no confidence in the statement that the percentage of his silicosis has not advanced.

Take the question of Tony Butun, for example. In 1968 he was certified 55 per cent. silicotic. In January, 1969, he was classified by the pneumoconiosis medical board as having advanced to 60 per cent. On the 12th December of the same year the same board declared him not to have advanced to 60 per cent. This could easily happen, but on the same day the chairman of the board certified him to be suffering from "advanced silicosis". How could that man have any confidence in that doctor? There are many other miners who feel the same way. Therefore we seek to provide a tribunal to which the employers can appoint a doctor, the employee can appoint a doctor and one can be appointed by lot.

In 1936 there was a provision in the Workers' Compensation Act that where an employer denied that a worker was really suffering from an industrial disease, after that worker had claimed he was so suffering, he was then referred to a medical board consisting of one doctor appointed by the worker, one doctor appointed by the employer, and one appointed by the State Government Insurance Office. I suggest that under the provisions of this Bill a tribunal be set up whereby one doctor can be appointed by the worker, one by the employer, and the third one can be chosen by lot and act as an independent chairman. Surely that would be a fair tribunal. The Deputy Leader of the Opposition has said it is not a good idea or a fair proposal. I would like to know why, and I would also like to know what is wrong with it.

I think when the Deputy Leader of the Opposition gives the provision some further mature consideration he will agree that it has all the hallmarks of establishing a fair tribunal. It must be borne in mind that that tribunal has the power of life and death over a silicotic miner and also will have a great effect on his widow.

I do not think it is necessary for me to keep the House any longer and I will complete my remarks by saying that I commend the Bill to members and I can only hope it will be received by another place with a reasonable attitude that keeps in mind that it will be highly beneficial not only to the working class of this community but also to the creditor class of this community, and therefore it should receive unanimous support from all concerned.

Debate adjourned, on motion by Mr. Bateman.

House adjourned at 11.10 p.m.

Legislative Council

Wednesday, the 12th September, 1973

The PRESIDENT (The Hon. L. C. Diver) took the Chair at 4.30 p.m., and read prayers.

QUESTIONS (9): ON NOTICE

1. MEAT

Exclusion from Export Incentive Scheme

The Hon. V. J. Ferry for The Hon. N. McNEILL, to the Leader of the House:

(1) Has the Government assessed the effect upon Western Australia of the withdrawal by the Federal Government of the Meat Export incentive grants?

(2) If so—

(a) what is the amount of the grant which will be lost by Western Australia;

(b) does the Government believe that this proposed action will be detrimental to the Western Australian industry?

(3) If the Government does consider the action to be detrimental to the Western Australian industry, what action has the Government taken, or propose taking, in opposition to the proposed Federal Government action?

The Hon. J. DOLAN replied:

(1) The information required to carry out such an assessment is not available at present. An approach has been made to the Minister for Overseas Trade seeking additional information which may assist in estimating the effect upon Western Australia of the withdrawal of meat exports from export incentive schemes.

(2) (a) Answered by (1).

(b) It is not considered that this action will have any major detrimental effect on the meat industry in Western Australia whilst strong world demand for meat and favourable prices exist.

(3) Answered by (2) (b).

2. EDUCATION

Tours by Children from Remote Areas

The Hon. G. W. BERRY, to the Leader of the House:

Is any subsidy available for either transport or accommodation for children in remote areas of Western Australia to visit their capital city, Perth, on conducted organised educational tours?

The Hon. J. DOLAN replied:

There is no provision for such assistance by the Education Department but headmasters may seek travel concessions through the Transport Commission, domestic airlines and the Western Australian Government Railways.

3. KARAWARA HOUSING PROJECT

Roads

The Hon. CLIVE GRIFFITHS, to the Minister for Police:

(1) Is he aware of the contents of a letter to the South Perth City Council dated the 16th July, 1973, relative to the road system in the State Housing Commission development at Karawara, signed by the Commissioner of Police?

(2) (a) Is the advice contained in the letter correct;

(b) if so, does the Minister concur?

The Hon. R. THOMPSON replied:

(1) Yes.

(2) (a) and (b) Not necessarily; the South Perth City Council were further advised by the Commissioner of Police on 30th August that the matter in question is one of town planning, which should be resolved between the Council and the developers.

4. GOVERNMENT EMPLOYEES' HOUSING AUTHORITY

Carnarvon Tracking Station

The Hon. G .W. BERRY, to the Leader of the House:

Is any consideration being given to the purchase of Carnarvon Tracking Station houses, when they become available, by the Government Employees' Housing Authority?

The Hon. J. DOLAN replied:

The question of purchasing Carnarvon Tracking Station houses was raised recently with the Shire of Carnarvon by the Government Employees' Housing Authority before finalising arrangements to build a six bedroom duplex for the Police Department.

However, no action regarding purchase of Carnarvon Tracking Station houses is contemplated by the Authority at the present time.

5. MEAT

Export Tax

The Hon. N. McNEILL, to the Leader of the House:

(1) Has the Government yet received advice from the Federal Government as to how the Budget proposal for a tax on the export of meat is to be implemented?

(2) What discussions were held with, or inquiries directed to, the State Government prior to the announcement of the tax?

(3) If research has been undertaken by the State Government on the effect or impact of the tax on the Western Australian industry, will the Minister make the results of that research available to the House?

(4) What is the anticipated contribution of Western Australia to this tax?

The Hon. J. DOLAN replied:

(1) Not as yet.

(2) Since the one cent per pound levy was designed to recoup the costs of export meat inspection services, the decision was essentially the concern of the Federal Government.

(3) and (4) It has been estimated that the one cent per pound levy on meat exports would have raised $1.95 million in 1972-73 on a shipped weight basis.

The anticipated contribution by Western Australia will depend on the level of exports during the levy period 1st October, 1973 to 30th June, 1976.

6. ABORIGINES

Housing: Fitzroy Crossing

The Hon. W. R. WITHERS, to the Minister for Community Welfare:

(1) How many Aboriginal people exist in the Fitzroy Crossing district?

(2) How many Aboriginal families are housed in conventional housing?

(3) In view of the answer given to my question No. 2 on the 7th August, 1973, which indicates there is no plan to establish a home maker in Fitzroy Crossing by January, 1974, and the answer given to question No. 3 on the 7th August, 1973, which indicates transitional housing would no longer be erected, and in view of current policy to phase out Aboriginal reserves, what is this Government's plan to train and accommodate the Aboriginal people in the Fitzroy Crossing district?

(4) When will this plan be put into operation?

The Hon. R. THOMPSON replied:

(1) Fitzroy Crossing has an average Aboriginal population of 66 people. This number varies according to seasonal employment. At times up to 300 Aboriginal people, including transient campers, could be expected at the centre on special occasions.

(2) As far as can be determined there are no Aboriginal families living in conventional homes at Fitzroy Crossing. This information has not been confirmed because my Department was unable to contact Fitzroy Crossing today.

(3) I understand that the State Housing Commission plans to build 20 village type houses at the Crossing, subject to the availability of Commonwealth finance.

It has not been possible to engage a homemaker to assist in the training and development of the Aboriginal people at Fitzroy Crossing. There are only three people who could properly fill this role resident in the township, but for a number of reasons it has not been possible to recruit them.

As yet there are no Aboriginal women who could be properly trained in the homemaker role, which requires a certain amount of literacy, experience and application.

My Department has been endeavouring to place a female permanent officer at Fitzroy Crossing for some considerable time. This officer as part of her duties would undertake some of the training aspects which in other circumstances could be allocated to homemakers.

No officer has been allocated to this town because there is no accommodation available for her.

(4) A plan for the training and development of the Aborigines at Fitzroy Crossing can be put into operation as soon as the officer can be accommodated and located.

Upgrading of some existing type III houses is programmed for this year to facilitate the training in some home skills, thereby making the transition to the new homes easier.

7. HORTICULTURAL ADVISERS

Appointments

The Hon. V. J. FERRY, to the Leader of the House:

(1) How many horticultural advisers (fruit) are employed by the Department of Agriculture?

(2) Outside of the metropolitan area—

(a) at what points are horticultural advisers (fruit) stationed;

(b) what areas are serviced by each adviser;

(c) are there any unfilled positions for staff in this category;

(d) if so—

(i) how long has this position existed;

(ii) which areas are affected; and

(iii) what action is being taken to appoint more horticultural advisers (fruit) to more adequately assist fruit growers?

The Hon. J. DOLAN replied:

(1) Seven.

(2) (a) Two at Bunbury,
One at Carnarvon.

(b) The advisers at Bunbury service the south west area covering the districts of Donnybrook, Bridgetown and Manjimup.

The adviser at Carnarvon services that immediate area.

(c) Yes—one position.

(d) (i) The position was approved in March, 1973.

(ii) Manjimup.

(iii) The position has been advertised throughout Australia, New Zealand and the United Kingdom.

When filled it will give satisfactory coverage to the south west. Fruit areas closer to Perth are serviced by advisers stationed in the metropolitan area.

8. FRUIT

Production

The Hon. V. J. FERRY, to the Leader of the House:

What are the production figures for the main fruit crops of the 1972-73 season in the following areas—

(a) Manjimup;

(b) Bridgetown;

(c) Donnybrook;

(d) Hills; and

(e) any other area?

The Hon. J. DOLAN replied:

Production statistics for fruit crops for 1972-73 have not yet been made available by the Bureau of Census and Statistics.

9. COMMERCIAL LAND

Remote Towns: Auctioning

The Hon. W. R. WITHERS, to the Leader of the House:

(1) Is it the policy of this Government to auction commercial land in remote area towns instead of hearing applications before a Lands Board, when it is known that settlers in the town have applied for the particular blocks for periods of up to two years?

(2) If the answer is "Yes" how would the Government ascertain the suitability of successful bidders at the auction to immediately establish a business to suit the needs of the community?

The Hon. J. DOLAN replied:

(1) Whilst the primary method of land release under the provisions of the Land Act is by public auction, the method adopted in remote area towns is dependent on the merits and circumstances of each particular case.

(2) Successful bidders at public auctions are required to conform with specified conditions relating to use of land, and the standard and timing of development.

WOOD CHIPPING INDUSTRY AGREEMENT ACT AMENDMENT BILL

Second Reading

THE HON. J. DOLAN (South-East Metropolitan—Leader of the House) [4.46 p.m.]: I move—

That the Bill be now read a second time.

The Bill before us has been framed to ratify a variation agreement negotiated between the State and the W.A. Chip and Pulp Co. Pty. Ltd. This agreement provides for a major wood chipping industry to be established near Manjimup.

The original wood chipping industry agreement contained in Act No. 58 of 1969, was framed for the same purpose; however, the terms and conditions of that agreement have fallen short of achieving development. The agreement's failure in this regard is due to changing factors which have affected the viability of the project since the original agreement was negotiated.

The State's action in negotiating a variation agreement for the project has been proven sound and appropriate by the progress that the W.A. Chip and Pulp Co. Pty. Ltd. has been able to make this year in securing a $200,000,000 contract for the supply of wood chips to Japan.

New development conditions provided for in the variation agreement have allowed the project to become viable. They were, in fact, essential pre-requisites to firm planning for the establishment of this major industry.

A number of factors have combined over the past five years to prevent an earlier start on the establishment of this industry. Because these factors determined the form of the amendment agreement I briefly touch on these before enlarging on the variations in development conditions.

In December 1968, the W.A. Chip and Pulp Co. was granted the right to obtain an acceptable contract for the supply of wood chips to Japan. This followed the calling of submissions from interested parties in 1967 and the later clarification of those submissions before selection of the W.A. Chip and Pulp Co. as the developer.

The W.A. Chip and Pulp Co. was then a wholly-owned subsidiary of Bunnings Timber Holdings, but Bunnings has since been joined by Millars (W.A.) Pty. Ltd., with a 40 per cent. interest in the chip and pulp company. The two companies in partnership in the W.A. Chip and Pulp Co. are the two major sawmilling operators in Western Australia. Between them they hold the rights to about 75 per cent. of the permissible saw log cut.

At the time the Western Australian Government announced that rights to seek wood chip contracts would be granted to the W.A. Chip and Pulp Co., the Australian Government was formulating guideline prices for wood chip exports and considering the requirements that would have to be met for the issue of an export license.

The Australian Government accepted that Western Australian timbers available for pulping are less desirable than many of the ash group of eucalypts of the Eastern States. Accordingly the Western Australian guideline price for chips was set at a somewhat lower level than that for chips produced from ash eucalypts in the Eastern States.

However, in spite of this, and despite the fact that the State from time to time made offers to amend certain terms of the agreement, continuing efforts on the part of the W.A. Chip and Pulp Co. to negotiate a sales contract for chips from Western Australia were unsuccessful until this year.

Over the period from the ratification of the original agreement considerable volumes of the more desirable Eastern States wood chips were being offered for sale, coincidentally with a general downturn in the world demand for pulp and paper. A more recent factor mitigating against this project was the world financial upheaval which disrupted trade negotiations in both Australia and Japan.

Now, however, there is a very much stronger market for wood chips. This follows an improvement in demand for pulp and paper and has resulted in the company being able to negotiate a very worthwhile sales contract for $200,000,000 worth of wood chips to be supplied over 15 years.

To ease the company's task of establishing the $11,000,000 industry, the State has renegotiated some of the terms and conditions of development. Broadly, the variations have reduced the company's obligation for immediate outlay on capital expenditure items and have enlarged the timber resources available to the company.

The variations mean that the State is now responsible for additional initial capital costs for provision of railway and port facilities. But the State's position has been protected through the application of increased charges for services and through

greater tonnages giving economies of scale. By the time the company has honoured its obligations under the initial contract, the State will have received increased revenues, which will meet the capital and operating charges of the State-provided facilities.

A significant aspect of a project of this nature is obviously the proper protection of the environment, and adequate safeguards have been incorporated in the variation agreement. The principal agreement has been in force since 1969. The variation agreement was referred to the Environmental Protection Council and the Environmental Protection Authority which advised on the desirable changes to the clauses and the conditions of license. These measures have now been included in the variation agreement. I will enlarge on these factors shortly.

First, I would like to deal with the benefits which will accrue to the State as a result of the establishment of this industry, as they are considerable. There will be new employment and a new decentralised industry; one which will be making use of tree species, sawmill offcuts and forest thinnings which have previously been of almost no economic value; and there will be considerable advantages in forestry management.

The most direct benefit from the establishment of this industry will be experienced in Manjimup. Any labour-intensive industry which can be established in a nonmetropolitan location has obvious advantages for the State's decentralisation effort through providing alternative employment and services to those in the metropolitan area.

Manjimup currently provides commercial, social, and recreational services for some 25,000 people from surrounding shires as well as the Manjimup Shire. The population of Manjimup town is about 3,500 at present, but it has been estimated that the establishment of the wood chip industry will generate a new, associated population of some 1,300 with the majority living in Manjimup. As a result the value of Manjimup as a growth centre will be increased; more use will be made of existing services; and the economics of providing new services and amenities will be improved.

A direct cash injection into the Manjimup area of some $2,600,000 a year will result from the industry, to provide substantial benefits to private enterprise already established in the area as well as providing increased buying power which can be expected to support the establishment of new commercial enterprises.

Engineering services in the district can also expect to benefit directly from the industry. It is expected that the new work will help existing services to consolidate their operations and to become more flexible and competitive.

Expenditure of $11,000,000 by the company during the construction phase and of a further $600,000 by the Forests Department will provide substantial employment for local tradesmen, while the construction force will bring a further cash injection while it is in the area.

The Forests Department's capital investment will be mainly for housing, which, in conjunction with the housing construction programme of the company, will provide a welcome boost for the local building industry.

Benefits will also be felt in Bunbury, the export port for the industry. Bunbury suppliers should benefit from the larger population expected in the Manjimup area, while there will be a direct payment to the Bunbury Port Authority of some $317,000 a year.

The State will also derive benefits through the industry's use of railways. The W.A.G.R. will receive about $1,250,000 a year in rail freights; increased freight carried will offset the decline in timber tonnages in recent years because of increased local processing, and the base of railway operations in the district will be broadened, improving the railway's competitive position and ability to withstand rising costs.

A further benefit will be re-employment of railway workers made redundant through the conversion to diesel of railway operations. Many of these people have been reluctant to leave the district because they have become established with their own land, homes, and other nontransportable items.

There will be other benefits as a result of the establishment of this industry in the form of transport economies. There will be an overall saving of $150,000 to $180,000 in the cost of road construction and maintenance which will be shared between the existing timber industry and the new wood chipping industry.

Further economies may be achieved through the introduction of integrated logging and the introduction of new equipment, such as road trains which could result in savings of up to 20 per cent. on current costs.

It has been estimated that wood chips worth $300,000 a year will be produced from sawmill waste and I need hardly add that this new production is achieved without the use of any new resource.

The Forests Department will benefit further through the removal for wood chips of cull material which currently occupies 30 per cent. to 50 per cent. of productive areas.

The later conversion of marri stands to karri will increase gross volume production from cut-over areas by approximately 55 per cent.

It is obvious that there are benefits to the State through the decentralised nature of this industry—benefits of new employment, benefits of more efficient use of roads and railways, benefits of new revenue to the Bunbury Port Authority and the general economies of scale which will apply in Manjimup as a result of the population increase which will accompany a start on this project. For these reasons, I believe the variation agreement is a reasonable compromise between the State and the W.A. Chip and Pulp Co.

I mentioned before that full considera-ation had been given to environmental protection. I believe that the controls which will apply to the project are more than adequate to allow the sensible and controlled use of our timber resources for the wood chipping industry.

A new clause, No. 30A, is one of the strongest introduced into the agreement and provides adequately for the control of operations either under existing, or any future, rules or regulations.

The clause reads: "Nothing in this Agreement shall be construed to exempt the company from compliance with any requirement in connection with the protection of the environment arising out of, or incidental to, the operations of the company hereunder that may be made by the State or any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act for the time being in force."

There is a second important safeguard in the Forest Produce (Chipwood) License which appears as a schedule to the agreement. This has been rigorously upgraded to reflect the views of the Forests Department and the Environmental Protection Authority with specific requirements relating to limitations on areas to be cut over.

To protect the waterways and preserve the forest verges of our roads for all users no cutting will be authorised in corridors alongside streams and roads.

There are many species of animal and bird life in the forestry areas to be cut over and protection for these has been achieved in two ways.

Fauna-rich areas will be specifically excluded from the forest license by the Conservator of Forests, as will water catchment areas which are salt sensitive.

Cutting will be managed in blocks so that animals and birds may migrate to adjacent blocks which, in turn, will not be available for cutting until the cut-over blocks are regenerated to a stage which will allow the re-establishment of the animal and bird population.

As a further and ultimate safeguard the conservator retains the right to excise from the license area at any time, without compensation to the company, any area which the State may require for roads railways, stream protection, wildlife maintenance, protection of scenic attraction, or any other works of public utility, amenity or convenience.

I feel the protection of the appropriate clauses to be completely satisfactory. The operation can be managed in a way that will produce the least possible short-term effect on the environment, and in a way which will allow full restoration of that environment through subsequent regeneration programmes.

I will now deal with the specific amendments made to the principal agreement by way of the variation agreement and the effect of the clauses in that agreement.

Variation agreements commonly deal with a number of minor matters, the reasons for which are self-evident and I do not propose to deal with these in detail.

The first significant amendments deal with the port. Under subclause 2 (b) of clause 5 the rental payable by the company for the stockpile area has been increased from $200 to $500 per acre per annum. While this is a substantial increase the charge is still deliberately modest.

Clause 6 (1) dealing with the design and construction programme of the company berth and other aspects of port development at Bunbury, has been amended to provide for tight construction deadlines which the company must meet if it is to commence exporting woodchips in conformity with its contract.

The State has agreed to dredge the company's berth to a depth of 40 feet and the turning basin to a width of 1,600 feet and a depth of 36 feet.

A new subparagraph has been added which provides for the company to make an equitable contribution toward the cost of additional dredging in the event of its using vessels requiring a depth greater than 36 feet and a width greater than 400 feet in the access channel, and a depth greater than 36 feet in the turning basin.

The cash contribution arrangements provided under clause 6 (2) (a) and (b) have now been deleted and to offset this the wharfage payable by the company under clause 9 (1) has been increased from 15c to 40c a ton.

A new paragraph has been aded to the renumbered paragraphs of clause 6 (2), providing for the greater use of local professional services, labour, and materials in terms identical to those used in other recent agreements between the State and developing companies.

Under the amended terms of clause 8 (1) the company is no longer making a cash contribution of $2,900,000 towards the cost of port development. However, it is still committed to an expediture of not less than $11,000,000 in establishing its industry.

The Hon. A. F Griffith: Is the Government finding the $2,900,000 for the wharf?

The Hon. J. DOLAN: At this stage I cannot say, but I think so.

The Hon. A. F. Griffith: If the company is not to make the contribution, surely it is important that we should be told who is making it?

The Hon. J. DOLAN: It seems obvious but I will find out before the debate continues.

I move now to the clauses dealing with rail transport, which have been fairly extensively altered.

The amendments to clause 13 subclauses (2) (6) and (7) do not greatly change their original intent, but are expressed in a more effective manner.

Under subclause (8) the company now has to provide wagons only and the Railways Commission will provide all other rolling stock.

Clause 14, as amended, will achieve similar aims to those required by the original clause 14 but is also expressed in a more satisfactory way. The Railways Commission will in fact allow the company a build-up period during which charges will remain at $2.25 per ton on the total tonnage transported, although tonnages during the period will not reach the minimum of 500,000 tons.

The amendments to clause 15 (1) provide for a freight rate of $2.25 per ton on tonnages over 500,000 tons and up to 750,000 tons with a decrease to $2.20 per ton on tonnages exceeding 750,000 tons. Although these rates are a reduction on the original freight rate, the increased tonnages to be transported will more than compensate and will enable the Railways Commission to fund any rolling stock it now has to provide.

Under clause 15 (2) the escalation formula has been rewritten to include a factor of 0.6 in lieu of 0.75. The Railways Commission is satisfied that this new formula will provide increases in freight rates adequate for its needs.

Clause 17 has been amended as a consequence of the company now having to provide wagons only and a new provision has been written into the clause relieving the company of responsibility where replacement of wagons is made necessary solely by the negligence of the Railways Commission.

A new clause 17A has been written into the agreement, making extensive provisions in regard to the company constructing and using private roads within the production area and to the company's use of public roads.

The company intends to use special off-highway vehicles for its logging operations which could not normally be used on public roads and the use of which requires special provisions in regard to public safety, etc.

Clause 27 has been replaced by a new clause, in terms similar to those used in other recent agreements, and provides for the manner in which the principal agreement may be varied in the future.

I have mentioned that an environmental protection clause, 30A, has been inserted in the agreement. Its wording is identical to that of clauses of this nature in other recent agreements.

The remaining amendments, all of which are significant, deal with the Forest Produce (Chipwood) License scheduled to the principal agreement.

Firstly, the terms of the license have been amended to provide for the company to fell and cut a quantity of timber sufficient to produce 670,000 tons greenweight of chips per annum, in lieu of the 500,000 tons limit previously applying. The Forests Department has assessed that this increased volume can be safely cut without any increase in the area in which the company is licensed to take timber.

It is anticipated that the company will chip 750,000 tons of timber per annum, the remaining 80,000 tons coming from mill waste.

Condition 3 of the license has been amended to provide for royalties payable at the rate of $2.40 for each 100 cubic feet of logged timber measured in the ground, in lieu of the rate of $1.77 previously payable under this condition. The effective rate payable is that set out in the proviso to the condition. If the terms of the proviso are met the royalty payable is $2.10 per 100 cubic feet in lieu of the old rate of $1.50.

Condition 8 has been amended to provide for a five-year cutting plan to be submitted to the Conservator of Forests, such plan forming the basis for yearly felling operations and haulage routes. The amendment thus provides for full consideration of the effect of the logging operations and permits a greater degree of control over any undesirable aspects that might otherwise arise.

I have previously mentioned the measure of control in regard to environmental matters now afforded by the amendment to condition 9 of the license, under which the conservator may excise from the license area at any time, and without consultation with the company, a wide range of areas that the State may see fit to protect.

Control is also afforded by the amended terms of condition 21 in regard to the potential pollution of water catchment areas, where appropriate action can be

taken to excise areas from the cutting programme where investigation shows that there could be significant changes in salinity in these areas.

A new condition, 24A, has been inserted to provide for the company complying with the requirements of the forest officer in charge in regard to operations in dieback affected areas.

I stress, in conclusion, that the most significant of these amendments provide for two major elements. Firstly, they provide for the adjustment of the company's rights and obligations under the principal agreement in a manner that will make the project an economic proposition —and these changes have been vindicated by the company's success in negotiating a satisfactory contract. Secondly, the amendments ensure that there is a high degree of environmental control available under the agreement.

I commend the Bill to the House.

Debate adjourned, on motion by The Hon. V. J. Ferry.

COMPANIES ACT AMENDMENT BILL

Second Reading

THE HON. R. THOMPSON (South Metropolitan—Minister for Police) [5.11 p.m.]: I move—

> That the Bill be now read a second time.

At the outset I wish to explain to members that the Bill is in a somewhat unusual form. Ordinarily, a bill which seeks to amend an existing Act is arranged in clauses which successively amend sections of the principal Act in the order in which those sections are contained in the principal Act. This Bill, however, apart from a preliminary part and a part containing miscellaneous provisions, contains five other parts, each dealing substantially with a self-contained area of company law. Accordingly, each part of the Bill deals exclusively with those sections of the principal Act that touch the subject with which that part is concerned. Thus it will be seen, for example, that several of the parts amend section 5 of the principal Act, the definitions section, but in each case the individual part concerned amends only the definitions that concern the subject matter of that part. The only object of arranging the Bill in this fashion is to present what is, after all, a very lengthy Bill, in the most convenient form for consideration by members.

The Bill is divided into the following seven parts—

Part I—(clauses 1 to 6) contains the usual formal provisions and also several new definitions which are essential to provisions contained later in the Bill.

Part II—(clause 7) deals with "substantial shareholdings" and i based upon recommendation contained in the second report o the Eggleston Committee.

Part III—(clauses 8 and 9) deals witl duties and liabilities of officer and disclosure of directors' in terests in securities gives effect t the recommendations contained i the fourth interim report of th Eggleston Committee.

Part IV—(clauses 10 to 28) propose to re-enact existing provision relating to accounts and audit a recommended by the Eggleston Committee in its first interi report.

Part V—(clauses 29 to 35) regulate "special investigations" into com panies giving effect to the thir report by the Eggleston Commit tee.

Part VI—(clauses 36 to 42) propose to repeal and re-enact the provi sions of the Companies Act, 196 on "take-overs" giving effect t other recommendations also con tained in the second interim repor of the Eggleston Committee.

Part VII—(clauses 43 to 115) con tains general amendments t different parts of the Companie Act. These matters have not bee specifically the subject of report by the Eggleston Committee.

A Bill of this size dealing with the subjec just referred to obviously represents a extensive revision of the Companies Act.

Since 1961 the companies legislation i Australia has been continuously unde review by the Standing Committee o Attorneys-General and in the past a sub stantial part of the time of the committee' regular meetings has been devoted to th business of companies legislation.

A number of company failures hav highlighted deficiencies in the legislatio and the take-over of companies by bot foreign and Australian companies ha become a matter of Commonwealth an State concern.

In 1967 the Standing Committee o Attorneys-General decided the interests o the commercial community and the publi would best be served if many of th matters then under review were investi gated by an independent committee o experts and as a consequence the Compan Law Advisory Committee was establishe under the chairmanship of Sir Richar Eggleston, with Mr. Philip Cox, a Sydne chartered accountant and Mr. John Rod a Melbourne solicitor, as members.

The Company Law Advisory Committee —or the Eggleston Committee as it is sometimes known—was requested to inquire into and report upon the extent of the protection afforded the investing public under the existing provisions of the uniform companies legislation and to recommend what additional provisions, if any, were necessary to increase that protection.

The Eggleston Committee received many submissions from organizations and persons closely acquainted with the operations and administration of companies and, of course, made its own investigations and inquiries. The recommendations made by the Eggleston Committee in the first four of its interim reports to the Standing Committee of Attorneys-General are reflected in parts II to VI inclusive of this Bill.

If members have not already read the first four interim reports of the Eggleston Committee, I think they will find their perusal most helpful in more fully understanding the reasoning behind the proposed amendments.

Provisions similar to those contained in parts II to VI of this Bill have already been enacted in the same or substantially similar form by the States of New South Wales, Victoria, Queensland and South Australia and also in the Australian Capital Territory and their enactment in this State will provide greater uniformity in commercial matters and reciprocity between State authorities attempting to enforce companies act legislation.

I now propose to deal with the more important proposals contained in the Bill in greater detail.

Clause 6 proposes to enact a new section 6A which sets out the circumstances in which a person is deemed to have "an interest in a share". The new section 6A is important because the expression "interest in a share" has application in the Bill to the provisions relating to "substantial share-holdings", "take-overs" and the "register of directors shareholdings".

Substantial Shareholdings: Clause 7 of the Bill proposes to insert a number of new sections in the Companies Act which will require persons who hold not less than 10 per cent. of the voting shares or of any particular class of voting shares in a company to disclose to the company by written notice particulars of the voting shares in which he has an interest and any change in the extent of that interest. The Company Law Advisory Committee stated in paragraph 4 of its second interim report that in the case of companies whose shares were dealt with on the Stock Exchange shareholders are entitled to know whether there are in existence substantial holdings of shares which might enable a single individual or corporation or a small group, to control the destiny of the company and if such a situation does exist to know who are the persons on whose exercise of voting power the future of the company may depend. The register of substantial shareholdings to be kept by the company will be open for inspection by members without charge and to other persons on payment of a small fee.

Such information is not obtainable under the Act as it now stands because the Act presently prohibits the registration of notices of trusts thus making it impossible to determine in whom the beneficial interest of shares is vested. The new provisions will not only enable shareholders and management to know who have, or are attempting to achieve, ultimate control of companies but they will also, it is hoped, bring an end to the phenomenon known as take-over by stealth.

The provisions are meant to apply to all natural persons who are substantial shareholders in a company whether they are resident in Western Australia, or in Australia or elsewhere and to all corporations whether or not they are incorporated or carrying on business in this State or in Australia.

Persons who have a substantial shareholding in a company and who fail to comply with the requirements to disclose those interests can be penalised in two ways—they face prosecution in the ordinary way with monetary penalties not exceeding $1,000, but more importantly, particularly in the case of overseas interest holders, they face the loss or suspension of their voting rights and similar privileges including the right to receive dividends in respect of those shares. The latter penalties are of course only to be determined by a court.

Duties and Liabilities of Officers and Disclosure of Directors Securities: Clause 8 of the Bill proposes to repeal the existing section 124 of the principal Act and to enact a new section 124 in respect of the duties of directors.

The change sought to be effected in section 124 is to make it an offence for an officer of a company to make improper use of information to gain advantage for another reason. The existing section 124 refers only to the advantage gained by the officer who misuses the information.

The clause also introduces a new section 124A to control "insider" trading by officers, including directors. The new section makes a director or other officer of a company liable to compensate a person who suffers loss or damage in relation to a dealing in securities by virtue of use by a director or other officer of specific confidential information to the extent of the difference between the amount paid for the securities bought by that person and the amount that would have been reasonable if the information had been generally known.

The Eggleston Committee recommended that the right of compensation should be limited to an "outsider" who pays more

than the true value for securities in ignorance of unfavourable information. The proposed legislation was however amended in the lower house so that it provides compensation for a person who disposes of securities at a price which is less than he might have been able to obtain if he had had all the information available to him.

Clause 9 of the Bill seeks to repeal and re-enact sections 126 and 127 in an extensively modified form. The amended section 126 will require a director to disclose his interest in shares and debentures to the same extent as a "substantial shareholder" will be required by the new division 3A to disclose his interest in shares but goes further and requires disclosure of rights and options and interests in participatory interests; for example, units in a unit trust.

The existing provisions in section 126 which require the disclosure of holdings of shares and debentures in a related corporation are retained and extended to include rights, options, and participatory interests.

The register of directors' holdings must, under the proposed new section, be made available for inspection by any member without charge and to other persons on payment of a small fee.

The new section 127 requires a director to give notice to the company of such information as is necessary to enable the company to keep registers required by the Act.

A defence to a prosecution is provided in the section where a director proves that he was not aware of the fact or occurrence, the evidence of which was necessary to constitute the offence.

Accounts and Audit: Clauses 11 to 26—The group of amendments proposed in clauses 11 to 26 relate to accounts and audit and re-enact the existing provisions in a completely revised form to give effect to the recommendations contained in the first interim report of the Eggleston Committee.

The new provisions will require the disclosure of substantially more information in the annual accounts than is presently required by the Act. The Eggleston Committee has expressed the view that if adequate protection is to be afforded to investors, information to be disclosed in published accounts and in reports by directors must be greatly expanded.

For the purposes of the proposed provisions, new definitions have been introduced and others amended. The definition of "books" has been extended to embrace records kept on computers and on microfilm in keeping with modern accounting trends. Additional definitions such as "related corporation" and "the profit or loss account" are provided to simplify the drafting of these complex provisions.

Clause 12 of the Bill proposes the repeal of the first six subsections of section 9 of the principal Act and the re-enactment of those provisions in an amended form in division 3 of part VI of the Act. Division 3 will then contain all of the provisions relating to the appointment, resignation, removal, powers and duties of auditors, leaving section 9 to relate only to the registration of auditors and related matters.

Clause 13 contains certain consequential amendments to section 74F of the principal Act.

Clause 14 seeks to amend section 131 consequential upon the amendment to the definition of "emoluments". It makes no change in the existing law.

Clause 15 seeks to correct an anomaly in section 136 of the principal Act to enable the Registrar of Companies to permit a company to hold its annual general meeting in a calendar year other than the calendar year in which the meeting should have been held.

Clause 16 seeks to insert a new section 159A to require a company that is not required to lodge accounts with the Registrar of Companies to include with its annual return a statement signed by its auditor stating whether the accounts have been audited, whether the company has kept proper accounting records, whether he has referred to an irregularity in his report and whether his report on the accounts is any way qualified; if his report is qualified the auditor must give particulars of the defects in the accounts. The purpose of the new section is to ensure that all companies that are required to appoint auditors cause their accounts to be audited annually. Experience has shown that many companies fail to keep proper books of account.

Clause 17 repeals the existing provisions relating to accounts and audit and inserts new provisions in their stead. The new provisions require the disclosure of substantially more information in the annual accounts than is required by the principal Act. The redrafted provisions extend the obligations in relation to the type of accounting records which must be kept and the preparation of group accounts and expands the information required to be included in reports by directors.

The directors will also be required to report on the group accounts. Section 162 of the new provisions will make more specific the obligations of directors in relation to bad and doubtful debts and the value of noncurrent assets. However it should be noted that in making those obligations more specific the new section 162 does not add to or increase such obligations.

Recognising that some of the accounts provisions may be onerous when applied to a specific company or class of companies, section 162C has been inserted in the Bill to enable the registrar to grant relief from

compliance with any specific requirement relating to the form and content of the accounts of a company, group accounts, or the report of directors.

To ensure that a consistent policy will be applied by the individual registrars in the exercise of that proposed power the section requires that the registrar take into account the views he knows to be held by the registrars in the other States and Territories of the Commonwealth.

It is proposed that the exsiting provisions of the principal Act dealing with the appointment and duties of auditors be repealed and re-enacted as new division 3 of part VI. I mention some of the proposed changes. Under section 166 an auditor will remain in office until the fifth annual general meeting after his appointment, unless he resigns, is removed from office or ceases to be qualified to act as auditor—thus providing security of tenure as auditor. As originaly drafted the new section 166 provided that an auditor would remain in office until death; but, recognising that this may effectively lock in an inefficient auditor, this section was amended in the lower House to provide that an auditor would be appointed until the fifth annual general meeting after his appointment. Auditors will be given greater independence in carrying out their duties as section 167B will confer qualified privilege on an auditor in respect of any statement made by him in the course of his duties.

Section 165 re-enacts subsections (1) to (6) of section 9 of the principal Act to set out certain of the audit provisions in a more satisfactory arrangement. Several new provisions have been included.

The new subsections (6) and (7) seek to remove a doubt that presently exists as to who are the auditors of a company when a change occurs in the constitution of a firm appointed as auditors; for example, on the admission of additional partners.

The new subsection (10) empowers the Companies Auditors Board to approve the appointment of a suitably qualified person as auditor of an exempt proprietary company located in a remote area where no registered company auditor is available.

Subsection (14) prohibits an auditor from wilfully disqualifying himself from acting as auditor. This is designed to prevent an auditor from disqualifying himself for the purpose of avoiding his duty to report adversely upon the accounts of a client company.

The Bill in sections 165A, 165B, and 166 in dealing with the appointment of auditors takes account of submissions made by the accounting bodies in connection with similar Bills of other States in relation to the practice of appointing combinations of firms or natural persons, or both, as auditors of companies. Such appointments were not originally possible under the newly enacted provisions of some of the other States but this Bill will enable such appointments to be made, and the Acts in the other States have been or will be amended accordingly.

Under the principal Act an exempt proprietary company is not required to appoint an auditor if all the members so agree each year. The exemption from the requirement to appoint an auditor has resulted in some companies failing to keep proper books and accounts with the result that if they become insolvent and are wound up the liquidator has been unable to ascertain the true financial position of the company, or to determine whether all assets of the company have been surrendered to him.

Under the proposed new provision set forth in the Bill a company will only be exempt from appointing an auditor in the following cases—

(a) Firstly—in the case of a company that is an unlimited company—if the company is also an exempt proprietary company, all the shares in which are held by natural persons or by other exempt proprietary companies that are unlimited companies and lastly all the members of which have agreed not to appoint an auditor. Such a company is also not required to lodge accounts with the registrar, nor are the directors obliged to give the certificate as to the correct keeping of such accounts as will be required of the directors of an exempt proprietary company that is not an unlimited company. Provision has been made in clause 54 of the Bill to enable limited companies to convert to unlimited companies. It will be seen that such an unlimited company will be in a much preferred position but this is so because the shareholders of an unlimited company assume full personal liability for the debts of the company.

(b) Secondly an exempt proprietary company that is not an unlimited company may dispense with the appointment of an auditor if all the members before the annual general meeting have agreed that it is not necessary to appoint an auditor. In this latter case the directors must lodge with its annual return a copy of its accounts or group accounts, together with other documents required by law. The directors of such a company would also be required to give a certificate as to the proper keeping of those accounts, whether they have been kept by a competent person and whether they give a a true and fair view of the state of affairs of the company.

An exempt proprietary company that is not an unlimited company can under the proposed provisions therefore either decide to dispense with the appointment of an auditor and lodge unaudited accounts accompanied by such a certificate of the directors, or it can elect to appoint an auditor and be exempt from filing accounts with its annual return, but it must then include with its annual return the audit certificate required under the proposed new section 159A. The Bill also proposes to regulate more closely the position in relation to the retirement of an auditor.

In order to ensure that the auditor does not avoid his responsibility to report adversely upon the accounts of a company and to prevent the directors of the company from forcing the auditor to resign, the Bill gives the Companies Auditors Board power to inquire into the reasons for an auditor's decision to resign. An auditor cannot resign unless he receives the consent of the Companies Auditors Board, except where the company is an exempt proprietary company.

The new section 167 proposes to re-enact the existing section 167, which sets out the powers and duties of auditors as to reports on accounts. The new section 167 will also include several further matters. The auditor of a holding company will be required to report on group accounts.

The section gives the auditor access to the accounting and other records of a subsidiary and enables him to obtain information for the purpose of reporting on the group accounts.

The auditor is also placed under a statutory obligation to inform the registrar of any breach of the Act which he considers will not be adequately dealt with in his report on the accounts, or by bringing it to the notice of the directors of the company.

Clause 22 amends section 375 of the principal Act relating to false and misleading statements. The new provisions propose to extend the existing section to apply to misleading statements in and to information omitted from documents required to be prepared for the purposes of the Act, and to make it an offence to authorise the making of false or misleading statements or omissions.

Clause 23 proposes the enactment of a new section 375A. This section differs from section 375 of the principal Act which related only to documents prepared for the purposes of the Act. The new section also covers verbal statements and is designed to prevent the making of false reports; for example, to the auditor of a company in his endeavour to obtain explanations and information to enable him to report upon the accounts.

This new provision makes it an offence for an officer of a corporation to make false or misleading statements to a director, member, debenture holder or trustee for debenture holders of a corporation, or to a prescribed stock exchange. The new section also takes account of the position of different office holders and stock exchanges who have an interest in not being deceived as to the position of a company.

Clause 26 repeals the existing ninth schedule of the principal Act and re-enacts different provisions on the recommendation of the Eggleston Committee which reported that "the compulsory disclosure of information as to the past performance of a company coupled with the safeguard against misstatements provided by audit requirements would be one of the most potent weapons available for the protection of investors".

Clause 27 is a transitional provision to afford officers of companies an opportunity to acquaint themselves with the new accounts provisions and to vary their accounting practices to comply with the new requirements. The new provisions will apply only to a company in respect of the first financial year of the company after the new provisions become operative.

Clause 28 is a transitional provision which will give an existing exempt proprietary company that has not appointed an auditor a period of three months grace in which to do so.

Special Investigations: Clause 29 proposes the repeal of division 3 and division 4 of part VI of the principal Act and the enactment of a new part VIA, containing new provisions relating to investigations in place of those to be repealed.

The new part VIA is based upon recommendations contained in the third interim report issued by the Eggleston Committee. The existing provisions classify investigations into four categories; namely—

(1) An investigation implemented by the appointment of an inspector by a special resolution passed by a company.

(2) An investigation arising out of an application made by the prescribed proportion of the members or debenture holders of a company for the appointment of an inspector by the Governor.

(3) An investigation initiated by the Governor by proclamation in the *Gazette* in the case where the Governor is satisfied that the investigation is necessary in the public interest or for the protection of members or creditors.

(4) An investigation initiated by the Minister for the purpose of inquiring into the ownership of or dealings in shares in a company.

The first two categories are covered in division 3 of part VI and the other two are provided for in division 4 of that part.

Under the proposed part VIA the existing two divisions dealing with special investigations have been integrated and all appointments of inspectors will be made by the Governor.

The proposed new provisions enable an investigation to be confined to a specific aspect of a company's affairs in lieu of the now common procedure whereby an investigation is ordered into the whole of the affairs of a company.

The holders of "interests" as defined in section 76 of the principal Act are given the right to apply for the appointment of an inspector.

Another important change in the law is effected in proposed section 169 which provides that a company may apply to the Minister for the appointment by the Governor of an inspector to investigate its affairs, if the company so resolves by special resolution. Under the existing section 170, a company may by special resolution appoint its own inspector without any application to the Governor.

The Eggleston Committee recommended that the power to appoint an inspector should be vested solely in the Governor. The powers conferred upon an inspector by the Act are extensive, and the committee considers that any company seeking to invoke these powers should have to satisfy the Governor of the need to appoint an inspector in the same way as would a minority of shareholders.

Section 174 contains new provisions which are designed to afford further protection to persons examined by an inspector, by providing that such a person is entitled to be represented by counsel who is permitted to address the inspector and to examine his client in relation to any question put to his client by the inspector. It also, on the recommendation of the Eggleston Committee, provides that a person examined by an inspector should be entitled to a witness fee.

Section 178 deals with the inspector's report and proposes some important changes in the law. The section prohibits an inspector from including in his report any recommendation relating to the taking of criminal proceedings, or any statement that, in his opinion, a specified person has committed a criminal offence. If an inspector holds such an opinion he is required to state that opinion in a separate report to the Minister. Those provisions were recommended by the Eggleston Committee.

Section 179 of the principal Act, which applies only in relation to investigations into share ownership, empowers the Minister to impose certain restrictions on shares or debentures if it appears to the Minister that there is difficulty in finding out the relevant facts about those shares.

Under the proposed new section 179B which re-enacts the existing section 179 the Governor—if satisfied that an investigation has failed to reveal particulars of dealings in or the ownership of shares, debentures or interests by virtue of the failure or refusal of a person to comply with the requirements of an inspector—may make orders—

(a) Restraining the exercise of voting rights;

(b) Prohibiting the disposal or acquisition of securities;

(c) Prohibiting the payment by the company of money in respect of those securities;

(d) Restraining the registration of transfers of those securities; or

(e) Restraining the issue of further shares to any person.

Takeovers: The Bill proposes to replace the existing section 184, which regulates takeovers, by a new part VIB containing a more extensive code. It is also proposed to replace the existing tenth schedule to the Act which contains the requirements with which a takeover offer must comply.

Basically, the proposed provisions are designed to ensure a fair and equal treatment of shareholders in companies engaged in takeover situations. The legislation is not designed to discourage takeovers but to ensure that shareholders will know the identity of the bidder, that shareholders and directors have a reasonable time to consider the proposal, that the bidder will supply sufficient information for shareholders to properly value the offer being made and that, as far as is practical, each shareholder will have an equal opportunity to participate in the takeover offer.

Although the changes proposed are extensive they really effect no change in principle. Some of the new provisions are designed to extend the takeover controls to meet the techniques which have been developed for achieving takeovers outside the existing legislation.

There has been, in accordance with the recommendations of the Eggleston Committee's report, an extension of the coverage of the takeover provisions in several major areas. The existing provisions are limited to offers that would give the offeror one third of the voting power in the offeree company. The Bill adopts as a criterion for the operation of the legislation 15 per cent. of the voting power instead of one-third as is presently required to constitute a takeover offer.

First-come first-served bids are brought within the scope of the takeover code.

An offeror includes a natural person—the existing provisions relate only to corporate offerors. Offers of two or more persons jointly are takeovers and come within the scope of the new code. Bluffing offers are sought to be controlled.

Separate provisions are made in respect of the compulsory acquisition of shares which have been the subject of a takeover

scheme, leaving the existing provisions in section 185 to apply to other types of schemes.

The proposed part VIB makes it clear that the law in force in the State where the offeree corporation is incorporated shall be the law governing the takeover scheme thus eliminating a doubt that exists under the present law.

Clause 39 of the Bill contains a transitional provision to the effect that if a notice under the existing section 184 (2) (a) were given before the amending Act commences, the Act in force prior to the amending Act shall continue to apply to that scheme.

Part VII of the Bill contains a considerable number of proposed miscellaneous amendments. They give effect to recommendations that have been made in the course of the review by the Standing Committee of Attorneys-General of the uniform Companies Act during the past few years. Some of the proposed amendments are of a general revision nature designed to correct existing anomalies or deficiencies in the Act. Many are minor matters clarifying or enlarging existing provisions. I do not at this stage propose to refer to all of the matters in part VII in detail. However, I will refer to some of the more important matters included in the proposed new part.

Clause 47 which contains minor amendments for the clarification of section 9 also includes a provision giving the Companies Auditors Board a discretion to register persons who satisfy specified conditions—particularly relating to those persons' practical experience in accountancy —and to refuse to register, either as auditors or liquidators, persons who are not resident in a State or Territory of the Commonwealth.

Clause 54 repeals and re-enacts section 25 of the principal Act which relates to the conversion of companies from one class to another. The purpose of the amendment is two-fold—

(1) To allow existing exempt proprietary companies to convert to unlimited companies so that they can qualify for exemption from appointing an auditor. That change of policy has been previously referred to by me when dealing with the accounts and audit provisions proposed by clause 17 of this Bill. It is anticipated that a number of existing exempt proprietary companies will wish to convert to unlimited status to enable them to qualify for the exemption. To ensure that a member of a limited company cannot be forced to accept unlimited liability for the debts of the company, the proposed new section provides that the change of status can be effected only if all members assent thereto.

(2) The new section 25 will empower a no-liability company to convert to a limited company.

Clause 58 seeks to amend section 76 of the principal Act in its application to miscellaneous types of investments which are not in the nature of shares or debentures.

The purpose of the amendment is to bring an interest in certain types of partnership agreements within the meaning of an "interest" under section 76 of the Act. The Bill would also provide for the prescription of other partnerships or other classes of partnerships in which no need for protection arises, thereby excluding such partnerships from the ambit of the section.

The rapid growth of syndication schemes and the collapse of some of these schemes in Western Australia have demonstrated the need for statutory control over the fund-raising activities of promoters of such schemes.

Members will be aware that there is usually keen competition in soliciting funds from the public in investment schemes, whether those schemes take the form of company flotations, debenture, mortgage stock, or unsecured note issues, unit trusts, or mutual funds. However, in each of those instances the companies legislation requires the preparation, registration, and issue of a prospectus containing sufficient information for the investor to make a reasonable assessment of the chances of success of the scheme and, accordingly, the security of his investment.

However, at the present moment interests in the nature of partnership interests are commonly promoted and vigorously advertised, but no means exist for controlling the nature and content of the advertisements and, probably more importantly, there is no obligation to prepare and issue a prospectus or to execute a trust deed to protect investors' interests.

Thus not only at the moment do promotors of partnership interests enjoy freedom, at the expense of investors' security, from those requirements applicable to all other modes of public investment but also the very fact that they do not have to issue a prospectus and secure the execution of an approved trust deed puts them at a competitive advantage.

All other mainland States have already enacted identical or similar amendments to section 76 of the uniform companies legislation, and there is real cause for believing that in the absence of similar legislation in this State promoters from other States are resorting to Western Australia for the purpose of promoting schemes of doubtful soundness.

Another important amendment is proposed in clause 101 of the Bill. Section 292 of the principal Act sets out the order in which preferential debts are payable

in a winding-up. The Standing Committee of Attorneys-General agreed to increase from $600 to $1,500 the amount of wages and salaries to which an employee of a company is entitled in priority and to remove the qualifying period of four months in respect of which wages and salaries are entitled to priority, the effect of which will be that wages and salaries will be entitled to a priority of $1,500 irrespective of the period for which they have remained unpaid. It is also proposed to remove the existing priorities limit of $2,000 in respect of workers' compensation.

A further amendment is proposed to the section to ensure that wages and salaries earned between the date of the presentation of the petition for a winding up and the date of the making of the winding-up order are entitled to priority to the same extent as wages and salary earned preceding the presentation of the petition to wind up a company. The expression "floating charge" is defined and the effect of that definition is that the priority extended to wages and salaries over the holder of a floating charge is not defeated by the crystallisation of the floating charge on a date prior to the commencement of the winding-up.

Clause 114 proposes a new provision, the enactment of which was agreed to by the Standing Committee of Attorneys-General in July, 1970. The section is designed to answer constant criticism of the existing law which does nothing to prevent a person who was a director of a company that failed from forming a succession of companies and incurring further debts in the names of those companies.

The section seeks to empower the Registrar of Companies to apply to the court for an order prohibiting a person from taking part in the management of a company for a period not exceeding five years.

The court, before making an order, is required to satisfy itself that the person had been concerned with the management of two or more companies that have failed and that the failures were due wholly or in part to the manner in which those companies had been managed.

When the uniform Companies Bill was in course of preparation, consideration was given to the inclusion of a provision in the Bill whereby a person who had been a director of a company that failed to pay more than 50c in the dollar to its unsecured creditors could not act as a director of another company for a period of five years without leave of the court. That provision was abandoned however, since it would have reacted harshly against a person who had joined a board for the purpose of endeavouring to save the company from total collapse. If the company failed in spite of that person's effort he would be forced to resign all other directorships held by him.

Such a position is unlikely to arise if section 374H is enacted. The registrar would not seek an order of the court except in appropriate cases and the court could be relied upon to ensure that persons did not suffer injustice. On the other hand the new provision would be useful in protecting the public against irresponsible or unscrupulous persons who incur debts in the names of companies and take full advantage of the limited liability principle to the detriment of the creditors and employees.

As previously mentioned this Bill follows substantially the same form as similar legislation in Victoria, South Australia, Queensland, and New South Wales and it is most important from the point of view of the business and commercial community that the legislation in this State should not differ greatly from that passed elsewhere. I do not suggest for a moment that the dictates of uniformity require this Parliament in any way to surrender its power to decide what the law should be. However when dealing with legislation such as this which operates across State borders and affects persons in other places it is important that the legislation be consistent, and that any changes made should occur only when Parliament considers the matter to be of fundamental importance.

I trust this House will pass this Bill so that Western Australian company legislation will be in similar form to that of the majority of other States.

I commend the Bill to members.

Debate adjourned until Wednesday, the 26th September, on motion by The Hon. I. G. Medcalf.

AGE OF MAJORITY ACT AMENDMENT BILL

Second Reading

THE HON. R. THOMPSON (South-Metropolitan—Minister for Police) [5.58 p.m.]: I move—

> That the Bill be now read a second time.

This Bill to amend the Age of Majority Act is to maintain the privilege of established existing rights.

The reason for the amendment so soon after the 1972 enactment is a logical response to a letter from the Law Society of Western Australia drawing attention to the fact that with the passage of the parent legislation a person who would have had a cause of action, and time within the meaning of the Limitation Act after the arising of that cause of action to pursue it, could be disadvantaged by the age of majority being reduced from 21 to 18 years.

The Law Society requested that this aspect, and also other aspects of the Statute of limitations, be referred to the Law Reform Commission. However, in the case of the operation of the Age of Majority Act

it was patent that the position outlined by the Law Society was obviously a real one, and were an incident to arise under the Act a person could, in fact, be disadvantaged. So the preferable course of action is to seek an amendment of the principal Act forthwith.

Legal advice to the Government is to the effect that the Age of Majority Act, 1972, could deprive a person of his right of action in the circumstances instanced by Mr. Toohey, the President of the Law Society, and it seems doubtful that the position is saved by the Interpretation Act, nor would it be proper to rely on that Act in the matter.

The Government was therefore advised that the proper course was not to refer the matter to the Law Reform Committee, but as a matter of urgency, to prepare an amendment to the Age of Majority Act to make it clear that rights of action which existed at the "commencement day" subsist for such period as they would have had the said Act not been enacted. The Bill has been prepared to achieve this requirement.

To clarify the position further, I would point out that one effect of the coming into force of the Age of Majority Act, 1972, has been to reduce the time within which persons who were under the age of 21 years at the time the Act came into force could exercise their existing rights of action. In accordance with the principle that legislation should not abolish or diminish existing rights, the amendment will ensure that those persons have the same period of time within which to bring their actions as they would have had prior to the Act coming into force.

The purpose of the Bill is, therefore, to reinstate that right to such class of person and to make it retrospective to the 1st November, 1972, being the date on which the Act was proclaimed to come into operation.

I commend the Bill to the House.

Debate adjourned, on motion by The Hon. I. G. Medcalf.

Sitting suspended from 6.02 to 7.30 p.m.

EXCESSIVE PRICES PREVENTION BILL

Second Reading

THE HON. R. H. C. STUBBS (South-East—Minister for Local Government) [7.32 p.m.]: I move—

That the Bill be now read a second time.

This legislation has been prepared by the Government and presented to Parliament as a result of the previously declared election policy of the Government to legislate for the control of excessive prices. A similar Bill was introduced in 1972 and passed through the Legislative Assembly with some amendment, but was defeated in this House.

In effect, the Bill complements consumer protection legislation which is now in force. The Consumer Protection Act passed this Parliament late in 1971 and was proclaimed to take effect on the 11th August, 1972.

At the outset I think it would be of some benefit if once again I briefly traced the history of price control in Australia. From the outbreak of war in September, 1939, to September, 1948, prices in Australia were controlled by the Commonwealth Government under defence powers with the objects of maintaining economic stability and ensuring orderly transition from wartime to peacetime conditions.

The national security regulations provided for the appointment of a Commonwealth Prices Commissioner with very wide powers to control prices of goods and services declared for that purpose by the Minister for Trade and Customs. The definition of "Service" was very extensive and could be further extended by the Minister.

The Prices Commissioner made prices orders under the regulations and deputy prices commissioners nominated in the respective States administered the regulations under the commissioner's supervision. Rigorous control was exercised within a framework which sought to check inflation and prevent profiteering without unduly discouraging essential production and trade.

In September, 1948, the Federal Government ceased administering prices control and the State Governments assumed responsibility in this field. More recently concern in respect of rising prices has caused important moves on a Federal level, and a Joint Parliamentary Committee on Prices has been formed of representatives of both the House of Representatives and the Senate in the Commonwealth Parliament. There obviously must be close understanding and co-operation between the Commonwealth and States with complementary legislation at the State level being particularly necessary to make prices justification properly effective.

I will touch briefly upon the position in Western Australia, New South Wales, Queensland, and South Australia and in doing so make mention that there is no prices control legislation currently on the Statute books in Victoria and Tasmania, although two attempts to introduce prices legislation during the past two or three years in Tasmania have not been successful because the Legislative Council defeated the Bills.

The Victorian Government has recently been looking at rising prices and inflation and the steps the State could take to combat the position, and has indicated a need for action with the Commonwealth Government on prices and incomes policy.

In Western Australia, under the Prices Control Act, 1948-1952, price control operated until the expiry of that Act at the end of 1953.

The provisions of the Act were not as detailed as those of the equivalent legislation in the other States, although the basic machinery was similar. Section 10 empowered a prices control commissioner to fix and declare maximum prices. Section 14 provided for the making of regulations for the purposes of the Act generally and particularly with respect to—

(a) The control of prices and rates for goods and services, particularly in relation to food, clothing and housing;

(b) The regulation so far as is necessary of prices and rates for goods and services which are essential to the life of the community, and of goods and services in general use which are in short supply;

(c) Co-operation between the State and the Commonwealth and any other State of the Commonwealth in carrying into operation or facilitating the operation of the provisions and purposes of this Act.

The Act appears to have been a transitional measure designed to carry on the Commonwealth wartime price regulation system. That was the early system in Western Australia.

Prices in New South Wales have been subject to control under the provisions of the Prices Regulation Act, 1948-1949. Under the Act the Minister could declare any goods and services to be subject to control and remove or re-impose control on any item. The Prices Commissioner was empowered to fix the maximum prices at which declared commodities and services might be sold or suplied and to investigate the price of any goods or service whether declared or not.

Generally control of prices in New South Wales was progressively modified after 1952 and was suspended in 1955.

Controls were temporarily reintroduced on a limited range of goods and services between 1955 and 1956. Control on bread was reintroduced in December 1957 and on motor spirit in May 1959—incidentally we have not got that in this State—and maximum prices for these commodities have since been fixed by the Prices Commissioner. Again, that State has a Prices Commissioner and we have not. Many other commodities and services remain declared under the Act but maximum prices are not fixed for them. Milk, gas, electricity, and coal prices and rents are subject to control under other Acts.

Under its Profiteering Prevention Acts, Queensland has had price control machinery since 1920. The current legislation, the Profiteering Prevention Act, 1948-1959, follows the same pattern as the New South Wales Act except that a Prices Advisory Board consisting of the Under-Secretary of the Department of Industrial Affairs, the Commissioner of Prices, and an officer of the Department of Agriculture and Stock is established. The functions of the board are to advise the Minister with respect to the declaration of goods and services and to advise the Commissioner of Prices with respect to the principles to be used by him in setting maximum prices or rates for declared goods and services.

At the moment no items are controlled by the Commissioner of Prices but the legislation has not been repealed and controls could again be imposed by the Government of the day at any time.

In South Australia a system of prices control over goods and services is still maintained under the Prices Act, 1948-1970. The framework of the machinery set up by this Act is contained in the following sections—

Section 19: This section empowers the Governor to declare by proclamation that any goods or services shall be declared goods or services or shall cease to be declared goods and services.

Sections 21 and 24: Under these sections the Minister may by order, fix and declare the maximum prices or rates at which goods or services can be sold or supplied throughout the State or in any part of the State.

Sections 4 and 5: These sections provide for the appointment by the Governor of the South Australian Prices Commissioner and other officers for the purpose of the administration of the Act.

Sections 13, 14, 15, 16, and 17: These sections relate to the setting up of Prices Committees by the Governor with power to make recommendations to the Minister in respect of specified classes of goods and services. Each committee is to consist of—

(a) A chairman appointed by the Minister;

(b) One or more representatives of the sellers or suppliers of the goods or services with which the committee is concerned;

(c) One or more representatives of the consumers or users of those goods or services.

The committees are to make recommendations on such matters arising under the Act as are referred to them by the Minister.

I refer members to the committees which were envisaged under the previous Bill. There is a compatibility here between what was proposed in the earlier measure in this State and what is in force under the South Australian Act.

The remainder of the Act mostly has a similar pattern to the equivalent New South Wales and Queensland legislation.

However, in 1966 new sections were added under which the Minister can set a minimum price at which grapes can be supplied to wine makers or brandy distillers. In a further amendment of the Act in 1967 the Minister was empowered to fix minimum retail prices for any type of liquor.

The South Australian Prices Act differs from the New South Wales and Queensland Acts in that the fixing of prices is a function of the Minister, not of the commissioner. The provisions relating to the fixing of minimum prices for certain commodities are also a departure from the general trend of Australian price-fixing legislation.

It is not the intention of the Western Australian Government to provide for minimum prices in the Bill presented and substantial evidence would need to be produced to show a need for this before it would be considered.

A wide range of goods and services are still subject to prices control in South Australia and the Prices Branch, under the commissioner, investigates complaints concerning excessive prices and charges whether or not the goods or services involved are subject to control.

South Australia has provisions in sections 34 to 42 of the Prices Act to extend the cover to certain land transactions, but these sections have not been invoked since the 1st January, 1962. It is not the intention of the Western Australian Bill to make provisions concerning land sales.

It is also worthy of mention that New Zealand has adopted prices control. Under the New Zealand Control of Prices Act, 1947, a body known as the Price Tribunal was given the following general powers and functions—

(a) To fix prices for goods and services;

(b) to investigate any complaints that might be made to it or referred to it by the Minister with respect to the prices of any goods or services;

(c) to maintain a survey of the prices of goods or services, to institute proceedings for offences in relation to prices, and to take such steps as in its opinion might be necessary to prevent profiteering or the exploitation of the public.

In addition the tribunal had powers to inquire into and investigate the accounts, returns, and stock of traders.

Under section 18 of the Act the Minister may publish lists of goods subject to price orders or special approvals. Any goods not listed are exempt from price control. Section 44 extends the provisions of the Act, so far as they are applicable, to the performance of, and rates and fees charged for, services.

The Control of Prices Act is a much more comprehensive measure than any existing Australian prices control legislation. The chief distinguishing features are—

(1) the power to fix minimum or actual prices as well as maximum prices;

(2) the power to control undesirable trading practices such as profiteering and hoarding irrespective of whether the goods controlled are subject to price control; and

(3) the severe fines payable for breaches of the Act.

It should be noted that the prices of a number of commodities are subject to control under various other New Zealand Statutes.

At present some commodities are subject to price regulation in this State under Acts which control their production and marketing. For example—

Wheat—The Wheat Industry Stabilisation Act, 1968, fixes the price at which the Australian Wheat Board is to sell wheat intended for human consumption, and the minimum price at which the board can sell wheat intended to be used other than for human consumption.

Milk—Under the Milk Act, 1946, the Milk Board is charged with the responsibility of fixing maximum —and in certain cases minimum —prices for milk at every stage of its distribution from dairyman to consumer in dairy areas constituted under the Act.

Eggs—Section 31A of the Marketing of Eggs Act, 1945, authorises the Egg Marketing Board to fix the maximum price at which each grade of eggs may be sold at retail.

Potatoes—The Marketing of Potatoes Act, 1946, does not confer power on the Potato Marketing Board to fix potato prices. However, since all potatoes produced in the State for commercial purposes become the property of the board before they are distributed to the consumer, the board can in fact regulate potato prices to some extent.

In these areas the laws of supply and demand in a competitive atmosphere have been eliminated in favour of orderly production and marketing with prices and rates regulated to protect the interests of the producers, retailers, and consumers.

In other cases where services are a State responsibility—for example, water supplies, electricity, etc.—the Government

does obviously exercise control over rates and charges pertaining to its supply to the consumer.

Various Ministers of the Crown are allocated the administration of these Acts, and it would be an unnecessary duplication for the Minister for Prices Control to be given secondary powers to investigate such activities, and have his departmental officers carry out inquiries in areas similar to those covered by other Government and semi-Government officers.

The Bill now before the House does not empower the fixing of minimum prices, but deals only with the fixing of maximum prices and rates for goods and services.

One object in fixing minimum prices, it has been said, is to protect the domestic manufacturer or supplier from goods or services dumped on the local market, either from interstate or overseas. So far as the latter is concerned, protection of goods from overseas competition is fairly well exclusively a matter to be dealt with in Australian States either by the Tariff Board or by the Controller of Customs under the Customs Tariff (Dumping and Subsidies) Act of the Commonwealth, which Act was, for example, invoked about 1971 to deal with the dumping on the home market of low-priced petroleum spirit.

So far as dumping of goods from other States is concerned, it is doubtful whether any minimum price fixing legislation would be likely, in the end result, to assist local manufacturers because of the protection afforded by section 92 of the Australian Constitution which at least guarantees that interstate goods will cross the border at their lower prices.

During the immediate post-war period doubts were raised as to the constitutional validity of State legislation imposing maximum prices on goods imported from other States. The doubts were based on McArthur's case (1920) 28 C.L.R. 530, in which the High Court held that, as far as goods coming into Queensland from New South Wales were concerned, the Queensland Profiteering Prevention Act, 1920, was invalid, as it conflicted with section 92 of the Commonwealth Constitution Act.

In Wragg's case (1953) 88 C.L.R. 353, it was explained by the High Court that it is only the initial transaction between a seller in one State and a buyer in another which is protected by section 92. All subsequent intrastate dealings could validly be subjected to price control by that State. To gain the protection of section 92 a transaction must have some interstate character and an intrastate sale of goods does not take on an interstate character merely because the goods concerned have at some earlier stage been imported from another State. However, legislation which only affected intrastate transactions might infringe section 92 if the burdens it imposed were upon imported goods because they were imported goods, or upon importers because they were importers.

Because the South Australian Act has been in operation for many years under a Liberal Government and more recently under a Labor Government, it seems, to all intents and purposes, to have been acceptable in meeting price control aspects in that State. Accordingly, it should provide a reasonable basis for use in Western Australia and therefore its fundamental principles have been inserted into the Western Australian Bill.

A "consumer", in an individual sense, is not particularly provided for in this Bill, though he is in a general sense. It must be understood that the South Australian Prices Act incorporates both consumer protection and prices whereas in Western Australia there is a consumer protection Act already in operation and it is deemed more desirable, administratively and otherwise, to supplement it with a separate Excessive Prices Prevention Bill.

The explanation is that in South Australia an individual who complains to the Prices Commissioner about a price which he believes to be excessive can have action taken under the consumer section of the Act; in other words, in South Australia under consumer protection, prices are a factor which can be looked at. Because of the dual situation of the Bills in Western Australia an individual will not be placed in the same category as far as consumer protection is concerned; a complaint must be treated separately as far as prices control is concerned.

A consumer's individual complaint can be received and investigated under section 17 of the Consumer Protection Act, which of course includes complaints on excessive prices. However, there is no authority to fix maximum prices under that statute. Because of the close relationship of the two functions it is logical and appropriate that the Commissioner of Consumer Protection may also be the commissioner for prices and it is found in South Australia that the one person fills the combined roles. I understand he also does so in other States.

Preliminary inquiries on excessive prices or rates may emanate from complaints received or other circumstances arising which may in turn cause recommendations to be made by the commissioner to the Minister. However, the appointment of prices committees in this Bill can only be made by the Governor who shall, in the notice published in the *Government Gazette* appointing such committee, specify the classes of goods or services in respect of which the committee shall have power to make recommendations as set out in clause 15.

For the benefit of members I would point out that this is a consistent variation in that it is the Governor who is given various powers to appoint committees to set prices. It is not the prices commissioner who will do this. Throughout the Bill the Governor appears as the one to appoint these persons.

It shall be the duty of every committee to make recommendations to the Minister upon such matters only as are referred to it by the Minister. The committee is therefore controlled in its scope of inquiry. A committee shall consist of a chairman nominated by the Minister, together with one or more members to represent sellers of goods or providers of services, as well as one or more members to represent consumers of goods or users of services in respect of which recommendations may be made.

Only the Minister may, by order, fix and declare the maximum price at which declared goods and services may be sold throughout the State or in any part of it. In making an order some elasticity is allowed to the Minister in the manner in which the order is applied in respect of quality, description, locality of State, and details of a similar nature.

Other specific facets of the Bill encompass such matters as declarations of secrecy to be made by the commissioner and his officers to ensure that no information on any matter obtained in consequence of their employment is divulged. Thus the affairs of a business operation which may be under scrutiny are adequately protected. Exception is made, however, where it may be necessary for the Minister or the commissioner to convey to his counterpart in another State certain information in connection with the control of prices in this State. Similarly, information relative to the interests of a consumer is allowed to be communicated to the Commissioner for Consumer Protection or to the Consumer Affairs Council in Western Australia.

The powers given to the commissioner to obtain information and otherwise investigate and inquire are somewhat similar to provisions in other Acts administered by the Department of Labour where inspection is involved and questions have to be asked of persons, where documents have to be produced, or information furnished. The power of entry to premises by an authorised officer for inspection purposes is a necessary adjunct, as is also that which requires the keeping of proper books and accounts, including stock and costing records, by business concerns producing, manufacturing, selling, or supplying declared goods or declared services.

I suggest that of its nature this is a Committee Bill and members desiring to be fully informed on particular aspects of the legislation may be assured that if such information is sought, every effort will be made to provide a satisfactory explanation at the Committee stage. This is important, I feel, if members are to be fully informed on the manner in which the legislation is intended to be administered and before the question is put.

I commend the Bill to the House.

Debate adjourned until Wednesday, the 26th September, on motion by The Hon. A. F. Griffith (Leader of the Opposition).

PROPERTY LAW ACT AMENDMENT BILL

Second Reading

THE HON. J. DOLAN (South-East Metropolitan—Leader of the House) [8.03 p.m.]: I move—

That the Bill be now read a second time.

The reason for the introduction of the Bill is a letter from the Law Society of Western Australia, dated the 19th October, 1972. The letter reads as follows—

> At its last meeting on the 6th instant, my Council considered division 4 of part VIII of the Conveyancing Act of New South Wales, consisting of sections 133C-133G. These sections have been introduced to overcome the harshness of the law which held that where an option was contingent upon the performance of terms and conditions of a lease, any breach, however minor, of the terms of the lease (and notwithstanding that the breach may have been waived so far as the subsistence of the lease was concerned), was a sufficient reason for a lessor to decline the purported exercise of the option by a lessee—whether the option was for a further lease, or for the purchase of the property in question.
>
> The Council considers that there is an equal need for the introduction of such legislation in this State and I am instructed to request you to give consideration to amending the Property Law Act to include provisions similar to those contained in division 4 of part VIII of the Conveyancing Act of New South Wales. This would give a lessee access to the court for relief against a lessor, who denies his right to exercise an option to lease or purchase on the ground of some antecedent breach.
>
> Yours faithfully,
>
> (Signed) J. L. TOOHEY,
> President.

The matter was then referred to the Crown Solicitor who tendered a rather lengthy, comprehensive, and detailed report. The Attorney-General could see merit in the proposition and this Bill was drafted.

If we accept the principle that where a lease contains an option, either to renew the lease or to purchase, such a lease would naturally contain certain conditions imposing obligations upon the lessor and the lessee. Where there is a breach of one of the terms or conditions imposed by the lease, the breach being on the part of the lessee, and the lessee purports to exercise the option to purchase or renew the lease, then the Bill sets out certain things whereby the lessor may require the lessee to repair the breach, or the lessee may seek remedy from the court.

If one examines the contents of the Bill one will see the action which the court may take. One is then justified in trying to anticipate what course of action, or guidelines, a court would take or adopt regarding a breach. Under the provisions of the proposed new section 83D the court may, in proceedings in which relief is sought—

(a) make such orders (including orders affecting an assignee of the reversion) as it thinks fit for the purpose of granting the relief sought; or

(b) refuse to grant the relief sought.

To assist the court in making its decisions, the Bill provides in subsection (3) of proposed new section 83D—

(3) The Court may, in proceedings referred to . . . take into consideration—

(a) the nature of the breach complained of;

(b) the extent to which, at the date of the institution of the proceedings, the lessor was prejudiced by the breach;

(c) the conduct of the lessor and the lessee, including conduct after the giving of the prescribed notice;

(d) the rights of persons other than the lessor and the lessee.

It is suggested that the relief most likely to be granted by the court in such instances—in favour of the lessee—would be where a breach was of a minor nature, and where the lessor had not, in fact, been prejudiced.

The court, of course, is given complete discretion as to what it may or may not do, as outlined earlier. If we accept that principle then we must ask ourselves whether, in fact, the remedy provided is to be made available in the matter of the existing leases, or whether the remedy becomes available only for new leases which contain options brought into effect after the coming into operation of the proposed legislation.

The remedy will operate only in regard to leases executed after the coming into operation of the Act.

It was originally intended otherwise and in accepting an amendment suggested in another place the Attorney-General commented that normally that Chamber was reluctant to pass legislation having a retrospective effect, in the absence of any cogent reason being given in relation to a past event or situation. There well may be certain cases where in the absence of this provision, hardship will be experienced, he added. If so he was unaware of such cases. If, following the passage of the Bill incorporating the amendment, notice is drawn to the fact that the provisions could or should have been made retrospective, Parliament would be given the opportunity to look at the matter again at a future time.

Turning now to the actual provisions covering interpretation and breaches, the proposal is to add a new division to part VII of the principal Act. The new sections are contained in clause 3 of the Bill.

Section 83A defines the term "option" and in paragraph (b) provides that "breach" shall be given the same interpretation as it would take in a lease without an option.

Section 83B requires the new division to be read and construed subject to section 68 of the Transfer of Land Act.

Section 83C requires that the lessor serve notice on the lessee of the breach within 14 days before the option of renewal is forfeited. The lessee would still be given the opportunity to apply within one month to the court for relief against the impending forfeiture of the option and forfeiture then could be prevented at the discretion of the court, either absolutely or conditionally. Failure of the lessee to comply with any condition subject to which relief was granted by the Court, would render his option liable to forfeiture.

As I have already explained in some detail, the court is given the power in section 83D to take into account all relevant factors when deciding whether to grant relief, including the nature of the breach, its effect on the lessor and third parties, and the conduct of the parties involved.

Other clauses of the Bill deal with administrative details to give effect to these main changes to which I have referred.

It has long been recognised by the law that certain insignificant breaches of a lease agreement do not discharge parties from their obligations to carry out the agreement and it is an obvious extension of this policy to treat options to lease similarly.

I commend the Bill to the House.

Debate adjourned, on motion by The Hon. I. G. Medcalf.

TRADE DESCRIPTIONS AND FALSE ADVERTISEMENTS ACT AMENDMENT BILL

Second Reading

Debate resumed from the 22nd August.

THE HON. G. C. MacKINNON (Lower West) [8.11 p.m.]: Last night I spoke a great deal about advertising and in the main I was speaking about one advertisement.

What concerns me about Bills of this nature is that when businessmen advertise the implied suggestion is that there is something evil about it; that it is possible that it is wrong and that the advertisers are trying to pull the wool over people's eyes. It seems to be taken for granted that if a Government, a trust, or foundation advertises then that trust, foundation, or Government is automatically good. I am at a loss to understand why this particular belief should have developed.

We live in an age when advertising is virtually a part of our life. We buy all sorts of things we do not need, or which we could do without, and most of them we buy because they are advertised. We place a value on them and we are prepared to buy them.

All sorts of things are advertised. I have in my hand a page from *The West Australian* of Monday, the 3rd September, on which appears an advertisement headed, "Hats off to Western Australia's engineers and manufacturers." It displays a very nice photograph of a pleasant gentleman (Mr. Don Taylor), the Minister for Development and Decentralisation.

The Hon. R. F. Claughton: You would not find that objectionable?

The Hon. G. C. MacKINNON: I would not personally, but I can imagine some people with very strong political views might believe this ought to be referred to a tribunal. They might suggest in their narrow-minded way that this advertisement was purely and simply a stunt to get Mr. Taylor's photograph into the paper, that it might be being paid for with taxpayers' money, and that it is not a proper advertisement. This is not beyond the realms of imagination. However, because it is an advertisement inserted by a Government, only someone with extreme political views like those I have outlined would ever believe there might be something untrue about it.

Nevertheless the implied belief is that when a business advertises, something is wrong with the advertisement. Last night I cited an advertisement presented to the public of Western Australia at a cost of $250,000 of the taxpayers' money and it is known as *The Plain Facts*. I suggested it should have been called "The Half Truths". Another pamphlet shown to the House, originally I think by Mr. Dolan, was labelled *Pay More and Get Less*. Both the publications deal with different sides of the health scheme. If either one of those is factual, true, and honest, and not misleading, then the other one must, by definition, be false, dishonest, untrue, and misleading.

The reason is that these pamphlets contradict each other in virtually every way it is possible for one pamphlet to contradict another. Nevertheless, they are advertisements and are both put out by organisations which one would imagine to be reputable. One is put out by the Department of Social Securities and the other is put out by the Association of Hospital Insurance Funds—if that is the correct name, but I am not sure it is. As I have said, if one is true the other is false.

The Hon. J. Dolan: How do you decide?

The Hon. G. C. MacKINNON: How does one decide? This is the very point I want to bring up. We are dealing with an aspect of life which, I believe, is important to us all. We are dealing with a big industry which makes it possible for us to have absolutely first-class television. Whether or not we like the programmes is beside the point. It makes it possible for us to have the news of the world delivered and to read with our breakfast each morning the paper for a cost of 6c. The advertising makes known to all of us all of the commodities which we would like to buy and, in fact, do buy.

The Hon. A. F. Griffith: You get a cheaper edition of *The West Australian* than I do. I pay 7c.

The Hon. G. C. MacKINNON: I pay it every three months and, consequently, I would not know the exact price. Advertising makes it possible for us to buy the things we want. Nevertheless, we hedge about with laws. People try to bring to our attention "better mouse traps" shall we say. The comment made by the Leader of the House by way of interjection is extremely important.

The Hon. J. Dolan: I asked a question. I think the law should be clear.

The Hon. G. C. MacKINNON: A measure such as this, which is designed to amend the parent legislation, should be clear and unequivocal so that there is not the slightest shadow of a doubt as to what is right and what is wrong. There must be no possibility of confusion in the minds of people who advertise. They must know that if they say something, believing it to be true, they cannot be haled before a court and found guilty of some obscure infringement. The remark made by the

Leader of the House ought to be borne in mind. We definitely need clear-cut, unequivocal terms in laws of this kind because if ever there is a group of people beset by all sorts of difficulties in interpreting regulations it is the businessmen of this community and, indeed, of virtually every community it seems. In modern days they have become the cockshy—the Aunt Sally—of our world, but they are the very people who make it possible for us to buy so many good commodities at such reasonable rates. There must be a clear definition of all the terms in order that they know precisely the area in which they may work.

The Hon. R. H. C. Stubbs: Would you indicate any specific objection to a definition?

The Hon. G. C. MacKINNON: No. I do not think there is any need, however, because Mr. Medcalf has an amendment on the notice paper.

The Hon. R. H. C. Stubbs: You are following that line?

The Hon. G. C. MacKINNON: That is right. I am speaking in general terms as I believe one ought to do at the second reading stage.

The Hon. R. H. C. Stubbs: I thought you were speaking specifically.

The Hon. G. C. MacKINNON: No, I am not speaking specifically. I thought I made it perfectly clear that I am following on the line of reasoning advanced by Mr. Medcalf who pointed out, with meticulous precision, that these terms ought to be more clearly defined in order that people operating under the Act should not have to wait on a judgment from a court before they know the exact interpretation of something within which they must work so far as advertising is concerned.

The other point I raise concerns advertising by Governments. Perhaps the Minister may answer this query when he replies. In referring to "Governments" I hope members will bear in mind that I have made no distinction between different Governments. Will Governments, too, have to face up to this if they advertise any sort of service and in that advertisement tell less than the truth or perhaps do not make the greatest effort to be absolutely truthful in their utterances? Governments do a tremendous amount of advertising nowadays. We hear that the Commonwealth Government is spending $250,000 of our money in advertising a health scheme we do not want. It is also spending $1,500,000 in advertising a Budget we do not like. This is a tremendous amount of money and represents a fairly big account. I imagine that an advertising agency specialising in this work would be pleased to receive such accounts because doubtless they are remunerative. I also have no doubt that the people who receive those accounts give their best possible attention to them. In presenting an advertising campaign in favour of a particular Budget it is possible to present slightly biased views, to say the least.

I have read one or two articles with regard to the proposals to impose a tax on export meat and I have noted the point of view expressed. I have no doubts whatsoever that the farmers, who must pay for it in the ultimate when they export meat, have a totally different point of view and believe that the advertising put out by the Government on this matter is false, misleading, and probably a downright fib. So much depends on the point of view.

This is why I believe we should take great care to listen to what Mr. Medcalf has said in his endeavours to clarify this matter. I repeat that we have before us at the present time two pamphlets advertising a service. These have been quoted as an example. As I have said, one is put out by Mr. Hayden and gives a point of view which is stated to be "the plain facts" and to tell the truth about a service with which we are to be provided.

The other one is almost diametrically opposed in every way and is put out by another group. It advertises a service which we now enjoy and what is stated in the pamphlet we know to be true in the main. We do not know whether or not the forecasts of what is to come will be true. I repeat that one or the other must be misleading and, yet, nothing will be done about that. However, I suppose if some fellow advertises a new line of breakfast food and claims it gives all the vitality in the world he may find himself in trouble if this claim is proved to be not quite true.

I am trying to point out to the Minister through you, Mr. President, that business today labours under all sorts of difficulties. I hope the Minister appreciates this fact. The amending legislation poses an additional difficulty because it hedges with the way in which businessmen may advertise their products, services, and goods. I certainly hope the Minister will take note of what Mr. Medcalf has said and ensure that the amending legislation leaves the interpretation of the Act quite unequivocal so far as knowledge of what businessmen can or cannot do is concerned. I intend to support the measure.

Debate adjourned, on motion by The Hon. D. K. Dans.

House adjourned at 8.25 p.m.