in respect of this educational policy, or it may be that the TAFE report was not available.

If members opposite look at the Liberal Party policy they will find that it contains references to technical education, special education, teacher training, independent schools, tertiary education, remote areas, textbooks, and administration. In respect of the policy on administration I am sure the member for Morley will appreciate that we will bring about the greater use of school facilities by the community. We will extend that area much more, and also expand adult and leisure education.

I am pleased that in this debate one member of the Opposition has supported our idea that intake at high schools should not exceed 1 000 pupils, and I compliment him on taking that stand. I would be very surprised indeed if any member of the Opposition gets up subsequently and says that he prefers high schools with an intake of 1 400 or 1 500 students in one great conglomerate, with all the problems that now exist in the high schools, as against our proposal to have the high schools in two sections.

If one examines the proposal of children in their fifth year entering primary school, one will find that this is a decided improvement. This is the only way we will give these children equal opportunity for education.

In regard to children in their fourth year we will also give them, at no extra cost, places in the kindergartens that will be vacated by children who will move into the primary sector.

Apart from the fact that the Liberal policy places emphasis on support and encouragement of the individual, as against the Labor policy of a collective mass and so on, if members opposite look through our policy they will see that it could have been proposed by the Labor Party. The position could be this: members opposite have not done the work and have not come up with a policy. Instead they have set out to rubbish the policy that we have put forward.

Our policy is backed up by all sorts of research, such as the Nott inquiry and the research it has undertaken, and the research undertaken both overseas and interstate. We took into account the results of the latter research and the recommendations made. We also consulted the local people involved in this area.

When we framed our policy regarding children in their fifth year we discussed the matter with the principal of the kindergarten teachers' training college, and she supported our policy. We also consulted Barbara Jones from the Kindergarten Association, and she also supported our policy. Furthermore, we consulted the ordinary kindergarten teachers. We framed a policy which took into account the views of people in key positions in Western Australia, as well as the ordinary grass root teachers and parents. That is what our policy has been based on.

Finally I say this is not a party political policy. It is one which is designed for the benefit of the children of Western Australia especially at the pre-primary school level, the primary level, and the secondary level.

Debate adjourned, on motion by Mr A. R. Tonkin.

House adjourned at 10.20 p.m.

Legislative Council

Thursday, the 3rd October, 1974

The PRESIDENT (the Hon. A. F. Griffith) took the Chair at 2.30 p.m., and read prayers.

QUESTIONS (4): ON NOTICE

1. HOUSING

Pilbara and Kimberley

The Hon. J. C. TOZER, to the Minister for Justice:

(1) Would the Minister please provide a complete schedule of proposed house building in the Pilbara and Kimberley by the State Housing Commission for 1974-75 in the following categories—

(a) under the Commonwealth/State Housing Agreement;

(b) for the Government Employees' Housing Authority;

(c) for other Commonwealth and State departments and instrumentalities; and

(d) for others?

(2) Where medium or high density housing development is planned, could figures in question (1) be broken down into various housing forms?

(3) Of the residences built under Commonwealth/State Housing Agreement, will houses be available for purchase, and what proportion of the total?

The Hon. N. McNEILL replied: (1) (a) to (d)

	Column 1 Housing Agreement	Column 2 Aboriginal Housing	Column 3 Government Employees' Housing Authority	Column 4 Other Commonwealth and State Departments	Total
Broome	10	5	8	..	23
Derby	10	5	7	1	23
Fitzroy Crossing	....	....	1	....	1
Halls Creek	5	10	1	....	16
Hedland South	10	12	6	26	54
Karratha	10	....	6	....	16
Kununurra	....	....	9	....	9
Mt Tom Price	....	....	2	....	2
Paraburdoo	....	....	1	....	1
Roebourne	....	....	5	2	7
Wickham	....	....	3	....	3
Wyndham	....	8	1	1	10
	45	40	50	30	165

The information given in Columns 3 and 4 reflects the requests for the Commission to arrange contracts as the building agency.

(2) The Commission proposes to build 10 medium density courtyard houses at Broome.

(3) The Commonwealth and States Housing Agreement permits the sale of no more than 30% of houses built under that agreement.

2 and 3. *These questions were postponed.*

4. MOTOR VEHICLES

Investigation of Design

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

In view of the shocking accident which occurred yesterday at City Beach when two children were incinerated whilst trapped in the back seat of a two door coupe motor vehicle, will the Government have an investigation carried out for the purpose of determining whether this type of vehicle should be re-designed to obviate similar occurrences in the future?

The Hon. N. E. BAXTER replied:

Yes, my colleague, the Minister for Traffic Safety, has agreed to instruct the Director, Department of Motor Vehicles accordingly.

POLICE ACT AMENDMENT BILL

Second Reading

THE HON. N. E. BAXTER (Central—Minister for Health) [2.35 p.m.]: I move—

That the Bill be now read a second time.

This Bill contains four amendments to the Police Act, and they are unrelated.

The first amendment concerns the authority of the police to fingerprint and photograph persons in lawful custody. Until 1972 it was the established practice of the Police Department to obtain these records under the provisions of the prison regulations. However, in that year this practice was challenged and the court ruled that the prison regulations could apply only to persons committed to prison and not to persons who had not been sentenced. This meant that persons under arrest did not have to submit to being fingerprinted and photographed. Since that time it has been possible to fingerprint only those persons prepared to submit to it voluntarily.

As a result there has been a considerable reduction in the number of prints taken with a consequent deterioration in the accuracy of police records. Members will appreciate the importance of complete and correct criminal records being maintained.

Fingerprinting is the established and positive means of identification, and in its absence incorrect or incomplete information recorded against any particular individual could lead to the court being misled as to his previous criminal history.

The other important factor is that almost certainly since the judgment was handed down, criminals wanted for arrest or questioning have escaped arrest or interrogation by refusing to submit voluntarily to having their fingerprints taken to establish their true identity. Normally anyone with a clear conscience would submit to fingerprinting.

All the other States have some form of legislation authorising the police to fingerprint and to photograph arrested persons, and the legislation as introduced in another place was moulded on that currently in force in New South Wales.

The present position in Western Australia in regard to fingerprints is frustrating to the police and favours the criminal. This position should be rectified. The recent "pack rape" of a helpless 20-year-old mentally retarded virgin was a classic example of what can happen if the embargo on fingerprinting is allowed to remain.

The girl's capacity to describe her assailants was limited because of her retarded mental condition, and the identity of her attackers might well have remained a mystery had the fingerprints of one of the group not been on record. By sheer good fortune the police were able to obtain a further print from a bottle at the scene of the crime.

In a recent murder investigation, fingerprints were developed at the scene. A previous offender against the law was strongly suspected of having committed the offence, and although he appeared in the criminal records with prior convictions, he had not previously been fingerprinted. Consequently, it was not until he was apprehended finally that comparison of his fingerprints revealed them to be identical with those taken at the scene of the crime. Had he been fingerprinted for the prior convictions, a great deal of investigating time would have been avoided. If fingerprints could have been taken of people apprehended in this way, there is no doubt that many criminals who have escaped detection would have been brought before the court.

In another case an offender was recently convicted under a different name for the offence of driving under the influence of liquor. He was treated as a first offender for this type of offence, whereas he had a prior conviction. This necessitated further proceedings to rectify the mandatory penalty. Since the embargo on fingerprinting numerous instances of this nature have occurred. Fingerprinting can protect the innocent.

Recently a part-Aboriginal was charged in the Perth Police Court with the offence of driving with an excess of .08 per cent alcohol in his blood, and also with being an unlicensed driver. He was fingerprinted but gave the name and personal description of another part-Aboriginal who was subsequently apprehended on warrant for nonpayment of the fines which were inflicted. Denying the conviction, it was not until he volunteered his fingerprints that it was established that he was not in fact the offender, thus avoiding detention on warrant.

A person was charged by the narcotics bureau on fingerprint evidence as a result of his fingerprints being developed on a parcel of narcotics which came through the post. His fingerprints were not taken and this resulted in an old set being used again in evidence. This is another instance of a case of a possible appeal against conviction.

A complaint was received from the Probation and Parole Board that information was supplied to the court that a person was not known at criminal records, whereas this person had admitted a prior offence. The reason for this was that the offender used a wrong name. She was recorded at criminal records under another name. Had her fingerprints been taken, this mistake would not have occurred.

Frequent requests are received from the Australian National Central Bureau for the supply of fingerprints, photographs, and criminal records of offenders convicted in this State for drug offences for transmission to the Secretary-General of the International Police Organisation to comply with international recording procedures.

Until appropriate legislation is created as proposed in this Bill, it will not be possible to comply with these requests except in cases where the offender's fingerprints and photographs are already on file or where the offender is actually sentenced as a prisoner.

In addition, as it is utterly impossible to comply with the requirements of the courts to supply accurate records, attempts are made to meet police court daily requirements by name checks of the persons listed to appear. It could never be expected that efficient service will be rendered by this procedure and with the passing of time, no doubt, offenders will become more conscious that fingerprints are not required to be taken, and seize upon this opportunity to hide their identities by using different names.

As a result of the present embargo on fingerprinting and photographing of offenders, we are unable to utilise effectively the facilities of the Australian Central Fingerprint Bureau in New South Wales to obtain Eastern States convictions of persons who are to appear before the courts in this State; nor are we able to obtain accurate information from overseas sources in respect of the antecedents and records of offenders. There is no doubt that, as a consequence, many offenders are appearing in our courts as first offenders, when in all probability they have either previous convictions in this State under a different name or they have prior Eastern States or overseas convictions.

It is our job to see that criminals are apprehended and that the public are properly protected and this legislation is necessary if we are to achieve these aims. Consequently it is proposed to insert a new section 50AA into the Police Act.

However, through the police interchange system copies of fingerprinting records become dispersed to interstate and international police authorities. Therefore the Bill

was amended in another place with a view to ensuring that not only the original negative would be destroyed on request of a person found not guilty of an alleged offence but all other copies which are available would also be destroyed after the time for appeal had elapsed. The Minister for Police during the course of the debate on this aspect indicated that he would be prepared to write to the Minister for Police and the Commissioner of Police in New South Wales, which is the State we deal with mainly, acquainting them with our legislation and requesting that no copies be taken of any fingerprints or photographs we may send to New South Wales.

The Minister further explained that any photographs, negatives, or copies that are taken will be sent back to this State and destroyed in the presence of the person who is found not guilty. There is no intention on the part of the police to retain the records of people who are found not guilty by the courts.

Another amendment refers to section 65 which discriminates against Aborigines and was overlooked when previously other discriminatory legislative provisions were repealed. This particular section makes it an offence for anyone other than a native to lodge with natives.

I understand that there have been instances in the Eastern States where somewhat similar provisions have applied in the past. Part-Aborigines—that is, people who are not defined as Aborigines because of the preponderance of their white ancestry—were convicted of an offence under these provisions for living with their Aboriginal relatives. This is not likely to occur today, but the legislation is redundant and should be repealed.

Section 90A (3) of the Police Act provides that where a person incurs costs in respect of an investigation, inquiry, or search made as a result of a false statement, he may claim reimbursement of his costs from the person who made the false statement.

Obviously, the Police Department should be enabled to benefit from this section as its officers are often put to considerable time and expense in following up false reports. However, the court has ruled that the Police Department cannot legally be defined as a person and that any claim by the department must fail on that ground. It is proposed, therefore, that the Act be amended to correct this anomaly.

The final clause relates to the validity of an analyst's certificate as prima facie evidence in a court of law. The court has ruled that in the case of prosecutions under the Police Act, an analyst's certificate is not admissible as prima facie evidence of the description or identification of the exhibit received for analysis. Thus the analyst must appear in person to give oral evidence of the results of his analysis. The disadvantages of such procedure have already been recognised in the Traffic Act which specifically spells out that an analyst's certificate may be accepted as prima facie evidence in prosecutions under the Traffic Act. The Bill accordingly proposes the amendment to the Police Act to bring it into line with the Traffic Act.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. R. Thompson (Leader of the Opposition).

MAIN ROADS ACT AMENDMENT BILL

Second Reading

THE HON. N. E. BAXTER (Central—Minister for Health) [2.48 p.m.]: I move—

That the Bill be now read a second time.

This Bill to amend the Main Roads Act is necessary to continue the procedures for annual road grants to be made by the State Government to local authorities. The previous scheme expired on the 30th June of this year. As the source of these funds is largely from Federal road grants, this legislation is also necessary in order that the proposed system of grants to local authorities conforms with the provisions and requirements of the Roads Grants Act, 1974, of the Federal Government.

Arising from the provisions of the current Federal Roads Grants Act there will be a serious deficiency in Federal funds for rural local and rural arterial roads in this State. The level of Federal grants to Western Australia for 1974-75 is $49 million compared with $49.2 million in 1973-74, and because of increasing costs there will be a substantial reduction in the actual roadworks which can be carried out with those funds during this year. There is also little upward trend proposed for the next two years.

Furthermore there is a serious imbalance in the allocations contained in the Federal legislation for specified classes of roads in Western Australia, the bulk of the money—that is, $28 million out of $49 million—being allocated for national highways and urban arterial roads. Federal moneys available for rural local roads and rural arterial roads have consequently been cut back from about $27 million in 1973-74 to $18 million for this year, a decrease in the vicinity of 33⅓ per cent.

In order to overcome the deficiencies in Federal funds for rural arterial and rural local roads, it has been necessary for the State Government to increase vehicle license fees by an average of 65 per cent from the 1st October of this year. This sizeable increase will provide only sufficient funds to meet urgent demands for better roads in areas such as the Pilbara and other parts of the State, and the need to allocate $5.4 million of State funds in the Main Roads Department programme of works to local authority roads, and to

continue statutory grants to local authorities for the next three years at the same level as in 1973-74. Accordingly, this legislation provides for statutory grant funds totalling $13 962 390 per annum to be made available for local authorities for each of the next three years.

The statutory grants scheme providing for these State road grants to local authorities is more generous than in any other State.

Under the provisions of the Federal Roads Grants Act, 1974, the Commonwealth Government intends to exercise control on the expenditure of Federal road funds by requiring the submission of programmes, and in the metropolitan area the submission of projects, for approval of a Federal Minister. The Federal Minister for Transport may also require the State road authority and local authorities to submit for his approval urban and arterial projects to be financed from their own funds.

The total funds in the statutory grants system as provided for in this legislation, amounting to $13 962 390 per annum for the next three years, are composed of $7 561 930 for country councils and $6 400 460 for metropolitan councils. While the Federal requirements now mean that details of programmes using statutory grant funds will have to be submitted to a Federal Minister for approval, it is proposed to allow local authorities to spend up to one-third of the statutory grants on road maintenance. This is to provide local authorities with some flexibility in their budget arrangements.

Under the proposed statutory grants system an amount equal to the total amount country local authorities received in 1973-74—$7 561 930—will be provided for the next three years. Each country local authority will be entitled to an annual statutory grant equal to the statutory grant it received in 1973-74 or, in the case of adjustments in council boundaries, such amounts as determined from time to time by the Minister. The grants shall be divided into two parts with one-third being known as the "base grant" and the remaining two-thirds being known as the "additional grant". These grants are shown in the second schedule to the Bill. Members will note that the Serpentine-Jarrahdale Shire, because of its wholly rural composition, has been included with the country shires. Advance payments on these grants will be made each month.

The one-third base grant to country councils may be spent on either maintenance or construction of roads, but only a broad outline will be required for this part of a council's programme if it is to be spent on maintenance. The two-thirds additional grant is to be spent on road construction and details of each construction project must be supplied in the programme. The programmes are to be submitted to the Minister for Transport for approval on the recommendation of the Commissioner of Main Roads and must meet the requirements of the Federal Roads Grants Act.

For the purpose of their statutory grants, metropolitan councils will be divided into two groups being "inner" councils and "outer" councils, because fringe councils are partly rural and have different road needs to "inner" councils. The total grant available for expenditure by metropolitan councils as a group will be equal to the total 1973-74 metropolitan statutory grant—$6 400 460—with this amount being divided under the distribution formula into $4 869 684 being available for "inner" councils and $1 530 776 being available for "outer" councils.

The Minister may from time to time determine the apportionment between the two groups of councils consequent upon future updating of the statistics in the distribution formula or adjustment in boundaries between "inner" and "outer" councils.

The "inner" metropolitan councils are listed in zone A of the second schedule. Each "inner" council will be entitled to a base grant amounting to its share, using the updated formula, of one-third of the aggregate amount available for metropolitan "inner"councils. This grant may be spent on maintenance or construction and if on maintenance, only a broad outline will be required in a council's programme. Advance payments on this grant will be made each month.

This Bill provides for the balance of the moneys available for all "inner" metropolitan councils for that year being placed in a common fund to be known as the inner metropolitan councils' urban road fund. This conforms with Federal requirements. Any metropolitan "inner" council will be entitled to submit each year details of projects for road construction on urban arterial and urban local roads in its area which it wishes to carry out and be financed from moneys allocated from this fund.

The programme submitted by an "inner" council must be approved by the Minister for Transport on the recommendation of the Commissioner of Main Roads and must also be acceptable to the Federal Minister for Transport under the terms of the Federal Roads Grants Act.

A similar system to that proposed for "inner" metropolitan local authorities will apply for "outer" metropolitan councils which comprise Armadale-Kelmscott, Kalamunda, Kwinana, Mundaring, Rockingham, Swan, and Wanneroo. The separate pool of funds for "outer" metropolitan councils will be known as the outer metropolitan councils urban road fund. However, because of its semi-rural nature, where an outer metropolitan council can show that

exceptional circumstances apply to a road project it has submitted, and for which Federal urban arterial or urban local roads funds may not be applied, the Bill provides that the Minister, on the recommendation of the commissioner, may approve of other funds from State sources being used for such project.

As the Federal moneys in the two funds should be spent in accordance with the terms and within the time specified in the Federal Roads Grants Act, 1974, a provision is contained in the Bill to meet these requirements and for any unspent moneys in the two funds to be transferred to the Main Roads Trust Account. This is a precautionary measure to ensure that the State will not lose any of its entitlement to federal funds.

In the Commonwealth Bureau of Roads report, which formed the basis of the Federal Government's decisions on road grants, serious criticism was made of the poor effort of local authorities in Western Australia in expenditure of their own funds on roads as compared with local authorities in other States. Local authority expenditure in this State is only one-half of the Australian average on a per capita basis. Therefore, it is proposed in this legislation to continue with a matching scheme which will apply to one-third of the funds, being the base grant, made available by the Government to local authorities.

The previous matching scheme was subject to some criticism in that as the previous road expenditure of each individual local authority was taken as its base for increasing its expenditure, those local authorities with good expenditure efforts were penalised. Therefore the new matching proposals as contained in this Bill are not based on an individual local authority's previous expenditure but are related to the average effort of comparable councils in relation to the statutory grants.

In the country, excluding local authorities in the more remote areas as listed in zone D of the second schedule where the Minister may set a lower quota or grant exemptions, councils will be required to match one-third of the statutory grant; that is, the base grant component, on a dollar-for-dollar basis. The remaining two-thirds will be free of the matching conditions. A similar scheme will apply in the metropolitan area except that fringe councils as listed in zone B will be required to spend $1.50 for each $1 of their base grant and "inner" councils as listed in zone A will be required to spend $2 for each $1 received from this grant. No matching will be required for funds allocated from the metropolitan pools. Under the new matching proposals, only about one-quarter of all local authorities—that is, those with the poorest expenditure effort—will need to increase their road expenditure to receive their full entitlement to the statutory grants.

The introduction of this Bill is necessary to maintain road construction and employment as an important service provided by local government in order to meet road needs. While our task has been made difficult by the financial and physical constraints of the new Roads Grants Act of the Federal Government, this legislation provides for a system to continue grants to councils in order that we can assist local government to proceed with the important job of improving local authority roads throughout the State.

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

MARKETING OF POTATOES ACT AMENDMENT BILL

Second Reading

THE HON. N. McNEILL (Lower West—Minister for Justice) [3.02 p.m.]: I move—

That the Bill be now read a second time.

Mr President, I think it will be acknowledged that this is a Bill of particular interest to several members in this Chamber who represent potato-growing areas.

A review of some sections of the Marketing of Potatoes Act has been requested by the potato industry for several years and the need has been affirmed as we are well aware in the reports of both the Select Committee and the Lissiman inquiries. I should add that a majority of the recommendations of both inquiries are matters for the internal decision and action of the Potato Marketing Board. In many cases they have been brought into operation already, either in whole or in part.

Since the Select Committee and Lissiman reports were received, the board, the Potato Growers' Association, and the Department of Agriculture have discussed the various recommendations and, as a result, those which require legislation have been embodied in this Bill.

Commercial producers who are not naturalised are at present not permitted to exercise a vote on election of producer representation on the board. These producers share with all others a similar interest in the industry and the Bill proposes to rectify an unwarranted disability in the matter of the election of producer representation.

Two of the six members of the board are required to be commercial producers elected by commercial producers. This is a statutory requirement under section 7 of the principal Act and no elasticity in the matter is permitted. The provision takes no cognisance of circumstances in the industry which would point to the desirability of the Minister being given some discretion in the matter of representation covering the wide field of activity associated with the industry. The Bill proposes that some discretion be permitted in the matter in the light of the particular needs of the industry from time to time.

While it is considered that control of production through licensing provisions is in the best interests of the industry as a whole there is no recourse to appeal against the board's refusal to issue a license. The reports of both the Select Committee and the Lissimen inquiry referred to this disability and the Bill accords a right of appeal which appears all the more appropriate in an industry in which one's complete livelihood may reside.

There is a further amendment brought forward to clarify the matter of sales other than through the board. No change is intended, merely a desirable clarification of the existing law.

Another amendment tightens up the penalty provisions arising from illegal plantings. A graduated scale of penalties is introduced to encompass a circumstance presently favouring extensive areas of illegal plantings regarded as a calculated risk relative to a prospective favourable return to the producer in spite of such penalties as may be imposed under the Act.

Finally it is intended to amend the board's internal accounting system to provide for a pool suspense account as recommended in the Lissiman report. This has the desirable feature of providing financial coverage in respect of debits for expenses or losses which do not become apparent before the close of a season.

I am advised that the amendments contained in this measure have the support also of the potato-growing industry.

I commend the Bill to members.

Debate adjourned, on motion by the Hon. R. T. Leeson.

DONGARA-ENEABBA RAILWAY BILL

Second Reading

THE HON. N. E. BAXTER (Central—Minister for Health) [3.05 p.m.]: I move—

That the Bill be now read a second time.

The purpose of this legislation is to authorise the construction of a railway commencing at a point near Dongara, being 421.517 km or thereabouts from Perth on the Guildford-Greenough flats railway and terminating in the Eneabba area, a total distance of 86.628 km.

The route of the railway is specifically described in the second schedule included in the Bill and on C.E. Plan No. 66814 which I table for the information of members of the House, together with a letter from the Director-General of Transport.

The plan was tabled (see paper No. 239.)

The Hon. N. E. BAXTER: The Bill provides the authorisation to construct the railway and for a deviation of 5 km on either side of the line in lieu of the one mile provided in the Public Works Act. The extension of deviation is necessary as at this point of time location surveys have not been completed.

The railway has been designed to transport mineral sands from the area of Eneabba to Dongara, and thence by way of an existing railway to Geraldton.

The Railways Commission has executed agreements with two mining companies for transporting 850 000 tonnes per annum of mineral sands from Eneabba. In addition, there are substantial prospects of an additional 1 million tonnes per annum becoming available from three other companies with leases in the area for transport to Geraldton.

The proposal for construction of the new railway has been subjected to careful economic analysis by both the Railways Commission and the Director-General of Transport. The results indicate a viable, and indeed profitable, project for our railways system.

Its rate of return on investment over the minimum of 15 years estimated life of the project has been assessed to give a good return on capital. The question might be asked as to whether rail transport for the whole journey from Eneabba northward would be more economical to the State as a whole than a combination of road transport from Eneabba to Dongara and rail transport from Dongara to Geraldton.

A considerable tonnage is, in fact, being hauled by road at present. Whether rail is more economical than a combination of road and rail depends upon the annual tonneage to be carried.

According to studies carried out by the Railways Commission and calculations made by the Director-General of Transport, throughout rail transport would be more economical at traffic levels above 600 000 tonnes per annum. At present it is confidently expected that by 1975, the quantity of mineral sands offering for transport out of Eneabba will be over 700 000 tonnes and as indicated previously, this figure could exceed 1 million tonnes.

Apart from its own economic viability a railway from Dongara to Eneabba fits well into long-range, overall State transport planning. One of several transport alternatives that have been looked at for the north is a rail link connecting the mining railways in the Pilbara with the State's network in the south.

The preferred route for this railway, if it were to be built in the future, is from the Pilbara via Geraldton, Eneabba and then directly south to serve other known mineral sands deposits, to Perth.

In view of the future need, the alternative of construction in standard gauge bears consideration.

However, bearing in mind the indeterminable factors of a railway to the Pilbara and the disadvantage of operating an isolated standard gauge railway over an interim period, a compromise solution has

been preferred and the railway will be constructed utilising eight-foot sleepers in lieu of narrow gauge seven-foot sleepers.

This would permit of conversion to standard gauge at a later stage at minimum cost and is a technique which has recently been used successfully with the conversion of the Esperance branch to standard gauge.

The total cost of the railway has been estimated by the Railways Commission as $8.735 million, and of this amount $6.116 million would be expended on civil works and $2.619 million on rolling stock.

An application made to the Commonwealth Government for assistance in funding the railway was recently declined and efforts are currently being made to finance the railway from State funds.

However, this is a matter distinct from the actual authorisation of the railway, which is the matter currently before the House; but it is the intention of the Government to proceed with the construction of the railway immediately funds can be made available and provided suitable contracts are signed with companies involved.

With regard to the transport conditions already applying in the area, it should be stated that at this stage there is no intention of giving the railways rights over existing carriers in so far as the present community and the agricultural industry in the area are concerned, or of altering the farmers' exemption provision which applies under the Transport Commission Act and which allows farmers in the Eneabba region to carry their own produce, including wool, in their own vehicles.

The new railway is to be built to handle mineral sands and the products of that industry. It is considered to be necessary to service the mineral sands industry which is establishing itself in the Eneabba basin. This industry appears to have a very bright future and is one which should be afforded every assistance in its initial stages to ensure its success.

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

MINISTERS OF THE CROWN (STATUTORY DESIGNATIONS) AND ACTS AMENDMENT BILL

Second Reading

THE HON. N. McNEILL (Lower West—Minister for Justice) [3.12 p.m.]: I move—

That the Bill be now read a second time.

This Bill has been designed to meet the situation which arises where the definition of a "Minister" in some Statutes specifically refers to a particular Minister of the Crown and therefore requires such title to appear in his list of portfolios.

Rather than the impracticable prospect of having an overlengthy list of portfolios it is considered to be more expedient to combine the various constitutional or statutory functions of a Minister under one title. However, this is not possible under existing circumstances.

The problem is further compounded where the administration of such Acts is transferred from one Minister to another. An example of this is the Main Roads Act in which the Minister is defined as the Minister for Works, but which is currently being administered by the Minister for Transport. Naturally, the Act specifically nominates the Minister for Works as the authority to delegate certain powers of the Minister under the Public Works Act to the Commissioner of Main Roads. Members will thus appreciate the need for this special legislation, particularly in the light of Acts that specifically designate particular Ministers.

The Bill accordingly sets out changes to be made to certain Acts to allow the interpretation of "Minister" to be defined in a more practicable manner than at present.

It is proposed that the operative instrument in this Bill will be by way of an Order-in-Council which can be either in general terms or specific in relation to any one Act or any part of an Act or to some particular regulation, legal proceeding, contract, or the like.

Debate adjourned, on motion by the Hon. R. Thompson (Leader of the Opposition).

RAILWAYS DISCONTINUANCE AND LAND REVESTMENT BILL

Second Reading

THE HON. N. E. BAXTER (Central—Minister for Health) [3.15 p.m.]: I move—

That the Bill be now read a second time.

I wish to table C.E. Plans Nos. 66664, 66889, and 66851, and a letter from the Director-General of Transport. The letter deals with the subject matter of the Bill.

The plans and letter were tabled (see paper No. 240).

The Hon. N. E. BAXTER: This Bill provides for the discontinuance and subsequent land revestment of six sections of the Western Australian Government Railways. The sections referred to are specifically described in the six schedules to the Bill.

The first, second, and third schedules refer to the Kalgoorlie-Gnumballa Lake railway—authorised under Act No. 18 of 1897—the Boulder Townsite loop railway —also authorised under Act No. 18 of 1897 —and the Brown Hill loop Kalgoorlie-Gnumballa Lake railway—authorised under Act No. 41 of 1900. The proposed closures include 12.867 km of narrow gauge line. The railways in toto are commonly referred to as the Boulder branch line.

The Traffic presently being hauled comprises mainly oil in tank wagons for the mines at Kallaroo, Golden Gate, and Kamballie and nickel concentrates from Great Boulder Mines Ltd., Fimiston to Esperance, which will be hauled by road following closure of the line. An analysis of the tonneage carried over the past four years indicates a steady yearly decline in traffic.

However, the principal motivation for recommending closure of the three sections is that following the recent commissioning of the standard gauge railways between Kalgoorlie and Leonora and West Kalgoorlie and Esperance, the three railways have become isolated narrow gauge lines and the economics of maintaining the operation of the railways in isolation, coupled with the paucity of traffic offering, are such that discontinuance of the railways is the logical action to be taken.

At the turn of the century these railways played a vital role in the exploration of "the golden mile", the railway service being availed of by thousands of miners and many companies associated with the production of gold.

The closures are likely to generate a little nostalgia and a sense of historical loss in some elderly citizens with memories of those events, and those dedicated to the preservation of national assets. However, in the name of progress and in the light of the evolution of railways to the standard of sophistication under which they operate today the discontinuance of the lines appears to have become an inevitable economic necessity.

On the other hand, I am informed that interested people in the Kalgoorlie-Boulder area are already considering what action can be taken to preserve this line for posterity in the form of a tourist railway, and the Railways Department has agreed to suspend action on the actual removal of the tracks while the matter is being examined by the Kalgoorlie people; though this has no bearing on the passage of the legislation.

For the information of members of the House I have tabled a copy of C.E. Plan No. 66664 referred to in the first, second, and third schedules.

The fourth schedule refers to the Coolgardie-Kalgoorlie railway and the fifth schedule to the Coolgardie-Lake Lefroy railway. I will deal with these conjointly because for all practical purposes they combine to make one continuous railway between Widgiemooltha and West Kalgoorlie.

The circumstances dictating closure of these sections are similar to those affecting the previously mentioned railways. The standard gauge railway between West Kalgoorlie and Esperance via Kambalda and Lake Lefroy has now been commissioned and this has rendered the narrow gauge railway between Kalgoorlie and Coolgardie redundant.

The closure of the Coolgardie-Lake Lefroy railway is also desirable on account of the availability of the standard gauge railway through Kambalda. All public sidings between Kalgoorlie and Widgiemooltha via Coolgardie have been closed and there is no traffic emanating from or going to points on these sections of the line.

Special arrangements have been made to service Coolgardie from the siding at Bonnievale, since commencement of the standard gauge services on the eastern goldfields main line. A local carrier at Coolgardie provides a daily service between Bonnievale-Coolgardie and Coolgardie-West Kalgoorlie to cater for less-than-carload traffic, parcels, mails, and perishables. Freight is charged as for Bonnievale.

Consignors are able to consign to either Coolgardie or Bonnievale and this arrangement continues to work satisfactorily. The proposed closure consists of 37.132 6 km on the Coolgardie-Kalgoorlie line and 83.935 4 km on the Coolgardie-Lake Lefroy junction line.

A copy of C. E. Plan No. 66889 referred to in the fourth and fifth schedules has been tabled for the information of members.

The sixth schedule refers to a small section of the Tambellup-Ongerup railway within the townsite of Gnowangerup. The extent of closure of this line up to its present point—that is, Whitehead Road in Gnowangerup—was authorised under Act No. 19 of 1963.

The purpose of this legislation is to close a further 152.7 metres of the railway to the south-western alignment of Corbett Street in Gnowangerup.

The extension of closure has been requested by the Shire of Gnowangerup and, as the section of railway concerned is now out of use, the request of the shire is being acceded to. A copy of C.E. Plan No. 66851, referred to in the sixth schedule, has been tabled for the information of members.

Briefly, the Bill allows the railways to be discontinued on different days, and proposes the revestment of the land in Her Majesty upon the coming into operation of the clause pursuant to which the railway ceases to operate.

The Bill further provides for the disposition of materials; that is, all material will be used or disposed of and the cost of each closed section will be removed from the railway accounts.

It should be mentioned with regard to the revestment of land that some mining tenements exist on land in the Kalgoorlie area which is to revert to the Crown. This matter has been discussed with the Mines Department, and arrangements have been made that when the land reverts to the Crown any area under a mining tenement granted by the Mines Department will automatically revert to the holder of the

tenement, subject, of course, to the agreement and conditions of the grant of tenement.

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

EVIDENCE ACT AMENDMENT BILL

Returned

Bill returned from the Assembly with amendments.

FUEL, ENERGY AND POWER RESOURCES ACT AMENDMENT BILL

In Committee

Resumed from the 2nd October. The Chairman of Committees (the Hon. J. Heitman in the Chair; the Hon. G. C. MacKinnon (Minister for Education) in charge of the Bill.

The CHAIRMAN: Progress was reported after clause 1 had been agreed to.

Clause 2: Commencement—

The Hon. R. F. CLAUGHTON: I voice my aversion to this clause on behalf of Opposition members, in the same way as I voice opposition to all the clauses of the Bill; that is, as a general objection as well as a specific one. Clause 2 provides that this Bill, when enacted, shall come into operation on a date to be fixed by proclamation. Yesterday evening Mr MacKinnon voiced what I understood to be a personal view when he said it would not be proclaimed at all. By nodding his head the Minister is now signifying that this is what he said. I am afraid this has been regarded as a definite undertaking. The impression as to whether that is an undertaking from the Government or just a simple personal view of the Minister could be made quite definite now.

The Hon. G. C. MacKinnon: I will speak on the matter as soon as the honourable member sits down.

The Hon. R. F. CLAUGHTON: The clause itself could be criticised, too, in that it could specify more definitely what sorts of emergencies the legislation would be used for. I repeat that we have a general objection to this and all the other clauses in the Bill.

The Hon. G. C. MacKINNON: I thank Mr Claughton for his obvious understanding of the true situation last night when, during a passage of his speech, Mr Thompson said, "Tell me this: Will you proclaim this legislation?" Literally off the top of my head, I gave my personal view, at the same time using the words "hopefully" and "maybe".

The Hon. R. Thompson: In your usual manner.

The Hon. G. C. MacKINNON: No, not in my usual manner. Most people, as Mr Thompson is well aware, accuse me of expressing myself in a completely different manner; I usually say, "No" and "Yes" in a very definite sort of way.

Although the article published does not have a by-line, and so I cannot ascertain who the author is, I am grateful that the *Daily News* in this evening's issue printed a complete report of the situation, and anyone with half a brain would say precisely what Mr Claughton has said; that is, I was expressing a personal view. This clause means that the Bill, when enacted, will be proclaimed on a date to be fixed. In other words, it will remain on the Statute book, but nothing will be done until it is proclaimed. In actual fact, this is what the clause means.

I would expect the Bill to be signed, sealed, and proclaimed almost immediately in case of an emergency. However, I never cease to be amazed at the number of people who imagine that all politicians confer on every detail and that every statement they make must be examined and must contain implications of great depth and all the rest of it.

The Hon. R. Thompson: As a responsible Minister, when you said "more hopefully"—

The Hon. G. C. MacKINNON: I think everyone in this Chamber knew precisely what I meant and nobody believed that, at that time, I rushed down to another place and had a conference with all the Cabinet Ministers and that what I said represented a backing-down or something like that. I am sure that what I said was completely understood. That has been indicated by Mr Claughton.

The Hon. R. Thompson: You indicated a while ago that it would be signed, sealed and delivered. Those were your own words.

The Hon. G. C. MacKINNON: I said that I would expect it to be. If we are to have this legislation we must have it ready in case of an emergency. That is what the legislation is for, but it need not necessarily be that way, or any other way. I am confirming that Mr Claughton is 100 per cent right in what he understood me to say. Mr Claughton did not go into any great depth. He simply asked me to confirm what I said. I do not think anyone can read into this that Cabinet is backing down, or anything else.

The Hon. R. Thompson: Towards the end of my second reading remarks I said that I did not believe you would proclaim the legislation.

The Hon. G. C. MacKINNON: The Leader of the Opposition is entitled to his belief.

The Hon. R. Thompson: I still think it is only a threat.

The Hon. LYLA ELLIOTT: I do not know whether this is the appropriate clause on which to raise the question I have in mind, because it does not really refer to any specific clause. However, I wonder whether the Minister has studied

section 8 of the parent Act which deals with the functions of the commission, and I refer particularly to paragraph (c) which gives the commission fairly wide powers, especially when we take into consideration the words "or other measures" in that paragraph. Could this not be applied in the case of an emergency? I would like to hear the Minister's answer to this.

The Hon. G. C. MacKINNON: I would not set myself up to give a judicial ruling nor would I even presume to express any kind of legal opinion on this. However, I would say it is a common-sense assumption that paragraph (c) is really referring to the totality of the use by the State of the fuel to produce power to serve the needs over the whole network of the SEC. I believe the provision is sufficiently open to allow legal argument in the event of rationing of a restricted supply brought about because of an emergency. This is a matter which I think would be best determined—and probably could be determined only in this way—if it were taken to court.

I cannot really think of any instance when this might happen, because if we have, say, only one-tenth of the supply, the SEC usually arranges for essential services—hospitals and the like—to be supplied. Whether permission for this is given in any other section of the Act I do not know. Such arrangement is usually for a short period only and people accept it as being reasonable. I would not interpret paragraph (c) of section 8 to allow that, but I still say it may do. Nevertheless, as I said, I believe such a matter could be determined only by argument before a learned judge.

The Hon. LYLA ELLIOTT: I do not think the Minister is very sure—

The CHAIRMAN: The question the honourable member asked is really outside the scope of the clause.

The Hon. R. Thompson: It would come under the next clause.

The Hon. LYLA ELLIOTT: Very well, I will leave it until then.

Clause put and passed.

Clause 3: Division of the principal Act—

The Hon. LYLA ELLIOTT: As I was saying, I do not believe the Minister is very sure of his ground on this point and I ask him whether he would be prepared to seek an opinion from the Crown Law Department on this before proceeding any further.

The Hon. G. C. MacKINNON: I could not see any point in doing so. It has nothing to do with making this Bill any less essential. We are not debating the need for emergency legislation, because, as Mr Thompson pointed out—and Mr Dans rightly corrected me on this last night—no member of the Labor Party denied the need for it.

In the regulation-making power in the Bill authority is given to ration fuel, and I think this is the point the Hon. Lyla Elliott is getting at. She says that I am not sure, but I do not think anyone can be 100 per cent sure until such time as these matters are tried before a judge. The decision made then is what makes us sure. Many Acts have been passed on the best advice—and I think this was discussed last night when we were talking about opinions of lawyers—but the final judgment is given by a learned judge.

Whether or not paragraph (c) does, in fact, authorise the rationing of fuel supplies when they are limited as the result of an emergency—and this is what I understand Miss Elliott to be inquiring about—I do not know; but I believe it does. However, the only way we can find out is to wait until such time as someone who has been affected by rationing takes the matter to court, because then we will find out for certain. I do not know how we would find out otherwise.

The Hon. R. F. CLAUGHTON: I again voice our opposition to the clause. One of our objections is on the grounds that these powers are not wisely attached to the Act which deals with the fuel, energy and power resources, and the commission which is in control.

I would also draw to the attention of the Minister the fact that the Act itself contains regulation-making powers. Under proposed new section 41 which gives overriding powers over all other Acts and laws what will be the position of the regulations made under this Act? No mention was made of those.

If the regulations made under a declaration of a state of emergency are in conflict with the regulations made under the parent Act, what would be the situation? Which regulations would apply? So far nothing has been said about that, and if the Government has not considered this, it should do so.

The Hon. G. C. MacKINNON: The Bill is, of course, combined with the Act and becomes part of the Act. Under section 40 the Governor may make regulations for or with respect to any matter or thing which is required, and the regulations may prescribe penalties and may require any information, account, document, or form to be furnished. Those regulations will remain applicable to that part of the Act, and the regulation-making powers in the Bill will operate in the part of the Act to which they apply; that is, the emergency situation which has been created under proposed section 45.

The Hon. LYLA ELLIOTT: I wish to persist with my question to the Minister. I ask him whether he would be prepared before Tuesday to obtain an opinion from the Crown Law Department on my question.

The Hon. G. C. MacKINNON: I will get a copy of it from *Hansard*. These matters will probably be picked up anyway, and no

doubt I will have the information for Miss Elliott by Tuesday.

The Hon. S. J. DELLAR: I, too, oppose this clause, which is designed to rearrange the parent Act into various parts wherein we will have the Minister dealing with one function and other people dealing with other functions. If the Bill is incorporated in the Act, part of the Act will be administered by the commission under the direction of the Minister, and another part of it will be administered by one or two Ministers or somebody else nominated by the Minister, which is provided for later on in the Bill. It seems to me we will have a mess, if we have not already got one, with the way the Bill has been presented. I cannot see the need for this type of legislation which will interfere with the parent Act. We will have different methods of administering the legislation which deals with fuel, energy, and power resources in this State.

The Hon. G. C. MacKINNON: I cannot see the point raised by Mr Dellar. I think the proposal put forward is a reasonable one. The Bill originated some time last year, when I take it the commission drew the attention of the then Government to the fact that the Act contained no provisions to cope with an emergency. At the time there was a serious possibility of an emergency arising because of action in the Middle East and so on. Attention was drawn to the fact that something should be done about it. Some instructions were given and the normal procedures were followed for the drafting of emergency provisions. This seems to me to be a reasonable place for emergency provisions dealing with fuel and energy. The members of the commission are the people best able to deal with the ramifications of it. They are dealing with normal supply and one would expect them to be able to deal with an abnormal situation. I have no argument with the attitude of our predecessors towards this.

It would be a routine matter for the commission to draw the attention of the Minister for Fuel and Energy to the fact that there was a lack in the Fuel, Energy and Power Resources Act. It could be done in a separate piece of legislation but I see justification for having the emergency provisions in the Fuel, Energy and Power Resources Act and having those people who are trained in and accustomed to dealing with the supply of fuel and energy in a normal situation to handle it in an abnormal situation. I believe it is perfectly reasonable.

The Hon. R. F. CLAUGHTON: I have not questioned that aspect before, but what the Minister has said has only served to bring in an element of confusion for me because, rather than leaving the operation to the commission, the amending Bill removes it from the commission and places it in the hands of a Minister. It has been suggested the commissioners may give advice to the Minister that an emergency is arising or is in existence, but once that is done, on the declaration of a state of emergency the authority to deal with it lies with a Minister of the Crown and anyone to whom he cares to delegate his powers, which need not be the commissioners, who may not be appropriate for all situations.

In relation to the earlier point I made, perhaps I did not make myself clear, and I will try to state the situation again. There is power for making regulations under the parent Act, which in normal circumstances will operate.

The Hon. G. C. MacKinnon: That is section 40?

The Hon. R. F. CLAUGHTON: Yes, section 40 of the parent Act. But on the declaration of a state of emergency a new power comes into operation, which is that contained in proposed new section 41, and other matters in the Bill follow from it—proposed section 47, etc. The regulations made under those proposed sections override all other Acts, laws, etc., but no mention is made of regulations made under the parent Act. It could be there is inconsistency between those regulations and the orders made under the state of emergency.

Sitting suspended from 3.49 to 4.10 p.m.

The Hon. R. F. CLAUGHTON: Before the suspension I had raised the question of the status of the regulations made under the parent Act at the time of an emergency. Proposed section 41 contains powers to implement regulations that will prevail over all other Acts, laws, etc. However, that proposed new section is silent on the status of regulations made under the parent Act. It may be that I am not reading the amendment correctly. Perhaps the Minister would like to reply to my question at a later stage.

The Hon. G. C. MacKINNON: I think I can answer it. One would have to go to proposed new section 45 which refers to the powers and authorities conferred by this part of this Act, and it states that they shall not be exercisable except in a part of the State in which an emergency has been declared. So it would be necessary to have two sets of regulations, but the new regulations would apply in the part of the State where the emergency had been declared.

Let us consider the possibility of an explosion and fire in a fuel storage tank in an isolated part of the State like the Pilbara. Death and destruction may follow the explosion and it is a situation of emergency in anybody's language. If an emergency is declared, one set of regulations would apply in that area, whilst other regulations would apply in the rest of the

State. It is reasonable to suppose that this could happen. It would be necessary to have both sets of regulations.

The Hon. R. F. CLAUGHTON: I am not trying to delay the Chamber, but I am simply seeking clarification. Proposed new section 45 commences—

> The powers and authorities conferred by this Part of this Act shall not be exercisable—

That is not what I am questioning. I understand that the powers contained in the amending Bill will operate only in the area over which the state of emergency has been declared. I understand, too, that all the current laws will still apply in the area where no emergency has been declared. I am not questioning that part.

The Hon. G. C. MacKinnon: All right.

The Hon. R. F. CLAUGHTON: With your indulgence, Mr Chairman, if we can look at proposed section 41 again—

The CHAIRMAN: We are not up to that yet.

The Hon. R. F. CLAUGHTON: No, but it is difficult to explain the point I am making in relation to the parent Act without reference to that proposed new section. We must remember that this Bill will be included in the parent Act. That is the point I am making.

The Hon. G. C. MacKinnon: I am with you, and I think I know the answer to your query now.

The Hon. R. F. CLAUGHTON: When proposed section 41 refers to "this Part of this Act" is it referring to the amending Bill before us, or does it refer to the amending Bill and the parent Act? If we refer to clause 3 we see that the Act will be divided into three parts. Then there is no reference in the proposed new section 41 (1) of the regulations made under the parent Act along with all the other Acts, laws, etc., over which the emergency regulations will prevail. In that situation there could well be an inconsistency between regulations made under the parent Act and regulations made under the state of emergency. If members look at subsection (2) of section 40 of the parent Act it says that the regulations may prescribe penalties not exceeding a fine of $200, etc. It could be that someone may find a loophole to escape paying the penalty for an offence which occurred in an emergency situation. As I say, I do not want to labour the point.

The Hon. G. C. MacKinnon: I think I get the point.

The Hon. R. F. CLAUGHTON: I just wanted to draw this to the attention of the Minister.

The Hon. G. C. MacKINNON: The right way to explain it is that part of the total Act—that is, this proposed Bill—is a quiescent part. We hope that it will lie within the body of the parent Act from now until doomsday and never be used. My understanding of it is that many of the matters suggested by Mr Claughton are correct. When an emergency is declared and the provisions of this part of this Act are inconsistent with other Acts or laws, then this part will apply. Again we must switch from one part to the other. These regulations will apply only in those areas where the emergency exists or during the time of the emergency.

The Hon. R. F. Claughton: I am not questioning that.

The Hon. G. C. MacKINNON: So at that stage this part will switch from being a quiescent section to a dominant section. There could indeed be inconsistencies. Let us consider the example which Mr Medcalf used. For reasons of safety a worker must wear leather protective gloves to perform a particular process in a factory. However, if an emergency is declared, the worker may have to use some other method of protection. One would expect common sense to prevail in such a situation, but the fact is the worker would not have to comply with the exact regulations laid down for his particular task. The emergency regulations would prevail over them. There is a possibility of inconsistencies.

The emergency might be declared at four o'clock, but the special regulations to deal with the emergency may not be framed until six o'clock. They can be thrown out if they are not necessary and, of course, the emergency might be over by the next morning and in such a case we would return to the ordinary regulations. If inconsistencies do occur, as I understand the situation, the regulations as they apply to the emergency would prevail.

Let us leave the fuel and energy legislation and take as an example the emergency which most of us would know about and would have seen on films. I refer to a flood and the fellows who fill sandbags and place them in position. Normally, no-one in his right mind would do some of the things they do in time of flood, such as wading waist deep through water carrying sandbags and placing them in position in order to save life and property. I suppose there are occupations where people build levees, but in the normal course of events, these things are done under vastly different circumstances. However, in an emergency, the emergency conditions prevail.

I think the honourable member is right when he says that inconsistencies could occur. If one read it through one would say, "Goodness me, that is inconsistent." But because it is a quiescent section which would prevail only during an emergency, it would make sense and the regulation would change from time to time. It is a little dangerous to try to pull this from the top of my head—I found that out last night, when answering a question—and it is difficult to imagine the sorts of circumstances where this may prevail.

The Hon. R. F. CLAUGHTON: I intend to oppose very strongly other clauses of this amending Bill, but that is not the case with this clause; I am simply drawing the point to the Minister's attention, because I think it is something that has been overlooked. When I use the word "inconsistent" I use it in the sense in which it is used in the amending Bill. Proposed new section 41 (1) states—

> Where the provisions of this Part of this Act are inconsistent . . .

Proposed section 41 (2) states—

> Emergency regulations made under this Part of this Act shall have effect notwithstanding anything . . .

I am referring to the collation of this Bill and the parent Act; it states that it shall have effect, "notwithstanding anything, whether express or implied". It will prevail over all other Acts. However, all other laws and Acts do not seem to include the parent Act.

The Hon. G. C. MacKINNON: I am pleased that the honourable member has raised this question. I have no real expectation that we will complete the Committee stage today. The matter he raised deals with a subsequent part of the Bill. By next Tuesday, I will have had time to examine the matter a little further and to obtain an official opinion on it. Probably, by the time we reach this stage, I will be able to provide the honourable member with a more complete answer.

The Hon. R. THOMPSON: The more one examines the parent Act in conjunction with the Bill, the more one sees inconsistencies. It has been preached many times that we must read the Bill as a whole, and not consider it in part. Of course, when the Bill becomes an Act, although it is split into sections, it cannot be denied that some sections of the parent Act will be applicable to the emergency regulations. I consider that section 30 of the principal Act will come into conflict with what is contained in this Bill. I think it gets back to the point I have made on several occasions that this Bill is out of context. The whole thing should be withdrawn and redrafted as a new Act; but not as an emergency regulating measure to be put into the parent Act, because I can see dangers inherent in the acceptance of this Bill, having regard to the parent Act as it now stands.

Clause put and passed.

Clause 4: Section 41 added—

The Hon. R. THOMPSON: This is the most repugnant and obnoxious clause in the Bill and we intend to seek clarification of it from the Minister. Before I go on to discuss the clause, may I say I have consulted with the Hon. D. W. Cooley, who has an amendment on the notice paper in line with an amendment moved in another place. I have persuaded him not to proceed with the amendment, for very good and sufficient reasons. I do not think members of the Australian Labor Party should be party to an amending Bill of this nature. I do not believe we should take part in any amendments which will produce on our Statute book something that is repugnant and objectionable. Therefore, Mr Cooley has decided not to proceed with his amendment.

I should like to continue in the same terms in which I spoke last night. We have had many and varied opinions on clause 4 from organisations, professors of law, Queen's Counsels, solicitors and, in this Chamber, from Mr Medcalf. But up to date we have had no explanation from the Government. I think it is now the Minister's turn to explain in detail what is the Government's view in relation to this clause. The Minister claims that the Crown Law Department drafted the clause and, indeed, the entire Bill. He said that the measure was necessary, that it will not do all the things people say it will do, and that people are jumping at shadows and misinterpreting the legislation. This has been the tone of the speeches from members opposite. I particularly want to hear—in fact, I am sure all members in this Chamber want to hear—the Government's interpretation of clause 4 of this Bill.

The Hon. G. C. MacKINNON: A number of members of this Chamber probably have read this part of the Bill to the public and in all sorts of places so often that they could almost relate it by heart. The Government's interpretation of clause 4 is as the clause is written. It states—

> 41. (1) Where the provisions of this Part of this Act are inconsistent with any of the provisions of any other Act, or of any regulation, rule or by-law made under any other Act, the provisions of this part shall prevail.

The wording of proposed new section 41(1) is crystal-clear, and the Government believes that those words mean what they say.

Subsection (2) of proposed section 41 states that emergency regulations are to have an overriding effect; but a regulation which has been ruled by the court to be invalid would not be an emergency regulation for the purposes of this subsection and would have no effect under that subsection.

Subsection (2) of proposed section 41 reads as follows—

> (2) Emergency regulations made under this Part of this Act shall have effect notwithstanding anything, whether express or implied, in any other Act or in any law, proclamation or regulation or in any judgment, award or order of any court or tribunal or in any contract or agreement

whether oral or written or in any deed, document, security or writing whatsoever.

I suppose Mr Thompson is asking me to answer the criticism that has been levelled at that provision. If, however, the regulation is valid then it is clearly in the public interest that it takes effect, and in order that it shall take effect, it may be necessary for the rules of the law and the practices of trade which govern the daily life of the community to be set aside because of the more urgent requirements of the emergency situation.

The Factories and Shops Act, the Health Act, industrial awards, tribunal decisions and the general framework of commerce and industry often make provision not only as to wages, but also as to the hours during which work is to be done and the conditions under which it is to be carried out. It may sometimes be necessary in an emergency situation to work different hours or under more difficult conditions. This clause is designed to make that possible without an argument later as to whether or not the normal conditions of employment should have continued.

It would perhaps be desirable to say that the alteration in the normal practice of commerce should be restricted to that which is immediately necessary to meet the emergency situation; but it is impossible to foresee what the emergency situation may demand. To place such a limitation on the exercise of a power means that anybody who wished to exercise that power, on whatever level of authority he may have, would have to consider whether or not he might later be sued for going beyond the immediate requirements of the emergency. The practical effect of such a dilemma would mean inevitable delay in the consultations, a probable lack of efficiency, and a frequent failure to use powers that would have been better used without hesitation.

We could all visualise the situation where some people agreed to carry out a certain job in special circumstances. They would say, "That needs attention, and we should get on with the job." In cases of emergency people do not consider whether a job which requires attention is governed by safety regulations, or whether in the course of the work they should knock off for morning tea.

People who have lived in country areas have faced that sort of situation, such as the flood which occurred in Bunbury in 1964, the bushfire which raged in the Dwellingup area, and more recently the flood which occurred at Carnarvon. In these circumstances we often find a group of people saying that the fire or flood is getting beyond control, and certain things have to be done. These people would not stop to consider the conditions of work; they would get on with the job. I am sure that in his experience with the seamen Mr Dans knows of such situations.

The Hon. D. K. Dans: It is defined in our awards.

The Hon. G. C. MacKINNON: Anyone who sees a situation arising which is fraught with danger will invariably attend to it immediately. There is no argument as to whether it is a matter of safety. The same applies under the legislation before us. Perhaps I ought not to proceed with subsection (3) of proposed section 41.

The Hon. R. Thompson: You could go on with it.

The Hon. G. C. MacKINNON: Subsection (3) states—

> (3) All powers given by or under this Part of this Act or by or under the emergency regulations shall be in aid of and not in derogation from any other powers exercisable apart from this Act.

Subsection (3) states that all the normal law and all the powers possessed by persons in authority under normal situations shall apply even in an emergency situation so far as they are not inconsistent with the regulations; and that the effect of the regulations is to give an additional power in times of need.

It has been said that this would place a man in double jeopardy; that is, it would mean he might be tried in respect of the same offence more than once. This might be so, and it might be desirable if the penalty imposed by the normal law in the normal situation were quite inappropriate to the gravity of the offence in an emergency situation. If that is not the case then the courts are well familiar with the principle that a man should not be placed in double jeopardy and would undoubtedly take it into account in assessing how he should be punished.

In the Bill, as in most other Acts, the punishments that are named are set out as the maximum punishment and not as the minimum. Nothing in the Bill prevents a court from exercising its discretion to discharge a person or to inflict a punishment less than the maximum, and it is that discretion which removes any real objection to the element of "double jeopardy" introduced by subsection (3). That is the Government's understanding of the meaning of proposed section 41 (3).

The Hon. R. THOMPSON: Let me raise a hypothetical case. Let us disregard any fuel shortages and assume that plenty of fuel is available. This relates to the word "services" which appears in the long title. Let us say that a particular union is out on strike, and fuel is not being transported to a given point to service the carting of wheat, potatoes, milk, and other commodities. Under the provisions covering "services" a state of emergency could be declared. That is as I understand the position. What is the Government's definition of the word "services"? We have been told that we must read the Bill as a whole, and in doing so we have to jump

from clause to clause. Turning from proposed new section 41 to proposed new section 47 we fined a reference to "services" in subsection (2) (k) which reads as follows—

> (k) engaging persons, whether for reward or otherwise, to perform functions and to carry out acts in order to assist the maintaining, controlling and regulating of supplies and services; and

I would like some explanation on the Government's interpretation of proposed new sections 41 and 47.

The Hon. G. C. MacKINNON: I would not presume to answer that query. The Leader of the Opposition could rephrase this question and ask what is the intention of the present Government if such a hypothetical case arose. Even if he did I would not be able to answer his query, because it would be a decision that the Government has to make. I would not presume to answer the question as framed, because in the future the honourable member himself could be a member of the Government of the day when such a hypothetical case arose.

The Hon. R. THOMPSON: I do not think that any member of the Opposition will accept this answer from the Minister. The Government has introduced the legislation, and the Trades and Labor Council has been accused of misrepresenting to the general public what could happen under its provisions. These are the types of explanations we want; and we are entitled to them.

The Government has included the word "services" in the long title, and it suggests that the inclusion of this word was approved by the previous Labor Government. I can tell him that is not a fact. The question of including the word "services" was not under consideration by the previous Government.

If the Minister and the Government do not know the intention of proposed sections 41 and 47, how would the general public, the Law Society, and other people who have raised objections know? We have been told that we have to read the Bill as a whole. We have, but we also have to go from clause to clause to get explanations. If we are not given the explanations then the Committee stage should end now, because accusations have been made against responsible members of the community who have tried to explain the Bill. The Minister now says it is not within his province to give an answer, because he does not know what a future Government will do.

I am not concerned with what another Government will do; I am concerned with what the Government that is in office will do. If the Minister thinks that his somewhat cursory explanation of the clause is satisfactory to members of the Opposition, then he has another think coming. We want to know in detail what proposed new sections 41 and 47 mean. We have been told by the Premier and by Ministers that the Bill must be read as a whole. We have done that and we are dealing with it by cross reference with the different provisions. We want explanations, and I think we are entitled to them.

The Hon. G. C. MacKINNON: In the context in which Mr Thompson asked the question, he is not entitled to an answer.

The Hon. R. Thompson: Because the Minister does not know.

The Hon. G. C. MacKINNON: Fair enough; I do not know what might happen 10 years from now. The Leader of the Opposition asked what the intention of the Government would be in a hypothetical situation.

The Hon. R. Thompson: I put up a hypothetical situation for the purpose of getting an explanation from the Minister.

The Hon. G. C. MacKINNON: The Leader of the Opposition asked what would be the intention of the Government in the circumstances of a hypothetical case, and I repeat: he is not entitled to an answer. He is entitled to an answer if he asks for an interpretation of the clause, and if he asks what are the powers which could be exercised in the light of a hypothetical situation, and to that question I did my best to provide an answer. He did ask, specifically, what is the intention of the Government and to that question I will not give an answer.

The Hon. R. THOMPSON: I will reframe my question and refer to milk drivers who cannot cart milk to a processing plant because those working in the fuel depot at Bunbury are on strike. Would the Government—

The Hon. G. C. MacKinnon: Could the Government.

The Hon. R. THOMPSON: Could the Government—or would the Government —declare a state of emergency under the interpretation of "services"?

The Hon. G. C. MacKINNON: I repeat: The answer to the question, "Would the Government" is I do not know, and nor does anybody else. It would depend entirely on the situation at the time. With regard to the question, "Could the Government", that is a different matter. To that question I would answer "Yes". With regard to "would" I could think of many hypothetical situations to which the answer would be an absolute "No". I would say "No" because my state of mind cannot visualise such circumstances occurring.

The Hon. R. Thompson: I am very pleased the Minister used those words.

The Hon. G. C. MacKINNON: I used them quite deliberately. When the question comes down to, "Could this be done"

that is a matter of interpretation. A state of emergency can be declared in relation to a particular area, so I take it that such a state of emergency could be declared with regard to the area mentioned by the Leader of the Opposition in his hypothetical case in order that fuel would be provided. I hope I have made the position clear.

The Hon. D. K. DANS: Until some specific explanation is given to this clause I see nothing but trouble besetting the Government. This clause is the key to the whole Bill. I have tried to be reasonably fair-minded after listening to the debate, and after reading all that I could with respect to this Bill.

We must all remember that we represent certain areas. It is my duty to visit my area and, to use a hypothetical case, someone at the BHP plant at Kwinana might tell me that he was starting to see the point with regard to this Bill and that the idea is not as bad as it was first thought. I might be asked for an explanation of clause 4. Unless I have some real explanation to offer, what chance have I got? I would simply have no answer, because the Minister does not have an answer. I can understand why he is saying these things; because he is being honest.

Surely any legislation, whether it be this Bill or any other Bill, should be specific enough to outline just what it is all about. I have already said that the Bill is too broad.

The Hon. V. J. Ferry: We do not know what an emergency might involve.

The Hon. D. K. DANS: I am always very grateful to Mr Ferry for his interjections. Of course, no-one knows what an emergency might involve, but we have been told that the emergency would deal with fuel, energy, resources, and services.

Let us refer back to the case raised by Mr Thompson. Does the emergency arise at the milk treatment plant—which has nothing to do with fuel and energy—or is the emergency to arise at the source of the fuel supply? At present there is no earthly chance of my, or any member, going out and saying that this Bill is aimed deliberately at the trade union movement and that it is a strike breaking exercise. Do I say that? Or do I go out and say that the Government, in introducing the Bill, is genuinely concerned about the future in respect of fuel, energy, resources, and services?

I am jealous of my reputation, as are other members in this Chamber, and I always try to tell the truth. I could say one thing genuinely believing it to be true and find that in the next week the reverse situation could occur, and in those circumstances I would not be very popular. Had the Crown Law Department made more information available, when it drafted the Bill a long time ago, it might have passed through both Houses of this Parliament some weeks ago. At present, it is difficult to convince even the people who support the Government.

Mr Medcalf was genuine in his comments on the Bill. I have now read the opinion of the Crown Law Department, and the opinions of many others, and were I to be quite blase I could express a different opinion when next explaining the Bill, but I might be proved wrong on the very next day, and that is not a good situation.

I will be very generous and say I do not think the Government has anything to hide. What is occurring now has happened to a number of Governments of a different political colour. They have introduced Bills which they have not understood. Many people have made money out of publishing books and pamphlets on how to read and understand Government Bills. There is nothing unusual about that.

I concede the point that the Kwinana refinery could catch fire tomorrow, but if it did it would not be necessary to proclaim an emergency. The people in this country would naturally rise to the occasion. That is the reason the Anglo-Saxon race has been able to carry the English language to the four corners of the earth. We should not forget our ethnic background.

In the case of a ship sinking at sea, it would not be necessary to tell the seamen to block up the hole. Self-preservation is the first law of human nature. However, the provisions of this Bill state that those seamen will have to plug up the hole without pay, but no seaman would want to be paid. The honourable Neil McNeill would know what I am talking about because he was a seafaring man. Seamen naturally do such things.

If we could receive some explanation of this ambiguous clause we would be well on the way, I presume, to reaching some agreement. However, at the moment I would not be prepared to go to the waterfront, or to the Kwinana strip, and put my head on the chopping block. I could be proved incorrect the very next day. It seems that in this State we have some of the most complicated legislation in Australia. The Commonwealth seems to be able to draft legislation which is readily understood. I am not criticising the Minister personally, because I am sure he understands the position.

The Hon. N McNeill: The honourable member alluded to seamen plugging up a hole, and said that they would not be paid. Can he clarify the provision with regard to being paid and not being paid?

The Hon. D. K. DANS: Perhaps I was telling an untruth, although not deliberately. Things have changed and seamen are now paid a salary and do not receive overtime. They work 12 hours a day, or 84 hours each week. The agreement covering

seamen still contains some of the provisions of the older awards and seamen are responsible for the safety of the ship, the passengers, and the cargo. In the case of lifeboats having to be lowered, the boatswain would not be ticking off everyone for overtime. The overtime book is the first thing that is saved! Does that explain the position to the Minister?

The Hon. N. McNeill: No not quite.

The Hon. D. K. DANS: Could the Minister tell me where I have gone wrong?

The Hon. N. McNeill: I will do so in a moment.

The Hon. G. C. MacKINNON: Before Mr McNeill rises to speak I would like to point out that quite inadvertently Mr Dans misinterpreted something I said. Very early in his speech he said I did not know.

The Hon. D. K. Dans: I said it is possible you did not know.

The Hon. G. C. MacKINNON: I said I did not know what the state of mind of Cabinet might be at a particular time.

The Hon. D. K. Dans: I heard you say that.

The Hon. G. C. MacKINNON: I want to explain a few other matters. There is no doubt that this clause is the one that is most misunderstood and has caused the most concern.

The Hon. R. Thompson: That is why we want it explained.

The Hon. G. C. MacKINNON In principle, a clause of this type is not new either in this State or elsewhere in Australia. However, the impression has been conveyed that it is entirely new, but it is not.

The Hon. R. Thompson: Where else can you find such a provision?

The Hon. G. C. MacKINNON: Something similar can be found in the Environmental Protection Act, because the intention of Parliament was that the Environmental Protection Act should be paramount in importance and should contain power to enable environmental matters to be considered as overriding the provisions which may well be outmoded provisions, of any other law.

Act No. 19 of 1949 of New South Wales is in almost identical terms to subsection (2) of proposed section 41, the only difference being that in New South Wales the words commenced "This Act and the regulations". The effect of the New South Wales provisions was what has been believed to be the effect of clause 4; namely, that the Act and regulations made under the Act could override any other legislative or judicial provision.

The Hon. D. W. Cooley: Is there any provision in the New South Wales Act to the effect that no work shall be done at less than award rates?

The Hon. G. C. MacKINNON: I think the honourable member is mixing this up with the Victorian Act.

The Hon. D. W. Cooley: No I am not. I merely ask whether there is any such provision in the New South Wales Act. Is it in the New South Wales Act?

The Hon. G. C. MacKINNON: I do not think so. I think it is in the Victorian Act.

In drafting this Act it was not considered necessary to go so far and the power is very much less than that exercised by the New South Wales Government in 1949.

It is essential to understand the construction of the proposed section 41 introduced by clause 4. New subsection (1) relates only to the question of inconsistency between the Bill and other Acts or subsidiary legislation. It does not have any effect at all on awards, judgments, orders of any court or tribunal, on any contract or agreement.

It does not deal with regulations. By virtue of the Interpretation Act the expression "this Act" would include regulations; in this case there is a contrary intention shown by the phrase "this Part of this Act" so the provisions of subsection (1) relate only to inconsistency between what is actually printed in the Bill and the provisions of any other State legislation.

The Hon. R. Thompson: Was it section 8 of the Environmental Protection Act that you mentioned?

The Hon. G. C. MacKINNON: I would have to get hold of the Act and check it.

The Hon. R. Thompson: It may be the power of authority to exempt.

The Hon. G. C. MacKINNON: I said something could be found in the Environmental Protection Act.

The Hon. R. Thompson: There is nothing similar in any respect.

The Hon. G. C. MacKINNON: There is an overriding power contained in the Environmental Protection Act. I was saying, the provisions of new subsection (1) relate only to inconsistency between what is actually printed in the Bill and the provisions of any other State legislation.

It says that if these provisions are inconsistent then the provisions of the Bill prevail. Since the provisions of the Bill are all provisions giving powers or saying what is to happen when a power that is given is exercised there is nothing in the Bill which has effect of itself, other than the provisions relating to offences. Of those provisions relating to offences, the only one likely to be inconsistent with any other law is the provision whereby offences are to be heard in the first instance before a stipendiary magistrate. But even then, subject to that requirement, the normal provisions of the Justices Act are to apply.

The provisions of the Bill are certainly not inconsistent with the provisions of the Interpretation Act and they are not inconsistent with the Rules of the Supreme Court which means that emergency regulations made under those provisions can be disallowed by Parliament and can be declared to be invalid by the Supreme Court.

When I commenced my remarks I did not make as full an explanation of proposed new section 41 (1), though I did in connection with new subsections (2) and (3) of that section. I thought that I should put that into the record because of what Mr Dans has just said.

The Hon. D. W. COOLEY: I would like to join with my leader and colleague in opposing this clause, because it is this clause which has brought about all the disputation described by the Minister. I do not wish to go through all that again. But I would point out that what has been said here today does not alter the force of the protests that have been made by the people in connection with the Bill; it only emphasises that aspect.

I am saddened that the Bill has got to this stage. We still do not know from the Government what it is all about, but we have had people stand up in their places and talk about floods and fires and the actions that people have been called upon to take to quench those fires and to stem those floods which, of course, has no relationship at all to the question before us today. If I am disadvantaged by the fact that I am speaking as a trade unionist in this place and not, as the Minister has described as a member of the Legislative Council—

The Hon. S. J. Dellar: Which you are.

The Hon. D. W. COOLEY: —I would point out that the Minister may also have trouble in becoming a unionist again, particularly after his long absence but if he does he should, as a unionist apply himself to the measure with the same vigor as he has applied himself as a Legislative Councillor.

The Hon. G. C. MacKinnon: I thought I only had to take a trade test to become a unionist. I think I could pass that.

The Hon. D. K. Dans: It depends on who is the examiner.

The Hon. D. W. COOLEY: As I have said there is much in this Bill and in the Act which could cause the trade union movement a good deal of concern.

We have heard it said that proposed new section 41 provides for a situation in which the Government can call upon people to work under conditions less than are provided for by their award. That has been said here today.

I submit that when trade unionists in this country are called upon to act in various situations—such as floods, fires, and so on—they have never looked for reward. They offer their services voluntarily.

This, however, is quite different in respect of shortages and the services to be provided under this Act. It may well be that a strike situation could be causing shortages in our State. Accordingly, is it suggested that the same comparisons should be drawn in respect of that situation as is being drawn in respect of floods and fires, and so on? Are people expected to work at less than award rates for the purpose of breaking a strike?

The Hon. J. C. Tozer: It does not say anything about less than award rates.

The Hon. R. Thompson: You made the worst speech and you did not know anything about it. I will deal with you in a moment.

The Hon. D. W. COOLEY: Whenever the truth is sheeted home to those who support the Bill in this place we have members interjecting in an endeavour to prevent the speaker who is on his feet from making his point.

This has been apparent since I have been here and I was subjected to a good deal of criticism from the Minister because I was recounting all the circumstances. In a situation as serious as this I think we should deal with the matter with some degree of seriousness, and people should be heard, and those with a vital interest in the matter should be permitted to put their point of view.

The Hon. A. A. Lewis: *Ad nauseam.*

The Hon. D. W. COOLEY: Even in the few hours since the second reading of the Bill was passed people have still been coming in and pleading with us, and with members opposite, not to go ahead with this new section in the Bill.

Surely to goodness there should be some reasoned discussion and some understanding given to the opposition that has developed in connection with this measure; particularly by those who support the legislation.

In my second reading speech I indicated I had received a telephone call—which I took down in longhand—from the Department of Labour and Immigration, in response to a letter I had sent to the Minister concerning the question of whether the clause we are discussing in any sense violates the ILO Conventions that have been ratified by the Australian Government.

In today's mail I received an official reply to that question, and I would ask your indulgence, Sir, and permission to tell the Committee something about the letter that has been sent to me by the Department of Labour and Immigration because some further consideration may be given to the question I asked the Leader of the House before the Bill came to this Chamber. I asked him whether he would look at

the position and let me know whether there had been any contravention of the ILO Convention in respect of this Bill. The Minister assured me the Western Australian Government would not contravene the ILO Conventions. There are serious doubts as to whether this Bill does not contravene these conventions.

The Hon. N. McNeill: You could have put that the other way; you could have said there is some doubt as to whether it does.

The Hon. D. W. COOLEY: I said in my second reading speech there is some doubt. While the doubt exists we should not proceed with the Bill. If the Government is unsure it should not go ahead with the legislation, because it has given an undertaking to the Australian Government that it will do nothing to contravene the conventions. A request was made to the State Governments before the conventions were ratified, and every State agreed to the ratification of conventions 87 and 98.

I know Mr McKenzie, the Deputy Secretary of the Department of Labor and Immigration, personally and I know he is not politically motivated. He is a very authoritative person in respect of ILO matters. He does not express his own opinions in his letters; he conveys to us the opinions of expert committees established by ILO to examine the conventions. Some of the findings of the committees are interesting to read. We can relate them in some way to the matter before the Chamber, because there are inherent dangers in a clause which says that regulations made under this provision shall have effect notwithstanding Act, laws, awards, or agreements.

Mr McKenzie said—

> You will appreciate that it is difficult to give an authoritative opinion on whether the provisions of draft legislation, as in the present circumstances, are themselves in breach of ILO Conventions or whether such legislation could lead to action which would be in breach of Conventions.

I wish the Minister would listen, because he has a grave responsibility in respect of this Bill.

Point of Order

The Hon. G. C. MacKINNON: I just cannot allow that remark to remain unchallenged on the record. I am listening to everything Mr Cooley says, because I regard him as a responsible member. His remarks are also being taken down by the *Hansard* reporter, and my officers and I will read the report.

The CHAIRMAN: Do you want the remark withdrawn?

The Hon. G. C. MacKINNON: That does not matter; my comments will be recorded in *Hansard*.

Committee Resumed

The Hon. D. W. COOLEY: I was merely worried that the Minister could not talk and pay attention to what I am saying at the same time; and I am afraid the question before us may be resolved before *Hansard* is printed. Mr McKenzie continued—

> The ILO has established machinery to supervise the application of ratified Conventions—the Committee of Experts on the Application of Conventions and Recommendations and a tripartite Committee of the International Labour Conference each year —as well as a Committee on Freedom of Association set up by the Governing Body to consider allegations of breaches of ILO principles of freedom of association.
>
> While I emphasise that it would not be appropriate for me to attempt to give a definite indication as to whether or not the draft legislation is in compliance with ILO Conventions Nos. 87 and 98, I can draw your attention to statements by the ILO Committee on Freedom of Association which indicate that restrictions or prohibitions imposed in specified essential undertakings or services are regarded by the Committee as not being contrary to the requirements of the Conventions provided that adequate protection is given to workers "to compensate them for the limitation thereby placed on their freedom of action with regard to disputes affecting such undertakings and services".

It is laid down in ILO that legislation can be enacted to cover emergency situations, and that legislation may provide that a convention can be overridden in some respects, provided the interests of those concerned are protected. While I greatly respect Mr Medcalf's opinion, I do not agree with his comment that guarantees are included in the Bill. I can see no guarantees; and certainly they are not written into the provision we are discussing at the moment. Mr McKenzie continued—

> The Committee has stressed the importance which it attaches, whenever strikes in essential services are forbidden or subject to restriction, to ensuring adequate guarantees to safeguard the interests of the workers thus deprived of an important means of defending their occupational interests.

While it is said in some instances strikes are illegal in Western Australia, the ILO expert committee does not consider that to be so as a general principle. It claims workers have an absolute right to take this action to defend their occupational interests.

This is also written into other Acts; namely, that in certain circumstances strikes could occur in an emergency situation and provision is made for it. Under this provision, the people's ability to protect their occupational interests would be taken away and it is essential in legislation such as this that such a provision should be laid down. Specific safeguards should be written into any Act of Parliament that provides for essential services.

I will not weary the Chamber or the Minister, because I think everyone knows that the people protesting against this Bill recognise the need for emergency legislation, provided adequate safeguards are included. Mr McKenzie went on to state—

> It is also pointed out that any such restrictions should be accompanied by adequate, impartial and speedy conciliation and arbitration procedures in which the parties can take part at every stage and in which the awards are binding in all cases on both parties.

How can we have conciliation and arbitration if the provisions of the award are overridden and the ability to go before arbitration commissions for the purpose of determining and settling disputes is taken away? Mr McKenzie went on to state—

> I should add that the term "essential services" is defined very narrowly in the ILO context. For instance, the Committee on Freedom of Association has made the following statement: "Although it is recognised that a stoppage in services or undertakings such as transport companies, railways, telecommunications or electricity might disturb the normal life of the community, it can hardly be admitted that the stoppage of such services is by definition such as to engender a state of acute national emergency. The Committee therefore considered that the measures taken to immobilise workers at the time of disputes in services of this kind were such as to restrict the workers' right to strike as a means of defending their occupational and economic interest."

If that does not spell out the situation with which we are dealing, I do not know what does. Almost everything that is contained in this statement in respect of the things we will have to cater for in an emergency is contained in the Bill. Mr McKenzie went on to say—

> The same point has been made by the Committee on Freedom of Association in regard to the employment of the armed forces or of another group of persons to perform duties which have been suspended as a result of a labour dispute. (This may be relevant to clause 10 (section 47(2)(k).) The Committee has stated that such action can be justified only by the need to ensure the working of services or industries whose suspension would lead to *an acute crisis*. The utilisation by the Government of labour drawn from outside the trade, with a view to replacing the striking workers entails a risk of derogation from the right to strike which may affect the free exercise of trade union rights.

Members will see that right through this correspondence, the right of workers to withdraw their labour is emphasised. We feel that if this clause becomes law, that right will be taken away in time of an emergency.

While I do not state categorically that this is so, I suggest it is possible that this clause could be in contravention of the ILO decision. All members who have read my speech on this matter would understand how careful the International Labour Organisation is in drawing up conventions before it sends them out to the respective countries for implementation and, in turn, the respective countries are very careful to examine the conventions before they ratify them. Many ILO Conventions are not ratified by member countries because of the many difficulties involved. However, the two conventions to which I refer and which may have a bearing on this clause have been ratified by the Australian Government and, indeed, by this Western Australian Government. Mr McKenzie continued—

> To sum up, the ILO supervisory machinery has recognised that legislation relating to maintenance of essential services which imposes prohibitions or restrictions on action by trade unions and their members is not necessarily in breach of the freedom of association Conventions provided that action taken under such legislation conforms with the sorts of principles I have quoted above and provided essential services are defined narrowly consistent with the ILO approach. I might add that there is legislation relating to essential services on the statute books of some other Australian States similar, in various respects, to the Western Australian Bill.*

There is an asterisk placed beside the last word and the note states—

> * There is also Section 30J of the Crimes Act.

Mr McKenzie continued—

> The ILO Committee of Experts has not queried this legislation in relation to ILO Conventions Nos. 87 and 98.

I claim from that assertion that doubt exists in respect of this clause. It should be checked out before we go ahead with it, because once we go ahead it is final and

cannot be revoked. Mr McKenzie concluded by saying—

> Finally, in regard to clause 4 (section 41 (1) and (2)), presumably the fact that Australia has ratified ILO Conventions Nos. 87 and 98 and that Western Australia agreed formally to ratification would be adduced so that any action taken by the Western Australian Government under legislation based on those clauses would not be inconsistent with the provisions of those ratified Conventions.

They assume by that, I should think, that the Western Australian Government would have checked out this situation before bringing this legislation before the Parliament. I wonder whether it was checked. Can the Minister give us an assurance on that point? Have the ILO Conventions been complied with, and will the Minister now give consideration to suspending discussion on the Bill until this question has been answered?

Point of Order

The Hon. G. C. MacKINNON: On a point of order, Mr Chairman, under Standing Order 150 I request that Mr Cooley table the paper from which he has quoted so that I may be able to obtain a photocopy of it.

The Hon. D. W. Cooley: I will send a copy to you.

Debate Resumed

The Hon. R. THOMPSON: While that is being done I want to return to the accusation we were dealing with prior to Mr Cooley speaking, when Mr Ferry and other members said that we misrepresented the Bill to the public; we did not understand the Bill; we have confused the public. Mr Ferry was followed by Mr Withers who made the same accusation. In regard to proposed new section 47(2)(k), he said we did not know what we were talking about; that if a person were engaged for remuneration or otherwise the engagement became a contract, and therefore we were misleading the people.

However, when we look at proposed new section 41, we find it provides—among other things—that it can be set aside—

> ...any law, proclamation or regulation or in any judgment, award or order of any court or tribunal or in any contract or agreement whether oral or written...

We have asked a responsible Minister in this Chamber to explain the Bill; to explain what would happen in a hypothetical situation. But he cannot explain it; he admits that.

The Hon. G. C. MacKinnon: I did nothing of the sort.

The Hon. R. THOMPSON: I want the Minister to explain it, and I want Mr Ferry to tell us how the trade union movement misrepresented the Bill to the public. I will relate clause 4 of this Bill to about 25 proposed new subsections before I finish.

The Hon. G. C. MacKinnon: You sound like Frank Wise.

The Hon. R. THOMPSON: Members opposite tell us to read the Bill as a whole. I want Mr Clive Griffiths to tell us how we have misrepresented the Bill to the public; how, through our actions, we got people to go on strike through misrepresenting the Bill, and how we organised marches. It is his turn now to explain how we misrepresented the Bill to the public. Likewise, Mr Lewis; it is his turn to tell us how we misrepresented the Bill to the public.

The Hon. A. A. Lewis: I said nothing about the Bill. I said you want to keep constant on what has been discussed.

The Hon. R. THOMPSON: All the honourable member has said is that we have misrepresented the Bill and confused the public, so Mr Lewis can tell us what he means. Members opposite say that they understand the Bill. Of course, Mr Masters did not get to his feet at any stage, but he did not stop interjecting. He said he would speak, but he did not. He said we could not understand what is in the Bill. Now it is his turn.

The Hon. G. E. Masters: When did I say that you did not understand what was in the Bill?

The Hon. R. THOMPSON: Likewise Mr Tozer. I want him to tell us in the context of his speech—

The Hon. G. E. Masters: When did I say that you did not understand what was in the Bill?

The Hon. R. THOMPSON: I think it was when the Minister was cunning enough to yap away when we could hardly hear what he was saying, because he was speaking in undertones hoping that only *Hansard* would hear what he was saying.

The Hon. G. E. Masters: That is not correct.

The Hon. R. THOMPSON: I would like Mr Masters and Mr Tozer to tell us what the Bill means. Also Mr Ferry and Mr Withers can tell us what the Bill means. To date we have been debating the Bill this afternoon for two hours.

The Hon. A. A. Lewis: Do you want Mr Medcalf to tell you again what the Bill means?

The Hon. R. THOMPSON: Mr Medcalf expressed a sound opinion with which I did not disagree. However, it was only his opinion. At no stage during his speech did Mr Medcalf say that any member from this side of the Chamber misrepresented the Bill to the public.

The Hon. A. A. Lewis: Actually, he was uninterrupted during his speech because he said so much more about the Bill than you have done.

The Hon. R. THOMPSON: He was the only member on the Government side of the Chamber who knew what he was talking about and I respect the opinion he expressed. I said that when I spoke last night. However I respect the opinion of three other eminent men—two professors and a QC.

The Hon. A. A. Lewis: You said that before and lost $2 000.

The Hon. R. THOMPSON: I said I respected and accepted their views, but that does not necessarily make their views correct. It is up to the Government to explain what is in the Bill. If we are to be accused of misrepresenting the Bill to the public, and if the trade union movement is to be accused of misrepresenting the Bill to the workers, let members on the other side of the Chamber tell us where we have gone wrong. What does the Bill mean? What does proposed new section 41 mean? It is interrelated with proposed new section 47, but how is it interrelated with the emergency regulations, which are mentioned in proposed new section 47? Proposed new section 47 reads as follows—

> Where a state of emergency is declared... the Governor, for the purposes of—
>
> (a) providing or securing supplies and services required by the community, or any substantial portion of the community; or
>
> (b) preventing supplies or services being disposed of in a manner prejudicial to the attainment of the objects of this Part of this Act,
>
> may make emergency regulations not inconsistent with this Part of this Act.

I do not disagree with that, but I am speaking of services. When I commenced to speak earlier today I said that no fuel, energy or power shortages existed in this State at present. I ask again: if the Bunbury transport workers went on strike and the dairy industry was threatened with a shutdown, or milk supplies were to be curtailed, would a state of emergency be declared?

I was not on the stump at any time, but I believe members opposite were on the stump because they were doing their best to explain their version of the Bill. From those in the Government ranks we are broadly accused of misrepresenting the Bill to the public. Now we want to know from them what the Bill means. Where were we wrong? It is now the turn of the Government members to get up and tell us where we were wrong.

The Hon. N. McNEILL: It will be recalled that much earlier in the debate—although possibly Mr Dans has forgotten the subject matter of the question—

The Hon. D. K. Dans: No, he has not.

The Hon. N. McNEILL: —perhaps other members of the Committee may recollect that I indicated I would at some time pose the question—and perhaps I should do that first; but, at the same time, I will make some other comments.

Mr Dans referred to a hypothetical situation at sea involving seafarers when he said that there was a provision—I am not sure of his exact words—that the seamen would not be paid.

The Hon. D. K. Dans: Any extra pay.

The Hon. N. McNEILL: Mr Dans made that comment initially, but he later said that now, of course, seamen are on a salary. However, I think if we were to take his words in their proper context, he meant that seamen would be in receipt of wages, although that was not said.

The Hon. D. K. Dans: I think that is understood.

The Hon. N. McNEILL: The question I posed to him at the time was this: Was it laid down that they would not be paid, or did it mean they might not be paid? Does the award provide for discretion and opportunity for them not to be paid? No doubt the honourable member will appreciate the import of what I am saying, because it is related very closely to some of the arguments that are being directed against the Bill. This applies particularly to Mr Cooley; it is a question of the discretions that will be available.

The Hon. G. C. MacKinnon: Such as a change in the award.

The Hon. N. McNEILL: Yes. The situation outlined by Mr Dans is a reasonable one where the people concerned might not be paid, but that is not the point. The point is whether provision is made that they may not be paid, or whether there is a discretion to say that the award can be scrapped and they will not be paid. Perhaps Mr Dans will clarify this point later.

Until the stage when Mr Cooley joined in the Committee debate there was a fairly reasonable and rational discussion, essentially between the Leader of the Opposition and the Minister in charge of the Bill. There was no injection of emotion, and no inflammatory statements or charges were made to the effect that the Government was taking action against the trade union movement. A very considered and intelligent debate was taking place, until Mr Cooley proceeded to make inflammatory comments. I think that under the circumstances those comments were out of place. They may bear out the fact that he is expressing the trade union viewpoint. He is expressing what I regard to be the symbol of his attitude to this Bill. He wants to nail onto the Government as much as possible the contention that the Bill is an attack on the trade union movement.

The Hon. D. W. Cooley: In a public statement you said it was, and some members by interjection have said it too.

The Hon. N. McNEILL: I did not say any such thing in a public statement. I know what the honourable member is alluding to. It was a report which appeared in the *Weekend News* of the 31st August. That report was not a quote; it merely said that Mr McNeill was reported to have said certain things. It did not take into account the context in which the remarks were made. I do not retract any of the comments that were made in the report.

The Hon. D. W. Cooley: I clearly heard you say the same thing in a television interview, so there is no point in your saying it has not been said by you.

The Hon. N. McNEILL: This is the sort of atmosphere that Mr Cooley has injected into the Committee debate. Of course, this obscures and clouds the issue; that is, the interpretation which should be placed on the provision in clause 4. The honourable member would much prefer to canvass the whole ground, and to contend that the Bill is an attack on the trade unions and that the legislation will override industrial awards. He said this Bill would give the Government the opportunity to smash the trade union movement. Those were the words which he used, time and time again; they were not words used by members on this side of the House.

In the second reading debate, and again today by interjection when the Minister for Education was speaking, reference was made to the New South Wales legislation. It was not my desire to introduce again the New South Wales legislation, because surely the Committee appreciates that particular piece of legislation was introduced to cover a very serious crisis in the Australian community, particularly the community in New South Wales.

However, the New South Wales Act is no longer on the Statute book. Mr Cooley questioned whether that Act contained a provision which was parallel with the provision in clause 4 of the Bill. In fact, there was, as Mr MacKinnon has said, but that Act is no longer in existence. That Act was enacted by a Labor Government in New South Wales in 1949.

The Hon. D. W. Cooley: Does it make the Bill good by saying that?

The Hon. N. McNEILL: I am giving the answer to the question asked by Mr Cooley as to whether the New South Wales Act contained such a provision. The reply is that it did. The honourable member then asked whether that would make the Bill good, but I suggest that is not relevant at all. The contention of members opposite is that it is the intention of the Bill to override industrial awards. I have read the New South Wales Act several times. It appears that that Act is silent on the question, other than the fact that section 7 contained a provision which is almost identical to a portion of proposed new section 41 in clause 4. From my observation it did not appear to make any reference to the fact that it would observe the awards which were applicable to the workers, with one exception. There is some dissimilarity between that Act and the provision in the Bill.

The Leader of the Opposition has referred to the use of the words, "engaging persons, whether for reward or otherwise". A parallel provision appeared in section 5 of the New South Wales Act as follows—

> (e) requiring persons to place their services and their property at the disposal of the State as may appear to be necessary or expedient for securing the maintenance, supply or provision of essential services and essential commodities;

That is a considerably stronger use of the powers than is apparent to the honourable member.

Mr Cooley may ask once again whether that makes the Bill good. The New South Wales Act was introduced by a Labor Premier in a Labor State to cover a crisis situation, and the Act remained on the Statute book for a number of years. Today it is no longer on the Statute book, but that is beside the point. I would not like to think that we could be placed in the situation where that sort of power would have to be invoked. There was the case of a Labor Premier of a Labor Government of New South Wales, at a time when a Labor Government was in office at Canberra, inserting provisions into legislation which were clearly spelt out and which appeared to be much stronger than the provisions in the Bill before us, and without the safeguards.

The Hon. D. K. DANS: I am a little disturbed that I ever raised the question of what was done in other places. What I was trying to bring out was the fact that proposed new section 41 would have been better had it been accompanied by a number of exemptions and explanatory provisions as to what it means. I do not think we know what it means and, without being disrespectful, I believe this statement applies to the Minister for Justice and the Minister for Education.

The provisions of the Navigation Act are very strict, and always have been and the seamen have to be paid for every day they are on the ship. No power can override that provision.

But all these items are laid down. The Act simply prescribes pay over a month. For instance, let us say that an emergency arose on a Sunday for which, theoretically, the seamen are never paid. They simply would not get any pay for that Sunday.

We must bear in mind that the seamen are paid for 12 hours' work, but they are on board for 24 hours a day. So, taking that to its logical conclusion, they would

not get any pay for the time spent on an emergency outside their normal watch hours. However, the Act prescribes all these things.

It would not be necessary to go around a ship and indicate that an emergency had arisen. For instance, an emergency could be that there is four feet of water in the hold. An emergency is not an emergency unless the ship is in danger.

However, to get back to the particular clause, I still have not heard anything I could use to explain this clause to the people I represent. I am not going to say that the explanation given by Mr McNeill is not correct, but I cannot use it to explain the clause to anyone. It is an unwritten law that legislation must be readily understood. Perhaps we could be cruel and say that we must legislate for the lowest common denominator in the community so that he can understand it. In other words we should dot every "i" and cross every "t". However, that has not been done in regard to this Bill.

Workers down on the job become suspicious when they read this legislation and immediately there is suspicion a certain amount of fear is engendered; and when there is fear there is trouble. That is why I believe it would be far better if the Minister would reconsider the matter and give us some explanatory information in the form of a schedule or some other document.

When the workers read proposed section 41 they believe that they could be ordered to work if, for instance, tanker drivers were involved in a stoppage. They would then believe they would not get any pay. If these workers have that fear in their mind, they will be very unhappy.

In my industrial experience which has been as much as anyone's in this place, I have found that indecision causes more trouble, strife, stoppages, and head-on collisions than do decisions. The same thing can be said of the situation in our own home. Once a decision is made everyone knows what will occur. It is only when they do not know what will happen that trouble brews. This can be applied to practically everything in our daily life, including motorcar accidents.

Therefore I am saying quite sincerely that it would be better if the Government could supply some specific information concerning the provisions. If the Minister could come back and tell us that the Crown Law Department has provided the information that no danger exists and if he could give me some document to substantiate the opinion, then I could explain the situation to all workers involved. The document could be used and quoted because it would be authentic. In those circumstances I would be quite happy; so I hope the Minister will give some consideration to my recommendation.

The Hon. G. C. MacKINNON: I thank Mr Dans for his very lucid explanation of what he would like done. It is very difficult to answer every query which is raised on a clause such as this. We get, say, five questions and then while we are answering those, we get another five. It reminds me of the situation Mr Wallwork found himself in when he presided over the coal tribunal at Collie, as he did for years. Mr Latter was secretary at the time and they would have 10 items listed of which they would do, say, two, but another two would be tagged onto the bottom of the list.

There were never fewer than 10. It was always very interesting but questions were invariably added.

An explanation of this section could range from the lengthy one I gave earlier to a simple one.

The Hon. R. Thompson: In very general terms.

The Hon. G. C. MacKINNON: A simple one, in general terms, could be that it is impossible to define every sort of emergency which may arise, and it is necessary to have a clause to provide that this part of the Act overrides any other legislation in the appropriate circumstances. It is necessary to have power so that emergency regulations will have effect despite anything implied, expressed, or written down in an award or order of any court or tribunal; that is, in an emergency it is necessary to have that power.

The Hon. D. K. Dans: I think the Minister needs to say that it is not a strike-breaking clause; that strikes will not be broken through its provisions. I do not know whether or not the Minister can say that.

The Hon. G. C. MacKINNON: I am not sure either. The situation could arise concerning a particularly unreasonable group of people who happened to be in a position of some authority and this could create an emergency. Such group would have to be stopped, somehow, in the interests of every other person. It could be a group of people who happened to have control of certain stocks and who may happen to be registered as an industrial union. It may be necessary in those circumstances to break the situation; I do not think there has ever been any doubt about that.

The Hon. D. K. Dans: We are now getting close to what I am to tell people.

The Hon. G. C. MacKINNON: I always bear in mind—and I suppose this is because of my family background over the last three generations—that despite the views held by Mrs Grace Vaughan I am, to some extent, my brother's keeper and that if what I do affects other people they are entitled to be angry. In effect the actions a unionist in either the legitimate

protection of his proper interests or because of unreasonable greed can affect his fellow unionists.

The actions of a harsh and unconscionable employer, greedy, avaricious, and, indeed, criminal, can affect his fellow employers. It is no good gainsaying the fact. It is true and we must have some sort of situation to protect the trade union movement—or the individuals who make up the trade union—against dire distress, and against threats to health because of the breakdown of all the refrigeration in the country, against the threat to the lives of themselves or their loved ones because of the breakdown of electrical equipment in major hospitals and the like; all these things are necessary in an emergency situation. That is what proposed new section 41 is all about.

I believe the discussion up to date has been interesting and I look forward to continuing it. To that end I intend to move that progress be reported.

Progress

Progress reported and leave given to sit again, on motion by the Hon. G. C. MacKinnon (Minister for Education).

House adjourned at 6.07 p.m.

Legislative Assembly

Thursday, the 3rd October, 1974

The SPEAKER (Mr Hutchinson) took the Chair at 2.15 p.m., and read prayers.

TABLED PAPERS

Removal from House: Statement by Speaker

THE SPEAKER (Mr Hutchinson): It has been brought to my notice that members are removing tabled papers from the precincts of the Chamber. I remind members that under Standing Orders 52 and 233 tabled papers are not to be removed from the Chamber or the offices of the House without the express leave or order of the Speaker. Furthermore, documents shall not be removed from the precincts of the House without the written order of the Speaker.

With the spread of members' offices throughout the building the tracing of missing papers causes many difficulties and, therefore, members are requested to conform with the abovementioned Standing Orders.

It should not be necessary for me to remind members that where only one document is available 50 members are inconvenienced if it is removed. Papers in use by a member must be returned each day before the adjournment of the House, unless otherwise authorised by the Speaker.

KWINANA FREEWAY

Extension: Petition

MR MAY (Clontarf) [2.19 p.m.]: I present the following petition, signed by 138 residents, in connection with the proposed extension to the Kwinana Freeway—

> To the Hon. Speaker and Members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned residents in the State of Western Australia do herewith pray that Her Majesty's Government of Western Australia will take such steps as may be necessary to relocate and re-design the proposed amendment to the Kwinana Freeway extensions so that no part of Aquinas property be resumed or used for a freeway extension.
>
> Your petitioners therefore humbly pray that your Honourable House will give this matter earnest consideration and your petitioners in duty bound will ever pray.

The petition is certified in the correct manner.

The SPEAKER: I direct that the petition be brought to the Table of the House.

The petition was tabled (see paper No. 265).

QUESTIONS (43): ON NOTICE

1. KANGAROO ADVISORY COMMITTEE

Meetings

Mr LAURANCE, to the Minister for Agriculture:

(1) Who are the members of the kangaroo advisory committee?

(2) How many meetings have been held since the committee was formed?

(3) When was the last meeting held?

(4) When will the next meeting of the committee be held?

Mr McPHARLIN replied:

(1) Mr B. K. Bowen, Director of Fisheries and Fauna (Chairman).

Mr H. B. Shugg, Chief Warden of Fauna.

Mr A. J. Mearns, Executive Officer, WA Wildlife Authority.

Mr A. R. Tomlinson, Chief Executive Officer, Agriculture Protection Board.

Mr R. Prince, Kangaroo Biologist, Department of Fisheries and Fauna.