the order or orders made as to the status and supervision of Mr. Berryman by the Mental Health Services, and when were the orders made?
- (2) Who was responsible to supervise Mr Berryman and how was that supervision conducted?
- (3) How and in what circumstances did Mr Berryman's status as a mental patient cease?
- (4) Who was Mr Berryman's doctor? Who engaged him and paid him? What treatment was prescribed?
- (5) Was Penn-Rose ever licensed by the Mental Health Services and, if so, when and in what circumstances did it cease to be licensed?
- (6) Did Penn-Rose continue to take persons whose presence there would have required the premises to be licensed under Part IIIA of the Act?
- (7) If so, why did it remain unlicensed?
- (8) If it should have been licensed but was not, why were the proprietors not prosecuted under the provisions of the Mental Health Act?

As Minister for Health and Minister for Community Welfare from 1974 to 1977, I had occasion to visit Penn-Rose Nursing Home on several occasions, and I met Mr and Mrs Herron. I found them to be decent people who were trying to do a job for some of the unfortunate people in our community. It is not easy to deal with patients and persons of the type in that hostel. I saw nothing in Penn-Rose to condemn.

We heard very strong words used in this Chamber about these people—and particularly about Mr Herron—and the circumstances in the hostel. I saw no evidence of those things. I have known the Herrons for some years, and I have always found them to be straightforward and decent people.

The evidence given to the Minister when he compiled the report included documents made available by the *Daily News*. Whenever possible, this place has been a target of the *Daily News*. Mr McKenzie mentioned the "caging" of one patient. I could not quite hear what he said about a caging; but he referred to a person being caged

at Penn-Rose some years ago. Some years ago, when I was the Minister, that event was termed "the monkey cage episode" in the *Daily News*. An article was written by a certain George Williams, who was a reporter new to the State, trying to make a name for himself. The "monkey cage" referred to the fact that the cage had been built by a former owner of the premises who had the idea of importing monkeys and keeping them in the cage, for one reason or another. Never at any time was the cage occupied by monkeys.

On the occasion in question, at every possible opportunity a patient used to wander out onto the end of James Street where the road turns onto the Guildford Bridge. He did that in the busy part of the morning when Mr and Mrs Herron and their staff were trying to look after the other patients. They stopped the patient from wandering onto the road on several occasions, and eventually they put him into the cage.

It was just a wire cage; and the patient was quite comfortable. He came to no harm in it. Of course, the reporter for the *Daily News* called it "the monkey cage", and he made quite a feature of it. It was an attempt by the reporter to make a name for himself. That is all the "monkey cage" episode was about; the patient came to no harm at all. Everyone knows the traffic that goes across the Guildford Bridge, and we can understand the concern of Mr and Mrs Herron about this patient.

It is unfortunate that Mr Berryman also wandered from the hostel. In fact, he was knocked down by a car in that particularly busy traffic area. A lot of the trouble started from the injuries he received, and eventually the injuries led to his death.

Mr Berryman was transferred from the Swanbourne Hospital to Penn-Rose for after-care on 13 September 1973. No problems were experienced with him until about 1977; but on 2 July 1977 he was struck by a motor vehicle—I have already referred to his walking out onto the road—and suffered concussion, a fractured skull, a fracture of the right hip, a knee injury, fractured ribs, a fractured lower leg, and abrasions and lacerations. He was admitted to the Royal Perth Hospital; and the hip fracture was treated surgically by the insertion of a pin. He had minor difficulties in passing urine in the post-operative period.

On 7 October 1977, Mr Berryman was discharged from the Royal Perth Hospital to Pyrton Hospital, in the care of Mental Health Services. On recovery, he was able to walk with a frame and other assistance. It can be seen that the result of the accident was quite severe for Mr Berryman.

A hospital report in December 1979 indicated that Mr Berryman still had problems. He suffered from stiffness in the morning, and he had a pressure area on the ankle which healed slowly with protective dressings. He had an infection of the right eye, and chest infections. He remained at Pyrton until 10 July 1980, when he was transferred back to Penn-Rose.

At the time of Mr Berryman's transfer to Penn-Rose, he was suffering from pneumonia. He remained at Penn-Rose on after-care status until he was discharged on 27 December 1980.

During January 1981, Mr Berryman developed a lesion on his right hip. His medical care at Penn-Rose was supervised by Dr M. A. C. Lyon and Dr G. J. Hollyock of the Swan Medical Group, Midland. His day-to-day care at Penn-Rose was undertaken by Mr and Matron Herron and their staff. The lesion that developed in Mr Berryman's right hip was above the head of the pin which had been inserted; and as the lesion worsened, the head of the pin became visible.

On 21 February 1981, at the direction of Dr Lyon, Mr Berryman was transferred to Swan District Hospital; but that is not the end of the story. Efforts had been made for some time to have him admitted to the hospital; but a bed was not available for him. Of course, that did not help in his treatment. At times it is difficult to obtain a bed for patients, and particularly those with this type of condition.

Honourable members would have to read the report to realise that the Minister for Health (the Hon. R. L. Young) was realistic in his comments. He did not hold anything back. Mr McKenzie and Mr Dowding spoke about certain matters brought out in the report; and the Minister has not tried to hide anything. He has brought out the facts as they stood. In his report, he was fair and did not cover up anything.

The matter goes back to the fact that Mr Berryman was in such a condition that it did not matter what was done to him at Penn-Rose, or what care he was given. Members have claimed that Mr Berryman was neglected at night; but that is not factual because the night staff on duty—

The Hon. Garry Kelly: Trained staff?

The Hon. N. E. BAXTER: —went around, taking care of the patients from time to time. Because of the limited number of occupants, this was not the sort of place that could carry a big night staff. It did not warrant a huge staff to give constant attention to the people who lived in the circumstances in which they did.

In his speech, Mr McKenzie said that we ought to pursue certain things so that a similar occurrence will not happen in the future. What happened to Mr Berryman could happen to many people, and probably it has happened to a lot of people, but nobody knows about it because of the circumstances existing.

When a person suffers lesions following an accident, the people responsible for him try to cure him, and they try to do something for him. Eventually the patient has to be sent to a hospital so that something further can be done. Treatment of this type of person—a Down's syndrome person—is much more difficult than for the normal, healthy person.

Mr McKenzie referred also to the reason Mental Health Services did not grant a licence to Penn-Rose as an after-care mental health hostel. This goes back to the time I was the Minister when certain persons in the Mental Health Services had a down on Penn-Rose. I will not name the persons concerned—certain doctors—but one of them has gone to South Australia. They had a set on Penn-Rose for certain reasons; some of the reasons were outlined by Mr McKenzie and Mr Dowding when they spoke.

I know of the attitude held by some of the people in Mental Health Services at the time. I had to deal with some of the doctors and people in the department who acted in this way. It was not all the fault of Mr and Mrs Herron that they were not granted an after-care mental health hostel licence.

In his speech, Mr McKenzie said that, notwithstanding Penn-Rose was not licensed, the patients were still there. In some cases, the patients were there because their relatives put them there—because they wanted to put them there, or because they could not put them anywhere else.

The Hon. Garry Kelly: Did that apply to Mr Berryman?

The Hon. N. E. BAXTER: Yes, I believe that applied to Mr Berryman.

Unfortunately Mr Dowding is not here. I wish he were here, because in the whole time I have been in the Parliament I have never heard such a scandalous, rotten, nasty attack on persons who could not defend themselves.

Mr Dowding ought to be thoroughly ashamed of himself for having attacked a person like Mr Herron, who is a gentleman. He would not dare to go outside the Chamber and say a word of what he said, not one word of it; yet he had the effrontery to stand here in this House and attack Mr Herron and say these scandalous, rotten, and

nasty things. As far as being a gentleman is concerned, Mr Herron would run rings around Mr Dowding.

How does Mr Dowding know how a person like Mr Berryman would act? I am referring now to Mr Dowding's comments about what Mr Herron said of Mr Berryman's putting his hands up the clothes of nurses and ladies. How would Mr Dowding know that Mr Berryman would not act that way?

The Hon. Garry Kelly: He was hardly fit enough, according to the report.

The Hon. N. E. BAXTER: The man was not dying; he certainly had lesions on his body and that sort of thing, but that would not stop him moving his hands around. As far as I know there was nothing wrong with his arms. To say a person in that condition could not do this sort of thing is purely guessing. Members should understand, as I am sure the Hon. Graham MacKinnon understands, that these are peculiar people in some instances.

The Hon. G. C. MacKinnon: I thought most Down's syndrome people were fairly strong.

The Hon. N. E. BAXTER: That is right. In spite of the fact that Mr Berryman had injuries and lesions, they would not have prevented him from using his arms and doing what Mr Herron said he did. I would prefer to take Mr Herron's word of what he did rather than Mr Dowding's word. Mr Dowding was not there; he was only guessing from what he had read of Mr Berryman's condition, and assuming he could not do those things.

Mr Dowding should leave the Chamber and make those statements in public. He made a melodramatic speech about this entire situation, and then, as usual, having made one of these speeches, he has not returned to the Chamber to let someone have a go at him and tell him what he thinks of him. I am ashamed to call him the Honourable Mr Dowding after the statements he made tonight in this Chamber. I can imagine why he would not make them in public.

The doctors did their very best, as did Mr Herron and the other staff, when treating Mr Berryman. They did everything they possibly could to heal his lesions; they did everything they possibly could over a period of several weeks to get him into Swan District Hospital. When he got there the doctors finally decided to operate, but he died of cardiac arrest, which could happen to anyone in those circumstances, and especially with a man in the condition to which Mr Berryman had apparently deteriorated by the time he got to Swan District Hospital.

Some of the evidence from the staff can be taken with a grain of salt. We have heard these sorts of things before about other establishments.

There is no need for a judicial inquiry; the Minister conducted a well-documented inquiry himself. He went to no end of trouble to inquire into the whole case of Mr Berryman and I believe he did a terrifically good job.

The Hon. Garry Kelly: Why can the evidence of only some staff be taken with a grain of salt? Why are you selective?

The Hon. N. E. BAXTER: There is evidence from one of the staff especially which can be taken with a grain of salt. Has the member read the report?

The Hon. Garry Kelly: No.

The Hon. N. E. BAXTER: Then I advise him to do so because he might then understand that some of the evidence, particularly from one staff member, can be taken with a grain of salt. He could have my copy to read and, having read it, I am sure he would know that Mr Young went to a lot of trouble to produce a factual report. There is no need for a judicial inquiry.

THE HON. ROBERT HETHERINGTON (East Metropolitan) [7.50 p.m.]: I would point out first one minor thing, because Mr Baxter should be more careful when quoting from reports. In fact, according to the report, Mr Berryman did not die in the Swan District Hospital, but in the Royal Perth Hospital where he was sent later.

The Hon. G. C. MacKinnon: Mr Baxter said he went to Swan District Hospital and died subsequent to that.

The Hon. ROBERT HETHERINGTON: Mr Baxter said he went to Swan District Hospital, was operated on, and died.

Several members interjected.

The PRESIDENT: Order!

The Hon. ROBERT HETHERINGTON: I support the motion because I find the report quite unsatisfactory on a number of grounds. First—and this was mentioned by the Hon. Peter Dowding and I want to mention it again—we are dealing with a report by a Minister who has inquired into his own department, his own area of competence, and his own area of responsibility. I would have thought that under our system of responsible Government, under the Westminster system that we hear so much about in this Chamber, the Minister may conduct an internal inquiry into his department; but if he wants someone to conduct an inquiry into a department over which he has responsibility on a matter of public

concern, it must be a public inquiry and that inquiry should be carried out by someone outside the department. After all, if the Minister's department fell down in its duty—and the Minister seems to think it did—perhaps the Minister should resign. It is hardly proper to ask him to make that decision; perhaps it is. But it might colour his report; I am not saying it has or has not, but I am saying that it is not a proper way to make a report.

It is all very well for Mr Baxter to say that the Cabinet ordered the report and ordered the Minister to make the report; I know that happened. The Cabinet behaved improperly. Cabinets can behave improperly and this is a case where a Cabinet was in error.

The Hon. N. E. Baxter: That is your view.

The Hon. ROBERT HETHERINGTON: Of course it is my view; I would not be saying it otherwise. It is not a view that I would expect every member opposite to accept, but I have just stated why it is my view. It is based on my view of the way the Westminster system operates; it is based on my view of the system of responsible Government; it is based on my reading and my study of how the Westminster system is supposed to work. We do hear a good deal of sneering about ex-academics in this Chamber, but at least an academic does some reading about the theory of how things are supposed to work. If Cabinets care to ride roughshod over that theory, that is their business, but they should not necessarily expect me to applaud their actions; they should not expect anyone else to do so who knows anything about how the theory is supposed to work.

It is important with an inquiry like this—and this is a cliché, but I will say it again—that not only must justice be done, but justice must be seen to be done. If a Minister inquires into himself he must expect people to think it is a white-wash. If the Government wants to make sure a proper inquiry is conducted, it should ensure that the inquiry is conducted by someone outside the department. In this case it would have been proper to have a judicial inquiry. So, that is the first thing to which I object about this inquiry.

Having read the report I found the same old things stated, such as "The Minister believes this is an undoubted fact", or "This is what the Minister believes", or "The evidence established this or that". The trouble is that we have no way of checking the veracity or adequacy of the Minister's findings because nowhere appended to the report is there a transcript of the evidence which we can read to check and establish whether we think the Minister's findings are borne out by the

evidence. Nowhere are we provided with even an edited version of the transcript. The Minister quotes selectively from the evidence, but we do not know what other evidence he saw. We know he is not a learned judicial officer; we know he is a politician and a Minister of the Crown.

His conclusions may be coloured; they may be wrong. Whatever they are, we have no way of finding out. The Minister has refused to make available a transcript of the evidence. There may be reasons for this, but he might at least have made available an edited version so that other people might read it and decide whether the Minister's conclusions were borne out by the evidence placed before him.

The Hon. N. E. Baxter: Are you saying there is no transcript?

The Hon. ROBERT HETHERINGTON: I said that the Minister has quoted selectively from the transcript.

The Hon. N. E. Baxter: There is quite a lot of transcript.

The Hon. ROBERT HETHERINGTON: I am aware of that; I read the report three times. If the Hon. Norman Baxter had listened he would have heard me say that although the Minister quoted from the transcript he did not append the transcript. Therefore, we have no way of judging how selective he has been, and what other evidence was put before him. I am not saying the Minister has come to the wrong conclusions, but that I do not know whether he has or has not. All I have is his word that his interpretation of the evidence is the correct one. I will get around to this in a minute when I read the report of the internal evidence, where I am not too sure that his interpretation is correct.

I think too that it would be helpful in a report like this, that if the Minister is to cite the names of witnesses, he might indicate who they are so that we know who was interviewed and where they were from. One can establish who most of them are by reading the report, but it would have been easier if a detailed list were given. I know Dr Fred Bell is the Director of Mental Health Services; I recognise him when I see him, and I know his status. I have found out who Mrs Patricia Tremble is, but I am not sure about some of the others.

I was surprised that the person responsible for initiating this inquiry, my friend and colleague Mr Fred McKenzie, who happened to be in the Swan District Hospital when Mr Berryman was a patient, was not interviewed. Mr McKenzie became aware of Mr Berryman and some of his problems, but as far as I can determine from

reading this report, Mr McKenzie was not interviewed. One would think that the person who started the whole business would have been interviewed. Usually when anybody makes an accusation or starts something, people want to interview that person straightaway to try to break down what he has said, or to determine whether he can substantiate what he said. As well, the matron or the nursing staff of that hospital who had Mr Berryman as a patient, and who according to the verbal reports of my friend were appalled by Mr Berryman's condition, were not interviewed. I find it quite amazing that these people were not called in for interview.

I agree with the Hon. Peter Dowding—on such matters he talks a great deal of sense—that it would have been better had the Minister been able to compel people to attend as witnesses, and been able to take evidence under oath. If that course had been adopted we might have felt happier about the evidence we received, and it might have allowed for a better inquiry to be conducted. As the situation is, the inquiry was by its nature unsatisfactory. Not only was that the case, but also, as my friend Mr Dowding pointed out, some of the inquiries were made on the Minister's behalf, by the solicitor who assisted him. So, the Minister did not hear that evidence firsthand anyway. I am not surprised at this because Ministers of the Crown are busy people, but I do not think in any case he should have been asked to make such an inquiry.

The report is deficient on those two grounds: Firstly, it was made by the Minister into his department; and, secondly, he did not ask to give evidence the people who one would think should have been asked. Another point is that he said at page four of the report—

In the course of the inquiry I interviewed 17 witnesses and considered many files and documents.

At page five he said—

It is not possible to enumerate each of the files and documents considered during the inquiry but they included relevant files from the Mental Health Services, the Public Health Department and the Crown Law Department, various statements obtained by the C.I.B., documents made available by the Coroner, and documents made available by the Daily News.

I wonder why it was not possible to enumerate those files and documents. Surely such an enumeration would not have taken more than four or five pages; of course it was possible to enumerate them. It would be quite interesting to deter-

mine the kinds of documents the Minister did consult. I realise some of the files by their very nature would be confidential, and I do not suggest the Minister should have quoted from them, but he should have listed them so that we may know the full range of the inquiry. By just reading about the kinds of documents the Minister used we might have been in a better position to judge whether the Minister's examination of those documents was adequate.

Certainly for the reasons I have given—the Minister's failure to invite the Hon. Fred McKenzie, and the matron and nursing staff of the Swan District Hospital associated with Mr Berryman, to talk with him, which indicates that the Minister's range of witnesses was not good enough—my opinion is that the report of the inquiry is unlikely to be as useful as it might have been. I find those circumstances to be unsatisfactory.

The rest has been covered fairly well by my colleagues. I do not intend to quote in detail the various other sections of the report. I was worried by the Minister's remark at page 35 of the report, as follows—

In a paper published in *Volume 16 of Clinical Genetics, 1979, pp.103-108* by a West Australian, Dr. Marie T. Mulcahy, the author observes that her study of Downs' syndrome cases in Western Australia in the fiscal years 1911-1965 revealed that only 19 per cent of such cases survived to age 40-49 years, only 4 percent survived to age 50-59 years and only 3 percent survived to age 60-64 years. It is thus apparent that the fact that Mr Berryman had survived as long as he had was itself rather extraordinary.

The Minister said quite properly—

I was not surprised to hear Drs. Hamilton, Lyon and Hollyock each say that, to their knowledge, there was little medical experience in Western Australia of the difficulties of caring for an elderly Down's syndrome sufferer such as Mr Berryman was.

What worries me is that this view that Mr Berryman was lucky to be alive at all, that he was a terminal case, was due to die, was just an old Down's syndrome patient anyway, seems to colour some of the findings. The important point is not whether Mr Berryman would die—it is accepted he was very sick—but is whether in the process of his dying he suffered unnecessarily. The *prima facie* evidence before my friend Mr McKenzie suggested Mr Berryman was in a deplorable condition when he arrived at the Swan District Hospital, and was suffering unnecessarily.

Interesting little comments can be found in the report such as that at page 29—

Upon his return to Penn-Rose, Mr Berryman was suffering from pneumonia. This was treated with as much success as could be expected in the circumstances.

I do not know what that means. It is one of those happy throw-away lines that should not appear in a report like this. I do not say Mr Berryman was not treated with as much success as could have been expected in the circumstances, and a careful reading of the rest of the report suggests that he was, but this kind of statement is one we could have done without. I would have preferred the report to be more specific. I do not think this is being unduly academic, asking for all the "i's" to be dotted and the "t's" to be crossed, but it is asking for precision, which is always desirable in a case like this.

The Hon. H. W. Gayfer: Yes, sir!

The Hon. ROBERT HETHERINGTON: I am not interested at this time in judging whether the accusations are correct, but it seems to me that they need further inquiry.

Further, at page 29 the Minister stated—

Late in 1980, and after Mr Berryman had ceased ambulating, he developed what Dr Hollyock described as a decubitus ulcer on the sacrum—

I hope I have that pronunciation correct, but the Minister will put me right if I do not. To continue—

—caused by Mr Berryman continuously lying on his back. It is clear that this did not result from any want of attention or care on the part of either of the doctors or Matron and Mr Herron. Attempts were consistently made to turn Mr Berryman and to have him lie in various positions but, for obvious reasons, he did not understand the importance of these attempts . .

The report continues, but the important point is that later it is indicated that at night the lodging house was left in the charge of one 24-year-old employee, who had no nursing experience. She was there most nights, but not every night; therefore there were some nights when no-one was there at all. It seems she would look at Mr Berryman in the morning, and along with others mop him up. That is hardly an indication that the greatest care was taken with Mr Berryman. During the day he could not be persuaded to lie on his back because he was difficult to handle, but at night no attempt was made to persuade him to do anything, and quite often nobody was in attend-

ance at the home. It seems clear to me that the general and trained staff at that time were inadequate, a situation which should not have been allowed to occur. That does not mean necessarily that the proprietors were not decent and well-meaning people, but it does mean they could not cope with what they had.

Perhaps they had bitten off more than they could chew, they had more people to take care of than they could cope with, or their number of staff had dropped off—I do not know. However, the situation had reached a stage, based on the evidence the Minister cared to cite, of things not being good enough. It becomes clear from reading the report, and as indicated by the evidence cited by the Minister, that the staff of Pyrton were happy for Mr Berryman to return to Penn-Rose from Pyrton because Mr Berryman regarded Penn-Rose as home. At page 24 of the report the Minister said—

It is clear from what several witnesses told me and from reports contained in the files that Mr Berryman regarded Penn-Rose as his home and that he was very happy indeed residing there.

Such evidence as I can find points to that fact while Mr Berryman was well. The Minister then says at that page—

While Matron Herron was, admittedly, the only qualified and experienced nurse at Penn-Rose, I have no doubt that she dispensed to Mr Berryman and, for that matter, to the other residents at Penn-Rose, professional and appropriate nursing treatment.

I do not know on what the Minister bases his “no doubt” that the treatment was professional and adequate, even if there was enough of it.

Was Mrs Herron capable of dispensing sufficient of the right kind of treatment in this kind of establishment with 24 people, some of whom were patients in need of care?

In the next part of the report one paragraph seems inconsistent in that the Minister had just said he had no doubt that Mrs Herron dispensed professional and appropriate nursing treatment; that is, he had no doubt of her professional qualifications, and this seems to be agreed upon. However, he said—

Notwithstanding this conclusion, it must be said that the overall standard and level of staffing at Penn-Rose was not adequate for the care of persons who required more than minor or occasional nursing attention.

Yet from the evidence in the report we note that here was a man who was slow, senile, ill, breaking

out in sores, with a pin in his hip causing a lesion that was becoming infected, and who, from the evidence cited by the Minister in the report, obviously was in need of fairly constant nursing attention, but he was not in a place that could offer anything but minor attention. On page 25 of the report the Minister said—

It may be that a lodging house providing residential accommodation for generally healthy adults requires only minimal supervision overnight. I offer no concluded opinion on that point. But a lodging house which accommodates up to 24 persons some of who are, by illness or infirmity or other cause, in need of consistent nursing and medical care ...

In other words, it looks as if all was not well. I just wonder what condition the other patients were in. I wonder what the other 24 were like, some of “who”—to quote the Minister’s words—required more than minor or occasional nursing attention.

We have an establishment which had a staff consisting of a matron; her husband; two young women in their early twenties, without training in nursing; a cook; and a part-time gardener—according to the report—to look after 24 people, some of whom were by illness or infirmity in need of constant nursing and medical care. It does not seem to me to be a satisfactory situation. On page 36 of the report the Minister said—

I do not think that I can avoid the conclusion that Penn-Rose, staffed only (leaving aside the cook and the gardener) by one qualified nursing sister, and by her husband and two young women who were, in effect, employed as domestics, and without qualified staff on duty in the nights, was a less than satisfactory establishment at which to nurse a man such as Mr Berryman, particularly when the lesion on his hip developed in early 1981. I appreciate and accept the inevitability of Mr Berryman’s sad decline, which had clearly commenced before the end of 1980, but I remain concerned as to the capacity of Penn-Rose, when viewed as a total unit, to cope with the demands imposed upon it.

Later in the report the Minister discussed the allegation that there was a desire to keep Mr Berryman in Penn-Rose until he was cleaned up. Although this evidence was not proved, it seems inconclusive and it seems to me that we need a further inquiry. We need a real inquiry. We need an inquiry of some depth.

At the beginning of his report, the Minister said that with the new Mental Health Act—I am not sure whether it has been proclaimed yet but no doubt the Chief Secretary will tell me if he gets to his feet—things such as this will not happen again. He seems to imply that at the end of his report. I suppose this is a comfort, but the worrying aspect is one still does not know what happened last time.

We do not know whether Mr Berryman did suffer needlessly and unnecessarily. I have no doubt, as the Hon. Norm Baxter says, that other people may have suffered like this and we have not heard about them. We probably would not have heard about Mr Berryman had it not been for the hardly fortunate coincidence of my colleague's having a kidney stone and being in hospital at the same time as Mr Berryman. These things happen by accident and this suggests that if an incident like this turns up only by accident, we need some reorganisation and an in-depth inquiry to make sure we are aware of what is happening in nursing homes, without accidentally finding out about them.

It would have been a good idea had we had a better inquiry, and it would be a good idea still if we had a better inquiry. I take some consolation from the fact that the Minister, at the beginning of his report, was concerned, as he was at the end, to see that regulations and licensing will prevent the possibility of whatever happened at Penn-Rose happening again. Certainly the tone of his report seems to suggest that what happened was undesirable.

He did not sheet home the blame, but the implications of the report were such that the blame was pointed in all directions, without a conclusion. In the interests of the people concerned we should have a better inquiry so that we may have a closer look at the evidence to ascertain whether it was a matter of human error, accident, or something that just happened. It may have been a matter of bad administration by a Government department or a matter of good intentions gone wrong. It could have been something worse—it could have been all these things, especially when we consider the report.

It would seem to me that it is comforting that there is still a possibility that some action will be taken about the title "nursing home" and similar titles so that their use will not mislead people, as apparently was the case with Penn-Rose—a lodging house described as a nursing home. Otherwise, people will assume that because a place describes itself as a nursing home with a matron in charge, it is a place where one can safely leave old and ill

relatives. Perhaps it is not and this matter needs to be looked at.

I take comfort in the Minister's intention but no comfort in the Minister's report. As I said, it is wrong in principle. It is deficient in method, done by the wrong person in the wrong way. It is contradictory, inconclusive and unsatisfactory. For those reasons I support the motion of my friend and colleague, the Hon. Fred McKenzie, that there be a proper and legal inquiry into the whole matter.

THE HON. G. C. MacKINNON (South-West) [8.26 p.m.]: It had not been my intention to speak on this motion for several reasons; one being that I think it is quite absurd that the Minister for Health is in the Legislative Assembly and the matter is being discussed in this place. The two ex-Ministers for Health in this place are a little out of touch. The Shadow Minister for Health is also out of touch. One would have expected him to do far more research on the matter. I changed my mind and decided to speak after hearing some comments because I felt I ought to protect some of the people with whom I worked for six years.

I suppose we will continue to suffer for a long time from the fact that the Opposition has very little ministerial experience. In the 27 years I have been in this place, the Labor Party has been in Government for six years. In some ways this is regrettable but in other ways it is quite praiseworthy. It is regrettable because of the lack of experience of that party. I find it quite abhorrent to have members and senior members take the stand that, *ipso facto*, the Minister is a liar, and to use Mr Kelly's recent words "He is not telling the truth and not being thorough."

Contrary to the views of Mr Hetherington, in-house reports and in-house examinations are common in every country I have visited.

The Hon. Robert Hetherington: I know that.

The Hon. G. C. MacKINNON: I have spoken with competent people who have operated under the Westminster system. They have expressed no doubt that in terms of realism in-house inquiries frequently are more satisfactory than inquiries held by outside agencies which have all due deference paid to the rules of evidence and the like, but have not a real understanding of the problem.

In 1969 when I examined the United Kingdom system of health I asked one fellow what it was like. He asked what I would like to think it was like. I had no answer. He said he had a box of reports on the system and some said that the system was beaut, one said it was falling to pieces, one said that with some improvements it could be made to work, and so on. In other words, he could

give me an independent inquiry report that satisfied any opinion I held. That is not uncommon.

It is an axiom, or perhaps a truism, that the most noteworthy Minister who has been sacked for any sort of reason was Profumo and that was not for playing up but for lying. No Minister can ever afford not to tell the truth. One does not read a report such as this with the basic assumption that everyone who operates in this field is a crook, is dishonest, or heartless—quite the reverse. We must operate under the premise that everyone in this field is an ordinary human being doing the best he or she can under difficult circumstances.

I was Minister for Health for six years under circumstances different from today. At that time Dr Hamilton, whom I appointed to the position that he so recently held, was just starting with the department. I think my name is on the Pyrton institution. That was hailed as a great advance. We got the children out of the Claremont Hospital and into separate establishments. We accepted that mental retardation and handicap could not be handled by Mental Health Services, but the children had to be left there for a time. I go back to the time when we had one person sitting in the middle of a room occupied by handicapped patients, and paid a small addition to his salary simply to change their napkins, because that was all the service they were given. We experienced a tremendous lack of expertise and knowledge.

It has always amazed me the way people have been prepared to care for handicapped children, with all the disadvantages of the handicapped, such as an inability to take oneself to the toilet, and the like. I have never ceased to be full of admiration for such people and we have never experienced any shortage of them. The Pyrton institution was designed so that it could be literally washed out with a fire hose because of the problems associated with some mentally retarded children. From the comments made here tonight, one would think only the worst type of people were involved in caring for these people; that simply is not true. Indeed, there is not enough money in the world to pay them.

I could not carry out the tasks performed by these people. When I was Minister, I used to visit each of these institutions once a year and, although I am difficult enough to live with at the best of times, for about a month after my visits, I would be practically unbearable. I am an emotional person, and it really got to me. Despite all the horrific sights I saw in my 5½ years in the Army, including 3½ years in a prison camp, I never failed to be moved by these children. Yet adults care for these children with tremendous

love and affection. I am quite sure that Mr Berryman was shown the same sort of affection.

Let members visualise for a moment the sorts of problems associated with the care of a man such as we are discussing. Initially, he suffered from Down's syndrome. Such people are happy enough; indeed, we used to place them in the factory training centre at Claremont Hospital, and would have at least one at each table because they laughed and joked and kept the other patients happy. Nevertheless, they are difficult to handle. Mr Berryman had become incontinent in several ways; he had had a prostate operation to try to alleviate his urinary troubles. He had a pin in his hip as a result of a motorcar accident—nobody's fault—which had produced an ulcer which was difficult to treat. He had lost weight. I lived under conditions where people lost immense amounts of weight. My weight dropped to 9½ stone and under such conditions, ulcers develop automatically. Unfortunately, we did not have anaesthetics, and we used to cut them out with a sharpened spoon—a teaspoon for small ulcers, and a dessertspoon for large ulcers. If people do not believe me, I can show them a few scars. Down's syndrome patients suffer from bad skin condition, which exacerbates their ulcers.

What tremendous motivation is needed by people handling such patients, when the poor fellow cannot respond with the same sort of reaction of normal people by saying, "That hurts", or, "I want this."

One would think from the comments of members opposite that these hostels and institutions had not long been in existence. Originally, Mr Hutchinson presided over an amendment to the Mental Health Act to allow them in one form. Subsequently, that provision was expanded by me to provide for a subsidy arrangement, organised by the State Government. At the time, it was hailed as a most magnificent step forward. The scheme operated in conjunction with the system we used to cater for the frail aged. It was carried on by Mr Ron Davies and, subsequently, by the Hon. Norman Baxter, Mr Ridge, and Mr Young, with occasional amendments to the Act to provide for tighter provisions. At the time, it was hailed as being a very advanced proposition, moving away as it did from institutionalised care. These people were taken out of the hospitals and placed under the control of people who cared.

We have heard tonight from Mr Kelly about slapping, as though Mr Berryman was beaten up. I have been a hospital patient when suffering from a kidney stone complaint; the pain was so bad I was just about tearing the sheets apart. I was slapped; the nurse slapped my bare bottom. I

must say I really did not object too much! I believe that is the sort of slap referred to on page 25 of the report, where Miss Hayes made the following statement to the police—

At times when Mrs Herron was cutting the skin away Mr Herron would slap Reggie with an open hand when Reggie played up.

That sort of thing is not uncommon. I have slapped my poor defenceless children once or twice, and I think they grew up to be better men because of it. It is all a matter of the way in which one uses the phrase, and tonight it was used to imply this fellow was literally bashed, and the boots put in. I do not believe it.

No-one would know better than the Hon. Win Piesse that we are dealing with the art of curing people; it is not an exact science, but the practice of trial and error. The Hon. Robert Hetherington was quite right when he said mistakes had been made. I read in the newspaper the other day the account of a poor fellow who had the wrong leg amputated. Of course mistakes are made. In the heat of the moment after a terrorist bombing or a multiple accident, mistakes are made. I have seen instances where doctors have said, "Bring him through; leave that one—he has no chance." They have left that person to die because their obligation is to save the people who can be saved. We are dealing with reality, and these situations must occur.

On page 26 of the report, Mr Herron is reported as saying—

There is a big difference in my view, in my way of thinking, between smacking Reggie, which is the same as smacking a kid, and striking him.

We can all appreciate the difference. It is rare to find a parent who has not smacked his child in one way or another. A child can be smacked in fun, to make a loud noise on his nappy-covered bottom. There is a world of difference between striking and hitting, and I am suggesting the implication of Mr Kelly's remarks tonight was that Mr Berryman was not smacked but struck. However, I do not believe it.

Members may think I am a trusting sort of person, but I am not; I am as suspicious as the next person. I have never ceased to be amazed at the patience of the people running these institutions. Okay, they must make money, but many of these people feel they are doing something special in caring for mentally handicapped people.

On page 31 of the report the following statement appears—

It is accepted by medical science that Down's syndrome sufferers have abnormal skin.

That fact might have been mentioned by speakers complaining about Penn-Rose. On page 35, the following appears—

In fairness to those who were called upon to treat Mr Berryman during his most difficult decline, particularly Dr. Lyon, Dr. Hollyock and Matron Herron, it should be said that the evidence that I have received revealed that each of these persons did his or her professional best in the circumstances.

That would be beyond doubt. Why would a Minister of the Crown lie about a thing like that? It is too absurd even to consider he would lie. This new-fangled idea of doubting the veracity of Ministers of the Crown is something I abhor. It did not take place a few years ago. I have witnessed quite brilliant members, and firm and stalwart members of the Australian Labor Party, stop new members in their tracks at the suggestion that Ministers of the Crown were not telling the truth. Ministers cannot afford not to tell the truth because at the slightest suggestion that they are not being truthful, I have no doubt there is not a Premier or a Prime Minister in Australia who would not ask for their dismissal, and get it.

In the report, the Minister makes the following statement—

It is my intention to take whatever action is necessary, including changes in legislation if required, to improve the effectiveness of inspection procedures.

We are talking about the practice of the art of medicine and I doubt whether anyone in that profession would not have looked back over a week of his life and said, "I could have done that a little better. I could have made that patient a little more comfortable, or done that differently." Many people can say about their jobs, "I do a good job and do not make many mistakes." However, that does not apply in the field of medicine because so often a doctor cannot obtain an exact response from a patient; how much more difficult is it to obtain such a response from an elderly Down's syndrome patient?

Mr Berryman was 62 years old when he died. It would be interesting to know how many Down's syndrome patients in the State are of that age.

The Hon. Robert Hetherington: Not many.

The Hon. G. C. MacKINNON: Until not very long ago, the treatment of mentally retarded people did not present much of a problem, for the simple reason that these people died, if not at

birth, then shortly after birth. Yet here is a Down's syndrome patient living to be 62 years of age. I would think much of the treatment of that man would have been quite new, and perhaps the significance of that point could have been raised in the debate. The Hon. Win Piesse would know about that.

I believe we ought to have a far greater acceptance of these people than we have. This reminds me a little of one inquiry which was made, the results of which were touted through one of the newspapers. This inquiry was carried out by an organisation called "scientology", an organisation which I have no reason to love and whose members have no reason to love me—I banned scientology for some years. This organisation held an inquiry into mental hospitals and it raised a great deal of nonsense. Yet the report was taken up by some members of Parliament as being factual.

I am alarmed by the dearth of goodwill evidenced by comments I have heard towards some of the people who look after the mentally retarded in this State. In my view we ought to be doing all we possibly can to encourage the big-hearted people who undertake this work. I know people working in homes who take mentally retarded people home for the weekend. They wipe their noses, wipe their bottoms, change their napkins, and do more things for them than one has to do for a 10-month-old baby. Above all, they give the mentally retarded people affection. The sort of witch-hunt of which we have seen some evidence tonight tends to deny this State the services of some people who do this magnificent work. We ought to dismiss summarily the motion moved by the Hon. Fred McKenzie and leave the matter to the Minister for Health.

THE HON. I. G. PRATT (Lower West) [8.46 p.m.]: I would like to comment on the effect of a debate such as this on this House and on the standing of Parliament generally. Firstly, I would like to state very clearly that I believe the Hon. Fred McKenzie brought this motion forward in good faith. Obviously he is following up a matter in which he believes, and the speech he gave tonight shows us that he cared very much initially about Mr Reginald Berryman and others like him, and that he still cares about them. However, I do not share his belief that a judicial inquiry is warranted.

The Hon. Fred McKenzie and the Hon. Robert Hetherington both referred to the fact that in his report the Minister said he had taken steps to ensure that this sort of thing does not happen again, and that legislative moves will be made to ensure that is so.

While the Hon. Fred McKenzie made his contribution in what I consider to be a very responsible manner, the same could not be said about his colleagues who followed him. I was disgusted to hear the approach taken by the Hon. Peter Dowding, who seconded the motion. We all know that the honourable member specialised in another discipline, and in that area people on opposing sides try to discredit completely the people on the other side.

The Hon. Robert Hetherington: He also knows a great deal about the law.

The Hon. I. G. PRATT: The Hon. Peter Dowding is well accustomed to a system where people are accused and it is tried to establish that they are telling lies, whether or not this is so. We are all aware of a trial which is attracting a great deal of publicity and we know that the legal officers on both sides have spent a great deal of their time trying to discredit the witnesses who have appeared for the opposing side. They have tried to prove that witnesses are liars or that they are incompetent. Surely both sides cannot possibly be right! I do not believe that behaviour such as that has a place in this House.

As members of Parliament we should deal with facts, and I believe the Hon. Fred McKenzie endeavoured to deal with the facts as he saw them. However, when the Hon. Peter Dowding rose to speak, he challenged the Minister's right to make judgments. He said that the Minister had no legal training, but he then proceeded to call a person involved in the case a liar on his own interpretation of a medical situation. I was not aware that the honourable member is a trained physician.

I am sure that the honourable member's speech was not intended for this House because none of us would be convinced by what he said. Obviously his comments were intended for the Press and for the public. If one needed to be convinced of that, one needed only to notice to whom he was talking. His little theatrical performance was directed solely to the Press Gallery and I doubt whether he looked more than once or twice at the Presiding Officer or members of the House. It was a serve for the public, and it did not really matter whether it was true because the member's statements would be covered by parliamentary privilege.

That brings me to my reason for speaking tonight. I believe that throughout the world today there is very little faith in politicians. It is performances such as the one to which I have referred which have led to that situation. Twenty members of Parliament may conduct themselves

properly and carefully, but if one abuses the situation, all politicians attract the same label.

Let us look at the fact that tonight the Hon. Peter Dowding called the proprietor of this nursing home a liar. No doubt that man will be labelled in the Press tomorrow as a liar as a result of a statement made under parliamentary privilege. The Hon. Peter Dowding said that Mr Berryman was sick. We all agree with that statement. The Hon. Fred McKenzie told us that and every member agrees that that is so. Mr Berryman had some pretty horrific wounds. Certainly he was very sick, but because he was sick the Hon. Peter Dowding said the proprietor of the nursing home was lying when he said that Mr Berryman put his hand up a lady's dress. Apparently that statement made the owner of the nursing home a liar.

I do not know what experience the honourable member has in the treatment of people with intellectual handicaps. Some very close friends of mine have been involved with handicapped and slow learning people, and the ladies within that group know that one of the problems they face is that as some slow learning children become intellectually handicapped adults, there is an increasing emphasis on sex. I know of some women who have left this particular service because they are embarrassed that these intellectually handicapped people want to touch them. If the people dealing with these handicapped persons do not like this sort of behaviour, they get out of the service.

I had some family involvement with these problems because my daughter trained as a psychiatric nurse. She told me about things that happened and situations that arose. She completed her training, but she found she could not handle the conditions and she left. It takes a very special person to handle what goes on. Whether some intellectually handicapped people are sick or well, they still emphasise sexual matters.

The Hon. Robert Hetherington: I think you are making an overstatement there. It is a generalisation.

The Hon. I. G. PRATT: The Hon. Robert Hetherington can think whatever he likes. He has already told us several times tonight that he can think whatever he wants.

The Hon. Robert Hetherington: Well I am sure you are making an overstatement.

The Hon. I. G. PRATT: I do not argue with his right to think what he likes.

The Hon. Robert Hetherington: No, I did not do that. You are getting me mixed up with the Minister for Labour and Industry.

The Hon. I. G. PRATT: All right, if the Hon. Robert Hetherington says he will not believe what he wants to believe, he can have it that way.

The Hon. Robert Hetherington: Really, I am overwhelmed!

The Hon. I. G. PRATT: When he stops mumbling, I will get on with my speech.

The Hon. Robert Hetherington: All right, I will let you get on with it—the sooner you get on with it the sooner it will be over.

The Hon. I. G. PRATT: I can understand that he is discomforted.

The Hon. Robert Hetherington: You don't discomfort me either.

The Hon. I. G. PRATT: These people do not have our inhibitions. If they want to do something, they just go ahead and do it. Such actions may take place with the person with whom they are associated at that time. It is not the sort of situation we are used to dealing with. The Hon. Peter Dowding said that because this man was sick he would not take such action and, therefore, the proprietor was lying. That is absolute rubbish.

The Hon. Peter Dowding said also that the proprietor of the nursing home was stealing money because he said a bed had been reserved for this patient. I would have thought that if these people were misappropriating money, there would be plenty of scope within our laws to deal with the situation without an inquiry. If we know that someone has stolen money, we do not need to hold a judicial inquiry. It is a simple matter; the theft is reported to the police, and something is done about it. Yet here, under parliamentary privilege, the Hon. Peter Dowding stands up and claims that the proprietor was stealing money. The Hon. Peter Dowding has labelled someone as a liar and a thief, but in doing so I believe he has cast a slur upon members of Parliament and upon Parliament itself.

Privilege, as we all know, is something special given to us. It should be used wisely. It protects us if we need to refer to information which cannot be aired safely in any other way. Anyone can look at the Minister's report, but the Hon. Peter Dowding has pulled out bits of the report and converted them into slanderous statements which he would not be game to make outside this House. He said that because the evidence was not given under oath, the witness concerned must be lying. Is that a reasonable inference—that anything not said under oath is automatically a lie? Again I say that I do not really think the Hon. Peter Dowding has asked us to believe these things—he was simply seeking publicity. It did not matter whether what he said was true—what mattered

was that he obtained some publicity in his witch-hunt against these people.

The Hon. Peter Dowding told us tonight that he wants a judicial inquiry so that the proprietors of this particular establishment can be dealt with. He has prejudged them; they are guilty. He now wants someone to prepare the noose. That fact will be amply apparent to anyone who reads *Hansard*.

I am very concerned that a member of Parliament should use the privilege of this House to make statements which he obviously would not make outside. In the past the Hon. Peter Dowding has been rather anxious to challenge people to go outside and say things. He tells other members that such action is open to them. It is a pity he does not take his own advice, go outside the House, call a Press conference, and make the statements there. I do not think he would have the fortitude to do so.

I am sorry I cannot support the Hon. Fred McKenzie in his motion. As I said, I believe him to be sincere, but I do not agree with him that there is a need for a judicial inquiry.

THE HON. R. G. PIKE (North Metropolitan—Chief Secretary) [9.00 p.m.]: Firstly, I point out to the Hon. Bob Hetherington that the Mental Health Act 1962-1979 is still in force and the new Mental Health Act 1981 has not yet been proclaimed.

The Minister for Health conducted an inquiry into the whole question of Reginald Berryman's death and much innuendo and criticism has been levelled at him by the member for Melville.

The Government is satisfied the Minister for Health has thoroughly and properly examined all the aspects affecting Mental Health Services and the Act referred to. Many hours were spent in this study and the Minister was assisted by professional counsel. The Government believes all questions which can be answered have been answered and any further inquiry, particularly one of the type requested, would be unnecessary and repetitive.

It is not responsible to advocate the expenditure of public funds on a costly judicial inquiry into matters which already have been adequately and satisfactorily dealt with. It would not seem appropriate, therefore, for me to respond in this Chamber as Mr Young has not had the opportunity to reply to the similar motion standing on the notice paper in the Legislative Assembly.

I ask the House to vote against this motion, because, as I have said before and as the Hon. Graham MacKinnon has very competently pointed out already—I thank him for his com-

ments as I thank also the Hon. Norman Baxter and the Hon. Ian Pratt—since this matter has been raised in the other House and the Government is in the process of considering it there, members should vote against it. I repeat a motion in similar terms, using almost identical words with a number of minor alterations—as the Hon. Fred McKenzie would know—has been moved in the Legislative Assembly and has not been dealt with yet by the Minister for Health.

THE HON. FRED MCKENZIE (East Metropolitan) [9.03 p.m.]: I thank those members who supported the proposition that an inquiry should take place and I am disappointed in the members who indicated there was no need for one. I would have thought that, because of the controversy that surrounds this issue, members opposite would have been pleased to provide the opportunity for a proper inquiry to take place. I emphasise the point made by the Hon. Peter Dowding that the accused was the person who conducted the previous investigation and that cannot be regarded as a proper inquiry. In those circumstances, how can one expect a report to criticise the Minister or his department?

Mr Baxter indicated endeavours had been made to obtain a bed for Mr Berryman in Swan District Hospital when it was known his condition was deteriorating to such an extent that he needed hospitalisation. However, I ask for how long an endeavour was made to get Mr Berryman into the hospital? When I saw Mr Berryman on 24 February, it was obvious his condition had been deteriorating for rather a long time. The sores were deeply imbedded and they were described adequately in the quotations I made earlier.

On page 32 of the Minister's report the following statement is made—

However, after the skin broke down the lesion did not readily improve and the situation, as it existed by mid February 1981, is best explained in Dr Lyon's own words:

"I think we were in a predicament in that we knew that he had a large lesion which was going to be very difficult to heal under any circumstances and this was complicated by the pin, which would then impair it. It was also complicated by our knowing that he had infection in the bone . . . we suspected that the bone was not united and that at no stage did we think, Dr Hollyock and myself, that he would become fit for anaesthetic. We were therefore in the predicament of knowing what ideally we would like to do, but not thinking that it was

possible. However, we did transfer him to Swan Districts for a surgeon's opinion on that."

The Minister continued—

The decision to transfer Mr Berryman to Swan Districts for review by a surgeon was made by Dr Lyon on or about the 16th February 1981 . . .

It can be seen that attempts were made to admit Mr Berryman on 16 February and he was actually admitted to Swan District Hospital on 21 February, so the time spent looking for a bed was not great. Indeed, at the most, it took five days, because the decision to transfer Mr Berryman was taken on 16 February which I contend was much too late. To continue—

. . . and it took some days to arrange for the transfer to Swan Districts which took place on the 21st February 1981. As has been indicated, Dr Lucas examined Mr Berryman and Dr Lucas told Mr Zelestis, who spoke to him on my behalf, that he advised against operation for although he thought that Mr Berryman was "a dying man" he formed the opinion that to operate would inevitably affect the quality and term of whatever life remained for Mr Berryman. Dr Lucas reached this view for many reasons including Mr Berryman's general infirmity his chronic chest infection, his immobility (and the consequent difficulties with the treatment of his chest infection and with his general management) and the fact that Down's syndrome sufferers have an added difficulty in surviving general anaesthetics.

I referred to those matters, because allegations were made about Mr Berryman's condition and Mr Dowding's comments were criticised. It was quite evident Mr Berryman was very ill and certainly not in a position to be able to respond in the manner suggested by Mr Herron in some parts of the report.

The Hon. N. E. Baxter: Read the statement at the top of page 39.

The Hon. FRED McKENZIE: I shall read those points when I come to them. I turn now to the night staff who were referred to by Mr Hetherington, and indicate that on page 24 the Minister made the following comments—

I have already mentioned that Miss Hayes was at the premises in the evenings. She was not paid for this. She was simply provided with board and lodgings. She understood that if anyone was sick she had to look after them and, if necessary, to call Matron Herron. She

did check Mr. Berryman at night when his condition had deteriorated.

That situation can hardly be described as "night staff". Somebody was on call, but was not paid.

The Hon. N. E. Baxter: This was not a "C"-class hospital; it was a lodging house.

The Hon. FRED McKENZIE: That is the point I am making. Penn-Rose should never have been allowed to operate as a "C"-class hospital; that is why a proper inquiry should be conducted. We must prevent these sorts of things happening again. I thought Penn-Rose was a nursing home and it is referred to as such in the telephone book. These so-called "nursing homes" are damaging properly registered "C"-class hospitals. In fact they are only lodging houses and as a result they can get away with murder.

The Hon. N. E. Baxter: I think that is a very strong statement.

The Hon. FRED McKENZIE: It is a factual statement.

The Hon. N. E. Baxter: It is not a factual statement.

The Hon. FRED McKENZIE: That statement has been borne out by the evidence before us.

The Hon. N. E. Baxter: It is not borne out at all in the evidence.

The Hon. FRED McKENZIE: A number of people in Penn-Rose were not well and many people have died in that establishment.

The Hon. N. E. Baxter: A number of people have died in "C"-class hospitals.

The Hon. FRED McKENZIE: That might be so, but this is a lodging house. In fact, I shall read—

The Hon. N. E. Baxter: Read the statement at the top of page 39.

The Hon. FRED McKENZIE: —a comment which appears on page 25 of the Minister's report—

It may be that a lodging house providing residential accommodation for generally healthy adults requires only minimal supervision overnight. I offer no concluded opinion on that point. But a lodging house which accommodates up to 24 persons some of who are, by illness or infirmity or other cause, in need of consistent nursing and medical care, must surely provide at least one trained nurse on duty at all times including overnight—and "on duty" in the sense of being required to regularly attend and check those persons who require particular care. Penn-Rose clearly was such an establishment.

Those are the Minister's words. To continue—

While Miss Hayes was doubtless a conscientious person she was quite unskilled in nursing. I cannot accept that it was proper to leave Mr. Berryman virtually unattended overnight, particularly after the lesion on his hip became apparent.

Those are not my words; they are the Minister's. Those words appear in the Minister's report and they represent one of the better features of it.

In spite of what the Minister said in his report, I am concerned these practices might continue. In a number of places in the report the Minister said that he would do this, that, or the other, but the House is about to rise and no legislation has been introduced designed to prevent these sorts of practices. In his report the Minister said—

It is my intention to take whatever action is necessary, including changes in legislation if required, to improve the effectiveness of inspection procedures and examination of private hostels to secure enforcement of the Act.

Later on he went on to say—

I will investigate the possibility of taking legislative action to ensure that the title "Nursing Home" and similar titles are not used in an improper or misleading way.

I will also investigate the possibility of greater cooperation between local authority health inspectors, Public Health inspectors and Mental Health Services' inspectors in procedures for the examination of lodging houses and private hostels. My aim in this regard will be to ensure that, wherever possible, persons who ought to apply for licensing under these provisions will in fact do so.

Local government has enough tasks to perform now and unless the licensing of these institutions is policed by a body other than a local government authority, the situation we are debating will continue.

On page 26 of the Minister's report the following appears—

When I asked Mr. Herron whether he had hit Mr. Berryman on such occasions the following evidence was given:

"Mr. Herron: Sure, I smacked Reggie because he would continue to put his hand up the skirts of the female staff and up the skirts of Bridgie or the Matron—Mem—when this treatment was going on. That is why I smacked him, and I would smack anyone. If he had been a normal person I would have more than smacked him.

Mr. Young: Was there any other occasion when you had to restrain him in such a way as to actually smack him?

Mr. Herron: No. That is the only reason I smacked him.

I continue to quote as follows—

Mr. Herron: There is a big difference in my view, in my way of thinking, between smacking Reggie, which is the same as smacking a kid, and striking him. I don't know what it is legally, I am not involved in that, but I smacked him with an open hand because he was a naughty little so-and-so and he knew what he was doing."

The Hon. N. E. Baxter: Is Mr Herron telling lies there?

The Hon. FRED McKENZIE: To be kind to him, I would say that, in my opinion, what he is saying is at least suspect.

The Hon. N. E. Baxter: Why?

The Hon. FRED McKENZIE: Because of the condition of Mr Berryman. When Mr Berryman was transferred from Pyrtou he was still suffering from pneumonia and all the evidence given by witnesses and contained in this document indicates Mr Berryman was in a generally declining condition to the extent that doctors said he was dying.

It was said to me in the hospital, "There is nothing we can do for this man, Mr McKenzie. He will die." That does not alter the fact that while he was in the process of dying, he represented a case of substantial neglect of his condition.

The Hon. I. G. Pratt: Are you prepared to say with or without parliamentary privilege that he was wrong?

The Hon. FRED McKENZIE: I am prepared to say it to an official inquiry. I am not going to be silly enough to run out of this House and make statements because the people who run Penn-Rose, the Herrons, have a reputation for serving writs on people. They threatened Mental Health Services with writs when it would not give them a licence to operate under the Psychiatric Hostels Association. They served a writ on the *Daily News*. I do not know what has happened with that.

The Hon. N. E. Baxter: That will be on until they get to court.

The Hon. FRED McKENZIE: The case will take a long time to get there.

The Hon. I. G. Pratt: What is sinister about using the processes of law?

The Hon. FRED McKENZIE: I am giving the reasons that one has to be reasonably careful. I am seeking an inquiry into this matter because I am not satisfied with the action taken to date. I do not know whether it is factual, but the evidence before me and what I have witnessed indicate gross neglect by that hostel. It should have been closed down long ago.

The Hon. N. E. Baxter: Did you see that in the hospital or at Penn-Rose?

The Hon. FRED McKENZIE: I saw it in the hospital. I saw a man who could not speak for himself. I did not go seeking this information; I was asked by a concerned member of the staff at Swan District Hospital to go privately into a room where this man was. No-one else had access to that room. I do not know why the man was in a private room away from everyone else.

This was not the first case from the Penn-Rose Nursing Home. The hospital had two cases previously; that is even mentioned in the Minister's report. So it was not just an isolated incident. I will go back to the question of Mr Berryman's being smacked with an open hand and being told, "You naughty little so-and-so." Mrs Herron's evidence was to the same effect. The report continues—

Whilst such treatment of Mr Berryman cannot be condoned and, indeed, can justifiably be deplored, it is important that this form of restraint be considered in the context of Mr Berryman's potential to detract from his treatment and care with demonstrably forgivable, but very distracting, behaviour.

The Minister accepted what the Herrons said; the Hon. Peter Dowding says he does not, and of course neither do I. Mr Baxter said the doctors had a set against Penn-Rose, but I do not believe that to be the case. I have no criticism of Mental Health Services; certainly it may have made one or two mistakes in respect of placing Mr Berryman in Penn-Rose, but overall its behaviour and attitude towards Mr Berryman was entirely different from that of the proprietors of Penn-Rose.

I will repeat again what the Director of Mental Health Services said in a letter. I refer also to what Mr MacKinnon said, all of which I fully support. I think Mr MacKinnon has the wrong view about Penn-Rose. Pytton does a marvellous job; it is absolutely fantastic and we ought to support that institution. It is a great pity that Dr Guy Hamilton has left the service now and has gone to South Australia. He was probably frustrated

about these actions. Mr MacKinnon talked about institutions and a need to get people away from them. I agree with him. In fact, I find myself in agreement with most of what Mr MacKinnon said.

The Hon. Robert Hetherington: He wasn't talking about your motion though, was he?

The Hon. FRED McKENZIE: He was talking about other matters; that is the point. He did not touch on Penn-Rose.

The Hon. G. E. Masters: I think in a general way he did very much. He related to the discussion. I thought he was very good.

The Hon. Robert Hetherington: Speak up.

The Hon. G. E. Masters: I thought he was good. I hope you listen to him. You will learn a lot from him.

The Hon. Robert Hetherington: Graham MacKinnon? Of course I listen to him.

The Hon. FRED McKENZIE: This is one of the criticisms that the Director of Mental Health Services had about the Penn-Rose Nursing Home or lodging house—

It is considered that, despite attempts by the Division to modify your attitude to the management of residents, the atmosphere at Penn-Rose has remained unacceptably rigid and institutional, . . .

That represents the very thing that Mr MacKinnon did not want to happen to these intellectually handicapped people; that very thing was happening at Penn-Rose, if one believes what the Director of Mental Health Services said.

The Hon. N. E. Baxter: Don't you realise Dr Bell was much more rigid than Mr or Mrs Herron? I can assure you that he was. I have personal knowledge of it.

The Hon. FRED McKENZIE: He was prepared to criticise. A little later in the report it says—

Subsequently, a number of residents of Penn-Rose who were on aftercare were discharged. As Matron and Mr Herron frankly admitted to me, Penn-Rose continued to accommodate varying numbers of intellectually handicapped and/or socially dependent persons. Further more, this fact was known to senior officers of the Mental Health Service including, in particular, Dr. Hamilton and Dr Bell. There was obviously an absence of effective communication between Dr Hamilton and Dr Bell upon the subject of the enforcement of the 1976 amendments both in relation to Penn-Rose in particular and, in

relation to other similar establishments, generally.

There was a reluctance on the part of Mental Health Services to pursue the matter of what was happening at Penn-Rose, and I suppose that was for very good reasons. The report continues—

Dr Bell suggested that the very restricted statutory power to enter unlicensed premises and examine a resident hampered enforcement of the licensing provisions. This was both generally and in relation to Penn-Rose in particular.

This was what was being done in relation to Penn-Rose. Dr Bell said he found it difficult to inspect the premises, for some unknown reason. Obviously the Herrons were very difficult people to deal with. I believe the matter ought to be pursued by way of a proper and full judicial inquiry despite what members say. I think an independent body should look into this matter.

I want to conclude on this point in respect of licensed psychiatric hostels: In his summing up the Minister said—

An application for an appropriate licence was made in 1977 but was refused. The Herrons initially sought to reverse this decision, but after a time, they did not persist in their attempts to obtain a licence. Following the dispute with the Herrons, the Mental Health Services did not take any steps to remove the circumstances which placed Penn-Rose in the position in which it required a licence. That is, Mental Health Services did not, whether by the exercise of power or persuasion, attempt to arrange alternative accommodation for those residents of Penn-Rose whose presence there rendered licensing necessary.

The proprietors were not prosecuted under the provisions of the Mental Health Act because of a lack of departmental resolve in relation to the enforcement of the provisions of the Act in relation to Penn-Rose in particular and in relation to other establishments generally. In relation to Penn-Rose, this lack of resolve appears to have resulted from the differences that arose between the Herrons and the Mental Health Services in 1977, evidentiary difficulties . . .

I emphasise this point because I made it earlier, and I have not received an answer.

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

The Hon. FRED McKENZIE: I emphasise this point because it is one of the reasons that these matters tend to get swept under the carpet and no action is taken to ensure that the intellectually handicapped in our community, no matter how old they might be, are protected and adequately cared for. The report continues—

. . . and a broader concern as to the capacity of licensed institutions to cope with all of the persons who would be discharged from unlicensed establishments if the latter were prosecuted.

There in the Minister's own report is a statement which should cause us a great deal of concern; that is, if it is insisted that people who are not in licensed establishments do in fact go into licensed establishments to receive the proper care and treatment that they deserve, there simply would be not enough licensed establishments to cater for them. That is something we ought to concentrate upon to ensure that these people are adequately protected.

I ask members to support the proposition of a judicial inquiry. Whether it is initiated in this House or the other one matters not, so long as the proposal to institute a judicial inquiry is given effect.

The Hon. Robert Hetherington: Hear, hear!

Question put and negatived.

Motion defeated.

LOCAL COURTS AMENDMENT BILL

Second Reading

THE HON. I. G. MEDCALF (Metropolitan—Attorney General) [9.26 p.m.]: I move—

That the Bill be now read a second time.

The principal purpose of this Bill is to establish a small debts court as a division of the Local Court.

In 1979 the Law Reform Commission of Western Australia issued a report on the establishment of a small debts court and this has formed the basis of the provisions of this Bill. An extensive examination of the commission's recommendations was undertaken by Crown Law Department officers with a view to their practical implementation.

The aim of establishing a small debts court is to make available a speedy and inexpensive settlement procedure similar to that of the Small Claims Tribunal having jurisdiction up to \$1 000. A plaintiff in an action will be able to elect to have the action heard and determined by the small debts court where the debt or liquidated demand in money does not exceed \$1 000.

The Bill contains also a provision for two or more causes to be joined where none of the respective amounts claimed exceeds \$1 000. It is intended also that where a cause of action exceeds \$1 000 a person may abandon the excess of \$1 000 so that the matter can be dealt with by the small debts court.

There is no compulsion on a person to elect to have the matter dealt with by the small debts court and it may continue to be dealt with under the general provisions of the Local Courts Act.

The small debts division of the Local Court will be constituted by a stipendiary magistrate whose primary function will be to attempt to bring the parties to the action to an acceptable settlement.

The hearings will be in private unless the court directs otherwise. Representation will not be permitted unless the court considers that an agent should appear as a matter of necessity and approves that accordingly. Representation by a legal practitioner will not be permitted unless all parties agree and the court is satisfied that the other parties would not be thereby unfairly disadvantaged.

The proceedings in the small debts division will be final and not subject to appeal unless the court has exceeded its jurisdiction or there has been a denial of natural justice to a party.

Judgments will be enforced in the same way as any other Local Court judgment. Preliminary or interlocutory proceedings will not be allowed.

The division will not be bound by the rules of evidence, but will be permitted to inform itself as thought fit. However, in arriving at a decision, the general law will apply.

Clerks of courts will be instructed to assist litigants in procedures and in the completion of forms and it is intended also that an explanatory pamphlet will be available to members of the public.

The fees will be the same as for ordinary claims and, following the service of the summons, any subsequent documents will be served by post. Legal costs, other than certain fees, will not be awarded, but the magistrate will have a discretion in exceptional circumstances where an injustice might otherwise occur.

Two other matters also are contained in the Bill. The first relates to the vacation period in every Local Court. Section 161 of the Local Courts Act makes provision for a vacation period to be observed between 20 December and 18 January, during which period the court is not permitted to sit.

The reason for this section has been lost in history, but it is believed that it permitted resident magistrates to clear leave entitlements without the need to provide relief during their absence. Also it could have been that many solicitors took leave over the Christmas period and therefore may not have been available for cases if they were scheduled for hearing during that period.

All country magistrates are now provided with relief during absences on annual leave and there is no real reason that the vacation period should continue. The Bill deletes this provision from the Local Courts Act. Although it is possible that some solicitors may still take leave over the period of the Local Court vacation, others do not and hearings can be scheduled if the vacation period is removed. This will enable better use to be made of magisterial time.

The other matter referred to above deals with the action to be taken by the court on the failure of a judgment debtor to appear. Differing views are held on the interpretation of the existing legislation and it is desirable that the matter be clarified. In the past some magistrates have imposed fines on judgment debtors without first inquiring as to the reasons for their non-appearance. Other magistrates have issued bench warrants for the arrest of judgment debtors for non-appearance.

Whilst it is possible to interpret the legislation in both ways, the Government believes that the logical procedure would be for the debtor to be brought before the court if he fails to appear. The Government believes there is little point in adding the further financial burden of a fine on judgment debtors. It is therefore proposed that to overcome the obvious anomalies which result from the stricter interpretation, the power to fine judgment debtors should be removed and provision included for the judgment debtor to be brought before the court as soon as possible on a bench warrant.

The small debts court will be complementary to the Small Claims Tribunal.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. J. M. Berinson.

ACTS AMENDMENT (RESERVES) BILL

Second Reading

Debate resumed from 20 October.

THE HON. G. E. MASTERS (West—Minister for Labour and Industry) [9.31 p.m.]: We are dealing with the Acts Amendment (Reserves) Bill, the Land Amendment Bill and the Land Amendment Bill (No. 2) concurrently and as 1

understand it we will be dealing with the Bills separately in the Committee stage.

I will endeavour to answer the matters raised by honourable members who in the main, I believe, support the legislation, although the Hon. Sandy Lewis did disagree with some areas.

This is a general attempt by the Government to rationalise the operation of the Department of Lands and Surveys and certainly to improve the management of reserves in a way that it will give reserves generally greater protection. That is something new in the legislation and the Government hopes to overcome the problems encountered at the present time when a need exists to excise areas of land from reserves which make management difficult. We cannot simply draw a line on a map and hope more protection is provided in relation to the system of easements.

It is the intention of the Government to overcome duplication in the department so that administration and lands and surveys mapping will be easier to operate. Consultants have been used over many years and generally speaking they have justified their existence by producing proposals that will make for the more efficient operation of Government departments and private enterprise.

The reorganisation of departments is always difficult and it is recognised there may be some problems. Therefore, the proposal at this stage is simply to reorganise the department as an interim measure to see how it works. If it is found that it is necessary to reorganise the department in the way suggested, further legislation will need to come before Parliament.

In the legislation a division is proposed which clearly defines the Surveyor General and his duties and makes his department identifiable in a way that will make it easier for him and the department to operate. It is not an empire-building programme and it is not the wish of the department or the Government to increase the number of staff or the work load to such an extent that the department will grow over a period of time. Indeed, the existing support staff will be used but the changes will create greater efficiency.

A number of members raised specific points and I will try to answer them; should I miss any I hope members will bring them to my attention.

The Hon. Jim Brown, as lead speaker for the Opposition, was concerned as to why ministerial approval was required instead of approval by a board of management. This is not meant as a reflection on those boards. It is simply a protective device that will do a number of things; particularly it will take account of environmental

matters. I make the point because sometime last year a local authority in the south-west issued a licence for the removal of sand from a parklands and recreation reserve. As a result the reserve suffered quite seriously and a great deal of public outcry resulted which came not only from the local people but also from people in Perth. I believe if the Minister is able to oversee the issue of these licences greater protection for conservation areas will result.

The Hon. J. M. Brown: There were two points that I raised. I also queried whether the Minister would be expeditious in giving that approval.

The Hon. G. E. MASTERS: What we must understand is that because of the experiences of the Government and the public in these matters it was felt it would be proper for the Minister to be the overseeing authority in the issuing of licences. There is nothing sinister about this at all. The Minister's powers will not be used in a way that would cause offence. We need to look at these matters and I point out again that conservation issues are of importance, and this is the main thrust of the change to the legislation.

The honourable member, along with other members, raised the matter of Class "A" reserves. The Hon. Sandy Lewis would know only too well—he drew my attention to it some 12 to 18 months ago—that it has been the accepted practice that where land is proposed to be taken from Class "A" reserves authority must be obtained from Parliament before that action can be taken. Further, it has been the accepted practice that where additions are proposed to be made to Class "A" reserves the necessary action could be carried out without reference to Parliament. This practice has been followed for at least 50 years and it has been mistaken. We are simply rectifying the situation and now applications for both deletions and additions to Class "A" reserves will come before Parliament. Of course, the provision is retrospective in an endeavour to make sure actions taken in the past are proper and acceptable.

The honourable member spoke also of easements and I have mentioned already the importance of these. Certainly, the amendment will assist one of the major projects in this State; that is, the natural gas pipeline. It is not brought forward specifically for that purpose, but there is no doubt it will help in the construction of the pipeline and be of great benefit to those concerned.

The existing provisions require that where public utilities need to pass through a reserve the necessary arrangements must be made and the proposal marked on a map. This causes management problems and it is a difficult way to handle

the matter. The Government is suggesting that, with the agreement of management boards, the public utility which is required to use a reserve should be granted an easement. This will be convenient for those people involved. Any easement through a Class "A" reserve must have the consent of the controlling authority—for instance the National Parks Authority. Where the National Parks Authority agrees with the easement it will be permitted, but if it disagrees the easement may not take place and the matter must go before the Government.

The Hon. A. A. Lewis: How does the National Parks Authority know it can agree or cannot agree when it does not know what is on the reserve and does not know what are the flora and fauna? You are talking arrant nonsense.

The Hon. G. E. MASTERS: I guess the honourable member will raise that matter in Committee; but I do not agree with him. I have the greatest respect for the President and members of the National Parks Authority, who would make a careful assessment.

The Hon. A. A. Lewis: You will give them some money to do something for a change?

The Hon. G. E. MASTERS: It would be remiss of me and the honourable member to suggest the authority would not pay due regard to expert advice that is available in this State from the Department of Fisheries and Wildlife, and the Department of Conservation and Environment. With respect to easements the National Parks Authority would behave properly and take due care before agreeing to them. If it refuses an easement the matter will come before this place for ratification in the form of a reserves Bill.

The Hon. Jim Brown raised the matter of agricultural lands and the changes put forward in this legislation. The amendments to the legislation will remove the statutory emphasis in relation to clearing and cultivation of land. The Government has recognised that in many land releases large-scale clearing is unsatisfactory.

New cultivation methods can be used so that clearing does not take place to the extent it has in the past, with associated damage. Minimum clearing is encouraged where possible and new plans for farm releases will be drawn up by the Department of Agriculture where land releases take place. Decisions are not made without great consultation. This part of the Bill will not cause any concern to members.

The Hon. Sandy Lewis made some strong comments and raised some doubts about certain sections of the legislation while supporting others.

The Hon. A. A. Lewis: He what?

The Hon. G. E. MASTERS: He referred to section 29 of the Land Act in relation to how land can be used. On reflection, I am sure he would agree this is a sensible thing to do because it is difficult to define these matters and there is an overriding provision which covers those areas where definitions did not fit.

The Hon. A. A. Lewis: You did not understand what I said.

The Hon. G. E. MASTERS: Mr Lewis will probably enlighten me. The honourable member also raised the matter of conditions and limitations on the vesting orders. I took the trouble to read the honourable member's speech and to get the answers to the questions he raised.

The Hon. A. A. Lewis: It is obvious you do not understand the English language.

The Hon. G. E. MASTERS: The conditions and limitations on vesting orders—the power to impose conditions and the opportunity for special conditions—seem reasonable to me. I do not think it would be fair to say the Minister would interfere without very good reason, and unless the conditions of the vestings were being ignored. It seems reasonable in any circumstances, if land is vested for a specific purpose and conditions of management exist and are ignored, or management is not carried out properly, that the Minister would reclaim the land in the interests of the public. It may be for conservation purposes. I do not think we need fear the powers of the Minister in dealing with these vesting orders and the limitations on the orders.

The honourable member had strong words to say in relation to the requirement for management plans; he said it was unreasonable, too costly, and an imposition on the management boards.

The Hon. A. A. Lewis: I beg your pardon?

The Hon. G. E. MASTERS: I thought the Hon. Sandy Lewis said that.

The Hon. A. A. Lewis: Whose speech did you read?

The Hon. G. E. MASTERS: I understood him to say—

The Hon. A. A. Lewis: You have read somebody else's speech. I said none of those things.

The Hon. G. E. MASTERS: If the honourable member agrees with me, that is fine.

The Hon. A. A. Lewis: I do not agree.

The Hon. G. E. MASTERS: Management plans on reserves are a reasonable proposition because some environmentally sensitive areas exist, and if the Minister or the Government felt a need

had arisen to bring in management plans, that would be a proper and responsible course of action for the Minister to take.

The honourable member also raised the matter of Class "A" reserves, and I think I covered that point in answering the Hon. Jim Brown. The Government and the Governor proclaim reserves at present, and they are classified as "A", "B", "C" and so on. The Class "A" reserves do not come to Parliament; they never have done, and it is not proposed that this should occur now.

The Hon. D. J. Wordsworth: It is not?

The Hon. G. E. MASTERS: No. Class "A" reserves are set aside by the Government and the Governor by proclamation. They are brought to the House afterwards.

The Hon. D. J. Wordsworth: How are they brought to the House afterwards?

The Hon. G. E. MASTERS: The proposals are put on the Table of the House and proclaimed, and they are there to see; but they are not there to be debated. The proposal is that any additions or deletions from Class "A" reserves will come to Parliament by way of a reserves Bill.

The Hon. D. J. Wordsworth: Can you justify why that should be so for an addition or deletion?

The Hon. G. E. MASTERS: That is the proposition. The setting aside of Class "A" reserves by proclamation of the Governor has been acceptable and successful, and has caused no bother.

The Hon. A. A. Lewis: It is completely illegal.

The Hon. G. E. MASTERS: That is not true.

The Hon. A. A. Lewis: Read your Crown Law ruling.

The Hon. G. E. MASTERS: I have read it.

The Hon. A. A. Lewis: Can you tell me how it is different?

The Hon. G. E. MASTERS: That is not true. The Crown Law opinion said no deletion or addition could take place to an existing Class "A" reserve. That is the legal advice we have. We are rectifying that by saying additions and deletions to Class "A" reserves shall come to Parliament.

The Hon. A. A. Lewis: It is a disgrace.

The Hon. J. M. Brown: We have been handling three Bills together, and it was spelt out in the Land Act that the deletions would not have to come to Parliament until they were a *fait accompli*.

The Hon. G. E. MASTERS: No, that is not right. The deletions from Class "A" reserves will have to come to Parliament in the way of a reserves Bill.

The Hon. J. M. Brown: Before the action has taken place, or after?

The Hon. G. E. MASTERS: It is ratified by Parliament. We will deal with this further in Committee.

The question was raised as to why there should be two registers. I suppose it is a service to the public. Two exist at the moment—one at the Lands and Surveys Department and one at the Land Titles Office. It is reasonable to keep two registers for the benefit and convenience of the public.

The Hon. Sandy Lewis raised some questions about the operation of the Surveyor General and suggested a lot of work should go to private enterprise. He suggested also that perhaps the department could be reduced from its present number to a small number headed by the Surveyor General, and private enterprise could do the rest. The Surveyor General's division is not related purely to survey. It embraces the establishment and maintenance of the basic survey system and includes a number of operations which come under the heading of cadastral surveying, geodetic surveying and topographic surveying.

The Hon. D. J. Wordsworth: What does it mean?

The Hon. G. E. MASTERS: "Cadastral" relates to boundary surveying. I looked it up today because I knew the Hon. David Wordsworth would ask that. "Geodetic" refers to benchmarks or trig points, and "topography" refers to 3-D—the contours. I hope members are impressed with this.

The Hon. A. A. Lewis: Contours?

The Hon. G. E. MASTERS: Yes, heights and depths. If one takes a photograph and gives it 3-D, one gets heights and depths. Mapping and cartography relate to the drafting of the maps. These go with remote sensing computer surveys and land utilisation. I point out to honourable members who have suggested that the department has grown unnecessarily in recent years that the number of staff at 30 June 1980 was 440; at 30 June 1981 it was 436; and at 30 June 1982, it was 427. One could not suggest empire building has been going on in that department. I draw to Mr Lewis' attention the fact that 80 per cent of the industrial survey work, which is a large part of the department's operations, goes to private enterprise.

I have touched on the question of consultants, and I said that their use was a proper course of action for any department or Minister to take when a complete review of the department's operations was taking place.

The Hon. David Wordsworth raised some matters with which I would like to deal. He mentioned specifically section 29 of the Act and referred to the deletion of certain parts of the Act relating to the use and the benefit of the Aboriginal inhabitants. Section 29(1)(q) rounds off by saying after all the definitions—

For any other purpose of public health, safety, utility, convenience, or enjoyment, or for otherwise facilitating the improvement and settlement of the State.

This is a very broad and wide reference. All the other matters are defined clearly, but these broad terms would cover any other situation where a need arose to set aside a reserve. We are simplifying the Act by getting rid of some of the outdated parts of the legislation. It will be easy to invoke a blanket-type provision; it is common sense and reasonable.

The honourable member talked about revocation of vesting orders, and said they were rather frightening. The power to revoke vesting orders would be used only as a last resort. Provision has been made to protect a third party involved in leasing a reserve. The main use of this power would be in cases where a board of management was not utilising the reserve for the purpose for which it was set aside, or it was being improperly utilised and the land was being degraded. It is inherent in all Crown land releases that if conditions are not met, or are abused, power exists to forfeit the land. I do not think any members would argue with that.

The Hon. D. J. Wordsworth: That is not a requirement of a revocation.

The Hon. G. E. MASTERS: No, I said it is inherent. In these vestings where we are talking about environmental and conservation issues, we thought this was a proper course of action in the light of changing public views.

The Land Act Amendment Bill (No. 2) seemed to raise less discussion than the others. I believe I have covered as many of the points raised as I can. I suggest that any other matters wait until the Committee stage.

I thank honourable members for their support.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (the Hon. R. J. L. Williams) in the Chair; the Hon. G. E. Masters (Minister for Labour and Industry) in charge of the Bill.

Clause 1: Short title—

The Hon. A. A. LEWIS: I will not go into great detail in the Committee stage of this Bill. I am disgusted with the Minister's answers to my questions. He misrepresented my speech during the second reading debate. I feel sorry for him in respect of the answers he has been given. Obviously, he did not read my speech and nor did his officers. I think it is disgraceful that we cannot get answers in this place, and that we are fobbed off with nonsense in the Minister's reply. It is obvious that these Bills will be passed and that the Government could not care less about conservation in this State. It is a tragedy for our children and our grandchildren. I hope the Minister does not come here with conservation Bills in the future and expect this Chamber to support him in any shape or form if he goes on with the nonsense that he has spoken tonight.

The Hon. G. E. MASTERS: I take strong exception to Mr Lewis' remarks. I read his speech and endeavoured to get reasonable answers for him. I put forward my reply in all sincerity, believing that to be what the member was asking about. If he has not received the answers he wants, perhaps he will indicate what he wants. I went through the matters he raised and answered them to the best of my ability. I certainly did not attempt to mislead the House during the second reading stage, or to fob anyone off. I simply put forward what I believed was in the legislation.

If the member does not agree with what is in the legislation, we will have to argue these points and finally end up by voting on the matter. I have as much interest as anyone in conservation and environmental issues in this State. I refute the arguments, and I take exception to what the Hon. Sandy Lewis said.

The Hon. A. A. LEWIS: I asked the Minister when he referred to the Government's attitude to IUCM classifications in any of his replies. That happens to be one of the most important things to have come out in the debate. The Minister did not deal with that at all.

We are trying to tighten up the reserves situation and trying to put names to reserves, but the Minister has not answered. Either the department or the Minister does not know what I am talking about. Maybe my hearing has suffered from being in this place for so long, but I heard no answers from the Minister. The Minister can take exception for as long as he likes, but he has not answered me.

Exactly the same sort of thing happened in the Minister's replies on the other Bills. It is a disgrace!

The Hon. G. E. MASTERS: I dealt with the matters that I thought the member mentioned specifically. Particularly he spoke of the Select Committee report, which I have read on a number of occasions. I agree with some of it, and I disagree with some of it.

When the honourable member spoke about the classification of land, I thought he was making a general comment on what should be done. I accept that it is a very important issue, and that his committee did a great deal of work. The Select Committee report has not been ignored. It will take some time to be implemented, and it will be of great value in years to come.

The classification of land into reserves traditionally has been on the basis of "A", "B", and "C" class. The Select Committee put forward a proposal based on world categories, and I see the value of looking at that, probably in the future.

At present we are dealing with particular areas of operation. The Minister responsible for the Department of Lands and Surveys has indicated an overall examination will be made of the Land Act. It may be that the matters raised by the honourable member will be considered at that time.

I accept that the honourable member raised those points, and that they were of value. They have been recorded in *Hansard*, and I have made my contribution.

The Hon. A. A. LEWIS: Again the Minister rises and says, "I have made my contribution." We are dealing with the Acts Amendment (Reserves) Bill, trying to be rid of numerous types of reserves. We are trying to streamline the operation of the Land Act. I have put forward the IUCM recommendations, and yet the Minister is not inclined to answer. The credibility of this Chamber is stretched to twanging point!

It worries me that the Minister here and the Minister in another place think they can get away with that sort of answer. The Minister here ought to report progress and obtain some decent answers. Obviously the Minister and his associate in the other place do not want to answer the questions, because they are too embarrassing.

The future of this country matters, and it is all bound up in this matter. The future of our reserves is bound up in the subject.

It may be that the department did not understand what I was talking about but it should consider the subject. The Select Committee went into it in far greater depth than the Ministers or the department, because they had not heard of the recommendations or studied them.

The Minister should not come into this place and start telling us that he has answered questions when he has not even attempted to answer them.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 3 amended—

The Hon. J. M. BROWN: The Hon. Sandy Lewis has made comments concerning reporting progress. During this debate we may have the need to do so. Clause 4, amending section 3, deals with the commencement of the actions to be followed in section 29, and it redefines "public purpose". The need for the amendment is consequential upon further amendments being accepted.

I mention clauses 5 and 6, and I point out to the Minister that this is the start of the concern which has now been expressed by other members. I considered that the purpose was quite satisfactory, until I had the opportunity to give it further study.

The Hon. G. E. MASTERS: I am not sure whether the honourable member is objecting to the change. There is nothing sinister about the proposed change. As he said, it matches the amendment to section 29.

The meaning of "public purpose" stands on its own, with the addition of "any other purpose declared by the Governor". We are not trying to do something sinister; we are simplifying the matter.

The Minister, the Governor, and the Parliament have a responsibility to make a judgment, bearing in mind that we all understand the importance of land in this State, and the importance of setting aside reserves and protecting them. The legislation is all about that.

I am sorry that the honourable member sees something wrong in our saying "for other public purposes", because the public purpose is what we are here to serve. We are in the Parliament to serve the public as a whole, and our decisions are judged by the public. If we make the wrong decision, the public will vote in a way which will mean we will not be here any more.

I am sorry that the honourable member sees a problem in this. I would have thought it was a simple matter, and acceptable to all.

The Hon. J. M. BROWN: The Minister has explained the Government's point of view quite satisfactorily in supporting the deletion of "in addition to any purpose specified" because it deals with section 29 of the principal Act.

In the first instance clauses 4 and 5 amend section 29. I have reservations about the need to amend section 29, after reading the debate that took place in this Chamber and discussing it with

interested parties outside the Parliament. Because of the comments of the Hon. Sandy Lewis, we on this side of the Chamber have been approached to take appropriate action.

I reiterate that the Bill should have gone to a Select Committee. Clause 4 is the commencement of the problem that I envisaged. I accept the Minister's explanation, but it is not a satisfactory response to the people who showed the same concern as I.

Clause put and passed.

Clause 5: Section 11 amended—

The Hon. J. M. BROWN: This deals with section 11; it is complementary to clause 4 and I will not traverse the ground again.

Clause put and passed.

Clause 6: Section 29 amended—

The Hon. J. M. BROWN: This relates to the concern expressed quite strongly by others, for reasons well known to the Minister. The purpose of amending section 29 of part II of the Land Act is to delete all the purposes that have been specified. It covers all the conditions under which reserves may be vested.

The new proposal is to delete the objects and purposes presently in the Act and to replace them with the words "and the purpose for which any such lands are so reserved or disposed of shall be specified in the reservation or disposition". My concern is that the specific purposes for creating reserves previously have been known to the public, but this will no longer be the case. Inherent in the Act is the ability to create reserves and help the progress of the State, but we are now presented with this rather loose amendment, and this is not a progressive move by the Government. After reviewing the remarks of Government members I have become concerned at this amendment.

After a great deal of difficulty I managed to obtain a copy of the report of the Select Committee which inquired into these matters and I inform the Minister that report is of great value. Awareness of and responsibilities for land use are well documented in it. The report indicates that the Government's move to amend the Act in this loose way is not a good move.

It is not good enough for the Minister to say this is what the Government intends doing and there will be no problem, and the Minister will exercise his responsibilities. I see this move by the Government as removing something valuable to the community whereby previously people were able to know exactly where they stood in relation to the requirement for the vesting of reserves. This amendment requires more than the fleeting

comments we have heard from the Government. I see dangers inherent in removing the specifications presently in the Act.

The Hon. G. E. MASTERS: To all those members who have expressed concern I indicate there is no need for concern. This amendment is not unrealistic if one reads section 29 of the Act. Section 29(1) states that the Governor may reserve or dispose of any lands vested in the Crown that may be required for the following objects and purposes—and it then lists the purposes, and they include cemeteries, the sinking of shafts for iron, copper, tin, water, etc. In effect, it means that if something is not defined it can be covered in any case, and when we consider paragraph (q) we find we are really changing nothing. The Act gives us a list of purposes for which reserves can be set aside and section 29 finishes up by saying—

For any other purpose of public health, safety, utility, convenience, or enjoyment, or for otherwise facilitating the improvement and settlement of the State.

In effect, we could quite easily just put a line through paragraphs (a) to (p) and rely on paragraph (q).

The public interest is to be defined in any case and when a reserve is to be set aside its purpose will be specified with the Governor's approval. The purpose will further be specified in the *Government Gazette* so the public will know all about it. It will be specified again in the vesting order and it will appear in the reserves register.

I understand members' concern but I assure them there is no reason to be concerned. This amendment is a simplification of the present Act. There is nothing sinister about this amendment and I am sorry if perhaps some members of the public believe something underhand is happening, because that is not the case. Section 29(1)(q) indicates that a reserve can be set aside for matters other than those defined in the earlier paragraphs. We are putting this into simple words, bearing in mind the department's efficiency is being considered presently and computerisation is being undertaken. The legislation will still provide protection.

The Hon. A. A. LEWIS: That is the sort of loose answer that comes with loose legislation. The Minister wants two bob each way. The Minister is saying that section 29(1)(q) allows us to do this now, and to blazes with everyone. He sees no reason to tell Parliament what the reserves will be for. He says the Governor can do it.

The Hon. G. E. Masters: That is not what I said. I said the purpose has to be specified by the

Governor in the *Government Gazette*, just as must happen now.

The Hon. A. A. LEWIS: That is not what the Minister said.

The Hon. G. E. Masters: I read it out.

The Hon. A. A. LEWIS: Then the Minister read it wrong. Why should this Chamber not know what a reserve will be for? Why should we have trust in the Minister or the department? The Minister's answer was not good enough. We have the right to expect these matters to be specified rather than the Minister merely going to the Governor and having things signed. These matters should be specified to the Houses of Parliament. We are meant to be the people responsible; we are meant to pass the Budgets; we are meant to make the laws.

The Minister blithely tells us that the Governor would sign a vesting order. The Governor would very rarely not sign one; perhaps the Minister could indicate the number of times he has not signed an order. It is all very well for the Minister to wipe off the Parliament at one fell swoop. This amendment may be good for the department but it is not good for us. We will not put up with it. We will continue to fight to have the Minister and the front bench responsible to this Parliament. If they do not want to be responsible to this place we might have to do something about it and find Ministers who are.

I am sick and tired of hearing Ministers tell me, "You don't have to worry; you can trust us." The Hon. Jim Brown and I are worried about this series of Bills.

A committee of this Chamber has looked into this matter in far greater depth than has any Minister. Can the Minister tell us why we should trust him or a department that has made so many mistakes? He should not ask us to have trust in him. Trust starts when Ministers listen to what the Parliament has to say. I hope the Minister can tell us why we should trust him and the Minister in the other place, and the department.

The Hon. J. M. BROWN: Like the Hon. Sandy Lewis, I was not satisfied with the Minister's comments. I was well aware of section 29(1)(q) which the Minister says is the same as the amendment being made to the Act. But previously the purpose of a reserve has been spelt out and paragraph (q) has not limited this. Therefore, we wonder why it is necessary to change the Act. The vesting of reserves is one of the most important areas of Government. I am well aware that the purposes of a reserve must be published in the *Government Gazette*, but all this does not justify

the removal of the objects and purposes presently in the Act.

To delete this part of section 29 and replace it with that provided in the clause does not seem to be necessary from an administrative point of view, whether or not the department has computers. The existing section has served its required purpose without any major amendment since 1958.

The Minister provided some satisfactory answers to other questions, but in regard to this clause I do not see the need for replacing section 29(1)(a) to (q).

The Hon. G. E. MASTERS: Firstly I will deal with the comment of the Hon. Sandy Lewis. It is not the wish, desire, or intention of the Government to turn its back on the Parliament. The existing situation is that a reserve is set aside after it goes through the process of obtaining Executive Council approval, and the Governor has accepted the recommendation of the Executive Council. As the Hon. Jim Brown rightly said, section 30 of the Land Act provides that the purpose for which a reserve is set aside must be spelt out in the *Government Gazette*. Obviously the Parliament will have the same situation under this legislation. No change will occur; we are not to take the matter out of the hands of members of this Parliament—we are simplifying the provision. It may be asked, if we are simplifying the provision, why not leave it as it is? But why should we leave in streams of words when the provision can be simplified and we are in the process of simplifying all the workings of the department? We are making clear the purposes for which reserves are set aside for public benefit, and the benefit of our future generations. I cannot see any problem in that, and say again that there is no sinister plot; simply, we are tidying up the legislation.

The Hon. A. A. LEWIS: The situation is becoming worse.

The Hon. G. E. Masters: I don't think I can win this.

The Hon. A. A. LEWIS: I did not intend to speak again because I thought I had made my point plain. However, the Minister does not understand what is involved. We may be able to get rid of two pages, but will we do anything to improve the provision? I do not believe we will. If we are to alter the Act, why cannot we handle that alteration sanely? Why cannot we deal with it in the way we ought to deal with it, instead of resorting to cosmetic alterations? Is all that he seeks to do—a cosmetic operation?

The Hon. G. E. Masters: There is a general reference in section 29(1)(q), and we are rewording it to simplify the matter.

The Hon. A. A. LEWIS: The Minister has said we are carrying out a cosmetic job on this Act, but why do we need that cosmetic approach at this time? The Minister is confusing me. He said this simplification is part of what the Government is doing overall, but why are we following this cosmetic course? He wonders why we do not trust him greatly. We have been told large-scale amendments are in the offing, so the logic of now having this amendment escapes me. I would like its logic explained to me.

The Hon. G. E. MASTERS: It is the practice of the Parliament when amendments to an Act are required to try to rectify in a simple way anything that should be rectified. We do that all the time with other legislation. Over the last few weeks in this House we have made changes of no earth shattering importance, but of general benefit to the reading of legislation.

Although some changes in this legislation are of no great impact, other matters are of importance. The legislation is not totally cosmetic, but it does include tidying up clauses. Some clauses are vitally important, of which I believe some members are supportive.

This clause will not change by one iota the responsibility of the Parliament and the protection afforded to the public.

The Hon. D. J. WORDSWORTH: During the second reading debate I was concerned that the definitions of reserves might become loose in the future; I felt the public may not have a full appreciation of what the lands may be used for. The definitions in the Act are extensive; after a purpose is selected for a reserve the public now have an idea of what the reserve will be used for. I expressed concern that we will not have in the future a proper definition, and I gave the example that land used by the Public Works Department may be used for any purpose that the department deems necessary, whether it be a sewage farm, or clearing ban controls.

I sought an assurance from the Minister that a detailed explanation of the use of reserved land should be made available to the public, so that in future the public would be aware of any change of use. I requested also an explanation of the use of the *Government Gazette* and suggested that something else might be used. The *Government Gazette* has almost outgrown its use. I do not know how many editions are printed each week, but we seem to have one printed every time any need arises. I do not understand how the public can follow what is happening in Government circles. Large local authorities generally keep a record of the *Government Gazette* so that they

are aware of what is happening in their regions, but other than that I wonder how the public can follow what is taking place.

The Hon. G. E. MASTERS: I ask honourable members to refer to section 30 of the Act. It sets out clearly the need to be specific in regard to the purpose for which a reserve is set aside. It is necessary for the Governor before giving approval to be aware of the purpose of a reserve. His having been made aware of that, the purpose will be specified further and set out in clear terms in the *Government Gazette* and the vesting order.

The reserve and its specified purpose will continue to be shown in the reserves register and relevant public plans. I guess the Hon. David Wordsworth is saying that although that situation exists, many people do not read the *Government Gazette*. That is a fair comment, but I do not know what the Government can do unless it works out another means of publicising these matters. That would be another consideration. The *Government Gazette* seems to be a publication taken as a report in general terms of the Government's operations.

Without a doubt the reasons for setting aside a reserve are made as clear to the public as can be expected reasonably within the Government's present operations.

The Hon. J. M. BROWN: I suppose one could refer to Section 29 as a "KISS" section—"Keep It Simple, Stupid". There is nothing as simple as that which is provided in section 29(1) of the Act, which specifies in paragraphs (a) to (q) what reserves are all about. I share the concern of the Hon. David Wordsworth that a reserve may be wrapped up in various uses of the Public Works Department. As a result of the importance of this legislation, the Bill requires another review of what it proposes to do. In other clauses of the Bill provisions of equal importance and seriousness must be raised.

We are not obtaining a comprehensive view of the legislation from the Minister, and we are trying to point out to him the way we view the legislation, which is as the public would view it. We are expressing the view of the public as it is drawn to our attention, and that is the need for vigilance over our reserves. We should not gloss over these matters with words which in years to come will be meaningless.

Clause put and passed.

Clause 7: Section 31 amended—

The Hon. D. J. WORDSWORTH: During my second reading speech I referred to the addition to or reduction of an "A"-class reserve which comes before the Parliament, and the fact that the Min-

ister may by proclamation declare a new "A"-class reserve, whether it be for the purpose of a national park or otherwise, without bringing that matter to the Parliament.

That does not seem very consistent. It is not necessary to have an addition to a reserve approved in this place because the Minister can make a new "A"-class reserve and therefore not have to add to one. I would like the Minister to explain how we can argue that we are being consistent by not requiring a new "A"-class reserve to be declared, yet an addition must be.

The Hon. G. E. MASTERS: The honourable member would know that the practice of creating an "A"-class reserve by proclamation, and setting aside land for the purpose of that reserve, has been pursued for more than 50 years. We found that additions to or deletions from such a reserve needed to be the subject of a reserves Bill in this place before they could become law.

The member was correct when he said that an "A"-class reserve can be set aside by proclamation by the Governor and instead of an addition being made to that reserve by way of a reserves Bill we could create another "A"-class reserve next to it which could in fact be attached to that reserve. That has not seemed to cause any difficulties in the past, but the Crown Law Department has drawn to our attention that this practice has not been according to law. We are putting that matter right in the legislation.

If honourable members suggest that all new "A"-class reserves should be brought to Parliament for ratification, that is not the purpose of this legislation. I put this amendment forward in good faith and ask members to support it.

The Hon. D. J. WORDSWORTH: I note from the annual report that five "A"-class reserves were set aside last year. We have had extensive conservation through reserves committee reports and the subject has been examined thoroughly. Therefore, I do not think it would cause any hardship that the matter should come before this place when it is wished to create a new "A"-class reserve.

Clause put and passed.

Clause 8: Section 33 amended—

The Hon. J. M. BROWN: This amendment deletes the definition of "person" in the Land Act. I would like to know the reason for that deletion.

Section 33 states—

"person" means any municipality, constituted pursuant to the provisions of the Municipal Corporation Act, 1906-1947,¹ and road board, constituted pursuant to the pro-

visions of the Road Districts Act, 1919-1948,¹ any other body corporate or any other persons;

The word "person" is clearly defined in this section. I did not mention this matter during the second reading debate but it appears the Minister thinks it is rather important. The word "person" is referred to frequently throughout the amendment before us.

The Hon. G. E. MASTERS: The definition of "person" is defined clearly in the Interpretation Act and that is one of the reasons we have no need to define the word in this Bill. The Interpretation Act states that a person includes a body corporate and that "person" means "persons" also. It can be singular or plural. The word was defined also in the Municipal Corporation Act and the Road Districts Act, both lapsed legislation. Therefore, there is no need to have the word defined in this legislation. It is adequately covered in the Interpretation Act.

The Hon. J. M. BROWN: I am aware of the interpretation of "person" under the Interpretation Act. However, if we look at the Parks and Reserves Act, we find section 3(4), states—

The Governor may by proclamation constitute any Board under such name as he deems fit, a body corporate with perpetual succession and a Common Seal with power to sue and be sued in its corporate name, to acquire, hold, lease and dispose of real and personal property to borrow money with the approval of the Governor and to do and permit to be done all things which are required by this Act to be done by a Board or which are necessary and convenient to be done by a Board for the purpose of giving effect to this Act.

A body corporate may be a single person. According to my reading of that Act, that authority could be granted to an individual. I would like to know why we are doing away with the definition under this legislation when it remains in the Parks and Reserves Act.

The Hon. G. E. MASTERS: Is the honourable member suggesting that by making this change, a board could now comprise one person, instead of a group of persons?

The Hon. J. M. Brown: Yes. It could be a single person.

The Hon. G. E. MASTERS: Section 34 of the Land Act, states—

The Governor may, by Order in Council published in the *Gazette*, place any reserve

under the control of any municipality, road board, body corporate, or persons, as a board of management, . . .

It could mean one person but I do not know whether that has ever been the situation. Normally, a board of management comprises a group of people who have been selected for a purpose. If the local authority is the responsible group, the word "person" would mean a body corporate or a local authority itself. When we consider the word "person" we must consider it as singular or plural.

I do not think there is any problem. Strictly speaking one could say a board of management could be one person, but it is most unlikely.

The Hon. J. M. BROWN: It is not unlikely at all. Under section 33 of the Parks and Reserves Act the Governor may, by proclamation, constitute any board in any such name as he sees fit. The Minister has not explained the reason that the definition has been deleted. Why is the change necessary?

The Hon. G. E. MASTERS: The existing definition refers to the Municipal Corporation Act 1906-1947 and the Road Districts Act 1919-1948, both of which have lapsed, so there is a need for a change anyway. Having done that, the draftsman quite properly said that the definition of "person" is clearly defined in the Interpretation Act, so there is no need to define it further.

"Person" means any municipality, corporate body or any other persons or body. Under the Interpretation Act the existing legislation allows a single person to become the governing body or board of management. There is no change in that respect. The draftsman wished to simplify matters. He quite properly said there is an interpretation anyway and maybe we should be doing more of this with all legislation, rather than continually writing in things. A person could be a board of management.

The Hon. J. M. BROWN: The definition of "person" has further implications. It means an individual could obtain an easement.

Certain persons could be under pressure to allocate particular easements. I realise that I may be transgressing by referring to another Bill, but this is why the course we are taking has complications. This may be my only chance to deal with the matter. I feel I should have a certain amount of licence to mention this in view of the fact that the three Bills have been taken concurrently for the convenience of the Chamber. I am concerned that if we withdraw the definition of the word "person" the other Bills will be affected also.

The Hon. G. E. Masters: But you see you cannot withdraw the definition of the word "person"

when it is in the Interpretation Act anyway. You want it in the Bill.

The Hon. J. M. BROWN: I want the definition of the word "person" retained in the Act because of the consequences in respect of other Bills which we are to discuss this evening.

The Hon. G. E. Masters: The same argument will apply; if it is in the Interpretation Act it covers the situation as far as that legislation is concerned also. You are quite safe; there is no risk.

The Hon. J. M. BROWN: The definition of the word "person" really does not refer to a person as an individual.

The Hon. G. E. Masters: Yes it does. That is exactly what it does do.

The Hon. J. M. BROWN: It seems to me that we are doing something which is unnecessary. I will not convince the Minister at this stage, and he has not been able to satisfy me. The problem could be overcome in the Parks and Reserves Act and I believe the definition should remain in the Land Act, as should the definitions in section 29.

Clause put and passed.

Clauses 9 to 15 put and passed.

Clause 16: Section 5 amended—

The Hon. J. M. BROWN: In his reply to the second reading debate the Minister explained the reason for the necessity for the Minister's approval in the case of the granting of a licence under subsections (1)(e) or (f) of section 5 of the Parks and Reserves Act. This arose because of the use of a reserve for quarrying by a local authority. His explanation in this regard is quite satisfactory.

The Hon. G. E. Masters: I had a win on that one, did I?

The Hon. J. M. BROWN: I wanted to know the reason; the Minister gave the answer, and I acknowledged the necessity for the amendment. I had viewed the matter from the point of view that speed could sometimes be the essence of the contract concerning parks and reserves. I accept the Minister's comments, but it was rather important to know the reason for the amendment. In my opinion the Minister's approval is more necessary in connection with paragraph (f) than paragraph (e) because paragraph (f) refers to the granting of licences for the removal of any sand, gravel, or earth.

Clause put and passed.

Clause 17 put and passed.

Title—

The Hon. D. J. WORDSWORTH: I raise the matter I endeavoured to raise earlier, which refers to protecting the investment which local governments and others have made in reserves, in the case of revocation. In his second reading speech the Minister explained that those who held leases would be protected and I pointed out that in some cases parties other than third parties could be involved; in other words, parties other than those in whom land was vested directly also could lose money without having any avenue of appeal. I am thinking particularly of recreation reserves. I had hoped for an assurance from the Minister that in the case of a revocation, local governments and others who had put money into reserves would receive compensation.

A revocation which is necessary because the local government or organisation in which the land is vested has acted improperly, is a different matter. However, the legislation does not refer only to such cases—a reserve can be revoked.

The Hon. G. E. MASTERS: My understanding is that the revocation, or the taking away—if I can put it that way—of a reserve from a managing group or, in the case the Hon. David Wordsworth was talking about, the local authority, would be done only in extreme circumstances. That would be in cases where the terms of the vesting or the purpose of the reserve were not being pursued properly; in other words, the reserve was not being used for the purpose for which it was set aside. I cannot imagine that the Government of the day would take away from a local authority a reserve which was being used for its proper purpose, kept in proper order, and on which money had been spent. In fact, even if no money had been spent on a reserve, I cannot foresee a reserve which was being kept properly being taken from anyone. I am not in a position to say that if that did happen compensation would be paid—that would be a matter for negotiation. I received an assurance from the Minister in another place that this is a protective provision which could be used where the purposes of a reserve are not being pursued. It is unfortunate that we have to even consider the inclusion of such provisions in legislation.

As the Hon. David Wordsworth well knows, occasionally reserves are used for purposes other than those for which they were put aside. I do not think there would be any risk of any Minister or Government taking away land where a large investment had been made by the person in whom the land was vested.

The Hon. D. J. Wordsworth: One would have thought it would be written into the clause.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

LAND AMENDMENT BILL

Second Reading

Order of the day read for the resumption of the debate from 22 September.

The PRESIDENT: In keeping with the instruction that I gave the other day when we determined to deal with these Bills concurrently, I will now proceed to put the question that the Bills be read a second time; firstly, in relation to Order of the Day No. 3—the Land Amendment Bill (No. 2)—after which we will then go back to do the Committee stage of Order of the day No. 3, followed by Order of the Day No. 4.

Question put and passed.

Bill read a second time.

LAND AMENDMENT BILL (No. 2)

Second Reading

Order of the day read for the resumption of the debate from 22 September.

Question put and passed.

Bill read a second time.

LAND AMENDMENT BILL

In Committee

The Deputy Chairman of Committees (the Hon. R. J. L. Williams) in the Chair; the Hon. G. E. Masters (Minister for Labour and Industry) in charge of the Bill.

Clauses 1 and 2 put and passed.

Clause 3: Part VIIIA inserted—

The Hon. J. M. BROWN: This part refers to easements, a matter which I have canvassed previously. Proposed section 134B(1), at the conclusion of paragraph (c) states—

the Governor may, upon the recommendation of the Minister, grant to any person any easement in, upon, through, over, or under any land in respect of which such a recommendation is made

That refers to Crown leases, but to me it is a cause for alarm. I know my opinion of the interpretation of the word "person" is different from that of the Minister. To allow an easement in such a manner is far from satisfactory. The decision will be made by one individual without any scrutiny. I have expressed concern already about

the release of Crown land and the way in which it will be possible for one person to agree to the release of Crown land without referral of the matter to any other body.

Certain areas of land will not be subject to any board or body other than the Department of Lands and Surveys. The Hon. Sandy Lewis interjected to the effect that I was not right. As I said in my second reading speech, if I am wrong, I would like to be corrected so that the record is straight for everyone concerned. I have not received a satisfactory definition of the requirement for a reserve, which I shall touch on later.

The Hon. A. A. LEWIS: As the Minister knows, I am concerned also and I do not believe he has answered my questions. I do not quite agree with the comments made by Mr Brown. Indeed, authorities, such as the National Parks Authority, are asked about easements in some cases. However, how does the National Parks Authority or the Forests Department—the Forests Department would be able to do it more easily than the National Parks Authority—know what is on the reserve, unless adequate money is allocated to finding out? The Department of Lands and Surveys would not know, although it would obtain the easement; but no management study would have been done.

An outside body has suggested that an environmental study should be conducted before easements are allowed to be made. That would be one way to handle the matter, but the Government has not taken full account of what occurs when easements are made through reserves, bearing in mind management bodies are not allocated adequate funds to find out what is on the reserve. Easements can continue to be granted, but the body handling the reserve will not know what it is controlling prior to the easement being granted.

At Three Springs the National Parks Authority made the mistake of locating the ranger's house in one of the three areas in which pygmy opossums breed in this State. If the National Parks Authority can do that in one of its own parks, how can the Minister convince me it can give information to the Department of Lands and Surveys about a pipeline, an SEC line, or anything else going through a reserve? Unless management studies are carried out on these reserves, how will we know what damage is being done? This is the crux of the problem and I cannot obtain an answer from this Minister, the Minister in the other place, or the department. No-one seems to want to answer the question.

I hope the Minister can explain why he thinks this Bill is all right when I have not been given

the appropriate information. If the Minister can tell me money will be allocated to obtaining that information, I shall be the most happy person in the Chamber.

The Hon. G. E. MASTERS: In answering the Hon. Jim Brown, I point out it is true that the Governor may, upon the recommendation of the Minister, make a grant to a person as defined in the Act—that is, "person, persons, body corporate, or the like". The Minister may make a recommendation to the Governor only under certain conditions, but where no-one other than the Minister or the Department of Lands and Surveys has an interest, it would be very simple for the Minister to make a recommendation.

Any Minister of the day has a responsibility to make sure the damage is kept to a minimum and we must expect that, when an easement goes through a Crown reserve or Crown land, some environmental damage will occur at least in the short term. Therefore, the Minister must take the advice of experts employed by the Government, mainly in the Department of Conservation and Environment. In relation to the handling of Crown land, this advice is a must for Government departments. Crown surveys are carried out and advice is obtained before grants are made.

These matters are not set out in the Bill, but they are normal practice and they are carried out by Governments regardless of political colour.

Governments will have to pay more attention to these problems, bearing in mind the pressures of conservationists and the like. I do not see the risk referred to by the honourable member and, where a reserve has been set aside for a specific purpose, such as a national park, the honourable member would know that the agreement of those responsible—for example, the National Parks Authority—must be obtained before an easement could go through the reserve.

The Hon. Sandy Lewis has quite rightly said that, in many cases, Crown land and some reserves have not been investigated fully and it will be some years before an ideal situation can be achieved in this regard. Indeed, bearing in mind the large tracts of land which have been set aside for particular purposes, it will be a number of years before we can achieve that.

The Government is allocating money progressively. I accept the Hon. Sandy Lewis has said much more money should be allocated to national parks, and that is a fair comment; but, in the management of its finances, the Government allocates certain sums of money in specific areas. We could all argue one area was neglected more than another, but where easements are being made

through national parks or Crown land, the Government uses the officers who have expertise in the area and they survey the land where it is anticipated easements will be required.

Although some risks are involved, I do not see the great risks referred to by the Hon. Sandy Lewis. Arguments in relation to the allocation of finance should be debated when we discuss the Budget. The Hon. Sandy Lewis always has a few words to say on this matter and I have no doubt he will do so again. I assure members the Minister and the department take all possible precautions. We use the officers employed for that purpose and I do not see the risks referred to.

The Hon. A. A. LEWIS: In other words, the Minister is prepared to take the risk. The Minister said that the Environmental Protection Authority looks at the area through which it is proposed the easement should go. Any park manager or any person who has had land use experience would know the total park should be examined, not just the area through which it is proposed the easement should go. The Minister is telling the Chamber that he does not have the information, but he will take the risk. He is prepared to put these parks at risk in order to simplify the installation of a pipeline, because we have not done our homework properly. It is of no use to say the EPA will have enough time and money to check the total scene. If the easement is to go through, the EPA will not be in that position. The Minister has told us that and he has indicated he is prepared to take the risk. Therefore, be it on his head and that of the department; but if one mistake is made they will hear the hollering around the State.

The Hon. J. M. BROWN: I refer members to proposed new section 134B(2)(a)(i) and (ii). During the second reading debate I asked whether any action taken on Class "A" reserves is carried out before presentation to Parliament. Could the Minister provide an answer to that question?

The Hon. G. E. MASTERS: Two issues are involved here. Firstly, we are looking at additions to Class "A" reserves which have to come to Parliament under a reserves Bill. If, as occurred previously, an excision is made from a Class "A" reserve, it must also come to Parliament by way of a reserves Bill.

The position in relation to easements is not the same. That matter does not have to come to Parliament. Arrangements are made between the persons requiring the easement and the governing authority, for example, the National Parks Authority. Where the authority agrees to the easement, it need not come to Parliament, but where

the authority disagrees with the easement, it must be dealt with by a reserves Bill in the Parliament.

The Hon. J. M. BROWN: I appreciate the Minister's explanation, but I am concerned that an easement could be put through without reference to Parliament.

The Hon. G. E. MASTERS: The regulations have to be tabled in Parliament, but Parliament has no say.

The Hon. A. A. Lewis: They can be disallowed.

The Hon. J. M. BROWN: They can be disallowed, but the easement can go through and Parliament has no say. That is incredible, especially when one bears in mind the situation in relation to Class "A" reserves, which is spelt out clearly in section 31(1)(a) of the Land Act. I am concerned about this matter.

Proposed section 134B(2)(c) in the Bill says—
every person—

- (i) who has, and on the relevant day had, any right, title, or interest in the land;
- (ii) in whom the land is, and on the relevant day was, vested within the meaning of section 33(2) of this Act or under any other Act; or
- (iii) who has, and on the relevant day had, the control of the land pursuant to section 34 of this Act or section 3 of the Parks and Reserves Act 1895,

has consented in writing to the grant of the easement.

What concerns me is what will happen to beekeepers who have no entitlement so far as the land is concerned. What will be their position in relation to reserves in the case of damage through the provision of easements? Will responsibility be awarded in the Parliament to the beekeepers who play a very important part in the industry? Provision is not made for people such as beekeepers. The Bill is not satisfactory, and I will be interested to hear the Minister's reply.

The Hon. G. E. MASTERS: I understand the arrangements with beekeepers in regard to putting their services on reserves and Crown land is something that is negotiated with either the Department of Lands and Surveys or the authority responsible for the reserve or park. Normally the beekeepers use areas where they are able to get in without too much damage to the environment; in other words, where they do not have to put in roads or destroy the vegetation.

I imagine that where an easement was made through a reserve or Crown land, the beekeepers

would need to make some other arrangements; but as I understand it, having been in reserves and having seen the way beekeepers operate, generally it would not be much of an imposition on them. In fact, I suggest that if an easement were made generally it would involve a clearing of some land, at least in the initial stages, and it would make access easier for the beekeepers because easements are actually a narrow strip of land and beekeepers usually place their hives in a cleared area while the bees, of course, do their job in the surrounding countryside.

I accept the proposition made by the honourable member that if a traditional beekeeping site were in the way of an easement, either the beekeepers would have to leave the site or the easement would have to go around it. That would be a matter for negotiation. There is no guarantee that beekeepers would retain their traditional sites, which I think is what the member is asking.

The Hon. J. M. BROWN: The Minister's remarks did not really give a full explanation in respect of beekeepers. The Minister suggested that easements might be just a narrow strip. If the Minister looks at proposed section 134B(1)(c) he will see it involves far more than just a narrow strip, and it could have a multiplicity of uses. While it is generally known that an easement is a narrow strip, it certainly need not be; it could be four, five or 10 chains wide. I will quote new section 134B(1)(c), as follows—

For

the provision of any structure, plant, or equipment, the carrying out of any works, and the performance of any maintenance that is necessary for, or ancillary or incidental to, giving effect to any of the purposes referred to in paragraph (b) of this subsection,

the Governor may, upon the recommendation of the Minister, grant to any person any easement in, upon, through, over, or under any land in respect of which such a recommendation is made and may express any easement so granted to be subject to conditions and the payment of consideration as set out in the grant.

This is the provision that really concerns every member. It is not a simple case of a railway line running down the track. Large tracts of land can be opened up by easements, and this is the real kernel of the problem. It represents one of the misgivings I have about this Bill. The requirements of the Bill should be referred to a Select Committee. That is one of the reasons that I must

stress our grave concern in respect of the misuse of the amending legislation we have before us.

Clause put and passed.

Clauses 4 and 5 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

LAND AMENDMENT BILL (No. 2)

In Committee

The Deputy Chairman of Committees (the Hon. R. J. L. Williams) in the Chair; the Hon. G. E. Masters (Minister for Labour and Industry) in charge of the Bill.

Clauses 1 to 9 put and passed.

Clause 10: Section 47 amended—

The Hon. J. M. BROWN: During the second reading debate I referred to the release of land. The Minister either misinterpreted what I said, or did not understand me. Section 47 deals with Crown land available for release, and, in particular, the diminishing amount of land available for agricultural purposes. It concerns me that in streamlining our provisions to protect our land and industries we may overlook the provisions of section 47 which allow, in the old terminology, the release of 5 000-acre to 10 000-acre lots of land. Section 47(4)(f)(ii) proposed to be deleted states in part—

Provided also that where in any year the percentage of improvements effected exceeds the percentage required to be effected under this subparagraph, the amount of the excess may be credited towards the percentage of improvements required to be effected in a subsequent year.

The provision proposed to be inserted states—

- (ii) shall effect improvements by way of progressively sowing to pasture or crop, or to both, such that by the end of 2 years from the date of approval of the application for the lease at least 10% of the total area of the land is or has been so sown, by the end of 5 years from that date at least 20% of the total area of the land is or has been so sown, and by the end of 11 years from that date at least 50% of the total area of the land is or has been so sown. " ;

In spite of the comments by the department and its inspectors in relation to the clearing of land, no proper provision has been laid down to ensure the land is utilised fully. To my mind the continued

clearing of certain land will be allowed even though an abuse of that land has occurred.

I mentioned the salinity problem in this State and said it was alarming to note that probably we were the worst off in Australia. I do not think this amendment will do anything to ease the problem. I do not think it will make any difference whatsoever to land utilisation.

Now the matter has been raised in this place we have the opportunity to correct the anomaly which has allowed land to be used indiscriminately and not for the purposes for which it has been set aside.

After land has been released it can be sold to other interested parties at commercial value. Those fortunate enough to be able to secure those leases receive a bonus also. There are valid reasons that people should be able to be relieved of their obligations, but they are certainly eased financially as a result of the consideration they receive. This legislation will not prevent land abuse.

The Minister has said there will be safeguards but I would like to know how they will be policed. A Minister may be rather sympathetic to a landholder who is behind in his clearing but this is not where the problem lies. The problem lies with some people who clear all their land without reference to anyone.

I hope my remarks will be heeded by the Minister and his department. We should have retrospective legislation applying to Crown land made available in the past under conditional-purchase agreements, to ensure that people are not abusing their privileges. The further release of land has been one of the causes of the salinity problem. We ought to have safeguards on land which is still under conditional purchase, thereby improving the land utilisation programme.

Amending Bills of such importance should come under close scrutiny. We must be vigilant with land releases that have taken place under conditional purchase and we must have safeguards to prevent the erosion of our land and the salinity problem which is so prevalent and damaging in this State.

I know this is not a popular subject, and at the moment we are enjoying a flush season. However, we must become watchdogs of this problem now so that it will not be further exacerbated and destroy the soil, which is so essential for the well being of this State.

The Hon. G. E. MASTERS: I note the honourable member's comments and I am sure most people in this State would share his concern about conservation and the environmental problems in some parts of our State. This legislation recog-

nises the problem and seeks to come to grips with it. This clause states "shall effect improvements by way of progressively sowing to pasture or crop, or to both".

The Hon. J. M. Brown: That is only minimal.

The Hon. G. E. MASTERS: But it does recognise there may be some problem and does place emphasis on clearing, cultivation and other methods of developing pasture and the like. Modern techniques have not come to grips with all the problems but the legislation does express the Government's view and recognition of the problem.

I will pass to the Minister the comments of the member and point out that the farming community is concerned about and aware of the salinity and erosion problems and is approaching them responsibly. This State owes a great deal to the efforts of the farming community; heaven knows what would have happened had a disastrous farming season been experienced this year. The farming community has done a tremendous job.

I believe the penny has dropped, and as a result of the Soil Conservation Amendment Act put forward by the Government last year and new techniques being used, we have started to come to grips with the problem. I believe we will come to grips with the problem and the farming community will maintain its productivity.

Clause put and passed.

Clauses 11 to 27 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

House adjourned at 11.51 p.m.

QUESTIONS ON NOTICE

FIRES: FIRE BRIGADE

Units

608. The Hon. ROBERT HETHERINGTON, to the Minister for Labour and Industry representing the Minister for Police and Prisons:

- (1) Is it the intention of section 23.1.2 of the chief officers standing orders as set out in brigade order No. 14/1982, to prevent fire brigade employees from being able to contact their union concerning matters of their safety and welfare, and other matters of public importance?

- (2) If this is not the intention, will the Minister examine the section to see if it should be amended?

The Hon. G. E. MASTERS replied:

- (1) No, it is not the intention of section 23.1.2 of the chief officer's standing orders to prevent any employee from communicating any genuine industrial grievance to his union. With respect to matters of public importance, there is ample opportunity within the brigade for any employee to offer constructive criticism or raise issues of concern to him, in accordance with long established principles.
- (2) There is not considered to be any need to amend the standing order, which is consistent with others which apply in other services.

LOCUSTS

Spraying

612. The Hon. TOM KNIGHT, to the Minister for Labour and Industry representing the Minister for Agriculture:

- (1) Is the Minister aware that aerial spraying has been carried out in Great Southern areas for control of locusts over the past few weeks?
- (2) If so, is the Minister also aware that due to incorrect information being given for mixing of spray, the spraying has been ineffective?
- (3) How much has it cost the Government to date?
- (4) Was it the manufacturer's fault by giving incorrect mixing instructions?
- (5) If "Yes" to (4), will the Government be claiming costs against the manufacturer for the occurrence?
- (6) If not, will the Government still be able to financially effectively complete the spraying so that the farmers do not suffer?

The Hon. G. E. MASTERS replied:

- (1) Yes.
- (2) The spray was not mixed but applied in a concentrate form using the ultra low volume technique through aircraft. The technique was not the appropriate method for the spot spraying of locust infestations and results in these situations were ineffective.
- (3) Unknown.
- (4) No.

- (5) Not applicable.

- (6) The Government will meet the cost of insecticide but farmers will be required to meet application costs in keeping with the original arrangements; except where special circumstances can be demonstrated.

613. *This question was postponed.*

EDUCATION: DEPARTMENT

Auditing Programme

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

- (1) Within the period 1976-1982 inclusive, which aspects, if any, of the Education Department's internal audit programme, have been reviewed by the audit department staff?
- (2) For each of those aspects in (1), on what date, or between what dates, was the review carried out?

The Hon. R. G. PIKE replied:

- (1) and (2) The State Audit Department annually reviews all internal audit programmes at head office and education supplies branch.

All areas of the State audit programme have built in scrutiny and review of internal audit head office activities.

In addition, the metropolitan north-west regional office programme was reviewed in 1981 and the great southern regional office programme in 1982.

AGRICULTURE PROTECTION BOARD

1080

615. The Hon. LYLIA ELLIOTT, to the Minister for Labour and Industry representing the Minister for Agriculture:

- (1) Does the Agriculture Protection Board or any other authority under his jurisdiction, use the poison 1080?
- (2) If so—
- for what purpose;
 - in which areas; and
 - in what quantities?
- (3) What steps are taken to check the effects on native fauna, including bird life, of the use of this poison?
- (4) Is there an antidote to 1080?

The Hon. G. E. MASTERS replied:

- (1) Yes.
- (2) (a) 1080 is used for control of a wide range of declared animals—vermin—including rabbits, dingoes and wild dogs, feral pigs, foxes, feral cats, rats and agile wallabies;
- (b) widely throughout the State where these animals cause a problem and where the poison can safely be used;
- (c) approximately 70 kg of 1080 is used in WA each year.
- (3) Two extensive surveys were undertaken in the 1950s and 1960s, soon after 1080 was introduced, which showed that native fauna—including bird—losses in the south-west were almost non-existent. Recent research work has shown that native species have a very high tolerance to 1080 because they have evolved in an area where 1080 exists naturally in very high concentration in the native vegetation.
- (4) No, although research work on this is proceeding in the USA.

EDUCATION: DEPARTMENT

Annual Report

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

With reference to the 1981 annual report, I ask—

- (1) On what date was a draft report submitted by the department to the Minister for approval, prior to forwarding to the printer?
- (2) On what date was the final report submitted to the Government Printer for printing?
- (3) On what date was the report completed by the Government Printer?

The Hon. R. G. PIKE replied:

- (1) From 1972 onwards, the annual report of the Education Department has been prepared by the permanent head of the department and addressed to the Minister. The Minister has in turn presented this report to the Parliament in accordance with the Act. As a consequence the Minister for Education did not receive a draft of the report.

- (2) Copy was sent on varying dates, commencing 23 April, and concluding 28 June; the main body of the manuscript was sent to the Government Printer on 15 June 1982.
- (3) The report was completed by the Government Printer on 27 August 1982.

PASTORAL LEASES

Resumption

617. The Hon. TOM STEPHENS, to the Minister for Labour and Industry representing the Minister for Works:

Can the Minister advise—

- (1) What pastoral leases have been, or are to be, resumed for the purpose of providing a catchment area for the Harding Dam?
- (2) On which pastoral leases is the Harding Dam to be located?
- (3) Has the Government, or will the Government, resume any land other than that specified in (1) for the purpose of constructing the Harding Dam?

The Hon. G. E. MASTERS replied:

- (1) Cooya Pooya Station was purchased in 1973. Negotiations are proceeding for the acquisition of approximately 3 700 hectares of Mt. Welcome Station on the basis of the exchange of approximately 16 500 hectares of Cooya Pooya Station which is outside the catchment of the Harding Dam.
- (2) Mt. Welcome Station.
- (3) No.

TRAFFIC: MVIT

Financial Accounts

618. The Hon. J. M. BERINSON, to the Chief Secretary representing the Minister for Local Government:

- (1) Did the Motor Vehicle Insurance Trust furnish its financial accounts to the Minister by 31 August as required by section 3Q of the Act?
- (2) If so, when will these be laid before the Parliament?
- (3) If not, has the Minister authorised an extension of time for the provision of financial accounts, and, if so, when and why was this authorisation given, and what extension of time was allowed?

The Hon. R. G. PIKE replied:

(1) Yes.

(2) and (3) The accounts were tabled in both Houses of the Parliament on 14 September 1982.

TOWN PLANNING: METROPOLITAN REGION SCHEME

Amendments

619. The Hon. FRED McKENZIE, to the Chief Secretary representing the Minister for Urban Development and Town Planning:

Referring to sections 33, 33A and 35C of the Metropolitan Region Town Planning Scheme Act, there does not appear to be any statutory requirement for property owners affected by amendment to the metropolitan region scheme to be notified in writing of proposed amendments—

(1) If the above is the case, will the Minister take steps to amend the Act to ensure those property owners so affected are notified in writing?

(2) If not, why not?

The Hon. R. G. PIKE replied:

(1) (a) Section 33 of the Metropolitan Region Town Planning Scheme Act outlines the procedure for amending the metropolitan region scheme and is concerned with substantial alterations to the scheme. The section does not include a statutory requirement for property owners affected by amendments to be notified in writing of an amendment. However—

(i) section 33(2)(c) requires that the authority insert details of an amendment in the *Government Gazette* and local newspapers; and

(ii) section 33(2)(e) allows the authority to take such other steps as it considers necessary to make public the details of an amendment.

On 2 November 1981, the Minister for Urban Development and Town Planning requested the authority to examine its policy in regard to notification of landowners and occupiers affected by an amendment. The authority, in late November 1981, advised the Minister that pursuant to section 33(2)(e) of the Act, the authority as a matter of policy resolved that all property owners affected by an amendment proposed under section 33 be notified in writing of the amendment. At the present time the Minister does not intend to take steps to amend the Act as she feels that section 33 and the authority's actions pursuant to that section are satisfactory.

(b) Section 33A of the Metropolitan Region Town Planning Scheme Act outlines a shortened procedure for amending the metropolitan region scheme where the proposed amendment does not constitute a substantial alteration to the scheme. Section 33A(2)(b) required the authority to notify in writing such owners of land directly affected by the amendment as the Minister directs shall be notified. The member's presumption with respect to section 33A is therefore incorrect.

(c) Section 35C of the Metropolitan Region Town Planning Scheme Act provides power for the authority, with ministerial approval, to declare certain land to be a planning control area. The planning control legislation was included in the Act in 1981.

This declaration does not constitute an amendment to the scheme. It simply introduces development control provisions which, in essence, mean that the responsibility for development control is transferred from the responsible local authority to the authority itself.

There is no requirement for individual owners to be notified in writing of such declaration and in the circumstances the Minister does not think that such a requirement could be justified.

(2) Answered by (1).

**ELECTORAL:
DISTRICTS AND PROVINCES**

Enrolments

620. The Hon. J. M. BERINSON, to the Chief Secretary:

At the latest date for which figures are available, what was the enrolment in each of the new electoral provinces and electoral districts?

The Hon. R. G. PIKE replied:

As at 18 October 1982, enrolments were as in the following list.

Legislative Assembly Districts

Albany	8 460
Armada	16 340
Ascot	15 936
Avon	9 266
Balcatta	17 284
Balga	16 928
Bunbury	8 253
Canning	16 812
Clontarf	15 452
Cockburn	16 828
Collie	8 507
Cottesloe	16 619
Dale	9 450
Darling Range	8 629
East Melville	15 647
Esperance-Dundas	9 659
Floreat	17 981
Fremantle	15 070
Gascoyne	3 815
Geraldton	9 067
Gosnells	16 192
Greenough	8 259
Helena	16 095
Joondalup	16 159
Kalamunda	8 581
Kalgoorlie	8 967
Karrinyup	17 865
Katanning-Roc	9 035
Kimberley	14 584
Mandurah	8 901
Maylands	16 205
Melville	17 412
Merredin	9 106
Mitchell	9 034
Moore	8 995
Morley-Swan	17 755
Mount Lawley	17 344
Mount Marshall	8 912
Mundaring	8 568
Murchison-Eyre	2 455
Murdoch	17 164
Murray-Wellington	9 054

Narrogin	9 091
Nedlands	15 427
Nollamara	14 567
Perth	16 533
Pilbara	11 518
Rockingham	16 113
Scarborough	16 562
South Perth	16 453
Stirling	8 434
Subiaco	15 817
Vasse	9 051
Victoria Park	15 819
Warren	8 149
Welshpool	16 821
Whitford	16 382
	<hr/> 729 382

Legislative Council Provinces

Metropolitan	82 377
North Metropolitan	66 968
North Central Metropolitan	66 123
North-East Metropolitan	82 812
South Metropolitan	65 423
South Central Metropolitan	63 371
South-East Metropolitan	66 508
Central	27 284
Lower Central	25 747
Lower West	27 405
South	25 929
South-East	18 626
South-West	26 338
Upper West	26 321
West	25 778
Lower North	6 270
North	26 102
	<hr/> 729 382

ROADS

Murray Street, Roberts Road, and Wellington Street: Widening

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

- (1) Is any road widening, alteration to alignment, or similar type work planned to Wellington Street, Murray Street and Roberts Road, envisaged in the vicinity of Thomas Street, Subiaco?
- (2) If Roberts Road is affected, will any of the railway reserve be utilised?
- (3) Will the Minister give details of what is proposed?

The Hon. G. E. MASTERS replied:

- (1) to (3) These roads are under the control of the Subiaco and Perth City Councils. From inquiries made it is understood that planning for this area envisages some changes to Wellington Street and Roberts Road related to the possible extension of the present Hay Street and Murray Street one-way pair system. These proposals have no effect on the railway reserve.

RAILWAYS: SERVICES

Termination

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

Will the Minister advise the date on which—

- (a) services ceased on the Mullewa-Meckatharra railway;
- (b) passenger services ceased on the Perth-Fremantle railway;
- (c) refrigerated services on Westrail were terminated;
- (d) Westrail ceased its less-than-car-load traffic in favour of Total Western Transport Pty. Ltd;
- (e) rail services ceased on the Boyup Brook-Katanning line; and
- (f) passenger services at night during the week and over the weekend were reduced on the Perth-Armadale and Perth-Midland lines?

The Hon. G. E. MASTERS replied:

- (a) 1 May 1978;
- (b) 2 September 1979;
- (c) 31 October 1977;
- (d) 1 July 1982;
- (e) 1 June 1982;
- (f) 18 October 1981.

FUEL AND ENERGY: GAS

North-West Shelf: Surplus Production

623. The Hon. GARRY KELLY, to the Leader of the House representing the Minister for Fuel and Energy:

Can the Minister advise the anticipated effect that surplus gas from the North-West Shelf project will have on the economics of other operations that supply energy fuels, e.g. Collie?

The Hon. I. G. MEDCALF replied:

The North-West Shelf project will provide important new supplies of natural

gas for Western Australia, adding significantly to the State's energy independence.

As North-West Shelf gas becomes available in the south-west of the State, it will replace natural gas currently being supplied from the Dongara field. The Dongara field is expected to become depleted over the next few years.

In addition, North-West Shelf gas is expected to replace fuel oil in many applications, substantially reducing the State's dependence on imported fuel supplies.

I refer the member to the reply given to question 605 on Wednesday, 20 October; asked by the Hon. Fred McKenzie.

QUESTIONS WITHOUT NOTICE

BRIDGE

Gwambygine

161. The Hon. H. W. GAYFER, to the Minister for Labour and Industry representing the Minister for Transport:

In the interests of the safety of York school children and others what progress has, or is being made in respect of reconstruction of the Gwambygine Bridge at York?

The Hon. G. E. MASTERS replied:

As indicated in my earlier reply to question 330, the Main Roads Department has no specific plans for the replacement of this bridge. The department has, however, been carrying out investigations to determine the repairs necessary to keep the bridge in service. When these investigations have been completed, the matter will be discussed with the local authority involved.

The Hon. H. W. Gayfer: They will have to hurry up; it will fall down.

STATE FINANCE: CONSOLIDATED REVENUE FUND

Education Department: Schools Commission.

162. The Hon. D. K. DANS, to the Leader of the House representing the Treasurer:

With reference to my question 488 of 22 September 1982, will he provide the House with that portion of the answer

relating to Schools Commission funding of individual programmes as outlined in his correspondence to me?

The Hon. I. G. MEDCALF replied:

I thank the member for supplying particulars of the question.

If he so desires, I have no objection to his tabling the letter dated 13 October 1982 providing details of the 1981-82 Schools Commission funding.

ELECTORAL: ROLLS

Joint Federal-State: Problems

163. The Hon. GARRY KELLY, to the Chief Secretary:

I ask the question posed by R. F. Stephens, Vice President of the Electoral Reform Society of WA on page 38 of this morning's *The West Australian*. Will the Minister take the electors of Western Australia into his confidence and tell them what serious problems could arise if State and Commonwealth electoral rolls were joint, in view of the fact that all other States except Queensland already have joint Commonwealth-State electoral rolls?

The Hon. R. G. PIKE replied:

In the debate which took place in this House about two months ago replies were given to a similar question asked by Mr Parker. I suggest Mr Kelly read the *Hansard* of that day.

CRIMINAL INJURIES (COMPENSATION) ACT

Payments

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

In each of the last five years what was the net amount paid pursuant to awards under the Criminal Injuries (Compensation) Act—

- (a) from Consolidated Revenue; and
- (b) by individuals?

The Hon. I. G. MEDCALF replied:

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

	\$
(a) 1977-78	44 746
1978-79	74 407
1979-80	163 273
1980-81	186 561
1981-82	209 809

(b) This information is not available.

STATE FINANCE: STAMP DUTY

Avoidance: Practice

165. The Hon. PETER DOWDING, to the Attorney General:

- (1) Is the Attorney General aware of the practice whereby persons seeking to avoid Western Australian stamp duty have arranged for Western Australian company share registers to be transferred for a brief period to either the ACT or the Northern Territory to enable share transactions to take place without being liable to WA stamp duty?
- (2) Is this practice avoidance or evasion of Western Australian stamp duty?
- (3) Has the Attorney General taken any action to terminate the practice or to make the practice illegal?

The Hon. I. G. MEDCALF replied:

- (1) Yes, I am aware of the matter to which Mr Dowding refers.
- (2) and (3) I am not the Minister responsible for this Act. Nevertheless I can inform the Hon. Peter Dowding that steps have been taken by the Commissioner of State Taxation to study the legislation which applies in some other States which has the effect of putting an end to this practice.

I am not certain what stage that has reached. However, I am aware of that because some officers from the States met recently with some Ministers in Sydney. I happened to be present and I know this matter was under urgent consideration by most of the Commissioners of State Taxation.

STATE FINANCE: STAMP DUTY

Avoidance: Amount Involved

166. The Hon. PETER DOWDING, to the Attorney General:

I appreciate that the Attorney General will not have the figures at his fingertips, but in his portfolio of responsibility for the operation of the Corporate Affairs Office, does he have any idea how

many millions of dollars of stamp duty might have been avoided by this practice in WA about which he has indicated urgent steps are being taken?

The Hon. I. G. MEDCALF replied:

That question rightly should be directed to the Treasurer because it concerns stamp duty. In my capacity of being responsible for corporate affairs, I would not receive that information.

STATE FINANCE: STAMP DUTY

Avoidance: Practice

167. The Hon. PETER DOWDING, to the Attorney General:

- (1) Was this practice drawn to the attention of the Attorney General by the Commissioner of Corporate Affairs, or has it come to his attention only through the activities of the Commissioner of State Taxation?
- (2) Does the Attorney General regard it as an appropriate matter to be raised with him by the Commissioner of Corporate Affairs?

The Hon. I. G. MEDCALF replied:

- (1) and (2) This matter came to my attention years ago when I was practising in the legal profession. It is not a matter which really concerns the Commissioner of Corporate Affairs; it concerns the Commissioner of State Taxation. These questions should be directed rightly to the Treasurer.

STATE FINANCE: STAMP DUTY

Avoidance: Companies

168. The Hon. PETER DOWDING, to the Attorney General:

In his capacity as the Minister responsible for the operation of the Corporate Affairs Office, is the Attorney General aware whether companies to which the WA Government has made advances have used this artifice to avoid paying WA stamp duty?

The Hon. I. G. MEDCALF replied:

I have no knowledge of that.

STATE FINANCE: STAMP DUTY

Avoidance: Corporate Affairs Office

169. The Hon. PETER DOWDING, to the Attorney General:

My question relates to the Attorney General's responsibility for the Corporate Affairs Office, and it is as follows—

- (1) Will the Attorney accept that the only statutory body that may become aware of the removal and return of a private company's share register would be the Corporate Affairs Office?
- (2) If supplied with evidence of a company in receipt of WA Government advances using this artifice, would he be prepared to have the matter examined to see whether breaches of any State legislation have occurred, or does he regard it as outside his portfolio?

The Hon. I. G. MEDCALF replied:

- (1) and (2) I think the member should know that, in the normal course, the Commissioner of Corporate Affairs would not become aware of the facts to which the member has referred.

The Hon. Peter Dowding: Returns would be lodged.

The Hon. I. G. MEDCALF: Well, the annual return does not disclose that information. Therefore, if the member has any information of instances where he believes there may have been some breach of the law, and if he supplies that information to me, I will most certainly have it inquired into.

**TRAFFIC: MOTOR VEHICLE INSURANCE
TRUST***Participating Insurers*

170. The Hon. J. M. BERINSON, to the Chief Secretary representing the Minister for Local Government:

- (1) In the financial year ended 30 June 1982 what payments to or by the MVIT were made in respect of participating insurers?
- (2) What years of MVIT operation were covered by such payments and how much was paid in respect of each such year?

The Hon. R. G. PIKE replied:

I thank the member for some notice of the question, the answer to which is as follows—

- (1) A total of \$2.262 million was paid to participating insurers.

\$

(2) 1972-73—793 000

1973-74—736 000

1974-75—733 000.