

## LEGISLATIVE COUNCIL

Thursday 21 September 1978

The **PRESIDENT (Hon. A. M. Whyte)** took the Chair at 2.15 p.m. and read prayers.

## ASSENT TO BILLS

His Excellency the Governor, by message, intimated his assent to the following Bills:

Barley Marketing Act Amendment,  
Electrical Workers and Contractors Licensing Act Amendment,  
Renmark Irrigation Trust Act Amendment,  
Savings Bank of South Australia Act Amendment,  
State Bank Act Amendment.

## QUESTIONS

## BELTANA

**The Hon. N. K. FOSTER:** I seek leave to make a brief statement before asking a question of the Minister of Tourism, Recreation and Sport, representing the Minister for the Environment, about the old post office and relay station at Beltana.

Leave granted.

**The Hon. N. K. FOSTER:** Until a few years ago Beltana was almost a deserted town. Today, there are signs of activity there, but fears regarding this town are being expressed by some people interested in conservation and this State's heritage.

Beltana has one of the few original relay stations and post offices, the building being over 100 years old. I last saw this building two or three years ago, when it was in a good state of repair. I understood there were moves being made by a number of organisations interested in its preservation. I was told there was some likelihood of a grant being made to preserve this building, which is only one of a number of other historic sites in Beltana. The original building was used by Father Flynn when he commenced his work in this town. I therefore ask the Minister the following questions:

Will the Minister ascertain the present ownership of the Beltana relay station and post office? Has finance been provided for any historical society for the preservation of this historic building? Has any other conservation-conscious group or organisation been granted any finance to purchase the building? Has any Government grant, State or Federal, been made for the preservation and restoration of the building, as well as the land associated with the original title?

**The Hon. T. M. CASEY:** I will refer the honourable member's question to my colleague in another place and bring down a reply.

## SKATE-BOARDING

**The Hon. C. M. HILL:** I seek leave to make a short statement before addressing a question to the Minister of Tourism, Recreation and Sport on the subject of skate-board riding.

Leave granted.

**The Hon. C. M. HILL:** About two years ago I asked the Minister whether he intended to exercise any control over

the sport of skate-board riding, because at that time there had been reports of considerable danger to young people involved in this activity. I heard a radio report during the weekend that the Minister in New South Wales was going to introduce some form of control in New South Wales. The report said that the Minister was influenced by an investigation into accidents occurring in Norway, where it was found a considerable incidence of skate-board accidents had occurred. Does the Minister intend to look into this matter any further, in the interests of the young people of this State?

**The Hon. T. M. CASEY:** I understand that Norway has totally banned skate-boarding, because of the number of fatalities and injuries that have occurred there. South Australia is one of the few States in Australia that have facilities set aside in recreation areas and parks for use by skate-board riders, and, having received a request from New South Wales for information on these areas, I have furnished the New South Wales department with photographs and details of size, etc., of these skate-board areas which may be of assistance as regards controlling this activity. We are not greatly concerned about the matter at this stage, because my department has not received any notification of fatalities or serious injuries occurring through the use of skate-boards.

My department regards skate-boards as being similar to yo-yo's: they are in for a couple of years, and then out for four or five years, and then the manufacturers bring them back in again. My department certainly monitors any problems attached to any of these sports, whether it be skate-boarding, hang-gliding, or anything else. I assure the honourable member that, if any fatalities or serious injuries come to our notice, we will then look at the situation again. At present, however, there does not seem to be anything we need do in the way of introducing restrictions or regulations.

## TWO WELLS CROSSING

**The Hon. M. B. DAWKINS:** I seek leave to make a short statement prior to directing a question to the Minister of Lands, representing the Minister of Transport, on the subject of safety at railway crossings.

Leave granted.

**The Hon. M. B. DAWKINS:** Some months ago, I had occasion to bring to the notice of the Minister the relatively long delays that were sometimes caused on a main road by long trains shunting to and fro over, or standing across, the road at what is known as Direk railway siding, at which there are warning lights. I am pleased that the Minister was able to draw the problem to the attention of the railway authorities and have it corrected, and I thank him for that. Recently, constituents in the Two Wells area have drawn my attention to a similar problem as long north-bound freight trains are held at Two Wells in some cases for a considerable time, and they extend back over the crossing of the main sealed road between Gawler and Two Wells. This road carries much through traffic, a considerable volume of which travels from Murray Bridge to Gawler and then to the main highway at Two Wells, thus by-passing Adelaide, and this crossing has the added disadvantage that there are no warning lights to warn on-coming traffic of the presence of the unlit freight train. Would the Minister ask his colleague to use his good offices to correct this fault and thus avoid what could be a very serious accident?

**The Hon. T. M. CASEY:** I will refer the question to my colleague and bring back a reply.

**MONARTO**

**The Hon. J. A. CARNIE:** I seek leave to make a short statement prior to directing a question to the Minister of Agriculture, representing the Minister for Planning, concerning the Monarto Development Commission.

Leave granted.

**The Hon. J. A. CARNIE:** Two days ago in the House of Assembly, the Leader of the Opposition called on the Government to sell the assets of the Monarto Development Commission because of the rather desperate plight that South Australia was in. The Premier is reported in this morning's newspaper as having replied that the Government would not do that because, if it sold the assets of the commission, it would sell them at a loss. The current Auditor-General's Report lists the total assets of the commission at \$25 931 000. As the Premier seems so sure that the sale price of the assets would not reach this figure, can the Minister say what value the Premier does place on the assets of the commission at this stage?

**The Hon. B. A. CHATTERTON:** I will refer the question to my colleague and bring back a reply.

**WAYVILLE LIGHTING**

**The Hon. C. M. HILL:** I seek leave to make a statement prior to directing a question to the Minister representing the Minister of Mines and Energy on the subject of public lighting at Wayville.

Leave granted.

**The Hon. C. M. HILL:** Residents and owners of residential property in Wayville have made representations to me that they are very concerned about the lack of lighting in the lanes at Wayville. Wayville is an old established suburb, with lanes running parallel to the principal streets, and these lanes front on to the backyards of the houses. Because of the lack of lighting, much vandalism has taken place. One owner of residential property has told me that he strongly suspects that drug offences have been occurring in these lanes, and that people generally in that part of the suburbs are very concerned because of the need for these lanes to be better lit than they are. Will the Minister ask the Minister in charge of the Electricity Trust whether the trust has any plans to improve lighting arrangements in the lanes at Wayville?

**The Hon. B. A. CHATTERTON:** I will refer the honourable member's question to my colleague and bring down a reply.

**BELTANA**

**The Hon. N. K. FOSTER:** I seek leave to make a brief explanation before directing a further question to the Minister representing the Minister of Mines and Energy regarding the town of Beltana.

Leave granted.

**The Hon. N. K. FOSTER:** I understand that several years ago a spur line was installed 1½ to 2 miles from Beltana. At that time the residents and others interested in the town, including conservation groups, were requested to comment on whether they wanted a service line to extend from that spur line into the town. The survey showed that there was no desire on anyone's part for power to be supplied to it, and that situation has not altered since, there being no power supply to the town.

It is held by service groups and local residents that the supply of power to this town would be detrimental to its historic and conservation aspect.

Will the Minister ascertain, first, whether ETSA power is now being connected to any building in Beltana, or whether there has been any application for such a supply? Secondly, is the Minister aware that several years ago a survey of residents in Beltana decided against any power supply from ETSA? Thirdly, has any present activity by ETSA been the subject of consultation with residents and conservation groups, and has the Royal George Hotel been purchased by a person employed by or associated with ETSA? Fourthly, has ETSA requested the Environment Department to undertake a feasibility study on any future transmission posts and lines in or near Beltana?

**The Hon. B. A. CHATTERTON:** I will refer the honourable member's question to my colleague and bring down a reply.

**COAST PROTECTION**

**The Hon. K. T. GRIFFIN:** I seek leave to make a short statement prior to asking the Minister representing the Minister of Marine a question about coastal areas.

Leave granted.

**The Hon. K. T. GRIFFIN:** I understand that about a month ago the Government announced that it was establishing a working party to bring together all those who have responsibility for coastal areas. In respect of that announcement I ask the following questions. First, how many persons are in the working party, who are they, whom do they represent, and to whom is the working party responsible? Secondly, has the working party met, and when is it expected that it will present a report? Thirdly, what are the reasons for the working party's establishment, what are its objectives, and what are its areas of research?

**The Hon. T. M. CASEY:** I will refer the honourable member's question to the Minister of Marine and bring down a reply.

**RAILWAYS INSTITUTE**

**The Hon. C. M. HILL:** I seek leave to make a statement prior to asking the Minister representing the Minister of Transport a question about the Railways Institute.

Leave granted.

**The Hon. C. M. HILL:** Before the Hall Liberal Government left office in 1970, plans had been approved for the construction of a new Railways Institute building near the Torrens River, a little to the west of the Festival Theatre complex. When the Labor Party came to office in 1970 those plans were scrapped, and the Railways Institute, whose previous home has been in the buildings demolished for the Festival Theatre complex construction, was shifted to temporary accommodation in the Old Legislative Council building. The institute was subsequently informed that accommodation would be provided for it in that part of the railway station building occupied by the Motor Registration Division.

Of course, it was known that ultimately the Motor Registration Division would transfer to a new building. That has now happened, and I acknowledge that the Australian National Railways has entered the scene. However, I recently received a copy of the institute's magazine (as, I suppose, other honourable members did), attached to the front of which was a separate slip which read:

Dear member,

Your attention is respectfully drawn to the unfortunate

plight of the Railways Institute seven years after its home was demolished and the members were promised by the Government new alternative accommodation. We were sold out. Is it too late to make amends?

I direct my question to the Minister of Transport, because I am sure he will acknowledge, as I do, that these people are residents of South Australia and, although they might now be joined with the Australian National Railways, all honourable members have their welfare at heart. What is the Minister's answer to the claim, "We were sold out," and is the Minister still interested in and doing his best to assist the institute in its problem?

**The Hon. T. M. CASEY:** I will refer the honourable member's question to the Minister of Transport and bring back a reply.

## CONSTITUTION

**The Hon. N. K. FOSTER:** I seek leave to make a statement before asking the Minister of Lands, representing the Attorney-General, a question regarding the State's Constitution.

Leave granted.

**The Hon. N. K. FOSTER:** Yesterday, there was a difference of opinion in the Council between me and the Hon. Mr. DeGaris, who unfortunately is not here at present (I assume that he is involved elsewhere or is indisposed). I intended to direct a question to that honourable member today. However, in his absence, I am reluctant to direct it to another Opposition member, because none of the Liberal members in this place is willing to announce who is acting as Leader of the Opposition in the Council during the absence of the Hon. Mr. DeGaris. This situation is somewhat deplorable and is one that I have raised with you previously, Mr. President.

Yesterday, there was a difference of opinion between the Hon. Mr. DeGaris and me on a matter that I had raised in debate relating to the appointment of an additional Minister. I had said previously that, if an accident involving a fatality occurred, the Government in office at the time to which I was referring, namely, between 1965 and 1968, would have had so few members in this place that it would have had to make other arrangements or appoint a Minister from an Opposition Party. I was ridiculed by the Hon. Mr. DeGaris regarding that point.

Further, it has almost become public knowledge that between 1968 and 1970, when the Liberal Party was in office, the Hon. Mr. DeGaris threatened Steele Hall that he would resign and take with him the Hon. Mr. Hill and another gentleman who was a Minister in this place but who is no longer a member here.

**The PRESIDENT:** I hope that this explanation is relevant to the honourable member's question.

**The Hon. N. K. FOSTER:** The Hon. Mr. DeGaris threatened that he would bring down the Government. However, Steele Hall took the wind out of Mr. DeGaris's sails by saying, "You do that. I will govern with seven Ministers in the Assembly," and the Hon. Mr. DeGaris knows that that was the case. Will the Minister of Lands ask the Attorney-General to give an opinion on the Constitution?

**The PRESIDENT:** The question is out of order. The honourable Minister has no need to attempt to answer it.

**The Hon. C. M. HILL:** I seek leave to make a personal explanation.

Leave granted.

**The Hon. C. M. HILL:** I found the first part of the honourable member's explanation somewhat hard to

follow.

**The Hon. F. T. BLEVINS:** I rise on a point of order, Mr. President. The Hon. Mr. Foster's question was ruled out of order.

**The PRESIDENT:** The explanation was allowed, and therefore the Hon. Mr. Hill is quite in order.

**The Hon. C. M. HILL:** I understood there was some implication by the Hon. Mr. Foster that the Hon. Mr. DeGaris had not informed you, Mr. President, of the Deputy Leadership position of the Party on this side of the Council. I explain first that there is absolutely no need for the Hon. Mr. DeGaris to do that but, for the Hon. Mr. Foster's information, I happen to be the elected Deputy Leader.

## SEEDS BILL

Read a third time and passed.

## MINES AND WORKS INSPECTION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 September. Page 904.)

**The Hon. B. A. CHATTERTON (Minister of Agriculture):** I shall reply to points raised in this debate. The Hon. Mr. Geddes asked about releasing the accident reports. The situation is that they can be released only with the consent of the Minister, who releases them only to *bona fide* persons, and not generally. This is to safeguard these reports, as sometimes there is a question as to whether their substance is *sub judice*; in these circumstances careful consideration must be given to whether or not they should be released. The honourable member also asked questions concerning tipping of spoil heaps in opal fields. It is apparent that the concept of a tip has been confused with a spoil heap made by a bulldozer on opal fields; such a spoil heap is a temporary placement of material. The matter of a tip is concerned with the permanent placement of reject material, rather than temporary spoil heaps associated with opal diggings. The Hon. Mr. DeGaris asked whether the industries at present under the Mines and Works Inspection Act would remain under this Act; the answer is "Yes". The Hon. Mr. DeGaris also asked about the pre-mixed concrete plants. The purpose is to clarify the situation, so that pre-mixed concrete plants situated at or near quarries come under the administration of a single Minister, rather than under the Minister of Mines and Energy and also the Minister of Labour and Industry.

Bill read a second time.

In Committee.

Clauses 1 to 6 passed.

Clause 7—"Inspector not to report or divulge information without authority."

**The Hon. R. A. GEDDES:** I had intended to move to strike out new subsection (1a) (b) but, before doing that, I seek information from the Minister. During the second reading debate I argued that, if accident reports were requested by the industry, it was only fair and proper that once people had paid their fee to the department they should be able to get those reports, so that they could keep their own house in order. The Minister replied that in some instances the reports would be *sub judice*. I cannot see how they could be, and I would like the Minister to explain how there could be a point of law in accident

reports to the department.

**The Hon. B. A. CHATTERTON (Minister of Agriculture):** There might be some legal action associated with an accident, and these reports could be *sub judice* in that situation. At this stage I cannot give any further information.

**The Hon. R. C. DeGaris:** You are suggesting there could be a court action.

**The Hon. B. A. CHATTERTON:** Yes. It is not in any way intended to prevent the release of these reports. However, there are some circumstances where safeguards need to be in the legislation to prevent an open release of the report. Normally, the reports would be released, but there are certain circumstances where they should not be released. That is the reason for the safeguards.

**The Hon. R. A. GEDDES:** New subsection (1a) provides:

The chief inspector of mines may—

(a) upon application by any person and payment of the fee fixed by the Minister;

and

(b) with the approval of the Minister,

release to that person any statements of fact contained in a report made by an inspector on an accident occurring in a mine or mining property or prospect or connected with any mining operation or undertaking.;

Could a statement of fact in a report made by an inspector be queried in law at some stage? It is strange that, when an accident occurs in a mining operation and an inspector, who is a responsible person, makes a report, there is an embargo placed on that report. I do not see where the law can come into it, unless the Minister does not approve of an opposition mining company having access to the report. The reason given by the Minister does not seem to coincide with the wording of the Bill.

**The Hon. B. A. CHATTERTON:** There is a requirement to safeguard the premature release of these reports in those circumstances. Consider a situation in which an action for compensation might be taking place and a report, which could be *sub judice*, is released prematurely.

**The Hon. R. A. GEDDES:** Because of the Minister's lucid reply, I will not proceed with the amendment on file. Clause passed.

Clauses 8 to 14 passed.

Clause 15—"Amendment of second schedule of principal Act."

**The Hon. R. A. GEDDES:** Can the Minister explain why this clause should not be amended with regard to opal mines?

**The Hon. B. A. CHATTERTON:** It is apparent that some persons have confused the concept of a tip with a spoil heap made by a bulldozer on the opal fields. These latter spoil heaps are a temporary placement of material most of which the operator is required to return to the worked-out hole. The matter of a tip is concerned with the permanent placement of reject material. The size of some of these "structures", that is the tips, is such that they should be designed just as any other major structure must be. It is envisaged that the size (volume) at which tips would need to be designed and approved would be 10 000 tonnes and not 1 000 as appears in *Hansard*. If the Act is amended to omit opal fields there could be created a problem for the future: for example, a coal mine beneath an opal field—the mine would be beneath the opal horizon (strata title) but the dump (tip) would be on the opal field. The tip would be on the opal field and that could create problems if the tips were large.

**The Hon. R. A. GEDDES:** I knew that the proposed regulations were for large amounts of spoil or overburden, so I was surprised at the figure of 1 000 tonnes.

The Minister has said that this figure should be 10 000 tonnes; therefore there is no point in moving my amendment.

Clause passed.

Clause 16 and title passed.

Bill reported without amendment. Committee's report adopted.

#### EVIDENCE ACT AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendment.

#### AUSTRALIAN MINERAL DEVELOPMENT LABORATORIES ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 September. Page 960.)

**The Hon. C. M. HILL:** I support the second reading of the Bill, which widens and improves the charter of Amdel, which was set up in 1960 in South Australia. It gives legislative direction to the laboratories to provide the necessary services, both now and in future, for mining interests and the public generally. I concur with the praise and commendations that have been made by honourable members in this debate about this organisation. Amdel has deservedly acquired a high reputation locally in South Australia, nationally, and internationally. Those members who have served within Amdel since 1960 and have played an active part in its work should be given full credit for what they have done.

The functions that are being given to Amdel by clause 7 may be a little wide. For example, the functions of the organisation include the right to manufacture and sell industrial products for use in the relevant industries. I hope that this function is used with some caution, and that this aspect of the operations will not develop in such a way that private enterprise, which might also be engaged in the manufacture and sale of products for the mining industry, might feel that some unfair competition is being established.

I also notice that later in that clause the Bill gives power to the organisation to deal with and dispose of shares or any other interest in a body corporate. That does not restrict the dealing in shares in companies associated with relevant industries, as I read it. It is very wide, and I also hope that Amdel is most careful and cautious in any acquisition and involvement that it has with other companies, whether partnerships or single entities. If these functions are used responsibly, there will be nothing to fear, but I think it proper that the new functions, previously not in the charter of Amdel, should be mentioned. If this Bill is passed, Amdel will have the right to involve itself in that activity.

I raise the question of statutory bodies now, and their place and role in the administrative structure of Governments. Amdel is a statutory body. There is a trend towards having more statutory bodies, and I say that in comparing the approach of forming statutory bodies to the approach of the expansion of Government departments. One can notice that in both the State Government and Federal Government spheres, and here we have another such case. Generally, I support the concept, because, first, there is a separation that can be watched more closely, when one compares such a proposal to that of expanding a Government department, and I think the people and

Parliament can keep a closer watch on the activity and financial performance of an operation when it is under the umbrella of a statutory body.

By "activity" I mean that a watch can be kept because these statutory bodies must report to Parliament, and the annual reports are laid on the table of each House of Parliament. In referring to watching the financial performance, I am mindful that not only are financial matters recorded in those reports but also the Auditor-General becomes involved and examines the operation as a separate entity, whereas, if it is part of a department, that activity can be merged in the Auditor-General's Report on the department in totality. I believe that statutory authorities should conform to certain principles concerning their structure.

I remind honourable members that the financial borrowings of statutory authorities are guaranteed by the State, and that is why Parliament should be interested in their activities, as money belonging to the people can be involved. I think the principles to which I have referred should include the fact that such bodies should report to Parliament and should be involved with the Auditor-General, and I also believe that statutory authorities should be responsible to a Minister. I hasten to point out that the success or otherwise of statutory bodies rests to a considerable extent in the choice of those who are nominated to the governing bodies. In the case before us, those appointments will not be made simply by the State Government as is the case with most other statutory bodies. As honourable members know, in regard to Amdel the legislation provides that two members of the new council will be nominated by the Commonwealth Government, two by the State Government, and two by the body representing the mining industry. That is the difference that one must bear in mind.

I cannot find in the Bill provision that this organisation is to be responsible to a Minister. I note that the Minister is mentioned in clause 7, and he is given the power to assign to the organisation functions other than those laid down specifically in that clause, but the legislation does not provide that the organisation is to be responsible to the Minister. The reason why I have said that I think that all statutory authorities should be responsible to a Minister is that, if there is any criticism of the record or performance of the authority (and the people are entitled to criticise, because they are financially involved), that matter can be and should be raised in Parliament. If it is, I believe that a responsible Minister must accept the responsibility of speaking and answering for that organisation. In other words, a Minister must reply in Parliament when questions that may reflect some public criticism are asked.

Putting it another way, I say that the democratic system under which we live involves the principle that statutory authorities should be responsible to a Minister, who must be responsible to Parliament. I acknowledge that, in discussions in this area, it may well be held that some Ministers may unduly interfere in the working of statutory authorities. That can happen but, if it does, usually such undue interference becomes ventilated, and that matter can be raised in Parliament. The statutory authority that we are considering now is, however, a little different, as I have said, because of the interest of the Commonwealth and the industry being involved.

Summing up my thoughts on this subject of statutory authorities, I would be much more pleased if Amdel, operating under its new charter in the form set out in this Bill, was responsible to a Minister. It cannot be denied that the organisation falls within the administration of a Minister in this State, yet it is not under his control. To me, that seems odd and I hope that more discussion on

that aspect can be developed in Committee. I support the second reading.

**The Hon. R. A. GEDDES** secured the adjournment of the debate.

### SHEARERS ACCOMMODATION ACT AMENDMENT BILL

In Committee.

(Continued from 19 September. Page 960.)

Clause 2—"Powers of inspectors."

**The Hon. R. A. GEDDES:** I move:

Page 1, lines 13 to 15—Leave out all words in these lines and insert paragraphs as follows:

- (a) examine any building or object;
- (b) after informing the owner or occupier of the land on which he is carrying out the inspection of his intention to do so, photograph any building or object relevant to the inspection;
- (c) require any person to answer any question put to him by the inspector;

I object to an inspector coming on to a property and photographing any object without at least having regard for the owner or occupier of the land. My amendment provides that an inspector may photograph the accommodation after informing the owner or occupier of the land that he wishes to do so. The shearers' accommodation could have unmade beds, the floor could be unswept, and so on, but if an owner knew an inspector was coming he could tidy up. I move the amendment on the grounds of decency and fair play.

**The Hon. D. H. L. BANFIELD:** Inspectors employed by the department are decent fellows, and already do what the honourable member suggests. However, I accept the amendment.

Amendment carried: clause as amended passed.

Title passed.

Bill reported with amendment. Committee's report adopted.

### DEBTS REPAYMENT BILL

In Committee.

(Continued from 20 September. Page 1029.)

Clause 16—"Termination of approved scheme."

**The Hon. D. H. L. BANFIELD (Minister of Health)** moved:

Page 7—

Line 7—Leave out "or".

After line 9—Insert paragraph as follows:

or

- (e) if the debtor applies to take the benefit of any law of the Commonwealth for the relief of bankrupt or insolvent debtors.

**The Hon. J. C. BURDETT:** I support the amendment. This clause applies in all cases of bankruptcy, but the amendment is necessary because it applies to a debtor's petition as well as to a creditor's petition.

Amendment carried; clause as amended passed.

New clause 16a—"Register of approved schemes."

**The Hon. J. C. BURDETT:** I move:

Page 7, after clause 16—Insert new clause 16a as follows:

- 16a (1) There shall be a register of approved schemes.
- (2) The tribunal shall—
  - (a) upon approving a scheme—cause a copy of the approved scheme to be filed in the register;
  - (b) upon varying or revoking an approved scheme—cause a memorandum of the variation

or revocation to be filed in the register.

- (3) The Registrar of the tribunal shall, upon application by any member of the public, permit him to inspect any part of the register.

Members of the Select Committee who opposed this suggestion did so on the grounds of privacy. I appreciate that argument, but a balance must be struck between the right to privacy of a debtor and the right of the community and the commercial world to protection when a person is the subject of the scheme. If a person gets into difficulties of this sort, he must accept the disabilities. Bankruptcy court records may be perused, and we already have a system enabling people who are entitled to know about a person's financial position (both in the business community and anyone else) to find out about unsatisfied judgment summonses, warrants of execution, bills of sale, mortgages, and so on. This amendment is not a great extension of the system.

It is good to provide that a person should make disclosure when seeking further credit and to make it an offence if he does not do so. The same applies under the Bankruptcy Act, under which a person is required to make a disclosure when credit over a certain sum is sought. I do not believe that an official register of this kind will be subject to nose-parking, or that many people will try to ascertain the state of their neighbour's affairs.

The present access to such information is not, so far as I am aware, used for this purpose. I do not think people make searches in the Lands Titles Office or at the deeds registry, or look through Dunn and Bradstreet's trade gazette to ascertain their neighbour's position. This is not likely to happen if a register of this kind is established here.

The only danger involved is that this information could be used without foundation. However, this will be an official register and, if one wants to ascertain what is contained therein, one will have to make an official search. This will enable the business community to ascertain whether someone who is seeking credit is the subject of a scheme. These official schemes must initially be drawn up by the debt counsellor and then approved by the tribunal.

It seems to me that it is no great hardship to require a register of these schemes to be kept and, although I am sympathetic to the need to protect a person's privacy on matters that do not concern anyone else, in a case like this a balance must be struck. It is a question of which is the greatest need: to protect the commercial community or a person's right to privacy. As a register will be of much benefit to the commercial community it should be kept.

**The Hon. D. H. L. BANFIELD:** I oppose the amendment. The provision of a register as such is not offensive, but enabling the public at large to inspect it is most offensive. It would provide a disincentive for persons to enter schemes, as their privacy would be carelessly invaded by persons with no real concern in knowing a person's financial situation.

The Hon. Mr. Burdett said that this principle already exists in relation to bankruptcy and other instances that he cited. However, the fact remains that a person involved in a scheme is trying to pay his debts. On the other hand, a person who goes into voluntary bankruptcy often wants to escape full payment of his debts. In this instance, the debtor is anxious to meet his obligations, and the Government does not consider that such a person's private information should be available to sticky beaks.

The Hon. Mr. Burdett did not say that people would wilfully and without good reason try to obtain information regarding people: he merely said that in his opinion they might not do so. Thereafter, when illustrating his point,

the Hon. Mr. Burdett said that only a few people might do this. So, the honourable member is, it seems, having a bet each way on the matter. The honourable member said that under the amendment, which has been accepted by the Select Committee, a debtor would have to disclose the existence of a scheme before he could seek further credit, and asked what would happen if a person did not do so. However, the Hon. Mr. Burdett knows that the Government is providing for that contingency, as such a person will be guilty of an offence and liable to a penalty not exceeding \$1 000, or three months imprisonment, or both.

**The Hon. J. C. Burdett:** If he is caught.

**The Hon. D. H. L. BANFIELD:** That is a fair incentive for a person to disclose this information. This Bill is aimed at the honest man who is trying to meet his obligations. If it involved a fellow who was trying to evade his commitments, the Hon. Mr. Burdett's argument could perhaps be considered.

**The Hon. J. C. BURDETT:** I said that a penalty was provided for non-disclosure. However, that does not help anyone in the business community if a person seeks credit and this information is not known and is not likely to be known. I do not agree with the Minister that, in the face of such a penalty, a debtor is not likely not to disclose. Because he has sought counselling and is the subject of a scheme, a debtor is in financial difficulties. I do not say that by any means all such people are likely to be dishonest or to seek further credit without disclosing the facts. However, certainly some people are financially desperate and will know that, if they disclose this information they will not get credit.

**The Hon. R. C. DeGaris:** It seems that fining them or putting them in gaol is not much good afterwards.

**The Hon. J. C. BURDETT:** That is so. As the Leader said, there would be not much point in throwing these people into gaol afterwards. The law should seek to prevent crime, not simply to punish those who have committed crimes, and the keeping of a register will act as a preventive measure.

**The Hon. F. T. BLEVINS:** The essential aspect in relation to this Bill and the others connected with it is that the debtor is voluntarily trying to do the right thing. I imagine (although I have not been involved in this sort of thing) that bankruptcy would be an easier way out if one had debts that one could no longer manage. It seems wrong that people who are voluntarily entering a scheme should be lumped together and have their problems highlighted by having information regarding them put in a register that was available for everyone to see. I do not accept the argument that this register should be kept merely because people can search the Lands Titles Office and other areas to ascertain information regarding people.

Of course, that is possible, but it is still not an easy process. It will be a separate register of ordinary people who are trying to do the right thing. The Opposition wants to expose them and highlight the problem. The Opposition is being hypocritical, because it totally opposed a register of Parliamentarians' financial interests being available to the public. All members of Parliament are in a public position, and their financial affairs should be made public. There are severe penalties if people do not disclose that they are subject to a scheme when they apply for credit. However, they have to be caught first, as the Hon. Mr. Burdett has said; what a nonsensical remark that is. You also have to catch a murderer first before he can be put away for life. Apart from the penalties for non-disclosure, a scheme can be cancelled; anything that the debtors have bought can be repossessed, and there are other penalties. I am appalled that honourable members opposite want to

segregate these people and let their business be known to any nosy or malicious person. I oppose the amendment very strongly.

**The Hon. R. C. DeGARIS (Leader of the Opposition):** I support the amendment. This is not the last of the amendments; there is a long way to go yet. During the Select Committee hearings it was suggested that creditors should never give credit to certain types of people and that the very giving of credit caused the problems. Unless the person who is supplying credit has relevant information, he cannot very well be blamed if he lends money to a person who is in some difficulty already. Perhaps the register should not be open to public scrutiny and the creditor requiring information should have to substantiate that a person is seeking credit, and the creditor wants to know whether there is a scheme. To say that the information should not be divulged to anyone cuts across what the Bill is trying to do. The amendment should be carried. There are areas of discussion and compromise that may be worked out afterwards, but I believe it is quite foolish for a person supplying credit to be unable to find out whether a person is under an approved scheme. In a small community, other than in the metropolitan area, everyone will know whether or not a person is under a scheme, anyway. Therefore, it is probably better that the facts of the case be known, rather than having people know that Bill Smith has been along to the debt counsellor and had a talk with him, without the full details of what has happened being known.

**The Hon. J. C. BURDETT:** Schemes under the Bill have been described as mini bankruptcies. Bankruptcy itself is quite public; the procedures in the court are published in the *Trade Gazette*, and the facts may be ascertained by anyone. There are all sorts of dire consequences; a bankrupt cannot be a member of Parliament and cannot be on various committees. A scheme under this Bill has been called a mini bankruptcy with some justification, although it is not the same thing. True, the debtor himself seeks assistance; the same point applies to a debtor's petition in bankruptcy. One of the disabilities involved is the register, which, because of the good that it does in the whole commercial community in preventing this kind of thing going further, is warranted.

**The Hon. D. H. L. BANFIELD:** The Hon. Mr. Burdett has referred to mini bankruptcy. A person entering such a scheme is voluntarily doing his best to pay his full debt. However, bankruptcy, whichever way it is looked at, involves a person trying to get out of his debt.

**The Hon. J. C. Burdett:** He gets a moratorium for three years.

**The Hon. D. H. L. BANFIELD:** He has that hanging around his neck for three years but, if he was a bankrupt, he would not be in that situation.

The Committee divided on the new clause:

Ayes (9)—The Hons. J. C. Burdett (teller), M. B. Cameron, J. A. Carnie, Jessie Cooper, R. C. DeGaris, R. A. Geddes, K. T. Griffin, C. M. Hill, and D. H. Laidlaw.

Noes (9)—The Hons. D. H. L. Banfield (teller), F. T. Blevins, T. M. Casey, B. A. Chatterton, J. R. Cornwall, C. W. Creedon, N. K. Foster, Anne Levy, and C. J. Sumner.

Pair—Aye—The Hon. M. B. Dawkins. No—The Hon. J. E. Dunford.

**The CHAIRMAN:** There are 9 Ayes and 9 Noes. I give my casting vote for the Ayes.

New clause thus inserted.

Clauses 17 to 21 passed.

New clause 21a—"Debtor must disclose existence of scheme."

**The Hon. D. H. L. BANFIELD:** I move:

Page 8, after line 5—Insert new clause as follows:

21a. A debtor in relation to whom a scheme is in force under this Act who seeks to obtain credit from any person without disclosing the existence of the scheme shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars, or imprisonment for three months, or both.

This new clause provides an incentive to the debtor to disclose the existence of such a scheme.

New clause inserted.

Remaining clauses (22 to 24) and title passed.

Bill reported with amendments. Committee's report adopted.

### SHERIFF'S BILL

(Restored to Notice Paper on 13 September. Page 846.)  
In Committee.

Clauses 1 and 2 passed.

Clause 3—"Repeal and transitional provision."

**The Hon. D. H. L. BANFIELD (Minister of Health):** I move:

Page 1—

Line 10—After "sheriff" insert "or a deputy sheriff".

Line 12—After "sheriff" insert "or a deputy sheriff".

These amendments enable the deputy to act for the sheriff where necessary.

Amendments carried; clause as amended passed.

Clause 4 passed.

Clause 5—"Appointment of a sheriff and sheriff's officers."

**The Hon. D. H. L. BANFIELD** moved:

Page 2, after line 3—Insert paragraph as follows:

(ab) one or more deputy sheriffs;

Amendment carried; clause as amended passed.

Clauses 6 and 7 passed.

Clause 8—"Duties of the sheriff."

**The Hon. D. H. L. BANFIELD** moved:

Page 2, line 33—After "execute" insert "or cause to be executed".

Amendment carried; clause as amended passed.

Clause 9 passed.

Clause 10—"How arrested persons to be dealt with."

**The Hon. D. H. L. BANFIELD** moved:

Page 3—Leave out all words in the clause after "10" and insert—

(1) Where the sheriff arrests any person, or causes any person to be arrested, in pursuance of any process, that person shall be brought as soon as reasonably practicable before the court out of which the process was issued.

(2) Where it is not reasonably practicable to bring a person arrested in pursuance of the process of a court before that court immediately, that person shall be kept in the meantime in safe custody.

**The Hon. J. C. BURDETT:** The Bill as printed does not cope with the possibility that the person arrested may not be able to be brought before a court immediately, and this amendment copes with the situation by providing that, in that case, he or she shall be kept in safe custody in the meantime.

Amendment carried; clause as amended passed.

Clause 11—"Offences."

**The Hon. D. H. L. BANFIELD** moved:

Page 3—

Line 14—After "the sheriff" insert ", a deputy sheriff,".

Line 15—After "the sheriff" insert ", a deputy sheriff,".

After line 17 insert subclauses as follows:

(1a) The sheriff, a deputy sheriff or a sheriff's officer,

may arrest any person who commits an offence under subsection (1) of this section.

(1b) A person arrested under subsection (1a) of this section shall be brought forthwith before a justice to be dealt with according to law.

Amendments carried; clause as amended passed.

Clauses 12 to 14 passed.

New clause 14a—"No licence required for the purpose of sheriff's sales."

**The Hon. D. H. L. BANFIELD:** I move:

After line 33—Insert new clause as follows:

14a. No licence or other authority is required under any Act by the sheriff, a deputy sheriff or a sheriff's officer for the purpose of selling real or personal property (by auction or otherwise) in pursuance of the process of a court.

Normally, the selling by auction requires a licence, and this new clause removes the need for the sheriff to have such a licence.

**The Hon. J. C. BURDETT:** The new sheriff was a little fearful that the statutory authority was not sufficient to provide that he could carry out sales without a licence. Out of an excess of caution, the Select Committee recommended this amendment to make clear that he did not require a licence.

New clause inserted.

Clause 15 and title passed.

Bill reported with amendments. Committee's report adopted.

#### SUPREME COURT ACT AMENDMENT BILL

(Restored to Notice Paper on 13 September. Page 846.)

Bill reported without amendment. Committee's report adopted.

#### LOCAL AND DISTRICT CRIMINAL COURTS ACT AMENDMENT BILL

(Restored to Notice Paper on 13 September. Page 846.)

In Committee.

Clauses 1 and 2 passed.

Clause 3—"Interpretation."

**The Hon. J. C. BURDETT:** I move:

Page 1, line 18—Leave out "two thousand five hundred" and insert "one thousand".

A few years ago, for the first time the small claims jurisdiction of the Local Court was introduced. In that jurisdiction the parties are not entitled to counsel, except in extraordinary circumstances, and the object is to have the matters dealt with quickly and informally. That is good as far as it goes and as far as it works but, obviously, it should not be done with a large claim. It has merit in regard to small claims.

The purpose of my amendment is that the Bill sought to increase the small claims jurisdiction from \$500 to \$2 500. In other States there is no jurisdiction higher than \$1 000, and my amendment does the same thing here. Because of inflation, we are prepared to accept the increase to \$1 000, but not an increase to \$2 500. The Opposition does not consider a claim for \$2 500 to be a small claim. Whilst there are advantages of speed and cheapness in the small claims jurisdiction, some people value legal representation and may not be able to put the case themselves. One party may be an academic, a highly qualified person in some field even close to the legal field. If he is a solicitor, the other party is entitled to legal representation. However, he may be a person who can put his case well and the other person may not.

It has been recognised throughout Australia that there is a call for the small claims jurisdiction, and that is all right if a small claim is involved. However, if a person wants legal representation, wants the case conducted according to the rules of evidence, and wants it decided according to law, he is entitled to that.

**The Hon. C. J. SUMNER:** I oppose the amendment and support the provision in the Bill. As the Hon. Mr. Burdett has said, this jurisdiction was introduced in South Australia about four or five years ago, with a limit of \$500.

At that time the legislation was on trial. There was not much small claims legislation experience in Australia. In an excess of caution \$500 was decided on by the Government. The small claims court has been a success in providing a quicker, simpler, and much less costly procedure than a full open hearing, where legal representation is allowed on both sides. There have not been any great drawbacks to that legislation; therefore, there is justification for increasing the limit from \$500 to \$2 500. In small claims matters a legal practitioner is not permitted to appear for a litigant without the other party's consent, which is not often granted.

Magistrates must take greater control over proceedings. One tends not to get long, involved, technical, legal arguments that one gets when two barristers fight it out in court. When stakes are high there is reason to maintain legal representation and the technicalities and delays that go with it. The Local Court list is long. Cases are sometimes not listed for hearing for 12 months. It is a matter of balancing out competing situations: the advantages of having a lawyer as against the advantages of a quicker and simpler settlement and resolution of claims. Given that the small claims court has been successful, \$2 500 is not an unreasonable limit.

**The Hon. K. T. GRIFFIN:** The length of trial lists in the Local Court is not a legitimate reason for dealing with small claims in the manner proposed in the Bill. It is not always because lawyers are involved, but because of insufficient numbers of magistrates available to hear cases. One cannot sacrifice a person's rights for the sake of a speedy resolution in the courts, and to keep the trial lists short. It is not proper to suggest that, because the lists are long, we ought to increase the speed with which a small claim may be dealt by increasing the maximum sum of a small claim.

Before the Select Committee there was conflict between magistrates who gave evidence as to the amount to which the small claims limit ought to be increased. One was firmly in favour of \$2 500; the other was even reluctant to agree to a figure about \$500. We acknowledge that since 1974, when the small claims jurisdiction was introduced, there has been inflation, but not 100 per cent. An increase to \$1 000 in those circumstances is the maximum to which I would agree, in view of the national trend since then. In the small claims jurisdiction there is no right of appeal. Where the claim is \$500, in most cases the heads of the parties can be knocked together with a view to getting some rough and ready justice, and in these cases it is not really necessary to have a right of appeal. But where the limit is \$2 500, and where heads of the parties are knocked together in the interests of rough and ready justice, it seems improper that there should be no right of appeal. For most people \$2 500 is not a small sum. The price of a reasonable secondhand motor vehicle would be around \$2 500, yet a small claim could involve a dispute over a secondhand motor vehicle. These disputes are often complex and the ordinary person does not have the capacity or experience to deal with them.

The Hon. Mr. Burdett indicated that it is quite possible that the parties who appear in the small claims jurisdiction

are unequal in their experience and capacity to deal with the problem in court. Increasing the limit of the jurisdiction to \$2 500 accentuates that problem and gives greater advantage to those who might more frequently appear in the small claims jurisdiction than to those who may make only one appearance in their lifetime. Even \$1 000 is likely to create some hardship for ordinary people who may have a once-in-a-lifetime dispute to take to court.

In those circumstances, they will be overwhelmed by the court room and procedures, and it is likely in those circumstances, although the magistrate has the responsibility to arbitrate, that he will not be able to present both sides fairly and still judge the case impartially, as he is meant to do. I therefore support the amendment.

**The Hon. F. T. BLEVINS:** As a member of the Select Committee, I was surprised that Opposition members did not say that the major supporter of an increase in the small claims jurisdiction was a magistrate working in that jurisdiction.

**The Hon. J. C. Burdett:** It was only one magistrate.

**The Hon. F. T. BLEVINS:** That man was certainly the most qualified person to give evidence on the matter. I was of the opinion that that man, who works in this field all the time, supported an increase to \$2 500. I object to what the Hon. Mr. Griffin said regarding the possibility of rough and ready justice being dispensed, because I do not believe that this or any other magistrate dishes out rough and ready justice. That is not the way in which the courts operate, and I was surprised to hear the Hon. Mr. Griffin describe the matter in that way.

It was significant to me that the most vehement opposition to the increase in this jurisdiction came from the Law Society. Without wishing to impute to it any bad motives, the Law Society certainly operates as a trade union in this instance, and I have no objection to its doing so. Although one can obtain advice on a case in the small claims jurisdiction, one cannot be represented in court. The Law Society made clear that it objected to that procedure and that it certainly did not want it to be extended.

It is the Law Society's role to protect lawyers and their incomes, and that is what the Hon. Mr. Griffin is trying to do. I do not say that in any bad way, nor do I say that it is undesirable. However, I would prefer to see this matter brought out into the open.

The Select Committee was told that, if the small claims jurisdictional limit was increased to \$2 500, certain law practices would experience much difficulty, as some of their staff work exclusively in this area. This increase in the jurisdictional limit will exclude lawyers from appearing in the small claims court, and I am convinced, having listened to and read much evidence, that members opposite are supporting the amendment solely to protect lawyers.

**The Hon. R. C. DeGARIS (Leader of the Opposition):** The Hon. Mr. Blevins showed his usual style of debate today, accusing everyone of having motives.

**The Hon. F. T. Blevins:** But we all have motives.

**The Hon. R. C. DeGARIS:** Not as low, though, as the honourable member would have people believe. The honourable member imputes motives, saying that this amendment was being moved to protect lawyers. However, that is quite wrong. One must realise that we are dealing with the small claims jurisdiction, and I cannot accept \$2 500 as being a reasonable limit for that jurisdiction. Three years ago, the Government introduced a Bill providing for a maximum jurisdictional limit of \$500 in the small claims court. The Select Committee agreed to increase that to \$1 000, and anyone who examined this

matter would say that that was reasonable.

I am not convinced that a claim for \$2 500 should go to the small claims court, in which the parties involved cannot be legally represented. As the Hon. Mr. Griffin and the Hon. Mr. Burdett said, there is a need for a small claims court in which such claims can be settled without great cost to the litigants. However, if the jurisdictional limit is increased to \$2 500, people involved in a claim of that magnitude will not be able to have legal representation, to which they should be entitled.

One magistrate gave evidence in favour of a \$2 500 jurisdictional limit, whereas another said that no increase should occur. Mr. Matison, the Chief Stipendiary Magistrate, who has had much experience in this jurisdiction and who was the senior of the two magistrates that appeared before the Select Committee, said that there should be no increase. I support the idea of a small claims court, although it must be kept as such. If a person is a party in a case involving a claim of \$2 500, he should be entitled to legal representation to ensure that his case is presented correctly. I refute completely the Hon. Mr. Blevins' claim that honourable members who support this amendment are doing so in order to protect lawyers. That is a baseless allegation.

**The Hon. C. J. SUMNER:** The Hon. Mr. Griffin said that the small claims court provides rough and ready justice and that it could lead to injustices occurring in certain circumstances. I would be unhappy about increasing the size of the jurisdiction of the small claims court if I thought that this was a great problem. However, I do not believe we have received any substantial or telling evidence to this effect or to illustrate that injustices occur in the small claims court.

The Hon. Mr. Blevins has pointed out that Mr. Ward, the other magistrate who gave evidence, said that he thought the small claims court operated very well, even in respect to the parties getting a just solution to their problems. There is no evidence to give credence to the Hon. Mr. Griffin's fears. In those circumstances, I cannot see why honourable members opposite are not prepared to accept the additional speed, simplicity, and cheapness involved in the small claims jurisdiction, given that there is no harm resulting from it.

I stress that the small claims jurisdiction is less costly to the litigants. If there is a claim for, say, \$1 000, the fee that the lawyer is awarded, even if that litigant is successful, is not enough to cover the fee that the lawyer would charge for his time in court or for the time spent in preparing the case. I do not have the precise figures, but for a claim of, say, \$1 000, if the claim was successful, the court might award costs to the successful litigant of, say, \$100 for a day in court. However, in most circumstances the lawyer would charge the client more (the present economic or market rate within the profession). That rate is usually based on the Supreme Court scale of fees, and the lawyer for a day in court might charge his client \$250 or \$300. Even though he wins his claim for \$1 000, the litigant is automatically out of pocket, on the example I have given, by \$150, \$200, or even more. So there is another advantage if legal representation is denied to both parties. Of course, the problem is that, if one person has legal representation, the other person feels obliged to have it, also. If a litigant loses his claim or loses his defence against a claim, he does not get any costs awarded by the court, but he still has to pay his lawyer's fees. This illustrates a compelling reason for the small claims jurisdiction: the cheapness of the proceedings to the litigants.

**The Hon. F. T. BLEVINS:** I must defend myself against the unwarranted outburst of the Hon. Mr. DeGaris. I stated that the Law Society acted as a trade union in the

defence of the rights of its members and in maintaining their work. I stated clearly that I did not think there was anything wrong in that. I worked for the trade union movement myself for many years, and I was proud of that kind of role, and I still am proud of it. It is an honest role, but let us have it out in the open. However, we have to look at issues from a much broader viewpoint. The Hon. Mr. Sumner spelt out in some detail the main problem of costs. Some people would say that, if there is a conflict over a debt of \$2 000, we should all have lawyers in the courts to fight it out in the proper manner. The Hon. Mr. DeGaris, the Hon. Mr. Hill, and the Hon. Mr. Griffin can afford it, but the ordinary working people of this community cannot. It sounds all right in principle, but these ordinary people get no justice; they might phone a lawyer, who might say, "Go for your \$1 000 if you like, and it will cost you \$1 000 to get it." So, they get no justice at all, never mind rough justice, as the Hon. Mr. Griffin so inaccurately described the small claims court.

**The Hon. R. C. DeGaris:** John Bannon can afford it.

**The Hon. F. T. BLEVINS:** That is precisely the kind of attitude that the Hon. Mr. DeGaris and a couple of his cohorts take in debate here. The honourable member stood up three minutes ago and said I had been smearing people and imputing bad motives. For the honourable member to make a snide and totally unnecessary remark like that and for it to be found amusing by the Hon. Mr. Dawkins and the Hon. Mr. Carnie, says more about the Hon. Mr. DeGaris than anything I can say within Standing Orders. In reality ordinary working people cannot afford to make claims where they have to have legal representation, and this amendment does nothing to assist them.

It will protect lawyers and give a veneer (not even a veneer, a smoke screen) to the claim that ordinary people will have the right to have a lawyer for claims of \$1 000. It does not say how much will be charged for that right, a right that cannot be exercised because people do not have the money. This Bill will give people access to justice that they can afford, so I oppose Mr. Burdett's amendment.

**The Hon. K. T. GRIFFIN:** The assertion that the Law Society was acting as a trade union in promoting its point of view, and that I was supporting a trade union point of view, is far from the truth. From what I have read, and my own recent experience, the Law Society for the 100 years or so that it has existed has had a much broader attitude and assumes a broader and heavier responsibility in all matters of the administration of law affecting society, than its own interests. The Law Society has a concern for clients, for those who need the assistance of the law and those who, for one reason or another, cannot get that assistance.

I interpreted the submission made by the Law Society and another lawyer, and the reaction of lawyers on the Select Committee from both sides of the House, as one that was concerned not with the income that would be retained for lawyers but with the way in which the law could be made to work effectively for parties who appear before the courts. This is not a measure designed to protect the income of lawyers. It is obvious to those who practise in this field that there is a loss of income, rather than a gain, by practising in a jurisdiction such as this, whether it is small claims, claims of \$2 500, even up to \$10 000. Far from wanting this type of work, I suggest that many lawyers would prefer not to do it because of the other demands on their professional time.

**The Hon. F. T. Blevins:** Many of them do it for a living.

**The Hon. K. T. GRIFFIN:** There are few practitioners who do only this for a living. So much legal work is available that if they were deprived of this area of practice

there are many other areas from which they could gain a living.

It was suggested that I had referred to justice in the small claims jurisdiction of the Local and District Criminal Courts as "rough and ready justice". I said that there was the prospect of rough and ready justice in this jurisdiction, in which a magistrate had to wear three caps: the cap of an arbitrator, the cap of a person acting for the plaintiff, and the cap of a person acting for the defendant. This is such an obvious conflict of interest that, if it occurred within the legal profession, the practitioner in that position would be disqualified because of the conflict of interest.

In this instance, however, the magistrate must wear those three caps, and in each instance must demonstrate a different attribute to the matter before him. That is not an easy thing to do, and puts the magistrate in a most embarrassing and difficult position, creating the prospect of rough and ready justice in those circumstances. This prospect will also occur because some inarticulate people appear before a magistrate and in these circumstances they do not have the experience to be able to discern the theme of the case they are presenting, whether as plaintiff or defendant, and do not have the capacity to be able to present documents that justify or negate the claim.

There is no way we can tell whether or not there has been injustice in the small claims jurisdiction: this can only be done by appeal, and there is no such provision. If we allow the jurisdiction to be increased to \$2 500, when there is no appeal, we will have no opportunity of being able to say whether or not there has been injustice.

The Hon. Mr. Burdett said that he has had persons approach him with complaints about the way in which their cases had been administered in this jurisdiction. I, and other practitioners I have spoken to, have had the same experience. I am not implying that magistrates who administer this jurisdiction are deliberately misleading or rendering injustice; they do the best job they can in the circumstances.

I cannot see any good reason for increasing the jurisdiction to more than \$1 000.

**The Hon. J. C. BURDETT:** The Hon. Mr. Blevins said that, if there was a claim for more than \$1 000 that he was involved in, he would not be able to be represented because he would not be able to afford it. I have not heard any mention of legal aid so far in this debate, although mention may have been made when I was absent from the Chamber.

If the Hon. Mr. Blevins was unable to afford legal representation for a claim of more than \$1 000, he would be able to obtain such representation, because legal representation is readily available through the various aid schemes, not only for persons who cannot afford it at all but also for persons who cannot afford it now, or cannot afford it in full. It is ridiculous to suggest that, because people cannot afford legal representation, they cannot get it.

The methods of obtaining legal aid are through the Law Society and the Australian Legal Aid Office, and soon it will be available from the Legal Services Commission. It is untrue to say that people who cannot afford legal representation, or cannot afford it in full or cannot afford it now, cannot get it.

**The Hon. F. T. BLEVINS:** I was not speaking personally when I said I could not afford it. I was referring to the people we on this side of the House represent: the person on average weekly earnings.

**The Hon. R. C. DeGaris:** I represent those people, too.

**The Hon. F. T. BLEVINS:** Don't interrupt. You are just trying to get a cheap laugh from some of the honourable members on your side of the House with your snide

remarks.

**The Hon. R. C. DeGaris:** I object to what you are saying.

**The CHAIRMAN:** Order!

**The Hon. F. T. BLEVINS:** I could afford to spend \$1 000 if somebody owed me \$1 000 because I would get it out of them, but not the average worker on average weekly earnings. He cannot get legal aid; the scale is set below his earnings. It would mean nothing to members opposite to spend \$1 000 to win their claim.

People like the Hon. Mr Griffin say that, to have justice, there must be an appeal, but that is a complete theory. When 70 per cent of the people cannot afford to go to the tribunal in the first place, what is the good of an appeal? The clause provides for ordinary people who cannot afford a lawyer like Mr. Griffin or Mr. Burdett to get justice without paying a large amount of money.

**The Hon. D. H. L. BANFIELD (Minister of Health):** I oppose the amendment. I will not call for a division on it, but that will not mean that I have weakened. It will save time.

Amendment carried; clause as amended passed.

Clauses 4 to 15 passed.

Clause 16—"Appeal from local court to Full Court."

**The Hon. J. C. BURDETT:** I move:

Page 3, lines 36 and 37—Leave out "two thousand five hundred" and insert "one thousand".

If the small claims jurisdiction figure is \$1 000, the figure for the appeal should be the same.

Amendment carried; clause as amended passed.

Clause 17—"When special summons may issue."

**The Hon. J. C. BURDETT:** I oppose the clause, which deletes the special summons procedure in small claims. An ordinary summons need not be served personally and it specifies a time within which an appearance has to be entered. If an appearance is not entered in that time, judgment in default of appearance may be entered.

However, the special summons procedure applies only to a liquidated claim, such as a claim for debt or money lent, but not to a claim for damages. An ordinary summons is on white paper and a special summons on blue paper. The special summons must be served personally so that there cannot be doubt that the person has received it. When it is served, the person cannot enter an appearance without filing an affidavit that he has a good ground of defence, and he must set out at least one ground.

In the case of ordinary summonses, often appearances are entered to cause a delay. A special summons makes the defendant decide whether he has a defence. It gives

him a disincentive to defend if he has no real defence. I suggest that the special summons procedure is useful in the small claims jurisdiction. It is not a hardship. The argument in favour of the clause would be that a defendant might have to seek legal advice to have an affidavit prepared. However, a Clerk of Court will prepare an affidavit of merit for a defendant.

**The Hon. C. J. SUMNER:** This clause is another step in simplifying the small claims procedure. The special summons procedure requires that an affidavit be signed by the defendant, so it is another complication in the procedure, and I cannot see why it should apply when we are trying to give people the opportunity to defend claims without the assistance of lawyers. If a defendant is required to file an affidavit, he may feel obliged to seek legal advice to have the affidavit drawn up, sworn and filed. I cannot see any reason why the special summons procedure should exist, especially in small claims.

Clause negatived.

Clause 18 passed.

Clause 19—"Appearance to counterclaim."

**The Hon. D. H. L. BANFIELD:** I move:

Page 4, lines 10 to 14—Leave out clause 19.

The Select Committee recommends that we leave out this clause.

**The Hon. J. C. BURDETT:** I support what the Minister says. At present it is necessary in all cases, whether in the small claims jurisdiction or not, that an appearance must be filed, not only when a claim is made but also when a counterclaim is made. The plaintiff must say, when a counterclaim is made, that he defends the counterclaim. Clause 19 is to delete that requirement.

Clause negatived.

Clause 20 passed.

Progress reported; Committee to sit again.

#### JURIES ACT AMENDMENT BILL

Received from the House of Assembly and read a first time.

#### ADJOURNMENT

At 4.54 p.m. the Council adjourned until Tuesday 26 September 1978 at 2.15 p.m.