# Legislative Council

*Tuesday, 18 November, 1969*

Listening Devices Bill (second reading)—Solicitor General Bill (second reading)—General Loan Account Appropriation Bill (second reading).

The PRESIDENT took the chair at 4.28 p.m.

The Prayer was read.

## LISTENING DEVICES BILL

### SECOND READING

Debate resumed (from 4th November, *vide* page 2152) on motion by the Hon. J. B. M. Fuller:

That this bill be now read a second time.

The Hon. R. R. DOWNING (Leader of the Opposition) [4.35]: When the debate was adjourned I had dealt at some length with my objections to the bill and had advanced what I believe to be constructive suggestions for the improvement of the measure. In summary, I had suggested that an approach should be made to a judicial officer; that there should be a discretion in the judicial officer to grant the order; that the offence should be a grave offence; that the warrant or order should be in writing in relation only to particular matters specified in the warrant or order; that there had to be a real likelihood of the procedure resulting in a conviction for a crime; that the judicial officer granting the order should have power to lay down limitations and restrictions; and that there should be continuation of the recognition of the public interest in the maintenance of privacy.

During the debate mention was made of the number of judicial officers who would be available to grant these orders, in comparison with the Commissioner of Police, the Assistant Commissioners and, in certain circumstances, superintendents. Judging from the Minister's interjections, he probably feels that the vesting of this form of authority over a wide range of judicial officers would not better preserve the right and freedom of the individual and at the same time would not provide adequately for the use of these devices. I disagree. I believe it is recognized by the Government and by all honourable members that indiscriminate use or unrestricted use of these devices could lead to grave injustices. Therefore I suggested that a judicial officer should be satisfied of certain things before he grants the order.

In Committee I propose to submit amendments that will provide that the authorization referred to in subclause (2) of clause 4 should be obtained by way of an order in writing from a judge of the Supreme Court, naming the person who is authorized to use a listening device for the purpose set out in the order. The amendment will provide further qualifications and will propose that if a person seeking authority to use a listening device can establish to a judge of the district court that he had not had reasonable time, having regard to the circumstances for which the order is sought, to approach a judge of the Supreme Court, a district court judge may grant the order. Further, I shall suggest that, when neither a Supreme Court judge or a district court judge is available, a magistrate, upon being satisfied that an order should be granted, may grant the order. I shall suggest, also, the qualification that the order should be granted by the judicial officer only when he is satisfied that, because of the gravity of the offence, it is desirable to issue an order, and is convinced that normal methods of investigation have failed or it is reasonable to believe that normal methods would be unlikely to succeed.

I shall not repeat what I said about the Birkett report and the views that were expressed by Sir Garfield Barwick when he was Commonwealth Attorney-General or more recently by Mr Nigel Bowen, when he was Commonwealth Attorney-General. I quoted what these three authorities said in respect of the need for exercising the most stringent precautions against the misuse of listening devices.

Finally, I might say that even in Victoria the legislation provides for some gravity of an offence. An order must be issued by a magistrate in that State. Surely

the Government is going too far by providing in this legislation that these devices may be used on the order of a police officer in respect of even minor offences. As I said previously, I am not to be taken as saying that there will be abuse of this legislation by the police. What I am saying is that it is possible for grave abuse to occur by giving this sole authority to the police. If there is a possibility of abuse, and it could arise, I feel that is sufficient objection for my purpose. I conclude by referring to what one commentator had to say about these devices. This is what he said:

> Almost any form of privacy invasion can be and is defended on the grounds of the public good. The onus of justification must always rest on the shoulders of the claimant. The annihilation of all privacy might perhaps bring organized crime to an end. In the police state of George Orwell's imagination the commission of private crime was practically impossible. The price paid was an all embracing public crime of such magnitude that freedom was totally destroyed.

I feel that abuses could arise unless safeguards are incorporated in this bill that orders will be made only after proper sworn testimony, and only in relation to a grave offence, and limited in their operation to that particular offence. I do not want honourable members to think that I am quibbling about the present Commissioner of Police or any of the assistant commissioners of police. I am only opening up for consideration all the things that are possible by the use of these devices, and the many ways in which they can be used. I quoted them at length when the bill was last before the House.

The Hon. ASHER JOEL [4.42]: I apologize to the Hon. R. R. Downing for my late arrival this afternoon. I listened carefully to his earlier remarks when he began his second-reading speech and I was indeed anxious to hear his continuation of it today. I support this legislation for I believe that the bill will not only protect the citizen from being snooped upon in his private affairs but will also stop the use of these rather fearsome devices for industrial and commercial espionage and counter-espionage. I feel also that this measure could have a salutary effect upon personnel investigations including staff supervision, and upon the use of listening devices in marital investigations and for purposes of civil litigation. If I have any criticism to offer it is on the basis that the bill does not go far enough.

I should have liked to see incorporated in the measure certain inbuilt safeguards such as those provided in clause 8 of the bill in regard to the use of bugging devices by the police, enabling control of such things as hidden cameras to determine consumer reaction to products, two-way mirrors to check on shoplifters and to observe employees at their daily tasks, the use of telescopic lenses on cameras half a mile way to take photographs, hidden movie and still cameras operated by automatic control, and small closed-circuit television cameras not much larger than a flashlight bulb. All of these things are being used in great numbers in the United States of America, and this is probably a reason why in that country the manufacture of bugging devices and of micro-miniature forms of listening devices and prying devices has become a multimillion dollar business. If any member doubts my personal feelings on the inviolability of the privacy of the individual and the necessity for preserving the rights of the individual as much as possible, I shall mention during my remarks what occurred in the police state of Germany.

Once searches and seizures were clearly visible acts of force which were permitted following court orders, and in other ways, to obtain necessary evidence for the apprehension of criminals either after a crime was committed or when crime was about to take place. Technological advances have resulted in the introduction of many subtle forms of invasion of the privacy of individuals. Whereas it used to be necessary to break into premises to seize evidence, it is now possible to preserve upon tape such intangibles as the human voice, or to procure a photographic record of something that occurred a long distance off. As I said a few moments ago, the evils of the invasion of privacy were never so graphically illustrated as they were in Hitler's Germany, where the secret police terrified the entire population into perpetrating some of the worst individual

and mass crimes in history. We must at all times ensure that this sort of action shall never occur in our democracy. As the notorious Dr Ley once said:

> There is no such thing as privacy for the individual in socialist Germany. The only person who still enjoys some privacy in Germany is someone who is asleep.

Gestapo chief Heinrich Himmler put it brutally after the promulgation of a ruling of the German Supreme Court—Hitler's creature of course—making criticism of the regime an offence, even in private conversation between husband and wife. Himmler had this to say:

> Carping criticisms are permitted only to those who are not afraid of the concentration camp.

I hope that no action of any parliament here will ever result in the introduction of such a situation in this country. The danger is not confined to bugging in Germany and in the Soviet states and the Iron Curtain countries. The absence of control of these devices in the United States of America and indeed in the United Kingdom has led to the establishment of a tremendous industry. It was estimated that at one period during World War II almost every hotel room in Chicago was bugged. Even a room occupied by Eleanor Roosevelt, the wife of the president of the United States of America, was once bugged by mistake. According to an authoritative source, Her Majesty the Queen when she was Her Royal Highness the Princess Elizabeth and the Queen Mother were once guests in a friend's house in London that was bugged during their stay. So the use of listening devices is not confined to one area; it extends to the highest level.

I am making these remarks as a preliminary to other comments because of the statements made by the Hon. R. R. Downing. I am one who has never yielded in his admiration for the capacity, diligence and workmanlike way in which the Hon. R. R. Downing applies himself to any measure before the House. However, on this occasion his contribution left me with the rather firm impression that his arguments against the bill were being advanced not as conclusive on the points to which they were directed but rather as a challenge to honourable members on the Government side to identify the flaws in his arguments. Indeed he appeared to leave members up in the air.

The honourable member made statements but he did not support them in the way to which we have become accustomed with documentary evidence and forceful legalistic interpretations. I feel that an honourable member with such a deserving reputation could have done better in espousing what I feel was not so much his point of view—I may be doing him an injustice here—but rather the point of view of the party that he leads with such distinction. I noted particularly that during the early part of his speech the other day he took the opportunity to advance the views of his party—as he put it, in his own way.

I assume that the Hon. R. R. Downing, particularly when he created the James Bond atmosphere that he did, was putting a point of view that reflected the opinion of his colleagues, rather than the opinion of one who over his many years' identification with the legal profession has made such a name for himself. The Hon. R. R. Downing's opening statement that the bill permits the wider use of listening devices than has been permitted anywhere in the Western world outside Communist countries was completely baseless. It was beyond me why he introduced this identification with what is taking place in Communist Russia, and failed to produce a scintilla of evidence to support his claim.

The fact is that there is a singular dearth of legislation dealing with the use of listening devices. Their use is virtually uncontrolled throughout the Western world. The most careful research will confirm that statement. I wonder more why the Hon. R. R. Downing attacked the bill, which restricts the use of such devices in no uncertain manner, when no other country or State in the British Commonwealth of Nations, other than Victoria, prohibits or controls by legislation the use of listening devices by any person, including the police. New Zealand does not, Canada does not and Britain—where the Birkett committee in 1957 recommended legislation which has

not yet been implemented, if ever it will be —does not. I say emphatically that this is attested evidence that I present before the House.

The Hon. J. A. WEIR: The honourable member is, so far, only saying it but is producing no evidence.

The Hon. ASHER JOEL: If the Hon. J. A. Weir bears with me, I hope he will hear me debunk completely the statements made by the Hon. R. R. Downing—made in all good faith, I am quite sure. Furthermore, the Commonwealth Government with full constitutional power to legislate on electronic transmitting devices, does not restrict their use.

The Hon. R. R. DOWNING: A licence is required for them.

The Hon. ASHER JOEL: A licence is not required, as the honourable member knows.

The Hon. R. R. DOWNING: A licence is required for any transmitting device.

The Hon. ASHER JOEL: The only way in which telephonic communication can be intercepted is upon a direct order from the Attorney-General, and it is not possible for the police in any State to intercept telephonic communications. Am I right?

The Hon. R. R. DOWNING: Yes.

The Hon. ASHER JOEL: The Hon. R. R. Downing's statement is not merely an exaggeration of the situation but rather a distortion of the position as he sees it. The Hon. R. R. Downing saw fit to give the House some graphic details of the sophisticated devices that are available today. Having conceded this, I cannot understand why he has any doubt that the legislation now before the House has been brought forward not only in good faith but also after the most careful and critical analysis of the situation throughout the world.

The honourable member disagreed with the means by which the Government proposes to restrict the use of electronic devices in the detection of crime. I feel that this is the only point on which the Hon. R. R. Downing finds something to cavil at. In general principles he agreed, although he painted this dreadful picture of what may be taken as an invasion of liberty. I can assure the honourable member that I also have read and studied quite extensively the use of listening devices and I probably know of many other devices that have not been mentioned here which are just as fearsome in their application as indeed are those of which he spoke, such as the olive which has its toothpick as its antennae.

The Hon. R. R. Downing said he was in good company in criticizing the bill. Perhaps the Hon. J. A. Weir, in view of his interjection, might listen to my next statement. The Hon. R. R. Downing mentioned such names as the former Commonwealth Attorney-General, Mr Nigel Bowen, and Sir Garfield Barwick, also a former Attorney-General and now Chief Justice of the High Court, and ex-President Johnson. I noticed that while the Hon. R. R. Downing was giving ex-President Johnson's views on listening devices and bugging, he did not refer to the recent utterances of Mr Nixon, the present President, to which I propose to refer later.

On examination I found that telephone tapping was the subject matter of the remarks upon which the Hon. R. R. Downing relied. He could not rely on them in relation to third-party eavesdropping. Not one of the honourable gentlemen the Hon. R. R. Downing referred to has at any time been responsible for the introduction of legislation dealing with devices such as the Hon. R. R. Downing described in detail. Never once has the question of bugging been dealt with by these honourable gentlemen; they dealt only with the interception of telephonic communication. Let honourable members be under no misapprehension at this point. When discussing the legality of electronic serveillance it is absolutely essential to separate wire tapping, which is the interception of a conversation on a telephone line, from all other third-party eavesdropping. Only the Commonwealth deals with the question of telephonic interception. The reason is, as the Hon. R. R. Downing knows, that only

the Commonwealth Government can legislate with respect to interference with telephone lines and equipment.

The sole legal issue, as I understand it, common to both, is the admissibility in a criminal trial of evidence acquired by any form of eavesdropping. Once again the Hon. R. R. Downing's argument breaks down. Commonwealth legislation on wire tapping does not make inadmissible evidence that is illegally obtained by such means. The bill now before the House proposes this very result with respect to eavesdropping devices. Let me remind honourable members at this stage that the Australian Labor Party is not unfamiliar with telephone tapping, or the tapping of telephone wires. I refer to a statement made in 1960 by a former Postmaster-General, Senator Donald Cameron, who was addressing in Victoria an Australian Labor Party conference, at which he said that telephones had always been tapped. He made no bones about it.

The Hon. F. W. BOWEN: They still are.

The Hon. ASHER JOEL: That is quite correct, but only in the interests of national security, under the most rigid form of control.

The Hon. R. R. DOWNING: They are tapped too in respect of departmental security.

The Hon. ASHER JOEL: The Hon. R. R. Downing may suspect it, but he has no evidence of it. This bill does not deal with telephone tapping. My only reason for emphasizing it and paying so much attention to it is that the Hon. R. R. Downing, during the early part of his speech, made so much of it.

I turn next to the Hon. R. R. Downing's reference to prior judicial authority as a necessary prerequisite to police use of these devices. During the weekend I have studied this matter at some length as I feel that this is a bill of major consequence to all who are concerned about the control of the invasion of privacy or hope to protect privacy as the inalienable right of every human being who lives in this country. I point out immediately to the honourable member that he noticeably omitted to draw attention to the Birkett committee's strong recommendation that such judicial authority not be provided for under the administrative arrangements it proposed for the United Kingdom, although the Hon. R. R. Downing placed great reliance on the Birkett committee's recommendation. The Birkett committee, composed of privy councillors in England, was appointed to inquire into the interception of communications. Its membership embraced such brilliant men as Mr Norman Birkett, Lord Monckton of Brenchley and Mr Patrick Gordon Walker.

I am sure that the Hon. R. R. Downing, having, as I emphasized over and over again, held ministerial office with high distinction for many years, recognizes the futility in this debate of advancing generalized proposals which depend for their success on details that he did not spell out. I feel that there are many answers not provided by the Hon. R. R. Downing. I hope the House will indulge me as I read from my notes, as I am not the legal luminary that the Hon. R. R. Downing is. For example, how does one prove months after obtaining a magistrate's consent for the use of an eavesdropping device that neither a Supreme Court judge nor district court judge was readily available.

The Hon. R. R. DOWNING: That does not have to be proved under my suggestion.

The Hon. ASHER JOEL: I shall deal with this a little later. I anticipated that the honourable member would say something of that nature and I took the opportunity to deal with that sort of contention but I shall not do so at this stage. Honourable members will recall that the Hon. R. R. Downing said that it should be necessary for police to obtain an order in writing from a Supreme Court judge and that if a Supreme Court judge was not readily available the order could be obtained from a district court judge. If a district court judge is not available the order then could be obtained from a magistrate. This proposal is a lawyer's paradise. It is superbly framed for lawyers. I do not suggest there is any ulterior motive.

The Hon. F. W. BOWEN: I should not discard it, just the same.

The Hon. ASHER JOEL: I object strongly to that. I am sincere in this matter. At every trial where conviction depended on evidence so obtained, hours of legal argument as to the legality of the magistrate's order could be expected. If the magistrate's order had been made when, as the lawyer would attempt to show, a Supreme Court judge or a district court judge would have been available, not only is the order invalid but, in addition, the evidence is inadmissible. I understand that we have in New South Wales thirty-three Supreme Court judges and twenty-six district court judges. How would a policeman prove that not one of those judges was available when the policeman is called upon to prove it twelve or eighteen months after the event? Is his word as to unavailability to be conclusive? If not, must the magistrate make independent inquiry even before he considers the policeman's request? Must a policeman seek out fifty-nine judicial officers and then, if unsuccessful, approach a magistrate, starting all over again? Not only is this putting an impossible task on the police but also it is unreasonable to expect a magistrate to satisfy himself on such a matter.

The Hon. R. R. DOWNING: That can be easily fixed.

The Hon. ASHER JOEL: I recognize the Hon. R. R. Downing's dilemma. I recognize it because I have no doubt that it confronted the Government when it was considering the legislation that we are now discussing. There was an American solution to the problem. In the United States ten or fifteen years ago police committed many flagrant acts in violation of the constitutional rights of citizens in obtaining evidence. As the Supreme Court of Canada was constrained to comment at the time:

> It was clearly apparent from the testimony of officers concerned that they casually regarded such acts as nothing more than the performance of their ordinary duties for which they were employed and paid.

It is to prevent this that this legislation has been introduced. As the Hon. R. R. Downing will know from his research in the American situation, in the case of emergency police may act for forty-eight hours without judicial authority so long as their action is confirmed by a judge. This is the American situation but it would be completely unacceptable in Australia. We are attempting to ensure that, before any bugging device is used by the police, they must first seek the approval of a responsible officer.

I now turn to the honourable member's attack on the bill as permitting police to use a listening device in respect of offences other than indictable offences. The Hon. R. R. Downing said that these devices should be used only for the detection of felonies or certain indictable offences. He relied heavily on the report of the Birkett committee in doing so. I do not profess to be any legal luminary.

The Hon. C. A. F. CAHILL: The honourable member is doing pretty well, so far.

The Hon. ASHER JOEL: Because of the importance of the measure I brushed up on my layman's knowledge on the subject and made some inquiries. Though I cannot give the same distinguished or learned view that the Hon. C. A. F. Cahill, who interjected, might give, I point out that all offences are either summary or indictable. An indictable offence such as breaking, entering and stealing, or assault occasioning actual bodily harm, is first heard at a magisterial inquiry and, as honourable members know, after a *prima facie* case has been made out by the police the accused is committed for trial at quarter sessions before a judge and jury. Prostitution, illegal betting and gaming are summary offences. In most cases the possession and taking of drugs are summary offences. Unless power is given to apprehend such persons and unless power is given to move into this area——

The Hon. R. R. DOWNING: Does the honourable member think that the police should have this power to prevent SP betting?

The Hon. ASHER JOEL: I am so glad that the honourable member has asked that. I shall be dealing with that later. Unless

this power is given it will be more than ever difficult to break down the master minds behind these rackets. Some of the worst crimes ever to be perpetrated in the country flow from these apparently minor offences. Drug addiction, prostitution and gambling rackets are among the biggest in the organized crime communities in the world, as I shall continue to show in the course of my remarks. I cannot believe that the honourable member was quite serious when he advocated that a secret commission is no longer to be regarded by the community as a serious offence. That is, in effect, what his argument suggested. I am sure that still fresh in the honourable member's memory is the fact that when he held the portfolio of Attorney-General several incidents occurred in which bugging devices were used to obtain evidence in bribery cases and to obtain a summary conviction for offences under the Secret Commissions Prohibition Act.

The Hon. C. A. F. CAHILL: They were mainly used by private individuals.

The Hon. ASHER JOEL: It is because they are mainly used by private operators that the bill was designed. It is aimed at stopping their use by private individuals and allowing them to be used only by police for the prosecution of offenders. I was disappointed to hear the Hon. R. R. Downing criticize the bill on the ground that it could be used to convict a sly grog seller or starting price bookmaker. As the honourable member has just interrupted and asked whether those devices would be used against bookmakers——

The Hon. R. R. DOWNING: You know my views about bookmakers.

The Hon. ASHER JOEL: I shall quote a few of these comments. If the Leader of the Opposition believes they should be wiped out and are a menace to the community in that behind these offences lies a vast field of organized crime, then he would not object to the use of a listening device properly supervised by a sergeant of police to close down a gambing joint. He cannot have it both ways.

The Hon. R. R. DOWNING: I object to the sergeant of police having the authority.

The Hon. ASHER JOEL: Might I add to gambling offences the offences of drug taking and drug peddling. I do not think any honourable member has the slightest doubt that eavesdropping is a dirty, filthy business.

The Hon. F. W. BOWEN: I wish the honourable member would not look so hard at me.

The Hon. ASHER JOEL: I do not regard the honourable member as any part of the business. He is looking at me so intently that I am proceeding on the lines that I have converted him to the Government's view. Eavesdropping is a dirty business, as the distinguished American jurist, Judge Holmes, branded wire-tapping in the case of *Olmstead* v. *United States*, (1928) 77 U.S. 438. The Hon. R. R. Downing seems to suggest that police are avidly waiting for the passage of this bill to embark on a tremendous investigation.

The Hon. R. R. DOWNING: I did not say that.

The Hon. ASHER JOEL: That is not the Government's view, in any case. The honourable member's suggestion that this is not his view and that is why he objected——

The Hon. R. R. DOWNING: I objected because of the things that could be done, not what might be done.

The Hon. ASHER JOEL: All things possibly could be done in some circumstances under all legislation. I give the assurance that this legislation has been devised to provide the maximum protection for the public from an invasion of their privacy and similarly to give maximum protection by the arming of the police with every modern technological device available so that they may apprehend criminals and at the same time prevent the continuation of a crime wave.

The Government is quite emphatic that crime is on the increase and that every reasonable technique should be at the Government's command to combat it. Approval for police to use bugging devices is needed

to fight organized crime, which is fast becoming an established fact in this country, before it reaches the proportions that it has in the United States of America. The criminal does not hesitate to use new technologies to aid his nefarious endeavours, and the Government sees no reason for the police to be hamstringed in their fight against the villain. The Hon. R. R. Downing relied heavily on the utterances of President Johnson and subsequently the Hon. C. Colborne said that he had heard on the radio at one o'clock today of certain statements made by President Nixon.

The Hon. C. COLBORNE: By President Nixon's wife.

The Hon. ASHER JOEL: I am expressing my own opinions, not those of my wife, and I hope that when I express the opinions of President Nixon it will not be regarded as a reflection.

The Hon. J. A. WEIR: We will have to get legal opinion on that.

The Hon. ASHER JOEL: President Nixon, when he was President-elect of the United States of America, said—

> I would use wire tapping devices in order to get at the heart of the organized crime problem.

That is quite contrary to what was suggested by President Johnson. President Nixon says "It is gloves off in the fight against crime and I would use any device". Organized crime is to be found in the baccarat schools, the sly grog joints, the S.P. betting joints, drug trafficking and trafficking in women, as it is in the United States of America, where most police bugging is done in an attempt to suppress these evils. It is wrong to say that entering a betting shop to have an illegal bet does not justify an invasion of the privacy of the person running the illegal betting shop. I agree with the Hon. R. R. Downing that illegal betting should be suppressed. When the bill to establish the TAB in New South Wales was before this House, the Hon. R. R. Downing and I were as one on it. However, it is not possible to obtain redress at law for a bet that has been illegally placed and welshed on, and this is where the stand-over man, the criminal and organized crime enter into the picture, just as they enter into the fields of prostitution and drug traffic. Not one of these activities is an indictable offence or a felony, but no one can doubt that many indictable offences flow from them. I draw attention to the problem of the Parliamentary Draftsman. How would he settle provisions that apply only to organized crime and not strike at the offences that the proposals made by the Hon. R. R. Downing would on the surface seem to protect? Is organized crime to escape merely because of fears in respect of the operation of S.P. betting?

The Hon. R. R. DOWNING: I did not say to limit it to organized crime.

The Hon. ASHER JOEL: Organized crime has to be proved, and how can that be done?

The Hon. R. R. DOWNING: I did not limit it. I did not say the legislation should go only to the suppression of organized crime.

The Hon. ASHER JOEL: The Hon. R. R. Downing's proposal would make it so difficult to obtain an authority to use a bugging device to detect crime that it would be impossible not to allow organized crime to escape. The Hon. R. R. Downing's remarks have been directed to serious crime and I am pointing out the difficulty of determining what is a serious crime. In the United States, the President's commission on law enforcement and the administration of justice said:

> Agents and employees of an organized crime family, even when granted immunity from prosecution, cannot implicate the highest level figures, since frequently they have neither spoken to nor even seen them.

This is the situation with regard to the little men in the S.P. betting, prostitution and drug rackets. The difficulty is to get to the perpetrator, the man behind the scenes, and the only way this can be done is to arm the police with sufficient authority to move in on the little men and so lead them to the big men. The President's commission also said:

> The great majority of law enforcement officials believe that the evidence necessary to bring criminal sanctions to bear consistently

on the higher echelons of organized crime will not be obtained without the aid of electronic surveillance techniques. They maintain these techniques are indispensable to develop adequate strategic intelligence concerning organized crime, to set up specific investigations, to develop witnesses, to corroborate their testimony and to serve as substitutes for them—each a necessary step in the evidence-gathering process in organized crime investigations and prosecutions.

District Attorney Frank S. Hogan of New York, for twenty-seven years engaged in crime detection, testified that "electronic surveillance is the single most valuable weapon in law enforcement's fight against organized crime." Chief Judge J. Edward Lumbard, of the United States Court of Appeals for the Second Circuit, declared that "electronic devices are of major use in detecting and suppressing crime." There are many other authorities. In regard to starting-price betting, I remind the Hon. R. R. Downing of what he said in this Chamber on 8th October, 1968:

> Since the introduction of the Totalizator Board one would have expected a greater effort by the police against offenders and the imposition of severe fines by magistrates.

The Hon. R. R. Downing also supported the principle that it should be possible to enter forcibly fortress-type S.P. shops. I know of no greater invasion of the privacy of an individual than forcibly to enter a building.

The Hon. R. R. DOWNING: If a policeman does forcibly enter, and there is no starting-price betting taking place, he leaves himself open.

The Hon. ASHER JOEL: And if he uses a listening device——

The Hon. R. R. DOWNING: You will never know. If he breaks down your door, you will know, but if he uses a listening device you will never know.

The Hon. ASHER JOEL: You will know, because in clause 8 there are inbuilt provisions that impose a tremendous responsibility on a police officer before he can use a device. Furthermore, a police officer has to submit regular reports.

The Hon. R. R. DOWNING: That is right, but the person who has been bugged does not know. He is not told that he has been bugged and nothing has been found.

The Hon. ASHER JOEL: The police of this State must have the means of dealing with organized crime at all levels. Organized crime is simply the application of corporate principles to the business of crime. Crime has moved out of the petty theft area and into the dangerous area of being a threat to the whole structure of our society. Our Commissioner of Police and the metropolitan press have justifiably sounded frequent warnings of the existence of organized crime in this State. No one is more dedicated in his attempt to suppress crime than the present Commissioner of Police, Mr Norman Allan. No one would suggest that Mr Allan, or his three assistant commissioners or his superindendents—none of whom reaches his high office until he has given years of diligent service and his record has been carefully analysed and scrutinized—are going to be guilty of lightly putting authority to use a bugging device into the hands of a sergeant of police, or anyone of lesser rank. I doubt it. The legal activities of organized crime are primarily the supplying of gambling activities, narcotics, women, money and liquor to willing customers.

I am quoting from the President's commission in the United States of America. Perhaps the House will bear with me while I point out how a police officer—who joins the force as a career, believing that his superiors are with him, and hoping that the authorities in government are conscious of what he is doing—will react to securing approval from a judicial authority in order to use a bugging device. The book *The Eavesdropper* deals at great length with bugging and snooping. It is by three well known authors, all expert in their field. They are legal men with a great reputation in the United States of America.

The Hon. C. A. F. CAHILL: When was that book published?

The Hon. ASHER JOEL: I think in 1959. I believe that the arguments put forward in the book are just as applicable now

as they were then. Unfortunately, the Hon. C. A. F. Cahill has succeeded in doing something that I did not think was possible —he has made me lose my place in the book. Rather than delay the House, I shall rely on my memory of what is stated by these authors who say that police officers were reluctant to approach a judge for permission, were reluctant to approach any other judicial officer, and frequently were reluctant to discuss the matter even with someone in their own department, lest a leak occurred. They found that, when they went before a judge and had to argue, somewhere along the line a leak developed, and in the area of organized crime someone found out.

We have seen in the evening newspapers how difficult it is to conduct a successful operation to apprehend suspected criminals; I am referring to what took place during the past twenty-four hours in what is known as the Dugan affair. I do not suggest for a moment that everyone is guilty. However, I point out how much more difficult it would be in these areas when a police officer has to go along all the time to someone else and argue why he should be given an authority. The whole weight of evidence from police officers is that they do not wish to deal with anyone other than their immediate superior officer, for only in this way can they assure the inviolability of the information that they have received, thus enabling them to proceed with their business. I am not suggesting for a moment that any member of the judiciary, even allowing for the arguments I advanced earlier on why they should not be approached, would be a party under any circumstances to revealing information on why someone came to them for permission to do certain things.

The Hon. R. R. DOWNING: Does the honourable member think that a judge or a magistrate would tip off criminals?

The Hon. ASHER JOEL: I have not suggested that.

The Hon. R. R. DOWNING: How does it get to the criminals? Could it get to them through the police?

The Hon. ASHER JOEL: Objections could be taken because it has to go through other processes, and because of the number of persons involved, the risk of a leak becomes greater; the more people involved the greater is the problem of secrecy. The honourable member has probably heard the old story I tell of the prominent horse trainer, Dan Lewis. When I asked him many years ago what chance one of his horses had, he said: "At the present time, only I know. Now you tell me, how many people know?" I replied, "One." He said, "If I tell you, how many people will know?" I replied, "Two." He then asked, "If you tell someone else, how many will know then?" I replied, "Three." Holding up three fingers, Mr Lewis said, "No, 111."

Once a departure is made from the careful way in which this measure has been devised, once there is a departure from the principles laid down, I believe we shall expose the police to a difficult situation that they may not be able to overcome. In this book, *The Intruders*, a volume that deals with police suppression of crime, Senator Edward Long, a Democratic Senator from Missouri, makes certain observations. Senator Long is nationally recognized as a champion of individual rights, and he is a person of some substance as well as a recognized defender of human rights. He was the chairman of a Senate subcommittee on administrative practice and procedure that in 1968 investigated wire tapping and snooping in the United States of America. He said:

> It is claimed to be of value in the following situations: To record bribe offers to Government agents and public officials; to record transactions involving narcotics or other contraband between undercover agents or informers and a suspect; to record bets placed by undercover agents or informers as well as conversations in suspected gambling centres; to record spiels of medicine men and other sellers of fraudulent health products and prices; to co-ordinate raids and arrests; to provide protection for undercover agents and informers; to maintain general surveillance of the home or office of a suspected criminal.

Senator Long proceeded to say:

> It would appear from all this that bugging is a useful law enforcement tool.

Yet we in this State are, with the exception of Victoria, the only ones who have taken the precaution of trying to legalize it in

such a fashion that it will be not a willy nilly arm of the Police Department but a tool that will be used only under the most rigid supervision.

The Hon. C. A. F. CAHILL: But in 1967 Senator Long introduced a bill to ban eavesdropping and wire tapping.

The Hon. ASHER JOEL: The bill was introduced but did not become law. Wire tapping in the United States of America is dealt with on an entirely different basis from the way in which it is dealt with in Australia. The honourable member probably knows that there has been great controversy in the United States of America over the 4th amendment, and whether the invasion of a person's privacy by use of wire tapping and bugging constitutes an abrogation of rights under the 4th amendment. It was held that it does not, even when a spike microphone is fired into a person's window, for the fourth amendment spells out that the only time that there is an invasion of human rights is when there is forcible entry.

The Hon. C. A. F. CAHILL: That is federally. But what is the position in the States?

The Hon. R. R. DOWNING: There is legislation in some of the States.

The Hon. ASHER JOEL: We are not discussing wire tapping and at this late stage I refuse to be diverted to a discussion of wire tapping. The bill does not deal with wire tapping, which is essentially a Commonwealth matter. The Hon. R. R. Downing made much of the fact that not only is a starting price betting operator or a sly grog merchant in jeopardy under the provisions of the bill, but also the poor punter or the thirsty citizen found on the premises. He deplores this, yet only a short time ago when the House was discussing an amendment to the Gaming and Betting Act, giving the police for the first time the opportunity to get a warrant to force their way into betting shops, the Hon. R. R. Downing commended the Government. What did the honourable member think the police would find? Did he think the premises would always be empty, or was it in his mind that police could not make arrests of people who were found in the gaming house?

The Hon. R. R. DOWNING: The honourable member knows that that was not my attitude. I meant that they would go in, and if they were unjustified in doing so, they went in at their own peril.

The Hon. ASHER JOEL: He spelt out, in far greater detail than he did tonight——

The Hon. R. R. DOWNING: I did not say that.

The Hon. ASHER JOEL: If the former Attorney-General is in any doubt as to the seriousness of S.P. betting and the like in the structure of organized crime, he might wish to reflect upon the words of the former United States Attorney-General, Robert Kennedy, who said:

> If the public stopped placing bets they would bring organized crime down to size quicker than all the combined efforts of the federal and local law enforcement agencies.

All honourable members know that such a concept is impossible. As long as people bet there will be the need for licensing and, unless licensed betting such as the TAB system is available, there will be illicit gambling. The whole question resolves itself into whether or not to permit the use of listening devices subject to stringent limitations. I find these limitations very much in evidence in the bill. I disagree strongly with the approach of the Hon. R. R. Downing—reluctant as I am, as I have said, to say it.

The Hon. R. R. DOWNING: There is no need to apologize for your attitude.

The Hon. ASHER JOEL: I feel that the honourable member's argument does not have the weight of many of the arguments that he has advanced with such success previously in this House. On the practical level I feel that his arguments invite even greater criticism. He seeks judicial authorization for orders for the use of listening devices, although I feel that he does not quite know how best it can be insisted upon. Assuming for the moment that his suggestion is practical, we have the position that

a policeman is to be armed with judicial authority of the highest order. If, as we have agreed, eavesdropping is a dirty business, a Supreme Court judge would be asked to make it look less dirty. He is asked to approve of it. I do not know of a Supreme Court judge who would relish the task. It would bring him directly into the arena of crime in a way that he might be expected to resent. In effect he would be asked to determine in advance whether he thought police activity in a case related to the perpetration of a crime or of a crime about to be perpetrated. He would be asked to determine whether a crime was being committed. In other words, he would be asked to do the dirty work that is the function of the police department.

The Hon. C. A. F. CAHILL: He has to do it now in many instances.

The Hon. R. R. DOWNING: He has a lot of unpleasant tasks to do.

The Hon. ASHER JOEL: I am sure the Hon. C. A. F. Cahill would be the first to agree that in this State wire tapping was virtually unknown except in the particular instance that has been the subject of an accusation by the leader of the Labor Party in another place. A similar comment may be made about eavesdropping. There is no basis for assuming that there will be widespread use of listening devices by the police. What is more, this bill is designed to ensure that the use of these devices will be always brought under the notice of the Commissioner of Police and the Minister responsible for administering this law. My firm view is that the bill is well balanced in the interests of all involved—the citizens of this State, the law enforcement agencies, the judiciary and the criminal. Even he will get a fair go as a result of this legislation. An overriding sanction that the Hon. R. R. Downing as a distinguished lawyer would know well, and as the Hon. C. A. F. Cahill will confirm, was stated by Lord Chief Justice Goddard in *Kuruma* v. *The Queen,* which is reported in 1955 Appeal Cases at page 197. When giving the decision of the Privy Council in that case Lord Chief Justice Goddard said:

> In a criminal case, the judge always has a discretion to disallow evidence if the strict rules of admissibility would operate unfairly against an accused.

A trial judge with particular knowledge of the facts in the case before him has every right to voice his criticism of any undue use of eavesdropping devices. He has ample powers to deal with unfairness, and a requirement, such as proposed by the honourable gentleman, for prior judicial authorization, is more likely to tie a trial judge's hands than to free them. With the responsibility firmly imposed upon the Minister administering the Act to supervise the extent of police use of these devices, coupled with the commissioner's own high sense of responsibility to the public, I find no benefit arising from the honourable gentleman's proposal. On the contrary, I suggest it defeats its own purpose. I can do no better than quote this extract from the finding of the British Columbia Report of the Commission of Inquiry into Invasion of Privacy, held in 1967:

> One would be living in a fool's paradise if he did not consider that organized crime will move or attempt to move into Canada . . . the police should be provided with the very best means of carrying out their duties. The use of these (electronic) devices . . . should be controlled but not so strictly that the authorities in pursuing an investigation are unduly hampered.

I submit that no argument has been advanced by the Hon. R. R. Downing that would measure up to the test referred to in that report which confirmed the views of President Nixon of the United States of America. The honourable member's views are radically different from those set out in the Birkett committee's report, and I am sure that the House would hesitate to embrace them in any circumstances.

The Hon. R. R. DOWNING: The Birkett committee said that these devices should be used only in special circumstances.

The Hon. ASHER JOEL: The Birkett committee said what I read to the House, and I do not intend to go over again all

the groundwork that I have traversed. I submit that any honourable member who studies the bill will agree that it will achieve something that every citizen will welcome. It will protect his privacy by not permitting the use of bugging devices for obtaining evidence to be used in marital or civil litigation. It will prohibit the use of microminiature electronic devices to spy on employees or employers. As this is emphasized in the bill, surely it will win the support of the entire House and all sections of the community. But the bill goes further than that—it provides protection for the citizen in the police fight against organized crime. It provides protection for the individual also in laying down that these devices will not be used unless the most rigid supervision of them is exercised by the Commissioner of Police, his assistant commissioners, his superintendents and by sergeants of police. Therefore, I submit that this measure is indeed desirable and that, although the remarks of the Hon. R. R. Downing on it are applicable, they are not appropriate.

The Hon. C. A. F. CAHILL [5.38]: I certainly agree with the Hon. Asher Joel that this important bill will have major consequences. I agree also with him that it does not go far enough, but for different reasons from those given by him. The object of the bill is to specify how these listening devices may be used. This is a most important and necessary measure and where the Government and the Opposition part company on it is on whether it is the best bill that can be introduced and on whether it provides sufficient protection for the privacy of the individual. The Hon. Asher Joel made it perfectly clear that many differing views may be held on the extent to which listening devices should be legalized. The perennial question, of course, is how to balance liberty against security. On that matter widely divergent views are held. The Hon. Asher Joel stated quite accurately certain views that support the opinions he put to the House. I propose to refer briefly to some others. This legislation must be looked at against the background of the need for its introduction.

This Government has been in office for about four years and has now produced the bill. I do not criticize the Government in any way for that, as the necessity for the bill has become apparent only in recent years, and obviously the Government must have been working on it for some considerable time. Though this legislation might not be of universal application, as the Hon. Asher Joel pointed out, the necessity for it is appreciated by thinking people in all Western countries. The fact that the Commonwealth Government might not have introduced any such legislation, and the fact that there is not much relevant legislation in the Western world is, with due respect to the Hon. Asher Joel, no reason why we should not introduce legislation setting out the maximum protection for the ordinary citizen.

Let there be no mistake: honourable members on this side are just as strongly opposed to organized crime as are members of the Government. We part company when we say that the bill does not contain enough protection or safeguards for the average citizen. President Nixon's views have been quoted and perhaps this is a good illustration of the room there is for genuine disagreement on what the bill should provide. In February, 1967, President Johnson called for legislation outlawing wiretapping and eavesdropping and I think at some other stage he qualified this by saying that an exception would be made where the national security is involved. Soon afterwards Senator Long introduced some federal legislation to deal with the matter.

Actually the position in the United States of America is quite chaotic because a general law on the statute book bans all wire tapping—not all listening devices—but the trouble is that this is ignored by a lot of States, where no such legislation exists. In Britain listening devices are permitted to be used only with the sanction of the Home Secretary and then only after it has been proved to his satisfaction that normal police investigations have failed. This is a pretty heavy restriction placed upon the use of listening devices.

The Hon. F. M. HEWITT: Wire tapping?

The Hon. C. A. F. CAHILL: On the use of any listening device, which would include wire tapping. In the United Kingdom it must be proved to the satisfaction of the Home Secretary that normal police investigations have failed, and doubtless the gravity of the offence would materially affect his decision on the matter. In Australia, Victoria introduced in 1969 legislation which is more in accordance with the views put forward by the Opposition here. Certainly in some respects it runs very much counter to this legislation. In Victoria a judicial process is necessary before any order can be made. I shall come to that aspect in a moment and refer to the differences in the two pieces of legislation.

This subject has been considered by many responsible international conventions including the International Commission of Jurists, and many conflicting views have been put forward on the scope and extent of such legislation. The Commonwealth of Australia, dealing only with telephone communications, imposes the restriction that listening devices may be used only with the consent and prior personal approval of the Attorney-General. With this background and with these divergent views on the extent to which privacy should be interfered with in the interests of eradicating crime, one would have thought that the Law Reform Commission, which was set up by this very Government, would have been the most appropriate body to which to refer this legislation for research and constructive suggestions. This is a bill which has major consequences and in effect deals with civil liberties—a subject discussed at some length overseas. One might have thought that reference of the bill to the Law Reform Commission for the purpose of obtaining its views would have been of assistance to all members of the House.

The Hon. ASHER JOEL: This is more law enforcement than law reform, surely?

The Hon. C. A. F. CAHILL: These days, the term law reform is much abused. It is largely reform in the sense that it purports to—and does up to a point—set up protection against invasion of privacy. When I say purports, I am not criticizing the bill in that sense. The bill is necessary and important but in a couple of major respects we disagree with it. First we take the view, as was put by the Hon. R. R. Downing, that administrative processes should not be used but that rather there should be a judicial process for the purpose of obtaining an order as important as one giving leave to use a listening device. We take the view strongly that it is wrong that the bill should apply to any offence. The measure is not restrictive enough, if I may put it another way.

The Hon. J. B. M. FULLER: The Victorian Act does not limit it in any way.

The Hon. C. A. F. CAHILL: It is limited in this way——

The Hon. J. B. M. FULLER: It is limited to grave offences, but that is as far as it goes.

The Hon. C. A. F. CAHILL: Under the Victorian Act the Chief Commissioner of Police or certain specified officers acting on his behalf, must make an application to a stipendiary magistrate. Victoria has this judicial process that we seek.

The Hon. J. B. M. FULLER: It must be a grave offence.

The Hon. C. A. F. CAHILL: I am coming to that. Subsection (4) of section 4 of the Listening Devices Act of Victoria, 1969, provides that in considering any application for approval to use a listening device a stipendiary magistrate shall have regard to the gravity of the matters being investigated and the extent to which the privacy of any person is likely to be interfered with, and the extent to which the prevention of crime is likely to be assisted. The bill before the House provides nothing of that sort, but deals with any offence. Though I have no doubt that it will not be used for the purpose of detecting people littering the roadway, it could be used for offences ranging from the most minor to the most serious.

There is a strong body of world opinion, headed by ex-President Johnson, that listening devices should be permitted only in cases where the national security is involved. There are plenty of expressions along the lines of those that the Hon. Asher Joel mentioned. The first matter upon which we join issue with the Government is that we maintain that invasion of privacy is such a serious matter that it should be the subject of a judicial process. If there is difficulty in having applications dealt with by a Supreme Court judge, or a district court judge, then a magistrate could hear the application. The Victorian Government apparently saw no reason why there should not be a judicial process.

The Hon. J. B. M. FULLER: The Act does not say what happens if the magistrate feels that the offence is not sufficiently grave. It does not say that he must refuse permission. He must take these matters into consideration.

The Hon. C. A. F. CAHILL: He must take them into consideration as affecting the conclusion that he reaches. For example, he might conclude that the gravity of the matter was not sufficient to justify an invasion of privacy.

The Hon. J. B. M. FULLER: He might look at the extent by which the detection of crime would be likely to be assisted.

The Hon. C. A. F. CAHILL: He would have to look at that.

The Hon. ASHER JOEL: There are many who believe this is unnecessary where most magistrates or judges from whom a warrant is sought tend to accept that the evidence brought by the officer would sustain a prosecution. It would seem to be a redundant procedure that such an officer should be approached.

The Hon. C. A. F. CAHILL: We do not think so, and neither did the Victorian Parliament. We object to this blanket provision. We say that it should be limited at least similarly to the Victorian legislation which takes into account the gravity of the offence, the extent of the invasion of privacy and the extent by which it will be of assistance in preventing crime. All these factors must be assessed by the judicial officer before he gives an order. The objections raised by the Hon. Asher Joel on the basis of delay are largely illusory. It would not take more than an hour for a magistrate to deal with the application. I can understand the objection to going through the range of a Supreme Court judge and a district court judge to a magistrate. I appreciate there might be a difficulty in proving the validity of a magistrate's order, but as the Hon. R. R. Downing pointed out by way of interjection, that difficulty could easily be covered by providing in the bill that the validity of any order shall not be challenged in any court of law. In short there would be an irrebutable presumption that the order was legally obtained if it were made by a magistrate or a district court judge. There is no difficulty about that.

The Hon. J. B. M. FULLER: Would not the problem be a sympathetic magistrate who gave the orders readily? Would not everyone go to him instead of the hundreds of other judicial officers?

The Hon. C. A. F. CAHILL: That is a problem that concerns the whole administration of justice. Human nature being what it is, that will never be overcome. We refer to them as granters and non-granters. I have made my point sufficiently clear. The offence should be grave and the application for an order should be dealt with by a judicial officer.

We object to clause 4 (2) (b) which provides that the clause prohibiting the use of listening devices shall not apply where the person using it does so in accordance with an authorization given under clause 8 of this bill or in accordance with an authorization given to him by the Minister of the Commonwealth administering any Act relating to the security of the Commonwealth or the Commonwealth Police Force and so on. That may be all right, but the next part exempts use under an authorization given by a delegate appointed by the Minister. That seems to be a general authorization. It means that some public servant, designated by the Minister could have a general authority.

The Hon. J. B. M. FULLER: This is the Commonwealth Minister?

The Hon. C. A. F. CAHILL: Yes, a Commonwealth Minister could delegate a general authority to someone to authorize a listening device.

The Hon. B. B. RILEY: There are cases where the Commonwealth legislation does precisely that.

The Hon. C. A. F. CAHILL: As far as I am aware there is no legislation dealing with listening devices, if that is what the honourable member is referring to, but there is ample legislation, as the honourable member points out, giving a power of delegation by the Minister to some officer. Protection of their privacy against invasion is cherished by most people. We on this side find it objectionable that the Minister in charge of customs should have the power to delegate a general authorization to some public servant for the use of a listening device. The Commonwealth Attorney-General must give authority for wire tapping to take place.

The Hon. J. B. M. FULLER: This is the federal law.

The Hon. C. A. F. CAHILL: But the State in this bill is giving extra power to the Commonwealth. It says quite clearly what is to be allowed. It is a Commonwealth Minister or a delegate of his who gives authority. This bill does not apply to these exceptions.

The principal objection taken in another place to the suggestion that there should be a judicial process was not the objection taken here by the Hon. Asher Joel. The objection in another place was that it would be unreasonable for the magistrate or judge to have to make a report to the Minister within three days. This would not be necessary. Under the Victorian legislation, the magistrate does not have to make any report. It is the chief commissioner, the person nominated, or the deputy commissioner, who must make any reports required under the Victorian legislation. That presents no problem at all.

Section 8 of the Victorian Act provides that a corporation shall be liable for an offence in the same way as a person. This bill contains no provision about the liability of a corporation. It is a pity that the bill here is not wide enough to include some similar provision. These criticisms are not against the necessity for the bill. My criticism is that the measure does not go far enough and leaves too many loopholes for the invasion of privacy. When a police officer is about to interview a person, he warns him that anything he might say will be taken down and used in evidence. That warning has been sanctioned by judges over the centuries but now apparently is to go by the board.

The Hon. J. B. M. FULLER: Perhaps the police officer could have a recording that he could play through the bugging device to let the person know what he was doing!

The Hon. C. A. F. CAHILL: I was merely pointing out that another safeguard for the ordinary person is to disappear. I am emphasizing that the use of these bugging devices must be strictly controlled and they must be used only in respect of serious offences.

The Hon. ASHER JOEL: Do you say organized prostitution and drug trafficking are not serious?

The Hon. C. A. F. CAHILL: I regard organized prostitution and drug offences as serious.

The Hon. ASHER JOEL: And illegal gambling on a major scale? This is the difficulty.

The Hon. C. A. F. CAHILL: I appreciate that, but the question is how far to go. This bill goes to the extent of allowing the devices to be used for any offence, not only in regard to a serious offence or an offence against the State. The Victorian legislation limits the offence in precisely that way.

The Hon. J. B. M. FULLER: I do not know whether that is correct. A magistrate can on the statement of a police officer

authorize the use of a bugging device. The police officer can go from magistrate to magistrate to find one who is sympathetic.

The Hon. C. A. F. CAHILL: Under the Victorian Act the magistrate must take into account the three matters I mentioned, one of which is the gravity of the offence.

The Hon. J. B. M. FULLER: There is no check on the magistrate.

The Hon. C. A. F. CAHILL: It is a question of whether we have faith in our judicial tribunals. You might just as easily say you have no check on the police officer.

The Hon. J. B. M. FULLER: A search warrant is returnable to a magistrate.

The Hon. C. A. F. CAHILL: When a search warrant is issued the person whose house is to be searched is not given any warning. The first he knows is when the police officer arrives with the search warrant in his hand. When an application to use a listening device is made to a magistrate in Victoria, the magistrate is bound to take into consideration the matters I have mentioned. Undoubtedly, some magistrates and judges are more easily convinced than others. That is human nature. The same is true of police officers given this power in the bill. A curious situation would arise in the case of a member of the police force seeking approval from an assistant commissioner to tap telephones in the police department in an endeavour to establish an offence by a police officer of receiving a bribe. That curious situation might cause some conflict of loyalty on the part of the assistant commissioner. Nothing I say should be taken as being the slightest attack on the police force. In any occupation a few will be dishonest.

The Hon. ASHER JOEL: If an offence were about to be committed in respect of a child, the delay involved in seeking approval from a judge or a magistrate to use a listening device could mean that the crime might not be prevented.

The Hon. C. A. F. CAHILL: In urgent civil matters, even allowing for the typing of all the documents, an injunction can be obtained within two hours. There are far more magistrates than judges and any delay would be minimal. Clause 15 of this bill is curious. I have not seen in any measure before this House a provision such as this. The Governor may make regulations not inconsistent with the Act exempting certain persons from the provisions of the Act. This means that any person may be given permission to use a listening device without being in any breach of the Act. Clause 15 (2) provides:

> Notwithstanding the provisions of section forty-one of the Interpretation Act, 1897, any regulation made for the purposes of paragraph (a) of subsection one of this section shall take effect on and from the date of expiry of the period during which either House of Parliament may . . . disallow the regulation . . .

Normally regulations take effect from the date of their promulgation. Apparently in this case the regulation will take effect only after the time for disallowing it has elapsed. It is preferable for any matter such as this to be dealt with by legislation, and that the person to be given permission to do these things should be specified. This clause provides that any person can be given permission by the Governor, admittedly with the safeguard that it does not come into operation until the time has expired. As the Hon. Asher Joel has pointed out, it may be necessary to act immediately, but this regulation might cause a delay of a couple of months.

The bill does not provide sufficient protection against an invasion of privacy. There is nothing in the bill to protect the sanctity of communications between husband and wife, solicitor and client, a minister of religion and a member of his congregation, or a member of this House and one of his constituents. Communications between solicitor and client, for example, have always been regarded as inviolate, but in this bill there is nothing to prevent a solicitor's telephone from being tapped.

The Hon. J. B. M. FULLER: That is covered by Commonwealth legislation.

The Hon. C. A. F. CAHILL: To be more precise for the Minister, there is nothing to prevent the attaching of a listening device to a telephone.

The Hon. J. B. M. FULLER: That is a Commonwealth offence.

The Hon. C. A. F. CAHILL: It may be a Commonwealth offence, but it is not an offence under this bill.

The Hon. J. B. M. FULLER: It is an offence under a Commonwealth Act. It is covered.

The Hon. C. A. F. CAHILL: I do not agree that it is covered. There is nothing to prevent the placing of a listening device outside a parliamentarian's office, a solicitors' office or a priest's confessional.

The Hon. ASHER JOEL: That is illegal.

The Hon. R. R. DOWNING: We are in favour of making this illegal.

The Hon. C. A. F. CAHILL: The Hon. Asher Joel has missed the point. The object of the bill is to make it illegal to use a listening device.

The Hon. R. R. DOWNING: We have agreed with that.

The Hon. C. A. F. CAHILL: We say that the bill does not go far enough, and I am giving the honourable member some illustrations of what could still happen.

The Hon. ASHER JOEL: You are suggesting that a superintendent of police will give someone permission to tape a conversation between a man and his wife.

The Hon. R. R. DOWNING: I said that the police could do it.

The Hon. ASHER JOEL: So could I, and so could a magistrate.

The Hon. R. R. DOWNING: But he has to get someone to connive with him.

The Hon. C. A. F. CAHILL: The magistrate, under the Victorian law, has to consider the extent to which the apprehension of the criminal will be assisted, and he has to take into account the gravity of the matter being investigated.

The Hon. J. B. M. FULLER: The honourable member is making a comparison with the Victorian law. In Victoria it is up to the police officer to operate under his authority and he can do what the police officer here will be able to do. What is the difference?

The Hon. R. R. DOWNING: In Victoria it has to be a grave offence.

The Hon. J. B. M. FULLER: The police officer states that it is a grave offence.

The Hon. ASHER JOEL: In Victoria, once a magistrate gives approval, that is the last he hears of it. It is proposed in New South Wales that a report be submitted.

The Hon. C. A. F. CAHILL: In Victoria the Chief Commissioner of Police has certain duties to carry out. He has to report to the Chief Secretary. Similar provisions are made in the bill, but the method of reporting in Victoria is different. In Victoria the magistrate authorizes and the Chief Commissioner of Police reports; but the bill being dealt with here provides that the Commissioner of Police both authorizes and reports. That is the difference. I do not wish to be sidetracked from my comparison of the bill with the Victorian legislation. The simple fact of the matter is that, if a police officer thinks a person consulting a solicitor is likely to say something that will assist him in his investigations, there is nothing to stop an authority being given for the conversation between the solicitor and client being heard by means of a listening device.

The Hon. L. A. SOLOMONS: Except that it is inadmissible.

The Hon. C. A. F. CAHILL: It is admissible under the bill; the bill makes admissible evidence gained after an authority has been given.

The Hon. L. A. SOLOMONS: But it is subject to the ordinary rules of evidence. Surely the rules of privilege would still apply?

The Hon. C. A. F. CAHILL: The honourable member makes a point that might have a lot of substance. But similar privilege would not apply to a minister and a member of his congregation, to a parliamentarian and a constituent, or to a husband and wife. The honourable member's interjection is correct, and it raises a matter that I overlooked. Once the evidence is on the tape recorder and it is produced in court, it might well be that objection could be taken on that ground, and sustained.

The Hon. R. R. DOWNING: Not if the person taking it was an authorized person.

The Hon. C. A. F. CAHILL: It is a debatable point, and the Hon. L. A. Solomons has made a relevant interjection. I have not considered whether the bill would go so far as doing that. In any event, I believe that we have made these points quite clear: first, we strongly support legislation that will have the effect of protecting the privacy of individuals from violation by listening devices; second, while the bill is necessary, it does not go far enough in its operations; third, we believe that, as in Victoria, approval should be given subject to judicial rather than administrative processes. They are substantially, although not totally, the objections we have to the bill.

The Hon. L. A. SOLOMONS [6.16]: I have listened with great interest and indebtedness to the contributions of honourable members from both sides of the House, and I realize that their speeches have involved them in a great deal of work and thought. This is almost a classic conflict of philosophies. The philosophy which the Opposition members have so ably expressed is perhaps summarized in the series of Boyer lectures and in the remarks of Zelman Cowen, to whom the Hon. R. R. Downing has referred. However, I believe that, as with many academics, their almost authoritarian statements of philosophy sometimes go too far.

I would be the first to agree that invasion of privacy in this modern world must be avoided at all costs, but there are certain circumstances in which there are exceptions. Strangely enough, the advocacy of the Opposition gives rise to a consideration of these exceptions to the rule. I am referring to advocacy not in this debate but recently in the budget debate, when members of the Opposition strongly pressed the Government to attack increasing crime and the increasing illegal consumption and use of narcotics. Both these matters concern honourable members irrespective of their political colour. The matter being considered in this legislation must be looked at from the viewpoint of those philosophies.

The Opposition attacks the bill on two basic grounds: first, whether it should apply to all offences, or whether they should be grave offences; and second, the need for a safeguard involving application to a judicial officer rather than administration by the police. I have a lawyer's abhorrence of the term grave. I do not know what it means. Grave to whom? I do not know whether the Victorian statute gives any clear indication, but I have been unable to find any legal definition of the term.

The Hon. C. A. F. CAHILL: It means the gravity of the offence.

The Hon. L. A. SOLOMONS: Does a grave offence mean an indictable offence, compared with one that is exercisable before a magistrate? That would be an easy, rule-of-thumb approach. Yet many offences, such as narcotics offences, are returnable in this State before a magistrate. Are they necessarily grave offences? It seems to me that it might well be that this particular type of offence——

The Hon. R. R. DOWNING: A member of this House was expelled following his conviction on a summary offence, because it was held to be an infamous crime.

The Hon. L. A. SOLOMONS: I do not know whether infamous is grave. At least the honourable member found the consequences grave. I am unable to say at this juncture whether a judicial officer, as suggested by the Hon. R. R. Downing, would agree that a particular offence was grave.

The Hon. C. A. F. CAHILL: He would use his discretion.

The Hon. L. A. SOLOMONS: That would be up to him.

The Hon. R. R. DOWNING: They are the words used by the Birkett committee.

The Hon. L. A. SOLOMONS: I do not know what is a grave offence. I would find it a lot easier if this measure stated that it is an offence punishable on indictment or not on indictment. Then everyone would know precisely what was meant. It reminds me of the famous jibe about equity being as long as the chancellor's foot. In this instance the gravity of the offence would be in the eye of the judicial beholder. The suggestion of the Hon. C. A. F. Cahill that this bill would take away the warning that a criminal would ordinarily get from a policeman is perhaps overstating the position. The warning he gets is when he makes a confidential admission *ex post facto*. To apply the honourable member's suggestion, virtually what he is saying is that a detective sergeant who is trying to apprehend Fred the burglar in the act should call out from his place of concealment, "Don't commit that crime until I first warn you of the consequences of your proposed action". The basic thing about which I am concerned is the philosophy of enforcement in relation to criminal acts. I believe that the Opposition made a sincere suggestion, but I feel that if it were agreed to it would attenuate the law enforcement value of this measure. Let me give an example of what could occur in the area where I live, Tamworth. How often does a Supreme Court judge go there? One visit, for a fortnight a year. Perhaps it would be handy if an offence were committed during the second or third week of August, for then a Supreme Court judge could be approached for an order in respect of the use of a listening device. District court judges are at Tamworth four times a year for an average of two days in each visit. A magistrate hears cases for two days a week in every week of the year with the exception of the first week in the month when he is there for only one day. What about the rest of the time?

The Hon. C. A. F. CAHILL: Are there no assistant commissioners of police?

The Hon. L. A. SOLOMONS: No, but there is a superintendent.

The Hon. R. R. DOWNING: Is there a superintendent stationed at any other town in the area?

The Hon. L. A. SOLOMONS: No, but at the least the police know where to find a superintendent at any time.

The Hon. R. R. DOWNING: Where is the magistrate?

The Hon. L. A. SOLOMONS: He lives at Tamworth and he is available on Monday and Tuesday of every week in the year except during the first week of the month. Thereafter, provided he is at home, he is available on Saturdays and Sundays.

The Hon. C. A. F. CAHILL: Would the same apply to the superintendent of police?

The Hon. R. R. DOWNING: He is away from Tamworth quite a lot.

The Hon. L. A. SOLOMONS: The superintendent of police, who has his headquarters at the local police station, always notifies his officers where he will be at any particular time. He may be contacted at a series of wireless communication points. I am giving a simple example to answer the question of how one would go about getting an order to use a listening device assuming that the police officers learn that a crime will be committed in the immediate vicinity of Tamworth one Friday night. What would they do? Suppose they hear about it about 4 p.m. on the Friday afternoon.

The Hon. R. R. DOWNING: Would they need a listening device?

The Hon. L. A. SOLOMONS: They may well want to use a small, portable listening device that would put them in a position to detect an offence more easily. Would they wait until Saturday morning to try to contact a Supreme Court judge in Sydney, or a District Court judge in Sydney, or even a magistrate in Sydney if the local magistrate is away? Would they seek out the criminal, who by then has committed

the offence, and say to him, "Last night we did not have a listening device available. Will you react the crime tonight so that we may record it?"

The Hon. J. A. WEIR: What a weak argument.

The Hon. L. A. SOLOMONS: The honourable member may regard it as weak, but it is the practical effect of what the Opposition is suggesting.

The Hon. F. W. BOWEN: The honourable member would make a good Father Christmas.

The Hon. L. A. SOLOMONS: The criminal would think the Opposition's view came from Father Christmas. Virtually the Opposition says: "Here is a particularly useful mechanism for combating crime, but we shall not let you use it unless you comply with a series of rules that will attenuate your use of the mechanism, that will make the procedure so slow and cumbersome that you will never use it". Whether the Opposition likes it or not, that will be the practical effect of its proposed amendments. I put it simply to Opposition members that they cannot have it both ways. Do they want a stronger attack to be made on crime? Do they want more efficient attempts made to try to wipe out this frightful increase in the narcotics problem?

The Hon. C. A. F. CAHILL: Does the honourable member suggest that a judge or a magistrate would not regard a narcotics offence as a grave infringement of the law?

The Hon. L. A. SOLOMONS: I do not know; and I do not think the Opposition does either.

The Hon. C. A. F. CAHILL: I should be surprised if a judge or magistrate adopted that view.

The Hon. L. A. SOLOMONS: It would depend on the magistrate. He might say that only offences dealt with ordinarily by a judge are grave.

The Hon. J. A. WEIR: Does the honourable member think that this bill will clean up crime?

The Hon. L. A. SOLOMONS: It certainly could be used to help clean up crime.

The Hon. J. A. WEIR: That has not been the result in America. The Hon. Asher Joel was going to produce evidence about the crime position in the United States of America.

The Hon. L. A. SOLOMONS: I do not know what the Hon. J. A. Weir is referring to. I do not recall the Hon. Asher Joel saying anything more on that aspect. The simple point is that the Government is trying to remedy a situation that has grown up because of lack of legislation.

The Hon. C. A. F. CAHILL: I thought the object of the bill was to protect the invasion of privacy.

The Hon. L. A. SOLOMONS: And I thought it was to regulate the use of listening devices, to allow their use with proper safeguards, and to protect the innocent public in the correct circumstances. I believe that the bill adequately fulfils those objects.

[*The President left the chair at 6.28 p.m. The House resumed at 7.45 p.m.*]

The Hon. J. B. M. FULLER (Minister for Decentralisation and Development and Vice-President of the Executive Council) [7.45], in reply: This has been a particularly interesting debate in which a number of very good speeches have been made, particularly by the Hon. Asher Joel and the Hon. L. A. Solomons. The Hon. C. A. F. Cahill also contributed considerably to the debate. It is obvious that the Opposition agrees with the objects of the bill and that the only two issues upon which we are possibly at variance are, first, whether the use of listening devices should be limited to serious crime, grave offences, or something of that sort, and, second, whether the approval or warrant of a judge or a magistrate should be necessary, rather than the procedure suggested in this bill.

With regard to the first point—serious crime—the basic problem is the difficulty of defining serious crime. What is a grave offence? What, in the mind of one magistrate might be a grave offence, might not be nearly

so grave in the mind of others. The Hon. Asher Joel illustrated at some length the difficulties that arise. What is regarded in England as a serious crime need not in Australia be felt to have the same gravity. There is this variation from country to country. Personally, I think the Secret Commissions Prohibition Act contains the sort of serious offence that possibly would not be considered serious by some of those who are criticizing our present approach.

In my view, the bill secures the position by, in effect, giving to the Attorney-General the overall responsibility of determining the extent to which and the cases in which the commissioner and his assistant commissioners shall authorize the use of listening devices. It can be accepted without any qualification whatever that the Attorney-General will lay down the principles upon which the Commissioner of Police and his assistants will be expected to operate in authorizing police to use bugging devices. Reports will be submitted all the time to the Attorney-General detailing the cases in which approval has been given. I think the Attorney-General will have regard also to the extent to which the use of these devices has proved successful or unsuccessful in solving some of the crime problems with which we are faced at present.

I do not think there can be any safeguard in a mere requirement that only serious crime warrants authorization of the use of a listening device. Use of a device will normally be sought when possibly only a suspicion exists that a crime is about to be committed. How can one define something at that stage? Let us look, as the Hon. Asher Joel has, at the problems associated with drug addiction, prostitution and the fortress type of starting price betting shop. Serious crime originates in many of these places. I do not think it can be determined in advance just what type of crime can be expected to be revealed by the use of a device. These are the places where plans are made for murders. One has only to mention the Borg case in this city to instance the extent to which crime emanates from centres of that type. I submit that the Hon. R. R. Downing is not quite correct in saying that the Birkett committee referred to the gravity of the offence. In effect, it laid down three conditions, one of which was that the offence must be "really serious." This might be quite suitable for a recommendation from the Birkett committee to those responsible——



The Hon. R. R. DOWNING: What is the difference between serious and grave?

The Hon. J. B. M. FULLER: I do not know. This is the point I am trying to make. In legislation, one cannot interpret a recommendation such as this. One cannot get to the stage of defining a "really serious" crime or a grave offence. This is a big problem. I realize that people are worried about it but I submit that the fact that the Attorney-General will be laying down the types of use that the commissioner and assistant commissioners should approve is a safeguard.

There is another aspect. The Hon. C. A. F. Cahill said that the Victorian Act was more in accordance with his thinking. The Victorian legislation provides that a magistrate's consent is necessary. According to the Victorian Act, the magistrate must have regard to the gravity of the offence, but the Victorian legislation does not limit the use of listening devices to grave offences. It just says that the magistrate must have regard to the gravity of the offence. The magistrate is not limited in any way at all. He can issue an authority in any case, as he thinks fit. The Victorian Act does not say that the magistrate shall not issue an authority unless he is convinced that it is a grave offence. The Birkett committee came down hard against a requirement for a judge's order or a magistrate's order. This was definite.

The Hon. R. R. DOWNING: The Birkett committee put the duty on the Home Secretary.

The Hon. J. B. M. FULLER: That is right. The arguments against requiring the judge's order or a magistrate's order are considerable and have been well outlined by the Hon. Asher Joel and the Hon. L. A. Solomons.

The Hon. R. R. DOWNING: What about the Home Secretary's authorization? The Birkett committee did not recommend that authority be left with the police.

The Hon. J. B. M. FULLER: That is right. Many people have been saying things about what should be recommended but few have reached the point of implementing them. We are implementing these proposals because we feel they are the best. An excellent case was put by the Hon. L. A. Solomons and the Hon. Asher Joel, and I should like to mention two further aspects. It is not practicable to provide for a review of the decision by the judicial officer approving the use of a listening device. If he gives the decision that a device may be used, he has nothing more to do with it. He does not see the effect of the authority that he has given. It goes completely beyond his care. When a search warrant is issued, for example under the Liquor Act, the police must make a return of the warrant, executed or unexecuted. The court discharges the warrant and makes an appropriate order.

The Hon. R. R. DOWNING: He would still have to furnish a report to the Minister.

The Hon. J. B. M. FULLER: I am talking about the magistrate—the judicial officer —that the honourable member suggests. He would not have any contact at all.

The Hon. R. R. DOWNING: Who said he would have?

The Hon. J. B. M. FULLER: Who is to report to the magistrate as to the effect of the order?

The Hon. R. R. DOWNING: No one suggested that there would be a report. I did not suggest that the police officer would have to report back to the magistrate.

The Hon. J. B. M. FULLER: That is the point I am trying to make. The magistrate would be completely out of touch with the effect of the approval that he had given.

The Hon. R. R. DOWNING: The Minister will not be.

The Hon. J. B. M. FULLER: The Leader of the Opposition is talking about magistrates and it is a magistrate who will be giving the authority. I am glad to see that this is not a political issue. Honourable members have been quoting from the Victorian Act. Some of us are criticizing legislation introduced by this good Liberal Government in Victoria; others are supporting it. This shows the strange approach that we in this Chamber may have on this issue. The Opposition is opposing the system of authorization that we have suggested in the bill.

The Hon. J. J. MALONEY: We are trying to improve the bill.

The Hon. J. B. M. FULLER: I am suggesting that the Opposition's genuine attempts to improve the legislation would not be in fact an improvement.

The Hon. J. J. MALONEY: The Minister is wrong.

The Hon. J. B. M. FULLER: We may be wrong. We do not suggest that the legislation is ideal. I see nothing in the Victorian legislation, under which magistrates are permitted to issue this authorization, to prevent a police officer going to a magistrate, being refused and then going to another, and to a third and so on. In effect he might go from one magistrate to another—100 of 140 of them—until he finds one who is willing to issue an order. Is this good? In this State we have the commissioner, the assistant commissioner and, for forty-eight hours only, a superintendent. I suggest this is pretty solid protection and has not the inbuilt looseness of the Victorian Act in relation to magistrates.

One other aspect was not referred to by the Hon. Asher Joel and the Hon. L. A. Solomons. To me the best form of judicial supervision of the issue of these authorizations is to be found in the ability of judges who preside over criminal trials to express their criticism or distaste of the action taken by the police in the use of these devices. The judges of this State are able to criticize the police but I find it difficult to believe that should a Supreme Court judge issue an

authorization for use of a bugging device, his brother judge hearing the case would feel as free to criticize the authorization.

The Hon. R. R. DOWNING: It is done every day in the Court of Appeal.

The Hon. J. B. M. FULLER: A judge would be loath to criticize his brother.

The Hon. R. R. DOWNING: It is done every day of the week in the Court of Appeal.

The Hon. J. B. M. FULLER: On legal issues. It would not be a legal issue when, at the request of a police officer, a Supreme Court judge issued an authorization. I really feel that the best way of handling it is set out in the bill. At the moment the situation is that these people are going about their business unrestricted. It is accepted on both sides of the House that some restriction must be introduced to ensure that the rights of the individual are safeguarded.

The Hon. C. A. F. CAHILL: We are agreed on that.

The Hon. J. B. M. FULLER: Good. At the same time we must see that the duty of the police to protect the public is safeguarded. We must have a compromise between the rights of the individual and the extent to which a law enforcement authority can use a bugging device, in effect, to protect the community. We have in the bill the sort of restraint that is necessary. We have restricted the use of these devices to a greater extent than the Opposition acknowledges. In our legislation the commissioner, the assistant commissioners and for forty-eight hours only, a superintendent of police, are the only persons who may issue an order.

The Opposition suggests that the authorizations should be granted by Supreme Court justices and district court judges and magistrates. The system proposed by the Government safeguards the community and protects the individual to a greater extent than the system proposed by the Opposition. I was interested in the suggestions about devices being used to listen to conversations between solicitor and client and for bugging the confessional. This could happen at the moment and the Government has introduced this legislation to safeguard individual rights.

The Hon. R. R. DOWNING: We want you to prohibit it. We want you to make it an offence.

The Hon. J. B. M. FULLER: The Leader of the Opposition is very keen tonight to determine what can happen and what cannot happen. He has been quoting the Victorian Act.

The Hon. R. R. DOWNING: I did not quote it at all.

The Hon. J. B. M. FULLER: Many people have been quoting the Victorian Act and I shall be surprised if *Hansard* does not show that the Leader of the Opposition quoted it.

The Hon. R. R. DOWNING: I quoted it only when someone interjected about it.

The Hon. J. B. M. FULLER: The Leader of the Opposition has a foot on each side at the moment. I think his ground is getting a bit shaky. In Victoria prohibition of the use of a listening device in conversations between solicitor and client or in the confessional would have to be laid down by the magistrate when he gave the authorization. The magistrate would have to say, "I authorize the police officer to use a device of this nature, but he cannot use it in a solicitor's office and he cannot use it in a church." Under this bill, when the Attorney-General is laying down the rules for the use of bugging devices, he will tell the Commissioner of Police and the assistant commissioners that the Government does not want the devices to be improperly used. Further, the Attorney-General will be given reports on the operation of the authorizations for the use of the devices.

This Government is leading the world in this type of legislation. It believes that this bill is the best method both to safeguard the rights of members of the community and to protect the community from the serious crime wave in Australia and throughout the world. This legislation is a positive and constructive approach and

should be given a trial. If, in two or three or four years' time, something is found to be wrong with the legislation, the matter can be reconsidered. The suggestion by the Leader of the Opposition increasing the number of people empowered to authorize the use of these devices would not operate as successfully as the system contained in the bill.

Motion agreed to.

Bill read a second time.

IN COMMITTEE

Clause 3

[Definitions]

The Hon. R. R. DOWNING (Leader of the Opposition) [8.5]: Clause 3 contains a definition of a private conversation. Under clause 4, a person is guilty of an offence if he uses a listening device to hear, record or listen to a private conversation, unless, as is set out in subclause (2) (b) of clause 4, he has an authorization given to him under clause 8 of the bill. A person having an authorization is entitled to listen to a private conversation. A private conversation could be a conversation between a barrister or solicitor and his client, between a member of Parliament and his constituent, between a doctor and his patient, between a clergyman and his parishioner, between a husband and wife or between a parent and child. A person with this authorization is not committing an offence if he listens to such a private conversation. I know that the Minister proposes to say that this would not be done. Will the Minister say positively that the Attorney-General in his directions to the police will direct that there is to be a total prohibition against the use of listening devices in these circumstances?

The Hon. J. B. M. FULLER: I think the Hon. R. R. Downing is making the point that where one of the parties to a conversation is the user of a device——

The Hon. R. R. DOWNING: No. A person using a device with an authorization under clause 8, even for listening to a private conversation is not committing an offence. Once a person gets an authorization, he can listen to a private conversation. I ask the Minister to say that the Attorney-General in his directions to the police will state that the authorization is not to be used in respect of a private conversation between a solicitor and his client, a member of Parliament and his constituent, a doctor and his patient, a clergyman and his parishioner, a husband and wife or a parent and child.

The Hon. ASHER JOEL [8.8]: The Hon. R. R. Downing is confusing the issue by trying to identify clause 8 with clause 4. Clause 4 specifically refers to a person being guilty of an offence if he uses a listening device to hear, record or listen to a private conversation. Clause 8 specifically deals with a prescribed officer of police, not a person. Clause 8 specifically states:

> (2) Where a prescribed officer of police is satisfied—
>
> (a) that, for the purpose of the conduct by a member of the police force of an investigation into an offence that has been committed, the use of a listening device is necessary; or
>
> (b) that an offence is about to be, or is reasonably likely to be, committed and that, for the purpose of enabling a member of the police force to obtain evidence of the commission of the offence or of the identity of the offender, the use of a listening device is necessary,

The only person who can use a listening device for the purposes of this clause is a prescribed officer of police who has been given an authority by the commissioner, an assistant commissioner or a superintendent of police. If the Hon. R. R. Downing is suggesting that any of these reputable persons will exercise that authority to allow the bugging of a confessional box or of a conversation between solicitor and his client, or a doctor and his patient, he is making a most improbable conclusion. There is no possibility of that happening and the Hon. R. R. Downing must know in his own heart that no government would be willing to allow this.

The Hon. R. R. DOWNING: I want the Government to give a direction that it is not to be done.

The Hon. ASHER JOEL: Furthermore, the Hon. R. R. Downing must know, because he has read the bill thoroughly,

that reports will have to be submitted within a matter of hours to the appropriate authority. Indeed, before a member of the police force gets permission to use a listening device he has to go to the commissioner, an assistant commissioner or a superintendent, and has to state what he is going to bug and why he wants to do it. I am sure that no prescribed officer of police would attempt in any circumstances to take the course of action suggested. Therefore, I submit that the Leader of the Opposition is drawing a red herring across the trail.

The Hon. R. R. DOWNING (Leader of the Opposition) [8.10]: I have said here many times that I do not expect any officer to do these things in normal circumstances, but all honourable members know that there have been policemen who are black sheep, in the same way as there are black sheep among members of parliaments, priests and other callings. I am saying that this power could be used in this way, and all I am asking the Minister to do is to give a direction that a listening device shall not be used in this way. The Hon. Asher Joel says that the police would not listen in to a conversation between a solicitor and client, but what is to stop an over-zealous policeman listening to a conversation between a solicitor and client, not for the purpose of using that conversation in evidence, but to get information that will enable him to convict the offender?

The Hon. J. B. M. FULLER (Minister for Decentralisation and Development and Vice-President of the Executive Council) [8.11]: I cannot give a definite guarantee here tonight that would involve the Attorney-General in this regard, but I will guarantee to the Leader of the Opposition that I shall suggest to the Attorney-General that he instruct the Commissioner of Police, the assistant commissioners and superintendents that they seek specific approval from the Attorney-General in cases that may arise along the lines suggested by the Hon. R. R. Downing.

The Hon. C. A. F. CAHILL: That destroys what the Hon. Asher Joel said.

The Hon. J. B. M. FULLER: I am only trying to be helpful. I thought the honourable member would appreciate a suggestion of this sort. There is worry in the minds of some honourable members opposite that this could happen. If the Attorney-General made specific mention that the Commissioner of Police, the assistant commissioners and the superintendents would be instructed along those lines, I think that would meet the basic requirement and what honourable members opposite are worried about. There are problems. Take, for instance, an abortion by a medical practitioner or by other people who do these things.

The Hon. ASHER JOEL: A few solicitors are crook, too.

The Hon. J. B. M. FULLER: I shall bring to the notice of the Attorney-General the question that has been asked by the Leader of the Opposition, and I am sure that he will give it proper consideration.

The Hon. F. W. BOWEN [8.15]: Could the Minister, in a few words, explain to a non-legal person the definition of a private conversation? Is it confined to two people, or can it apply to a group of people? In other words, can there be only two parties to the conversation? What would be the position if there were three parties to the conversation? I could get into trouble if a listening device were used to record something that I have said on occasions to recalcitrant members. Could the Minister give a simple explanation of this somewhat technical clause, which has caused my head to spin considerably.

The Hon. J. B. M. FULLER (Minister for Decentralisation and Development and Vice-President of the Executive Council) [8.16]: I think it is a good idea for a non-legal member of the House to ask a non-legal Minister for a legal definition, but I think the crux of this provision is that third-party eavesdropping is prohibited. If ten persons are talking together in a private conversation and someone records that conversation by eavesdropping, that is an offence. It does not matter whether it is one, two or ten people, the eavesdropper is the point of all this. A

public or large meeting is not the sort of application of these devices that would be expected. However, if two or three people get together in a private conversation and someone, by means of a listening device, records it, that would be an offence.

The Hon. H. J. McPHERSON [8.17]: Following upon the question asked by the Hon. F. W. Bowen and the answer given by the Minister, I wish to express my concern about the definition of a private conversation. First, I believe the definition is ambiguous and will leave it completely open for a defence lawyer to argue the validity of any statement applicable to private conversations. The definition says that a private conversation means words spoken by one person to another person in circumstances that indicate that those persons desire the words to be heard or listened to only by themselves. As a layman, I would expect that to be a private conversation; but then it goes further and says, "or that indicate that either of those persons desires the words to be heard or listened to only by themselves and by some other person." The rest of the paragraph is, to my mind, a direct contradiction of what I have already read out.

The Minister, in his explanation to the Hon. F. W. Bowen, stated that a private conversation is where any number of people may be gathered together to carry on a conversation or a meeting. In the words of the definition, if one of the people present knows that the conversation is being communicated to an outside source, recorded or taped, or that a listening device is being used, this would justify the court in ruling that it was not a private conversation. I ask honourable members not to get me wrong; I am entirely behind anything that will help the police to perform their function of preventing crime and deterring criminals, but I am convinced that, if this definition is adopted, it will lead to legal battles in the courts between members of the legal profession—after all, that is what they will be paid for—to define whether a conversation is private or otherwise. I am certain that honourable members of the legal profession in this Chamber tonight could not agree on a ruling.

I concede that misuse of the powers would be most unlikely with the present Commissioner of Police, assistant commissioners and superintendents. The Hon. R. R. Downing has often envisaged what would happen if officers were not of the calibre of present-day officers. It would be undesirable for me or anyone else to have a confidential conversation if we feared the possibility of our conversation being listened to surreptitiously. I concede that the bill is aimed at the detection of crime, and that it provides for authorization of the use of listening devices through the police force, but there are instances in the history of many countries of members of the police force not coming up to scratch. I do not like the ambiguity of this definition.

The Hon. ASHER JOEL [8.19]: I am glad that the Hon. H. J. McPherson referred to the definition of private conversation, for to me this is clearly set out in the bill. It could not be more simplified. The bill prohibits surreptitious interception of private conversation in which the eavesdropper does not participate either directly or by implied invitation. This is what the bill spells out, in the definition of private conversation, which says it is to stop a surreptitious interception by a person who is not normally party to a conversation. I cannot understand the honourable member's obfuscation on this matter, and I believe that there is no ambiguity in the definition of private conversation.

The Hon. H. J. McPHERSON [8.20]: My interpretation of the definition is that the honourable member and I may be having a confidential conversation.

The Hon. J. J. MALONEY: That is unlikely.

The Hon. H. J. McPHERSON: Be that as it may, the Hon Asher Joel may be under the impression that he and I are having a private conversation. I am not a member of the police force but I might have obtained authority to use a listening device, and I could be using it.

The Hon. J. B. M. FULLER: You must be a member of the police force to get that authority.

The Hon. H. J. McPHERSON: That is correct, but not all members of the police force are obviously members of it.

The Hon. F. M. HEWITT: I think the honourable member is somewhat confused.

The Hon. H. J. McPHERSON: I am not confused. I am suggesting what might happen the first time this provision is argued in a court. I venture to say that when that happens barristers and solicitors will be lined up on both sides of the court listening to the legal argument.

The Hon. J. B. M. FULLER (Minister for Decentralisation and Development and Vice-President of the Executive Council) [8.22]: I feel that the Hon. H. J. McPherson is being somewhat pessimistic. If he looks at the Victorian definition of "private conversation"——

The Hon. H. J. McPHERSON: I thought that was not relevant to the debate?

The Hon. J. B. M. FULLER: The point I am trying to make is that the Victorian legislation, which is now operating, has a provision in almost similar terms to this one. I feel that the situation to which the honourable member referred will not arise. If it does, at least a decision will be given, which will be an improvement upon the present position. The Government is trying to ensure that a bugging device will be used only with proper authorization. The honourable member should realize that when this measure becomes law only a member of the police force will be given the authorization.

Clause agreed to.

Clause 8

[Authorization of use of listening devices by certain police officers]

The Hon. R. R. DOWNING (Leader of the Opposition) [8.24]: I sincerely ask the Minister to agree to an amendment that I have outlined and of which he has a copy. I do not suggest that its drafting is perfect and I appreciate that I cannot move it unless first the Committee rejects this clause. I suggest that I am in order in referring to the proposed amendment to give the reason for rejecting clause 8. The amendment that I propose should be inserted in its place is as follows:

8. (1) Before a person is authorised to use a listening device under the authorisations referred to in paragraph (b) of subsection two of section four of this Act he shall obtain an order in writing from a Judge of the Supreme Court naming him as a person authorised to use a listening device for a purpose set out in the order.

(2) If a person seeking to be authorised to use a listening device under paragraph (b) of subsection two of section four can establish to a Judge of the District Court that he has not within a reasonable time having regard to the circumstances for which the order is sought been able to approach a Judge of the Supreme Court such District Court Judge may issue the said order.

(3) If a person seeking to be authorised to use a listening device under paragraph (b) of subsection two of section four can establish to a Stipendiary Magistrate that he has not within a reasonable time having regard to the circumstances for which the order is sought been able to approach a Judge of the Supreme Court or a Judge of the District Court such Magistrate may issue the said order.

(4) An order shall only be made if such Supreme Court Judge, District Court Judge or Magistrate is satisfied that because of the gravity of the offence it is desirable to issue an order and that he is convinced that the normal methods of investigation have failed or that it is reasonable to believe that normal investigations would be unlikely to succeed.

(5) Any order made under subsection one, two, or three of this section shall not be called into question or challenged as to its validity on the grounds that there was available a Judge of the Supreme Court to give such authorisation where the authorisation was given by a District Court Judge or there was available either a Judge of the Supreme Court or a Judge of the District Court in the case where the authorisation was given by a Magistrate.

May I say why I feel that the police should not have authority to use these devices? To establish my consistency of attitude on this matter over a long period of years I shall tell members about two instances that occurred under two commissioners of police, for both of whom I had the highest regard. First was Commissioner W. J. McKay, who approached the Government to have a legal officer attached to the Police Department to whom the police could direct their doubts on their powers or to have the law interpreted. Both former commissioners have

since died, but I have no doubt that the records of the Police Department will contain references to the matters I am mentioning.

For years I have felt that in a democracy someone should stand between the police and the citizen. I regard a policeman as a zealous, dedicated officer who is principally concerned with bringing an offender or a criminal to justice. Like many of us in our various professions, he becomes obsessed with this idea, and he does not realize, like an outsider does, that occasionally he infringes the liberty of the individual. When this request was made by Commissioner McKay I strongly urged the government of the day not to agree to his request. I felt that if there was any doubt about the rights of the police as against those of the citizen, the matter should be determined by someone divorced from the police force. Therefore, I refused to support the request and I was successful in inducing the Government not to agree to it.

Years later, and no doubt this is also recorded on the files of the Police Department, Commissioner Colin Delaney made a similar application. I had a long association with Commissioner Delaney, dating from the time when he was a detective. I had the highest personal regard for him, and over a long period I considered him to be a personal friend. He expressed dissatisfaction with the speed with which he was able to obtain advice from the Crown Solicitor on matters about which police had doubts on their legal powers and authorities. Following his submission an arrangement was made for a highly qualified officer experienced in the criminal law to be available in the Crown Solicitor's office for this purpose. I would have trusted Colin Delaney with my life and many members on both sides of this Chamber know of my great personal relationship with him.

I felt that it is not fair to the police to require them to determine things of this sort. There is a conflict of their desire and duty and their purpose in life of bringing offenders to book. In these circumstances they might not appreciate the consequences that would flow from the things that they do. They would feel quite rightly—and I do not make any criticism of it—that the thing to do is at all costs to get the offender. I have always felt that in any democracy there must be someone between the police force and the people. For this reason, I hope that no government ever does what I felt should not be done then.

If the police want legal advice on the extent of their powers they should go to some highly qualified officer of the Crown, such as a legal officer in the Crown Law Department, or the Solicitor General, in cases that are particularly involved. That legal officer can look at the problem and see the necessity to get the offender but at the same time he will see the undesirability of prejudicing any of the liberties of the private citizen. I do not like the police having their own legal officer or legal section, just as I do not like this authority vested in the police by this bill. I do not think any lawyer in this Chamber would disagree with the view that, when the police have doubt about the extent of their power —they know their ordinary powers and authorities in most matters—they should seek assistance as I have outlined.

I know in Britain the duty of authorization devolves upon the Home Secretary, and I should have preferred that sort of provision to the one in this bill. I should have preferred that the authority should be given to the Attorney-General to its being given to the Commissioner of Police. The Attorney-General, who is responsible in Parliament to the people, would examine the question from the point of view of the citizen. If he authorized use in circumstances where the general public objected to use, the Attorney-General could be brought to the bar of public opinion. When authority is given to the Commissioner of Police or assistant commissioners of police it is given to men who are dedicated to using their authority for the purpose of carrying out their work and getting results by way of convicting the offender. In many instances these police officers would not realize the consequences of their infringement of the liberty of the citizen. This is my purpose in saying that this clause should not be agreed to and that the amendment that I have suggested should be inserted.

I do not want any member to say that I do not believe that the intention behind this bill is good. If I have been understood to criticize the Government for bringing in this bill, let me say that that is the last thing I want to do. I believe in the prohibition of these devices. It was my wish in my second-reading speech to make it as clear as possible to all honourable members that I supported the banning of listening devices. I do not want to allow these things to be abused. I do not want to repeat what I have said, but my point is that we must consider not what the best policeman can do, but what the worst policeman can do. I know that the prescribed officer must authorize the use of these devices, but in all cases in which the police are given excessive powers, the authorizing of those powers should lie not with the Commissioner of Police but with some other authority removed from the police.

The Hon. J. B. M. FULLER (Minister for Decentralisation and Development and Vice-President of the Executive Council) [8.35]: This clause is one of the two issues I mentioned earlier on which the Opposition and the Government differ. Subclause (5) of the Hon. R. R. Downing's proposed amendment says that any order made under subclauses one, two, or three of the clause shall not be called into question or be challenged as to its validity, and so on. I think this destroys the purpose of his clause.

The Hon. R. R. DOWNING: Only on one ground.

The Hon. J. B. M. FULLER: The Hon. R. R. Downing has not made that clear to me.

The Hon. R. R. DOWNING: That he should have gone to a judge of the Supreme Court, but went to a district court judge.

The Hon. J. B. M. FULLER: On reading it, that is not clear to me. Surely a magistrate could be encouraged to give an authority—forgetting about the other angle for the moment. Who is to question the magistrate if he gives an authority because he has been persuaded to do so by, say, the over-zealous policeman to whom the Hon. R. R. Downing referred earlier? Let us suppose that, in effect, one of the black sheep has persuaded a magistrate that there is good cause to issue an authority. There would be, under the amendment, no check on the magistrate.

The Hon. R. R. DOWNING: There must still be a report to the Attorney-General within the specified time.

The Hon. J. B. M. FULLER: My point is that the system incorporated in the bill gives authority to a limited number of people, who will act on the guidelines laid down by the Attorney-General. In fact tonight I have given a guarantee, at the suggestion of the Leader of the Opposition, that I will discuss guidelines with the Attorney-General.

The Hon. J. J. MALONEY: Will they be laid down in regulations?

The Hon. J. B. M. FULLER: The Hon. R. R. Downing made his suggestion in all good faith. I have given my assurance that I will discuss this with the Attorney-General. This bill contains the system that we suggest should operate in this State. We shall not have hundreds of magistrates making decisions without close adherence to the guidelines that the Attorney-General feels should be laid down for authorization. I think the Hon. R. R. Downing would not gain anything from his amendment. The overzealous policeman can present an overwhelming case to a judge or a magistrate for authorization. Then, where would we be?

Under the Hon. R. R. Downing's proposed amendment it would be a lot easier to get an authorization for the use of a listening device. I suggest that the Government's proposal is a much tighter and more effectively policed system, and as the Leader of the Opposition wants someone to act as a buffer between the police and the community, he will have the Attorney-General, who will have laid down the guidelines. The Attorney-General has the ministerial responsibility and can be criticized in this Chamber for allowing the Commissioner of Police to issue particular types of authorization. I think the bill comes

back to the sort of ministerial responsibility for which so many honourable members have been asking for a long while.

Question—That the clause stand—put.

The Committee divided:

AYES, 26

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|---|---|
| Mr Ahern | Mr Manyweathers |
| Mr C. J. Cahill | Mr O'Connell |
| Major-General Eskell | Mr Packer |
| Mr Evans | Mr Patterson |
| Mr Falkiner | Mrs Press |
| Mr Fuller | Mr Riley |
| Mrs Furley | Mr Shipton |
| Mr Gardiner | Mr Solomons |
| Mr Gleeson | Mr Spicer |
| Mr Hewitt | Mr Vickery |
| Mr Asher Joel | |
| Mr Keighley | *Tellers,* |
| Mr Kenny | Dr de Bryon-Faes |
| Mr McIntosh | Mrs Davis |

NOES, 21

| | |
|---|---|
| Mr Alam | Mr Murray |
| Mr Bowen | Mr Peters |
| Mr C. A. F. Cahill | Mrs Roper |
| Mr Colborne | Mrs Rygate |
| Mr Coulter | Mr Sutherland |
| Mr Dalton | Mr Thom |
| Mr Downing | Mr Weir |
| Mr Geraghty | Mr Wright |
| Mr Gordon | *Tellers,* |
| Mr McPherson | Mr J. E. Cahill |
| Mr Maloney | Mr Cockerill |

Question so resolved in the affirmative.

Clause agreed to.

ADOPTION OF REPORT

Bill reported from Committee without amendment, and report adopted, on motions by the Hon. J. B. M. Fuller.

THIRD READING

Bill read a third time, and returned to the Legislative Assembly, on motions by the Hon. J. B. M. Fuller.

## SOLICITOR GENERAL BILL

SECOND READING

The Hon. J. B. M. FULLER (Minister for Decentralisation and Development and Vice-President of the Executive Council) [8.47]: I move:

That this bill be now read a second time.

When regard is had to the long title of the bill, I am sure the Hon. R. R. Downing, a former Attorney-General, will bear with me while I put before the House a brief resumé of the "powers, authorities, duties and functions incident to the office of the Attorney-General". Since 1856, when responsible government took office in New South Wales, the Attorney-General has invariably been a member of Cabinet. He is the person who normally acts for or represents the Queen in litigation in this State.

In addition to powers specifically conferred by statute or otherwise, the Attorney-General has the right and duty of doing all acts done by usage or custom by the Attorney-General in England in 1824, the date of appointment of the first Attorney-General of New South Wales. By statute a number of offences require the Attorney-General's consent before proceedings may be commenced or appeals undertaken—for example, under the Crimes Act in respect of incest, false statements regarding births, deaths, and the like; under the Secret Commissions Prohibition Act; under the Criminal Appeal Act on reservation of question of law after acquittal; and under the Justices Act, requiring justices to state a case—a request which cannot be refused. The Attorney-General has also certain statutory powers, not inherent in the office of Attorney-General, which he has as Minister for the time being administering an Act. The Companies Act is one of these.

It is customary, though not required by statute, to refer for the Attorney-General's consideration other types of criminal prosecutions before they are instituted—for example, prosecutions for conspiracies, bigamy, public mischief, and offences by public servants in the course of their duty. His general administrative functions involve being responsible for and exercising supervision over the workings of law in this State. In addition to his responsibilities in administering Acts of Parliament included in his portfolio, these being well known to honourable members, the Attorney-General is charged with the protection of charities of a public nature, of children and incompetent persons. It is his duty also to act in a number of ways in protection of the public interest—for example, the proper execution of charitable trusts: when public rights are threatened

or imperilled he is the person to move the courts, usually on the representation of members of the public affected.

The Attorney-General supervises and directs the Crown Solicitor on Crown intervention in proper cases in matrimonial suits. He is the legal adviser to the Government and in this capacity advises the Governor whether bills passed by both Houses of Parliament may properly be signed by the Governor or whether they should be reserved for Royal assent, as required in some instances. Against this background, honourable members might approach the present measure. It has a twofold purpose. The first is to give statutory recognition to the office of the Solicitor General. The second is to permit certain of the powers, authorities, duties and functions of the Attorney-General to be exercised or performed by the Solicitor General in certain circumstances.

These circumstances are, in brief, where the Attorney-General has formally delegated the exercise or discharge of such matters to the Solicitor General—in which case the Attorney-General is in no way proscribed from continuing to deal with such matters—and where the Attorney-General, for one cause or another, is absent from the State or by reason of illness unable to discharge his powers, authorities, duties, and functions. It will be noted, also, that the Solicitor General may act, without the need for express delegation, where the office of Attorney-General is vacant. As regards delegated powers, it is particularly to be noted that the delegation may be made subject to any conditions or limitations imposed therein. The Attorney-General desires it to be known, and gives the unqualified assurance, that a copy of any instrument of delegation will be tabled in each House of parliament for the information of honourable members.

The Hon. R. R. DOWNING: That was not said in another place.

The Hon. J. B. M. FULLER: No. It is being said here. This procedure is considered desirable not only as a means of ensuring that Parliament is fully apprised of the type of matter which may be determined by the Solicitor General when occasion so requires, but also as permitting of evidentiary proof being readily available as to the authority under which the Solicitor General may have purported to act. Public notice will also be provided of any conditions or limitations imposed in the instrument of delegation.

I do not think I need emphasize the need for this legislation. With the passage of time, and the continual increase in Crown litigation, involving frequently constitutional issues of the utmost importance to the State, the need for the uninterrupted performance and discharge of the functions of the Attorney-General, as I have briefly outlined them, is abundantly clear. Unlike other portfolios, there can be no acting Attorney-General, and, indeed, the Solicitor General, historically, owes his existence to the circumstances with which I am now dealing. Illness and absence from the State are prime factors in causing the smooth flow of government to be impeded. The Hon. R. R. Downing will undoubtedly recall occasions when he would have been assisted by the present bill. Unless for the purposes of reply, therefore, I do not propose to delay the House further by expounding the obvious.

Honourable members will note that the bill has been drafted so as to make the Solicitor General's powers during absence or illness of the Attorney-General, and those delegated by the Attorney-General, mutually exclusive. It may frequently happen that the Solicitor General is exercising delegated powers, and that a situation arises whereby he is vested with powers to act in place of the Attorney-General during absence or illness. The bill will permit the plenary exercise of powers by the Solicitor General without any limitations which may have applied under the delegation. I emphasize also that the common law powers of the Solicitor General are expressly preserved.

In this age of delegation of authority, I should not wish honourable members to evaluate the measure as a mere administrative device. It goes far beyond that. It is designed to overcome specific problems which arise not infrequently, and is in no way inhibiting what must be regarded as

one of the prime responsibilities of ministerial office—a responsibility to Parliament. Ministerial responsibility is the keynote of government and will continue under the bill. I commend the measure to the House.

The Hon. R. R. DOWNING (Leader of the Opposition) [8.55]: The necessity for the comments I intended to make on this bill has been taken away by the fact that the Minister has said that the Attorney-General will table in Parliament a copy of each of his delegations. The matters delegated by the Attorney-General should be severely restricted. I say that despite the fact that I have the highest regard for the present Solicitor General, Mr Harold Snelling. I worked with Mr Snelling for many years and I knew him when he was a member of the bar before his appointment as Solicitor General. I have always believed that ministerial responsibility is the bulwark of democracy. The Attorney-General should take ministerial responsibility for and not delegate to the Solicitor General, such matters as prosecutions under the Secret Commissions Prohibition Act, prosecutions under the Crimes Act for false statements in regard to births, deaths and marriages, prosecutions for the offence of incest, appeals against the severity of sentences, and *ex officio* indictments.

While I was Attorney-General I accepted responsibility in the matters I have mentioned, but I would be the first to admit that in almost every instance I had the invaluable advice of the Solicitor General. However, that advice did not lessen my responsibility for the decisions made. When the present prison parole board was appointed and the Minister's approval of that board's recommendations was not required, I said I thought that was wrong. The Attorney-General alone should exercise his powers and delegations should be made only in the circumstances mentioned in another place.

At present the Attorney-General has to be out of the State before the Solicitor General may exercise these powers. The Attorney-General might be at Nyngan or Bourke, touring the State, or perhaps absent in the course of an election campaign, and those are proper occasions for delegation. However, the delegation of power should be limited as much as possible and only for urgent matters.

On many occasions the occupant of the office of Solicitor General has been a political appointment. I first started to take an interest in politics when I was about 17 or 18 years of age and, like many young people today, I thought I knew most of what was to be known about politics. At that time the Solicitor General of this State was a political appointment. He was Mr Bob Sproule, I think a member of this House, who was a partner in the firm of R. D. Meagher and Sproule. Honourable members who have taken an interest in politics will know who R. D. Meagher was.

Looking back briefly I notice that in 1902 Mr V. R. Wise was Attorney-General, Minister of Justice and Solicitor General. When Mr Holman was Premier in 1913, Mr D. R. Hall was Minister of Justice and Solicitor General. Later, in 1917, when Mr D. R. Hall was Attorney-General, the Hon. J. J. Garland was Minister of Justice and Solicitor General. In those days the office in the service was Assistant Law Officer. In 1920 Mr J. D. Fitzgerald was Solicitor General and, as I have said, Mr Sproule was the Solicitor General in 1921. Those were the last occasions on which a member of either House was the Solicitor General, and I think the general practice was that the holder of this office was a member of this Chamber, although there were instances when the position was occupied by a member of another place.

I am unhappy that the provision for delegation is too wide and extends to too many matters. I am not referring particularly to the Hon. K. M. McCaw, but I am suggesting that an Attorney-General in future might be able to say: "I will look into that. It was not dealt with by me but by the Solicitor General." That excuse should not be available, and I get great comfort from the Minister's statement that the terms of the delegation and matters delegated will be tabled in both Houses of Parliament.

I have a note here of some of the matters that are dealt with by the Attorney-General. For instance, there is contempt of court

and advising the Governor, especially in respect of bills that are reserved for Her Majesty's assent. I have never taken the view that section 36 of the Constitution prevented another Minister from consenting to prosecutions under the Companies Act, which merely uses the word "the Minister". I have always held the view that only where the Attorney-General is specifically nominated has he alone the power to act in these matters. Section 36 of the Constitution Act says, in effect, that one Minister may do anything for another Minister except where the Attorney-General is specifically mentioned.

To effect what is sought in the bill there appear to be two alternatives: to amend section 36 of the Constitution or, alternatively, to introduce a bill of this kind. I believe that an amendment to section 36 of the Constitution to bring about this result would not require a referendum. I am not sure that an amendment to the Constitution, empowering the Minister of Justice to act, would not have been the better course to take, but that is a matter of opinion, I suppose. I should have pressed for the adoption of such a course had the Minister not stated that the delegation would be strictly limited and subject to the scrutiny of Parliament.

I wish to pay a tribute to the present Solicitor General, Mr Harold Snelling, Q.C., whom I knew as a member of the bar and with whom I had first-hand dealings for some years. I know how dedicated he is to his office. I have the greatest admiration for Harold Snelling's broadness of vision and for the decisions he makes when submitting recommendations on difficult matters relating to the filing and non-filing of bills. Mr Harold Snelling always looks at matters objectively and, as a lawyer should, on strict legal grounds. Whatever the offence and whatever the public emotions might be, I was always satisfied that he examined the matter and made his recommendations based on the facts that were before him. When I was Attorney-General there were occasions when there was criticism concerning the Crown not deciding to proceed with prosecutions, but I always felt content to defend these decisions as my decisions, knowing that I had the strength of Mr Harold Snelling's advice and opinions to back me up.

Anything that I might have said in this debate must not in any way be taken as a criticism of Mr Harold Snelling, for I would hate it to be thought that I had anything but the highest regard for his capacity and integrity. However, I am a great believer in ministerial responsibility, and I believe that on only few occasions should anything be done that would in any way detract from the responsibility of a Minister of the Parliament.

The Hon. H. D. AHERN [9.8]: I am not nearly so enthusiastic as the Minister about this bill. My objection to it is that it is a further challenge to ministerial responsibility, and I believe that the concluding paragraph of the Minister's second-reading speech confuses the issue or indicates a different understanding of ministerial responsibility from the understanding that I have. That is where responsibility stops—with the Minister, through parliament, not with the executive, through the Minister.

It seems to me that the bill has been altered, since it was originally drafted, to provide for a reference of all delegations to both Houses of Parliament. I do not believe that this reference to both Houses of Parliament is nearly as effective as it is claimed to be. These days many regulations and other papers are being tabled. They are coming forward in such great numbers that the reference to Parliament is becoming somewhat an easy way out to avoid the responsibilities of Parliament and ministerial responsibilities. In introducing this thought I realize that I might be subject to criticism, but I believe that the time is coming when the safeguards involved in submitting regulations and laying them on the table will not be as effective as they used to be.

This situation is largely brought about by the number of regulations that are laid upon the table of the House. This Chamber is able to take credit for introducing the Committee on Subordinate Legislation, which was brought before this House by His Honour Mr Justice Begg when he was a member of this Chamber. He recognized the problem of the dangers of executive

government. I believe that these problems are becoming more and more real, and they are by no means being overcome by suggesting that copies of all delegations be presented to this Chamber. It is a nice way of getting around the situation. The problem would be better overcome by amending the Constitution Act. Although the Hon. R. R. Downing has great experience in the law I am willing to go out on a limb and recommend that the better course to follow would be to amend the Constitution Act.

I regard this provision of reference to Parliament as a challenge to the fundamental principles of ministerial responsibility. The Government would have been well advised, and it would have shown much greater sincerity in its statements on ministerial responsibility, if it had adopted the obvious and simple method of amending section 36 of the Constitution Act. The fact that members of this Parliament have been asked to agree to a delegation of authority to the executive in so many amending bills brought before the Parliament of New South Wales may indicate a return to the "new despotism", as administrative government was described by Lord Hewitt, Chief Justice of England, in the early 1930s.

The Hon. C. A. F. CAHILL [9.11]: I see no particular reason why the office of Solicitor General should not be recognized by statute. Also, I see no particularly good reason why it should be so recognized. As I am in a state of even balance on that aspect of the bill, I have nothing further to say on it. Clause 3 of the bill provides for the Solicitor General to carry out such duties and functions as the Attorney-General may direct. As that is what now happens, I see nothing objectionable in that provision. Indeed, it is quite reasonable to provide in clause 3 (1) (b) that when the Attorney-General is absent from the State or the office is vacant, the Solicitor General by statute should exercise his powers and functions. However, it is in respect of clause 4 that I, like the Hon. R. R. Downing and the Hon. H. D. Ahern, have some serious doubts. Naturally I am willing to accept the Minister's undertaking that all such delegations will be tabled in the House.

Like the Hon. H. D. Ahern, I do not favour the power of delegation except for specific reasons. The functions and the powers of the Attorney-General are most important and to provide in this bill that he may delegate any or all of those powers to the Solicitor General is indeed difficult to follow. Clause 4 does not give any reasons why the Attorney-General may delegate at will any or all of his important powers and functions for which, as the Hon. H. D. Ahern pointed out, he must accept ministerial responsibility. To provide for the Solicitor General to exercise those functions during illness or absence abroad or, if you like, even absence in the country, is not objectionable, but to be able to delegate these important powers at will without specifying any reason for it is, or could be, a negation of ministerial responsibility.

Without doubting in the slightest the assurance given by the Minister, I think it is much more desirable for matters like this to be dealt with by statute. For example, provision could easily be made for the power of delegation by way of regulation or proclamation, with the normal requirement that such proclamation shall be tabled in this Parliament and may be disallowed by either House. I am not suggesting that the Attorney-General would do it, but he may delegate his powers for inadequate reasons. Therefore, if there is to be any delegation of those powers at any time, it is important that the reason for the delegation should be stated in the instrument of delegation. It must be a good, acceptable reason. An amendment could be moved to the effect that such delegation would have to be made by way of proclamation or regulation and that the instrument should set out the reason for the delegation, with parliament having its usual powers in relation to the tabling of such a document, that of the right to disallow by either House of Parliament. The Minister's assurance does not go that far.

The Hon. J. B. M. FULLER: The House might not sit for four or five months.

The Hon. C. A. F. CAHILL: There could be problems like that, but the Government dealt with a similar situation in the

last bill debated in this Chamber, which provided that the instrument should not operate until the time for disallowance passed. Usually any rule or proclamation operates from the date of gazettal, unless specifically provided otherwise, and it can be disallowed later. However it is done, what the Minister has undertaken to do is to table the instrument of delegation. In the absence of an amendment to provide for disallowance, I would seek the Minister's assurance that if it is to be done at any time it should only be done for special and good reason, and the reason for such delegation of powers should appear in the instrument when it is laid on the table of the House. Even if it cannot be disallowed, at least it can then be criticized. Although I do not oppose the bill in principle, I oppose this aspect of it because the power of delegation is much too wide and permits the Attorney-General, on the face of it, to delegate any or all of his powers without giving any reason for doing so.

The Hon. B. B. RILEY [9.20]: I should have thought that perhaps the Hon. H. D. Ahern and the Hon. C. A. F. Cahill are worrying unduly about delegation by the Attorney-General to the Solicitor General. I should have thought also that the Attorney-General will still be responsible ministerially, first for the fact that he had delegated, and second, for what was done by his delegate, the Solicitor General. I myself should have thought that ministerial responsibility was still fully operative in these conditions. In considering the alternatives of delegation, on the one hand, or regula- or proclamation on the other, I would suggest that the latter alternative mentioned by the Hon. C. A. F. Cahill would be extremely cumbersome and indeed unworkable when all that was needed was a temporary delegation for the reason, for instance, that the Attorney-General would be distant within the State but not outside the State, so that some powers of his should conveniently be exercised by the Solicitor General for a short time.

The Hon. J. B. M. FULLER (Minister for Decentralisation and Development and Vice-President of the Executive Council) [9.22], in reply: I thank the Hon. B. B. Riley for straightening out the impression that I had tried to give in dealing with the ministerial responsibility of the Attorney-General. I think it is accepted that responsibility for delegation of authority rests upon the Attorney-General, who is responsible also for the acts of his delegate. There is no doubt in my mind on that aspect. We ought to look briefly at the points raised about the extent of delegation. I have here an Executive Council minute signed by the Hon. W. F. Sheahan on 18th August, 1953, authorizing the appointment of Mr Snelling. It says that the Solicitor General is authorized to exercise all the powers, authorities, duties and functions of Her Majesty's Attorney-General when the office of the Attorney-General is vacant, when the Attorney-General is absent from the State, or when the Attorney-General is, by reason of illness, unable to exercise those powers. This means that the Solicitor General has no authority to act when the Attorney-General is in transit within the State and out of touch with his office, and cannot be communicated with without undue delay. Often, of course, this means that the problem of communicating with him would be much greater than it would be if he were interstate or even overseas. Even when the Attorney-General is outside the State the Solicitor General cannot act in place of the Attorney-General on urgent prosecutions in company frauds, or crimes of incest or secret commissions, though he can already act in a vast number of other matters that possibly are not less important. A great variety of administrative acts, not involving matters of policy, cannot be performed either under the existing authority. Formal matters under the Companies Act requiring the Attorney-General's assent, late filing of documents, or things like that, can be delayed by reason of the unavailability of the Attorney-General. There is the instance of last minute changes of court sittings, which may cause serious inconvenience to jurors, litigants and witnesses, especially in country areas. If Executive Council minutes are delayed because the Attorney-General is not available to sign them, a great deal of inconvenience may be caused to members of

the public. This bill will remove situations of this sort that prejudice the public interest and on occasions even the civil liberties of people. The provision has no other purpose. The concept of ministerial responsibility is in no way impaired by the bill. As I have said before, the Attorney-General is responsible for the delegation and is responsible for the acts of the Solicitor General under delegated powers.

Motion agreed to.

Bill read a second time.

IN COMMITTEE

Clause 2

Page 3

(7) The person holding the office of Solicitor General at the commencement of this Act shall be deemed to have been appointed by the Governor under this Act, and shall, subject to subsection three of this section and notwithstanding subsections four and five of this section, continue to hold that office on the terms and conditions he held the same immediately before such commencement.

The Hon. B. B. RILEY [9.25]: The end of clause 2 (7) is ungrammatical and meaningless as it stands. I move:

That at page 3, line 18, the words "he held the same" be omitted and there be inserted in lieu thereof the words "on which he held it".

Unless my amendment is agreed to, the provision will read:

The person holding the office of Solicitor General . . . shall . . . continue to hold that office on the terms and conditions he held the same immediately before such commencement.

This does not make sense.

The Hon. J. B. M. FULLER (Minister for Decentralisation and Development and Vice-President of the Executive Council) [9.26]: The honourable member's amendment appears to improve the wording of the bill and, on the face of it, I see no objection to accepting his suggestion.

The Hon. C. A. F. CAHILL [9.27]: I agree with the proposed amendment, which I think, would improve the bill.

Amendment agreed to.

Clause as amended agreed to.

ADOPTION OF REPORT

Bill reported from Committee with an amendment, and report adopted, on motions by the Hon. J. B. M. Fuller.

## GENERAL LOAN ACCOUNT APPROPRIATION BILL

SECOND READING

The Hon. J. B. M. FULLER (Minister for Decentralisation and Development and Vice-President of the Executive Council) [9.30]: I move:

That this bill be now read a second time.

The bill provides for the appropriation of an amount of $245,428,000 from the General Loan Account for the various works and services included in the State's public works programme. This amount has been arrived at after taking into account balances of appropriation on previous years' votes which had not lapsed at 30th June last, and after allowing for appropriations required to cover loan expenditure during the first few months of next financial year, pending the passing of the General Loan Account Appropriation Bill for 1970–71.

The bill provides also for the transfer of $3,600,000 from General Loan Account to Consolidated Revenue Fund in reduction of part of the accumulated deficit in that fund at 30th June, 1969. Loan expenditure on public works and services is expected to total $233,379,200 this financial year and will be financed mainly from the State's loan allocation for these works which was determined at $194,590,000 at the June, 1969, meeting of the Australian Loan Council. Finance will also be available from Commonwealth payments for a number of specific purposes and from repayments to the General Loan Account arising from expenditures in previous years.

In addition to these allocations for general works, an amount of $46,500,000 will be available this year for housing in New South Wales under the Commonwealth-State Housing Agreement. Of this sum, 70 per cent or $32,550,000 is for the Housing Commission of New South Wales

and the remaining 30 per cent, that is $13,950,000, will be transferred to the Home Builders' Account for advances to co-operative building societies.

The Australian Loan Council determines the limits within which the State's semi-government and local authorities may borrow directly on their own behalf. As in recent years, no total limit has been placed on borrowings by bodies each raising $300,000 or less in a year. The larger local and semi-government authorities have borrowing programmes in excess of this figure and the loans they raise are chargeable against the semi-government borrowing allocation, which has been determined at $118,640,000 for New South Wales this year. This includes a further special increase of $2,000,000 for New South Wales which will also count for formula purposes in future years, thus permanently improving our share of the total semi-government allocation.

Although the allocation for general public works represents an increase of $12,520,000 over last year. I have already mentioned that $3,600,000 of this sum has been set aside to strengthen the Consolidated Revenue Fund by funding last year's deficit. The State has incurred deficits in four of the past five financial years and at 30th June last the Consolidated Revenue Fund was in overdraft to the extent of $13,600,000. Though the heavy wage increases granted by the courts in these years, the widespread effects of the drought and rising costs generally, have contributed to this position, much of the cause has been the unsatisfactory situation existing in the field of Commonwealth-State financial relationships. This aspect was dealt with by the Premier and Treasurer in his Budget Speech and I am sure honourable members will have carefully noted his comments on this important matter.

The Government's capital works programme has been drawn up so as to ensure that the most effective use is made of the funds available. I do not propose to cover the programme in detail as honourable members have already had the opportunity to study the comprehensive review given by the Premier and Treasurer in his printed Loan Speech. However, I should like to refer to some of the important works provided for. Education again features prominently in the distribution of funds. We live in an increasingly complex world and our young people, who hold the key to our future development as a nation, must have a sound, well rounded education to fit them for modern living.

A total of $71,005,000 has been allocated for the further development of the State's education services at all levels. This includes $53,571,000 for new buildings and facilities at primary and secondary schools and at teachers' colleges. With the growth of science and technology, there is a steadily growing demand for tertiary education in its various forms and an amount of $10,920,000 has been set aside for expenditure on technical and advanced education projects. A further $6,514,000 has been provided towards the building programmes of the State's five universities and this will attract an equal amount from the Commonwealth under the usual matching grant arrangements. Provision has also been made on the Loan Estimates of the Minister for Agriculture for advanced education and other capital projects at agricultural colleges.

Another area of State responsibility having special community significance is health and hospital services. Capital expenditure on these services was increased substantially in 1968–69 and has been further increased this financial year to a total of $27,685,000. This is roundly $1,000,000 more than last year's expenditure and includes $20,814,000 for further expenditure on the large and costly programme of works which the Government is undertaking at public hospitals, including the teaching hospitals associated with the University of Sydney and the University of New South Wales. Under the scheme introduced two years ago $3,250,000 of this amount will be raised by way of Government-guaranteed borrowings.

Since the Government took office in 1965 special efforts have been made to reduce the large backlog of water supply and sewerage works in both the metropolitan and country areas. Substantial increases in the funds allocated for payment of subsidies

to local authorities have enabled the waiting time for subsidy to be halved. This year's allocation of $5,000,000 provides for further progress under this scheme and will, of course, be augmented from direct borrowings by councils to meet their share of the cost of approved works. The high level of growth and development in the Sydney, Newcastle and Wollongong areas is being reflected in a continuing heavy demand for water supply and sewerage services and both the metropolitan and Hunter district water boards plan record expenditures this year.

The demand for electricity also continues to rise sharply and the Electricity Commission expects to spend a further $95,000,000 on the development and expansion of the State's power generation and distribution system. This large expenditure will be financed from the commission's loan allocation, direct borrowings and internal resources.

Another important section of the programme deals with public transport. The allocation of $24,000,000 for the Department of Railways will be supplemented by a further $16,800,000 available from the Government Railways Renewals Fund, making a total of $40,800,000. Expenditure on the eastern suburbs railway is estimated at $8,127,000, and a further $3,759,000 has been included for the completion of the upgrading of the Parkes-Broken Hill railway line. This is an important section of the Sydney to Perth standard gauge railway and history will be made when the first transcontinental trains run early in 1970. Work has begun on the new high level bridge over the George's River at Como and considerable progress will be made on this important project this year. Provision has been made also for the expenditure of a further $16,000,000 on new locomotives and passenger and goods rolling stock as part of the department's modernization programme.

The Department of Government Transport is increasing its fleet of modern buses and by the end of this financial year 337 new vehicles will have been brought into service out of a total of 632 buses being supplied under contracts let by the department. Expenditure on new buses and associated depot accommodation will total $1,665,000 this year.

Expenditure on the development and improvement of the State's ports is expected to reach just under $23,000,000. The Maritime Services Board will spend $16,600,000 from loan and renewals funds on works in the ports of Sydney, Newcastle and Botany Bay, while a further $6,390,000 will be available for port works financed from the loan allocation of the Minister for Public Works. This includes provision for further expenditure on the Islands Reclamation Scheme at Newcastle and for harbour deepening works at Port Kembla.

The Department of Main Roads is planning to spend $119,100,000 on main road and bridge works. This includes the funds available under the new Commonwealth Aid Roads arrangements which commenced on 1st July last. Major improvements to the State's roads system will flow from this large programme of works.

The Loan Estimates again provide for a contribution of $2,000,000 to the Country Industries Assistance Fund. This is additional to the amount of $2,000,000 recently appropriated for the fund from consolidated revenue and will enable further progress to be made with the Government's policy of promoting the decentralization of industries to country areas.

Finally, I should like to refer to the provision made for the development and conservation of the State's rural resources. The funds allocated to the Water Conservation and Irrigation Commission have been increased substantially and the allocation of $23,250,000 is an increase of $6,250,000 as compared with last year. This includes provision for further expenditures on the Lostock Dam on the Paterson River, Carcoar Dam on the Belubula River, Toonumbar Dam on the Richmond River and Copeton Dam on the Gwydir River. The Commonwealth has agreed to provide $20,000,000 towards the construction of the Copeton Dam, which is estimated to cost $45,000,000.

The allocations for river and foreshore improvements include provision for further State expenditures on flood mitigation

works. The arrangement under which Commonwealth assistance has been available towards a number of approved schemes ended on 30th June last, and an approach has been made to the Prime Minister seeking Commonwealth participation in a new scheme of flood mitigation works to cost in the vicinity of $22,000,000.

The allocation to the Forestry Commission has been increased by $700,000 to $4,300,000 to enable sufficient softwood areas to be planted to take full advantage of the assistance under the Commonwealth Softwood Forestry Agreements Act. The area to be planted this year is a record 20,500 acres which is almost treble the comparable figure for 1965.

A further $11,000,000 will be available to the Grain Elevators Board this year from loan funds and direct borrowings. Special funds are also available from the Australian Wheat Board for emergency storage and every effort has been made to ensure that the maximum storage practicable is available to handle the current year's crop.

What I have said gives only a broad outline of the Government's capital works programme and there are many important works that I have not mentioned. As I stated earlier, more details of the programme are given in the printed speech of the Premier and Treasurer, copies of which are available to honourable members. However, should honourable members desire additional information regarding any particular item, I shall do my best to supply it later in the debate. While more could be done if funds were available, the programme embodied in the Loan Estimates is a sound and practical one which provides for further progress in the development of the State's resources and community services. I commend the bill to the House.

The Hon. R. R. DOWNING (Leader of the Opposition) [9.45]: My remarks on the bill will be brief. I have no doubt that the Government regrets that the limited amount of $3,600,000 is available out of loan funds to finance the accumulated deficits over the last four years of $13,600,000. I have said previously that it would be hard to beat the record of a deficit for four years out of the five that the Government has been in office, with a surplus in one year only. It is to be regretted that this $3,600,000 is to be taken out of the money normally available for capital works. The $3,600,000 is in addition to some other amounts, which I referred to on another occasion, that were put towards the general revenue account instead of into loan expenditure. There was an amount for the sale of the Oakdale State Mine that should have been available for capital expenditure, not to finance deficits. Selling capital assets to live on the proceeds is bad financing. In addition to the $3,600,000 deficit there was that $5,000,000 obtained last year from the sale of the Oakdale State Mine which went into revenue funds.

The Commonwealth Government can be most justifiably criticized for its allocation to the States of loan funds. In his Financial Statement the Premier and Treasurer said that the Commonwealth this year has budgeted for a deficit of $30,000,000 but included in its expenditure is an amount of $758,000,000 that it is lending to the States. Therefore the fact is that the Commonwealth will have a surplus of $728,000,000. This $758,000,000 is not money that it will spend for revenue purposes—it is money that it will lend out at interest rates to the States. The total sum that is available this year from the Australian Loan Council is not the amount that is set out in the bill. This bill incorporates the sums unexpended on last year's appropriation, but I think the Minister mentioned the amount of $194,000,000 as the Loan Council allocation this year. That means that the Government of New South Wales has been given out of that $758,000,000 a sum of $194,000,000 to spend on capital works in this State. That money has come to New South Wales as a loan to be repaid with interest, but was derived from revenue that the Commonwealth has collected from the taxpayers.

This disparity is one of the crucial matters in Commonwealth-State relations. I have given the figures for State debts and Commonwealth debts on another occasion and I do not propose to repeat them. It will be found that the Commonwealth debt

has decreased considerably since the end of the war and the debts of the States have increased out of all proportion. The Commonwealth's debt has been repaid, but the States' debts have increased because the Commonwealth has lent them money out of revenue. Something must be done about Commonwealth-State relations. The practice of the Commonwealth's raising money by taxation and lending it to the States plus interest is the worst possible feature of the present Commonwealth-State relations.

The Hon. F. M. HEWITT: Especially when strings are put on the loans.

The Hon. R. R. DOWNING: The Minister is referring to the special loans. One example of these is Blowering Dam. According to the Commonwealth people, this dam is being built by Commonwealth moneys. The fact is that it is being built by money lent to the State. The Commonwealth said it would give the State some period of deferment for the repayment of the loan, but the State still pays interest on it. That would not be so bad if the money were coming from loan resources of the Commonwealth, such as borrowing under the Financial Agreement by which loans are to be floated for the States only by the Commonwealth, but the great proportion of the money that is lent to the States at interest is money that the Commonwealth has received from taxation.

The Hon. J. B. M. FULLER: It is our money coming back.

The Hon. R. R. DOWNING: It is our money coming back. The Commonwealth did not even give New South Wales in loan funds a proper proportion of the money that New South Wales contributes. New South Wales has approximately 40 per cent of the population and the wealth of Australia, but it did not get 40 per cent of the loan allocations for the year. New South Wales also did not get back the full proportion of revenue.

The Hon. H. D. AHERN: Do you think we ought to secede?

The Hon. R. R. DOWNING: No. Western Australia unsuccessfully suggested that some years ago after a referendum was carried, but I believe that Western Australia would be in a better position to do it now than when the State carried the referendum. At any rate, it is in a stronger financial position to do so. However, this is not a satisfactory state of affairs, and I hope that in addition to seeking increased financial reimbursements to the States—what the Commonwealth now calls assistance—the Premiers in their conference with the Prime Minister today will bring to the notice of the Prime Minister how the Commonwealth lends revenue to the States, and charges them interest. I believe that there should be greater non-repayable allocations to the States.

The Premier mentioned in another place the sum of $758,000,000. Of course, the Commonwealth says that it has a deficit of $30,000,000, but it omits to mention that it has lent $758,000,000 of its revenue at the prevailing rate of interest on government loans. That needs to be given considerable thought, and I believe the whole question of Commonwealth-State financial relations requires close scrutiny, and I believe also that there must be some radical departure from the practice that has existed in the past few years.

The Hon. J. J. MALONEY (Deputy Leader of the Opposition) [9.51]: This debate gives me another opportunity of suggesting that the Government should apologize to the Labor Party for criticising Labor governments over the years when the Government parties were in opposition. During the debate on the Budget I pointed out how responsible Ministers in both Houses have criticized Commonwealth-State financial relations; I now wish to reiterate how the same gentlemen, when in opposition, criticized Labor for attempting to criticize what they then called the best Commonwealth government Australia ever had.

Recently I gave honourable members details of consolidated revenue income and tax reimbursements, which showed that since 1965 the Government, whose members criticized us, have been living in clover. That

applies not only to consolidated revenue income and reimbursement moneys but also to loan allocations to New South Wales. I agree that the allocations are not good enough, and agree that the financial arrangements between the Commonwealth and the States should be reviewed and placed on a more equitable basis. However, I do not agree that we on this side should sit back without commenting when year after year members now on the Government side of the Chamber criticized us for saying exactly the same things as they are saying now.

An examination of loan allocations to this State since 1964 shows how our loan funds have risen each year to the following amounts: $149,000,000, $154,000,000, $162,000,000, $171,000,000, $184,000,000, and this year to $194,000,000. That shows that the Government has consistently received substantially more than Labor received when in office. One can easily say that costs have gone up, but costs were rising during Labor's regime, and they certainly have not risen much more quickly in recent years. Recent increases in loan moneys, revenue and reimbursement grants are much greater than Labor ever had.

I assume that the conference in Canberra is over already, for the participants were expected at a dinner this evening. However, I do not believe that the conference today would have touched on loan allocations or our financial commitments. Apparently it was called to deal with what we might call the turnover tax in the various States. If it is found that all turnover taxes are illegal, as has been found in the Hamersley case in Western Australia, it would be interesting to send to the Prime Minister at the forthcoming meeting between the Commonwealth and the States, the statement that I quoted by the Hon. R. W. Askin when he was Leader of the Opposition and said that if the Government of New South Wales expects to get more money from the Commonwealth Government, it is up to it to show by what means the Commonwealth can increase taxation to get it. I would be interested to hear the Premier and Treasurer telling the Commonwealth Government next week, when the meeting is held on financial relations, where the Commonwealth can increase taxes to get the additional money.

I rose to point out that the Government that is now criticizing the Commonwealth criticized Labor in office for saying exactly the same things. I wish to point out, also, that the present Government is getting a much better financial deal than Labor ever got. Of course, the Government would now be happy if everyone forgot how its members criticized Labor. Indeed, the Government wants the Labor Party now to join it in its criticism of the Commonwealth Government.

Motion agreed to.

Bill read a second time.

COMMITTEE AND ADOPTION OF REPORT

Bill reported from Committee without amendment, and report adopted, on motions by the Hon. J. B. M. Fuller.

House adjourned, on motion by the Hon. J. B. M. Fuller, at 10.2 p.m.

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# Legislative Assembly

*Tuesday, 18 November, 1969*

Bill Returned—Questions without Notice—Department of Mines—Local Government (Further Amendment) Bill—Theatres and Public Halls (Amendment) Bill (second reading)—Land Tax (Amendment) Bill (second reading)—Bill Returned—Superannuation (Amendment) Bill (second reading)—Co-operation (Amendment) Bill (second reading)—Adjournment (Towradgi School).

Mr SPEAKER (THE HON. SIR KEVIN ELLIS) took the chair at 2.30 p.m.

Mr SPEAKER offered the Prayer.

BILL RETURNED

The following bill was returned from the Legislative Council without amendment:

Appropriation Bill