Legislative Council

Tuesday, 31 ***January,*** 1978

Constitution and Parliamentary Electorates and Elections (Amendment) Bill (Free Conference, Report, Message)—Questions without Notice—The Baptist Union Incorporation (Amendment) Bill (second reading)---Oaths (Amendment) Bill (second reading)—District Court (Amendment) Bill (second reading)—Law Reform (Nervous Shock) Amendment Bill (second reading)—Law Reform (Joinder of Actions) Amendment Bill (second reading)—Bankruptcy (Repeal) Bill (second reading)–Gaming and Betting (Greyhound Racing Control Board) Amendment Bill (second reading).

The President took the chair at 2 p.m.

The Prayer was read.

CONSTITUTION AND PARLIAMENTARY ELECTORATES AND ELECTIONS (AMENDMENT) BILL

Free Conference

The PRESIDENT: The time having come for the free conference with the Assembly in reference to the Constitution and Parliamentary Electorates and Elections (Amendment) Bill, I direct the Clerk to call over the names of managers for the Council. Each manager will announce his presence when called.

The Clerk having called the managers and all being present,

The PRESIDENT: The managers will now proceed to the conference room. To suit the convenience of honourable members, I shall leave the chair until 4.30 p.m., sharp, tomorrow.

[The President left the chair at 2.2 p.m.]

Wednesday, 1 ***February,*** 1978

[The House resumed at 4.30 ***p.m.]***

The Hon. Sir JOHN FULLER: Mr President, I desire to report to the House that the managers of the free conference in reference to the Constitution and Parliamentary Electorates and Elections (Amendment) Bill have not yet concluded their deliberations.

The PRESIDENT: To suit the convenience of honourable members, I shall leave the chair until 2.30 p.m., sharp, tomorrow.

[The President left the chair at 4.31 ***p.m.]***

Thursday, 2 February, 1978

[The House resumed at 2.30 p.m.]

The Hon. Sir JOHN FULLER: Mr President, I desire to report to the House that the managers of the free conference in reference to the Constitution and Parliamentary Electorates and Elections (Amendment) Bill have not yet concluded their deliberations.

The PRESIDENT: To suit the convenience of honourable members, I shall leave the chair until Tuesday next, 7th February, at *4.30* p.m., sharp.

[The President left the chair at 2.31 p.m.]

Tuesday, 7 February, 1978

[The House resumed at 4.30 p.m.]

Report of Free Conference

The Hon. Sir JOHN FULLER: On behalf of the managers chosen by this House to meet managers of the Legislative Assembly in free conference with respect to the Council's rejection of the Constitution and Parliamentary Electorates and Elections (Amendment) Bill, I report that the managers have met and now present the following report, together with the agreement arrived at by the managers:

> The managers appointed by the Legislative Council, by Resolution of *25* January, *1978,* whereby a Free Conference with the Legislative Assembly, pursuant to section 5B of the Constitution Act, *1902,* was agreed to with respect to the Council's rejection of the Constitution and Parliamentary Electorates and Elections (Amendment) Bill, report to your Honourable House that, having met the Managers appointed by the Legislative Assembly, agreement was reached on the basis of the attached document.
>
> JOHN B. FULLER,
> On behalf of the Managers of
> the Legislative Council.
>
> *Legislative Council Committee Room,* C255,
> *Parliament House, 2nd February, 1978.*

Agreement of free conference of managers appointed by the Legislative Council and Legislative Assembly to consider the Constitution and Parliamentary Electorates and Elections (Amendment) Bill.

The free conference agreed as follows:

1. The system of voting for the direct election of Members of the Legislative Council to be optional preferential voting requiring the voter to vote for *10* candidates at least but otherwise permitting the voter to indicate preference beyond *10* candidates if the voter so wishes.

(a) The ballot paper must state the following or something to a similar effect:

Place the number *"1"* in the square opposite the name of the candidate for whom you desire to give your first preference vote. Give contingent votes for the remaining can-

didates by placing the numbers "2", "3", "4", and so on, in the squares opposite the names of at least 10 of the candidates in the order of your preference.

(b) In the counting of the votes the following should apply:

(i) Any ballot paper which has less than 10 squares numbered will be invalid.

(ii) Any ballot paper which has at least 10 squares numbered and the sequence of that numbering is not in strict numerical order, then the ballot paper will be formal until that strict numerical order is departed from.

2. The first election for 15 directly elected Members of the Legislative Council to be held simultaneously with the next State general election.

3. The provisions of the Bill relating to Members of the Legislative Council due to retire in 1985 and 1988 to remain unaltered. This means that Government and Opposition parties start off under the new system equal.

4. The date of the required referendum to be on the 10th June, 1978, or such other date in proximity thereto as may be agreed by the managers.

5. The Government to instruct the Parliamentary Draftsman to prepare the amendments to the Bill so as to give effect to this agreement and such amendments to be submitted to a meeting of the managers for approval and upon the amendments being approved, all parties having so signified to the conference agree to support the passage of the amended Bill through both Houses.

6. The parliamentary parties represented by the Government and Opposition having so signified will agree to and will not oppose a "Yes" vote at the Referendum.

7. Except for the consequential amendments arising out of this agreement, the Bill to remain unaltered.

8. The managers of the respective Houses to report this agreement.

Signed on behalf of the Managers of
the Legislative Council,
JOHN B. FULLER.

Signed on behalf of the Managers of
the Legislative Assembly,
NEVILLE WRAN.

Legislative Council Committee Room, C. 255,
Parliament House, 2nd ***February,*** 1978.

By consent, I move:

That the report and the attached agreement be now adopted.

I shall speak briefly on my motion for the adoption of this historic report. I hope that the managers' report will not be debated; rather I hope that it will be accepted in the spirit in which it was negotiated. Last week's agreement was a victory for the concept of section 5B of the Constitution Act, as envisaged by those who inserted these provisions in the Act. The provisions for a free conference of managers under the standing orders of both the Legislative Council and the Legislative Assembly were effectively put into practice last week. The discussions were held in an atmosphere

that was far removed from heated debate. The reasoned debate and interchange of views enabled a compromise to be reached. I believe that all concerned should be congratulated. I now hope that the machinery measures necessary for the agreement to be put into effect will be handled with expedition.

The events of the past week have convinced me that much can be said in support of the concept of committees from both sides of the House meeting to consider contentious legislation, in an endeavour to reach a compromise as far as possible prior to the second-reading debate in this Chamber. I understand there has been a move in some parliaments of the world towards acceptance of this system. One of the places where serious consideration has been given to this concept is the House of Commons. I should like to know how effectively that method is operating there in ironing out contentious matters.

In the absence of a gallery and press gallery, one can often adopt a much more sensible approach. I should like the House to give some thought to an inquiry into the introduction of this system in both Houses of Parliament, in an endeavour not only to expedite the proceedings of both Houses, but also to improve standards generally in the handling of legislation.

The Hon. D. P. LANDA: I join the Leader of the Opposition in supporting the adoption of this report. All of us in this Chamber and most people throughout the community watched with interest—indeed, fascination—the mechanisms of the Constitution in operation, from the inception of the bill until this very day. I suppose that to claim victory for section 5B of the Constitution is as neutral a term as any of us could aspire to. In the ecumenical spirit of today's meeting, I join in the Leader of the Opposition's remarks when I say that the Constitution of this State did have such a victory. However, I think it would be remiss of me if I did not add something which I am sure is in the hearts and minds of all members on this side, namely, that history will show that the Premier of New South Wales, the Hon. Neville Wran, Q.C., has achieved in eighteen months something that has eluded many men and many governments before him, both Labor and of other persuasions. Premiers of the greatness of Heffron and Lang could not achieve the democratization of this Chamber that has been achieved as a result of the events set in train by the Premier.

I join the Leader of the Opposition in his hope that the machinery measures needed to complete this process of constitutional reform of this Chamber will be dealt with expeditiously. I am confident that the ultimate approval of the people, which is necessary for all such changes, will be forthcoming at the appropriate time.

Motion agreed to.

Report and agreement adopted.

Motion (by consent, by the Hon. Sir John Fuller) agreed to:

That the Council managers have leave to meet again with the managers for the Legislative Assembly, in reference to the Constitution and Parliamentary Electorates and Elections (Amendment) Bill.

Message

Motion (by the Hon. D. P. Landa) agreed to:

That the following message be forwarded to the Legislative Assembly:

The Legislative Council has this day adopted the Report and attached agreement on its behalf of the Free Conference in reference to the Constitution and Parliamentary Electorates and Elections (Amendment) Bill and has granted leave for its managers to meet again with managers for the Legislative Assembly.

CONSTITUTION AND PARLIAMENTARY ELECTORATES AND ELECTIONS (AMENDMENT) BILL

Message

The President reported the receipt of the following message from the Legislative Assembly:

Mr President—

The Legislative Assembly has this day adopted the report of the managers on behalf of the Assembly at the Free Conference with the Legislative Council in reference to the Constitution and Parliamentary Electorates and Elections (Amendment) Bill and has granted leave for its managers to meet again.

Legislative Assembly Chamber,
Sydney, 7 February, 1978.

L. B. KELLY,
Speaker.

QUESTIONS WITHOUT NOTICE

ANIMAL HEALTH LABORATORY

The Hon. D. P. LANDA: On 16th November, 1977, the Hon. J. R. Hallam asked me a question about the intention of the federal Labor Government to establish an animal health laboratory at Geelong in Victoria and the present federal Government's attitude to that proposal. I have been advised by my colleague, the Minister for Decentralisation and Development and Minister for Primary Industries, that in November, 1974, the Whitlam Government accepted the recommendation and conclusion of the Parliamentary Standing Committee on Public Works that detailed design and documentation of the Australian national animal health laboratory should commence. This design and documentation has continued but commencement of the construction originally proposed in the 1976–77 financial year was deferred.

Money was originally allocated to the Australian national animal health laboratory in the 1975–76 financial year to enable site works to proceed. The successful tenderer for the first stage of the project was selected but no contracts were let owing to the withholding of supply by the Liberal-Country Party opposition. On the change of government, funds continued to be withheld. In the 1976–77 financial year again no funds were provided to enable site works or construction to commence. A specialist design team was established to undertake the design and documentation for the Australian national animal health laboratory. This has continued from 1975 until the present time.

The Australian national animal health laboratory would be an essential element in Australia's preparations to meet the threat of exotic diseases. The laboratory when completed would be able both to assist in the rapid diagnosis of many exotic diseases and, it is hoped to prepare vaccines to assist in their control and ultimate eradication. Exotic diseases pose a continuing threat to the economic well-being of both rural and urban communities of this country and the proposed laboratory is essential and urgently needed to identify quickly and control such diseases.

PAYROLL TAX

The Hon. P. S. M. PHILIPS: I address a question without notice to the Vice-President of the Executive Council and Minister for Planning and Environment. Is it

a fact that late in January, 1978, the Commissioner of Pay-roll Tax wrote to registered employers inter *alia* in these terms:

> Notice to registered employers—pay roll tax return for period ending January, 1978.
>
> (1) The supply of return forms for the year commencing January, 1978, has been delayed. This supply which will be in pad form will be posted during early February, 1978.
>
> (2) As a consequence, the time for lodgment of the completed return and payment of tax for the period ending January, 1978, has been extended to the 28th February, 1978.

If that is a fact, is there any explanation for the short term loss of revenue to the State and the imposition of additional clerical burdens upon employers? Will the Minister say what will be done in future to avoid a repetition?

The Hon. D. P. LANDA: In order to give the honourable member credit for the research that he has undertaken I shall ask my colleague in another place to give a detailed answer.

SMALL BUSINESSES

The Hon. T. S. McKAY: I ask the Vice-President of the Executive Council and Minister for Planning and Environment a question without notice. I refer the Minister to the first annual report of the Small Business Development Council of New South Wales and ask whether he will confer with his colleague the Minister for Decentralisation and Development and Minister for Primary Industries with a view to having the purposes of the Act, particularly with regard to loans, implemented to assist small businesses in New South Wales to develop and thus provide much needed opportunities for employment within this State.

The Hon. D. P. LANDA: I am aware that the Small Business Development Council, which was set up under the administration of my colleague the Minister for Decentralisation and Development and Minister for Primary Industries, is providing a great deal of assistance to small businessmen by way of advice and expertise on the management side of business. I cannot advise the honourable member of the up-to-date position with regard to loan funds under that authority's jurisdiction; but I shall take up the matter with the Minister in another place.

DENTURE MARKING

The Hon. D. D. FREEMAN: I ask the Vice-President of the Executive Council and Minister for Planning and Environment whether he will request his colleague in another place, the Minister for Health, to consider making it mandatory in future that all dentures be marked with suitable indestructible code markings to assist where necessary in the identification of persons by forensic authorities.

The Hon. D. P. LANDA: I shall take up the honourable member's question with the Minister for Health. I know that honourable members are keenly interested in the matter raised by the honourable member. I shall obtain detailed information for the House.

THE BAPTIST UNION INCORPORATION (AMENDMENT) BILL

Second Reading

The Hon. D. P. LANDA (Vice-President of the Executive Council and Minister for Planning and Environment) [4.49]: I move:

That this bill be now read a second time.

The object of the bill before the House is to amend the Baptist Union Incorporation Act in respect of the voting age of a member of a Baptist congregation. The Baptist Union Incorporation Act of 1919 is a private bill which incorporated the Baptist Union of New South Wales and empowered such corporation *inter alia,* to deal with trust property belonging to the said union.

The Baptist Union of New South Wales is comprised of certain persons being members of a religious body or denomination called Baptists and is a charitable organization. Honourable members will recall that it has long been the policy of both this Government and preceding governments to assist churches and charitable organizations which seek the introduction of legislation to facilitate their work on the basis that the expenditure thereby saved may be better put towards the achievement of the charitable objects for which they exist. Section 12 of the Act, in some detail, prescribes certain requirements that have to be met concerning the conduct of meetings of Baptist congregations which may be held for the purpose of making directions on the administration of the particular church. These requirements *inter alia,* outline the conditions that have to be met before a member of the congregation is entitled to vote at such meetings. One of the conditions contained in the section is that a member must have attained the age of 21 years.

The executive committee of the Baptist Union of New South Wales approached the Government with a view to amending the Act to provide for a reduction in the voting age from 21 years to 18 years. Members of the Baptist denomination feel that such an amendment is necessary to bring their statutory voting age into line with the majority age that is now favoured by recent legislation both federal and State. It is true that in recent years enactments of legislation have brought about a reduction in the majority age from 21 years to 18 years, in relation to full contractual and testamentary and proprietry rights and obligations and voting capacity. I am sure that honourable members would agree that it is both appropriate and desirable that the subject legislation should reflect the voting age that is now favoured and accepted by the community generally.

Clause 2 (a) confers a reduced voting age of 18 years as opposed to 21 years by amendment to section 12 of the Act. Clause 2 (b) represents an amendment to the short title of the Act provided for in section 13. This amendment is simply the addition of the year 1919, the year the Act was assented to. Though this amendment to the short title is of a minor nature it is nevertheless necessary to bring the Act into line with current principles of drafting. I commend the bill.

The Hon. L. A. SOLOMONS [4.52]: The past few years have seen the adoption of the age of 18 for the removal of legal disability not only for parliamentary representation but also for the ability to contract, to make wills and to do all sorts of other matters incidental in the past to the attaining of the legal age of adulthood, which was then 21 years. The Opposition sees no reason why that should not apply also to matters of religion and conscience and to the organization of bodies that propagate matters of religion and conscience. This bill, accordingly, has the wholehearted support of the Opposition.

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. D. P. Landa.

OATHS (AMENDMENT) BILL

Second Reading

The Hon. D. P. LANDA (Vice-President of the Executive Council and Minister for Planning and Environment) [4.55]: I move:

That this bill be now read a second time.

Sir Alexander Beattie, the President of the Industrial Commission of New South Wales, has approached the Government seeking an amendment to the Oaths Act, 1900, which will give members of the commission the same power of administering oaths as Justices of the Supreme Court. Section 3 (2) (a) of the Oaths Act which empowers Justices of the Supreme Court and certain other judicial officers to administer the oath of allegiance, the official oath and the judicial oath, was inserted when the legislation was amended in 1916. However, the Industrial Arbitration Act did not become law until 1940, and although, in section 14 (2), it purports to equate the position of a member of the Industrial Commission with that of a Supreme Court Judge, it did not authorize members to administer the oaths referred to in the Oaths Act.

Of course there is a possibility that a court might hold that members of the commission come within the provisions of section 3 (2) by reference to the Industrial Arbitration Act. However, I am sure honourable members will agree that where doubts exist it is preferable to amend the legislation under review rather than to wait until the matter is tested in court proceedings. Though it is evident that the position is anomalous, the only recurrent practical problem relates to the ceremonies at which new members of the commission and new conciliation commissioners take the oath of allegiance and the judicial oath in accordance with the provisions of the Industrial Arbitration Act.

In the past, as a result of the apparent disability of members of the commission in relation to the administration of oaths, it has been the practice for new members and new conciliation commissioners to be sworn in before a Justice of the Supreme Court. In view of the significance of the occasion, not only to the man concerned and his family, but also to the other members of the Industrial Commission and the conciliation commissioners, it seems appropriate that the president of the commission or, in his absence, the next senior member, should be empowered to conduct the ceremony. The bill, when implemented, will achieve this objective simply by ensuring that members of the Industrial Commission of New South Wales are included among those judicial officers referred to in section 3 (2) (a) of the Oaths Act, 1900. I commend the bill.

The Hon. W. J. HOLT [4.57]: The Opposition supports the bill and agrees with the remarks made by the Minister. If the Industrial Arbitration Act of 1940 purported to equate the position of members of the Industrial Commission of New South Wales with that of judges of the Supreme Court of New South Wales it would seem proper that new members of the Industrial Commission of New South Wales or

new conciliation commissioners should be sworn in by the president of their own commission rather than by a justice of the Supreme Court of New South Wales or the Chief Justice.

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. D. P. Landa.

DISTRICT COURT (AMENDMENT) BILL

Second Reading

The Hon. D. P. LANDA (Vice-President of the Executive Council and Minister for Planning and Environment [5.2]: I move:

That this bill be now read a second time.

This bill will modify the law by amending the District Court Act, 1973, in certain procedural and other areas. The first aspect of the bill that I propose to deal with covers the provisions of the District Court Act, 1973, relating to interpleader applications. At present, the interpleader provisions of the Act allow an application to the court for relief only where proceedings have been previously commenced. These provisions, as honourable members will be aware, do not assist the person who may be under a liability in respect of a debt or other personal property and who has not been sued even though he may expect to be sued by two or more persons making adverse claims to the debt or property.

A frequent example of this situation in practice occurs in the case of a stakeholder. For example, a real estate agent may hold certain moneys on deposit and may have notice that the moneys are claimed by both the seller and the prospective purchaser of a property. At present, the stakeholder who has notice of competing claims, is unable to approach the court for relief until one claimant initiates proceedings against him. The bill proposes to allow the person who finds himself in such a situation to make application to the court for relief by way of interpleader. Section 115 and 117 of the Act will be amended by items (6) and (7) of the schedule to the bill. This will also have the effect of allowing the court to determine more speedily who has the right to the subject property.

The second aspect of the bill is to enable the upper monetary limit on the jurisdiction of the District Court to be increased beyond the present limit of $20,000 by consent of the parties given at any stage of the proceedings. The Act at present provides in section 51 that the parties to litigation may extend the jurisdiction of the District Court beyond this $20,000 statutory limit provided the parties consent in writing and notice giving this consent is filed at the same time as the statement of claim by which the action is commenced. However, it may become apparent during the course of the proceedings that a claim for a much higher figure can be supported. Those honourable members who are also legal practitioners will be aware of the problems facing practitioners in this situation. They must commence fresh proceedings seeking to recover a higher amount of damages even where the other party is willing to consent to the District Court having jurisdiction beyond the statutory limit of $20,000. By amending section 51, item (2) of the schedule will, by consent of the parties, make this jurisdiction available at any stage of the proceedings in the District

Court. The provisions, if passed, will make it unnecessary to commence fresh proceedings. I am sure the advantages to be gained in the saving of court time and also the reduction in costs for litigants will be appreciated by all honourable members. The bill also extends this jurisdiction by consent, on the same terms, to cover cross-claims.

Third, the bill relates to the power of the District Court to order interrogatories to be administered. At present, the District Court does not have this power. The court's endorsement of the issuance of interrogatories by one party to another enables the real issues between litigants to be more quickly and accurately isolated. The power to make such an order would be of great assistance in certain cases before the court, and in view of the convenience to be gained in these cases the bill proposes to grant the District Court the power to order interrogatories by amending section 68 of the Act.

This section makes provision for the rule-making power of the court. The court will also be empowered to decide whether interest on verdicts should be available over a more extensive period of time. At present, interest on verdicts given in the District Court is available from the date the judgment is given until payment. In contrast, the Supreme Court Act, 1970, provides that the Supreme Court may order to be included in the sum for which judgment is given, interest at such rate as it thinks fit for the whole or any part of the period between the date the cause of action arose and the date when judgment takes effect. In view of this provision, difficulties have been experienced in transferring matters from the Supreme Court to the District Court in those cases where it would have been appropriate to commence the proceedings in the District Court. Item (4) of the schedule to the bill introduces a new section 83A which will permit the court to consider ordering interest for the period from the date the cause of action arose to the date of judgment.

The fifth aspect of the bill relates to applications to pay judgment debts by instalments. The bill amends section 88 of the Act in this regard. At present, all registrars have a restricted power to grant applications for the payment of judgment debts by instalments. Upon granting such an application, the registrar must notify the judgment creditor, who may lodge an objection to the order within a specified period of time. Following an objection, the matter must be set down for hearing before a judge.

The bill proposes to widen the power of certain registrars to enable them to grant an order for payment of a judgment debt by instalments after a hearing before the registrar. The necessary amendment to the bill is contained in item (5) of the schedule. The rules of court will specify the places at which registrars will be permitted to exercise this extended power. Of course, the registrar's order will continue to be subject to a right of appeal to a judge of the court. It is expected that the revised procedure will result in the expedited disposal of applications and a consequent saving of court time. The Government considers these provisions important in its efforts to streamline court procedure. Also it is hoped that the provisions will result in savings in court time and reduce even further the delay in the hearing of civil actions before the District Court. I commend the bill to the House.

The Hon. L. A. SOLOMONS [5.7]: The Opposition does not oppose the measure. If I may deal with the proposed amendments in the order in which they were dealt with by the Minister in another place—a slightly different order from that with which they were dealt by the Minister in this Chamber—perhaps it will save upsetting the notes that I have prepared. The Opposition is in agreement with the proposition contained in the proposed amendments to section 51 of the District Court Act whereby, by agreement at any time, the jurisdiction of the District Court may be extended.

However, at this juncture I should have liked to see an amendment giving an initial jurisdiction of $30,000. Honourable members will recall that I argued strongly for such an amendment when the previous amending bill was introduced by the Opposition when it was in Government. There was some discussion about it and, indeed, the passage of the bill was held up while conferences took place.

I am certain that practitioners would be generally in agreement with my submission that, because of the lessening value of money and the continuance of the increase in verdicts returned in the District Court—and of course the fact that these days the pool of persons from whom Supreme Court judges and District Court judges are selected is virtually the same—no harm to the community would have resulted had the limitation been increased overall. I welcome the amendment as proposed by the Minister; it is a first step along the way.

I have some reservation in regard to the proposed granting to the District Court of the power to administer interrogatories. I take this attitude not because I am against the principle of interrogatories or any other method by which it is easier to elucidate the actual matter a court must determine. In fact, the reasonable degree of informality that has in the past been part of the power of the District Court has made it clear to the judges that they can exercise their initiative in determining the correct matters for the court to determine.

I am concerned about an experience I had recently with a piece of Victorian legislation. I was acting through a Melbourne agent for a defendant in a simple case in which a debt was alleged. My Melbourne agent, by the use of interrogatories, was able to withhold from the plaintiff money, part of which at least was certainly due and owing for at least three years, by the injudicious use of interrogatories, summonses for further interrogatories and arguments whether the interrogatories had been sufficiently explicitly argued. This went on to such an extent that I believe in due course the plaintiff partially lost interest in his action and caved in, and we were able to settle the case very advantageously. I draw this to the attention of the Minister, in the hope that, if the process of interrogatories is used in the District Court, it is watched closely to ensure that it is not abused and used as a delaying tactic by those who sometimes take advantage of the rules for that purpose.

I applaud the move to widen the power to grant interest. Often persons will withhold payment of money that they know is properly due, and have the benefit of interest on the investment of that money. They know these days that they can get more money by way of an investment return on the money than they can get if they paid it out, although it is justly due. They suffer only the payment of costs, which often with large sums of money is much less than the interest. I believe that this is a proper approach.

I applaud the proposed amendment to the process of interpleader, whereby, as often happens in commercial practice, a person finds himself in possession of a sum of money or a piece of property to which there is more than one claimant, and he himself is the meat in the legal sandwich. Under this proposed amendment he will be able to take the initiative and, I would presume, pay the money into court, thereby absolving himself from further responsibility, including what additional attorney–client cost he might otherwise have been liable for if he had been forced to await the institution of legal proceedings to have the matter determined.

The final matter dealt with is the widening of the power to allow registrars not only to make interim orders with reference to the payment of judgment debts by instalments, but also, when there is an objection to that matter, finally to determine it in certain circumstances. I have the utmost confidence in the registrars of the District Court. I have seen them operate and I believe that this provision, subject to appeal to a judge, will speed up the process of the recovery of debts, or the protection of

impecunious persons from the harsh recovery of debts from persons who owe them. For those reasons, and subject to those very small reservations, particularly with reference to interrogatories, the Opposition supports the bill.

The Hon. W. J. HOLT [5.15]: I agree with the Hon. L. A. Solomons' suggestion that the jurisdiction limit should be raised to $30,000 without obtaining consent, whether it is prior to the action or, as suggested here, by consent after an action has been commenced. The Minister, with his long experience in the plaintiffs' jurisdiction, would probably agree that it is not so much a question of the amount for which an action will finally be settled or what the verdict will be, but the feeling of a plaintiff when he first walks into the office, as to what he is likely to receive—no doubt having had some good legal advice from some of his colleagues at work. I agree that the limit could be extended, and I hope that the Minister will suggest that this be considered by the Attorney-General in another place, particularly in view of the inflation that has occurred since the limit was last increased in, I think, 1975.

It is interesting to reflect that when the District Court was formed by Act of Parliament in 1858, the jurisdictional limit was £200, and that in only personal actions. There were then three judges administering the many districts in the State. Things have improved greatly--or people might say they have greatly retrogressed—in the intervening years. If I might be permitted to make a personal reflection, if anyone wants to learn more about the District Court, a judge of that court for twenty-five years has recently published a book entitled *The Court Rises.* Seeing that the Law Foundation is not paying him any royalties, I might mention that the author was my father.

The Hon. D. P. LANDA (Vice-President of the Executive Council and Minister for Planning and Environment) [5.17], in reply: I thank honourable members for their support. I certainly will commend to the Attorney-General the matters that have been raised by the Hon. L. A. Solomons and the Hon. W. J. Holt. Without being too facile about it, I think the expectation of the plaintiff is not the only thing that may determine the jurisdiction in which a borderline claim is brought. Other serious facts must be considered when deciding where an action should be commenced. In personal injury cases there can be a worsening of the medical condition, without any possible consideration by the medical practitioner at the early stages. The condition might be dormant and might be inflamed, thus causing an exacerbation and a necessary increase in the amount of damages that are properly due. Similarly, the work situation might alter drastically, which would cause an actual loss in wages, which might be dramatically different. The availability of light work or overtime might increase, and the capacity to perform it might remain the same. A host of factors could come into it to form a real basis for litigation.

The Hon. L. A. Solomons: Even in workers' compensation cases, under section 16.

The Hon. D. P. LANDA: Yes. As the Hon. L. A. Solomons knows from his experirnce, a plaintiff might well have an action determined by a court, or settled, and it is under the $20,000 limit, but the range of possible verdicts might be in excess of that. If a practitioner brings an action in the District Court, only to find the range of possible verdicts is above that, honourable members can accept my assurance that the only safe thing to do is to make application for transfer. This has a tremendous effect as far as time and costs are concerned; indeed, the sheer nuisance of it is certainly a matter that needs legislative correction.

In regard to interrogatories, I agree with the Hon. L. A. Solomons that the provisions must be watched carefully. I do not think they will become a problem. The District Court has long enjoyed a practical atmosphere, somewhat different from the other jurisdictions. I think that will reflect itself in the use of these procedures.

Raising the jurisdictional limit to $30,000 as of right carries with it consideration of other matters including the capacity of the court to cope with the additional work. It must be done on a gradual basis to assess whether the court can absorb it. My latest inquiries about delays reveal that the District Court is in an enviable position compared to other courts. This measure will increase the jurisdiction of the District Court. In recent years the trend has been to increase the jurisdiction of that court and if it can handle the extra workload I have no doubt that before long a limit of $30,000 will be a matter of right.

I thank honourable members for their contributions to this debate. Though this measure is of concern mainly to legal practitioners, it has wide ramifications for litigants, many of whom are injured persons whose cases are pending on the common law lists. The diminution of delay, in the interests of those people, must receive constant consideration by the Government and the courts. Certainly this Parliament should aim at minimizing delays.

Motion agreed to.

Bill read a second time.

In Committee

Schedule 1

The Hon. L. A. SOLOMONS [5.24]: Item (3) in this schedule proposes amendments to section 68 of the District Court Act. I invite attention to my concern in regard to the proposed power to enforce an answer to interrogatories administered by the party giving the notice and requiring a party to answer interrogatories administered by another party. The Minister might well take note of my warning as to the immense potential for delay built into the interrogatory system unless it is strictly controlled. I express the hope that the regulation-making provisions in the bill will permit rules relating to interrogatories to be made only if there is some provision for supervision by a judge of the court or for the person concerned to object to interrogatories. Alternatively the party seeking the answer should accept the burden of proving that the issues have not been fairly established and that the interrogatories are not being administered as a tactical matter.

The Hon. D. P. LANDA (Vice-President of the Executive Council and Minister for Planning and Environment) [5.25]: I will convey details of the honourable member's caution about this to my colleague the Attorney-General. I think the honourable member touched upon the answer to the problem in that a defence to interrogatory delay lies with the respondent who has the opportunity to suggest that issue has been joined and that interrogatories are being used for the purpose of establishing factual matters which should be left for proving during the actual proceedings.

Should it turn out that these forms are used differently in the District Court as compared to the Supreme Court there would need to be an inhibition against that use. I am sure that the Attorney-General would be quick to correct the anomaly by way of regulation. No doubt a reluctant supplier of information would complain that he was being forced to divulge information properly the property of his own case. I shall invite the attention of the Attorney-General to the honourable member's comments.

Schedule agreed to.

Adoption of Report

Bill reported from Committee without amendment, and report adopted, on motions by the Hon. D. P. Landa.

LAW REFORM (NERVOUS SHOCK) AMENDMENT BILL

Second Reading

The Hon. D. P. LANDA (Vice-President of the Executive Council and Minister for Planning and Environment) [5.27]: I move:

That this bill be now read a second time.

This measure is associated with the District Court (Amendment) Bill, 1977. The bill will vest in the District Court the jurisdiction to enable actions for damages where the injury complained of arises wholly or in part from nervous shock to be commenced in the District Court. At present the Law Reform (Miscellaneous Provisions) Act, 1944, provides that these actions shall be brought in the Supreme Court. Of course, the jurisdiction gained by the District Court will be restricted to actions where the amount claimed is not more than $20,000, unless this limit is raised by consent of the parties. It is felt that this provision is worth while in further streamlining court procedure and it will also be of benefit to practitioners. I commend the bill to the House.

The Hon. L. A. SOLOMONS [5.28]: The history of the common law is a fascinating subject that is worthy of more consideration than it is generally given. As Professor Julius Stone has often pointed out, changes in the law are very much reflective of changes in society. It is often difficult to ascertain whether one follows or is precipitated by the other.

It might be interesting to honourable member to learn that an action for nervous shock may well have had its initial impact in a judgment, though a dissenting one, given by the late Dr H. V. Evatt in Chester's case in 1939. His Honour was the dissenting judge in a case in which it was alleged that there ought to be an action for nervous shock. The matter finally was determined by the House of Lords in a case known as the Fishwife's case—Bourhill v. Young, published in 1943 *Appeal* Cases at page 92. The case concerned a pregnant woman, who for some unknown reason was described by that unattractive term fishwife. She was riding in a tram in England when she witnessed a serious accident. Having seen the accident, heard the terrific impact and seen the person injured lying in a pool of his own blood, she subsequently had a miscarriage.

After a series of appeals the matter was determined in her favour. Soon after that, most Commonwealth countries legislated for an action for nervous shock which widened the original concept of negligence that there had to be in fact a direct association between the person harmed and the person doing the harm. New South Wales did this in 1944 by way of the Law Reform (Miscellaneous Provisions) Act. It was then contemplated that the matter could be dealt with only by the Supreme Court, but for the reasons I touched on in my second-reading speech on the District Court (Amendment) Bill it is now obvious that many of these cases may properly be dealt with by the District Court. The bill seeks to give the District Court power to hear such cases, but only within the limit of the jurisdiction as laid down by the District Court Act. The Opposition supports the bill.

The Hon. W. J. Geraghty: What was meant by a fishwife?

The Hon. L. A. SOLOMONS: I do not know. As a matter of fact, because of the sense of history with which the Hon. R. F. Turner infected all honourable members, I went off and read again the case of *Bourhill* v. Young. She is described only as a fishwife. I can only assume that it means the wife of a fishmonger. It seemed to me to be an offensive term to use for a pregnant woman who was injured in that way.

The Hon. D. P. LANDA (Vice-President of the Executive Council and Minister for Planning and Environment) [5.32], in reply: The shock of the detailed debate in this matter has certainly hooked me. The bill will do something that is long overdue. It will equip the District Court of New South Wales to deal with a claim which, to the surprise of some members of the House, is not so infrequent. It is not uncommon for the spouse of a person killed in an accident, when informed of the accident and in many cases the horrific nature of the death, to suffer nervous shock. It is a medical fact that the grief is so traumatic at the time that is causes actual pain and suffering and, not infrequently, permanent damage in many respects. Also, persons who are uninjured in an accident—they may be passengers in a vehicle or mere bystanders—may suffer similarly. The damage may not be sufficient to justify the bringing of an action in the Supreme Court of New South Wales. Often there has been the strange position whereby physical damage and financial loss actions were commenced in the District Court though the action relating to nervous shock was taken in the Supreme Court. This is absurd. They should both be heard in the one jurisdiction. I am pleased that the bill will equip the District Court to deal with claims that are by way of determination no more complex, involved or difficult than many of the actions with which the District Court is already equipped to deal. I am sure the measure will contribute to the easing of delay in the courts. I thank honourable members for their support of it.

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. D. P. Landa.

LAW REFORM (JOINDER OF ACTIONS) AMENDMENT BILL

Second Reading

The Hon. D. P. LANDA (Vice-President of the Executive Council and Minister for Planning and Environment) [5.37]: I move:

That this bill be now read a second time.

This bill is also related to the District Court (Amendment) Bill, 1977. Section 161 (1) (c) of the District Court Act, 1973, provides a rule-making power in respect of the joinder of causes of action, the consolidation of proceedings and the joinder, misjoinder and nonjoinder of parties. However, doubts have arisen as to the extent of this rule-making power. The Law Reform (Miscellaneous Provisions) Act, 1946 allows the joinder of defendants only in tort and this Act still applies to the District Court, The District Court rules in part 7 provide for the joinder of causes of action and parties generally. Part 7 of the rules relies for validity on section 161 (1) (c) of the District Court Act, 1972. The bill proposes to remove any doubts as to the validity of part 7 of the rules. This will be achieved by removing the District Court from the operation of Part II of the Law Reform (Miscellaneous Provisions) Act, 1946. I commend the bill to the House.

The Hon. W. J. HOLT [5.38]: If it is considered that there may be some question as to the validity of part 7 of the District Court rules as a rule-making power on a procedural matter, the Opposition supports the proposal.

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. D. P. Landa.

BANKRUPTCY (REPEAL) BILL

Second Reading

The Hon. D. P. LANDA (Vice-President of the Executive Council and Minister for Planning and Environment) [5.40]: I move:

That this bill be now read a second time.

In December, **1970,** the New South Wales Law Reform Commission delivered its report on statute law revision to the Attorney-General of the time, then Mr K. M. McCaw. The report recommended repeal, subject to certain savings, of a large number of enactments that the commission described as being no longer necessary. The reasons for the recommendation were various, encompassing enactments that had achieved their purpose immediately upon coming into force, those that had become obsolete as they dealt with transient situations or events long since passed, and those that had ceased to operate because they were inconsistent with the law of the Commonwealth.

As one example of the latter category the commission referred to the New South Wales Bankruptcy Act of **1898.** This legislation was superseded following the commencement of the Commonwealth Bankruptcy Act of **1923,** although it was amended in **1974** to provide that no claim could be made on the estate of a person made bankrupt under its provisions after the expiration of twenty years from the date of sequestration. The State Bankruptcy Act would have been repealed, in accordance with the Law Reform Commission's recommendation, by the Statute Law Revision Act, **1976,** but for the existence of a dormant balance of **$42,981.58** in the bankruptcy suitors' fund established under section **105.** That fund was intended to meet the costs of inquiries, proceedings or prosecutions deemed necessary by the court in cases where there were no funds available in the bankrupt's estate to pay such costs. As the fund does not represent moneys held in trust for any person or body, and a court order is required to authorize payments therefrom, section **31** of the Audit Act cannot be applied to clear the balance, which will remain indefinitely unless legislative action is taken. In these circumstances the terms of the Statute Law Revision Act were not appropriate to transfer the suitors' fund balance to Consolidated Revenue, and the Government elected to omit reference to the State Bankruptcy Act with the intention of giving effect to the Law Reform Commission's recommendations by introducing a separate repealing Act in the form of the bill now before the House.

Despite the time and enormous effort to which the Law Reform Commission committed its considerable resources of legal knowledge and expertise in order to produce its report on statute law revision, the suggestion has been made, in another place, that repeal of the State's redundant Bankruptcy Act is somehow imprudent, representing an abdication of this Parliament's legislative responsibility. I fail to see the validity of this proposition. It cannot be denied that the Commonwealth has legislated to "cover the field" in bankruptcy matters in accordance with its powers under placitum (xvii) of section **51** of the Constitution. But this fact in no way inhibits this Parliament's right, as a sovereign legislature, to make laws in the area of bankruptcy if the need should arise.

Repeal of the New South Wales Bankruptcy Act does not constitute any final handing over of power to Canberra. It simply represents an acknowledgement of the Commonwealth's acceptance of legislative responsibility in the area, leaving the State's

slate clean to enact supplementary legislation should it become apparent that the federal Parliament's laws are inadequate or deficient. However, I find it hard to imagine circumstances in which this Parliament would be called upon to patch up Commonwealth laws, particularly in a field such as bankruptcy where the community is entitled to look to Canberra for uniform, rational legislation of general application throughout Australia.

In practice all bankruptcy matters are now under the control of the Commonwealth. The administration of all estates sequestrated under the State Act are complete and all records are in the custody of the Commonwealth Official Receiver. The bankruptcy estates account, into which official assignees or trustees appointed under the State Act were required to pay moneys received in the course of administration of bankrupt estates, has a nil balance, and has had since the last recorded transaction in July, 1963. There are no remaining assignees or trustees appointed under the New South Wales Bankruptcy Act, and furthermore all persons declared bankrupt under State law have now been automatically discharged pursuant to section 149 (2) of the Commonwealth Bankruptcy Act, 1966. In these circumstances the Commonwealth Inspector General in Bankruptcy has requested that the bankruptcy estates account be closed.

The New South Wales Treasury, which conducts the account in accordance with section 102 of the State Bankruptcy Act, has advised that there is no objection to its closure. However, the terms of section 102 require that it remain open. It is therefore apparent that the inspector general's request was not prompted by any centralist political motive. The obligation to maintain records for a moribund account constitutes an unreasonable administrative inconvenience. He simply wishes to be rid of that obligation, thereby rationalizing the day-to-day operations of his department.

This bill will repeal the now defunct New South Wales Bankrutcy Act of 1898, thereby facilitating closure of the bankruptcy estates account and transfer of the dormant funds in the bankruptcy suitors' fund to Consolidated Revenue. It is in complete accordance with the recommendations of the Law Reform Commission, made to and endorsed by the former State Government. It is inconceivable that the Commonwealth would vacate the field of bankruptcy law without giving the States considerable notice of its intentions, and in that unlikely event no responsible executive would seek to rely on antiquated legislation. I commend the bill to the House.

The Hon. L. A. SOLOMONS [5.46]: The Opposition supports this bill. I find myself in complete agreement with the Minister's comments with respect to the suggestions that were made in another place that this legislation was perhaps motivated by centralism. There are two facets of the matter that have perhaps escaped the notice and attention of persons who put forward that rather illogical theory. The first is that in the event of some traumatic constitutional decision which showed that the Commonwealth may be exercising power invalidly, we should be thrown back on to an Act which, in modern terms, could be described only as antediluvian. There can be no doubt that if that happened, there would be no restriction upon the power of the New South Wales Parliament to enact new, proper and up-to-date legislation.

There is a second and completely practical point. The federal Commissioner of Taxation is by far the largest and most regular petitioner in bankruptcy. While he continues to use the bankruptcy administration as part of the normal process of collecting tax from people who do not or cannot or will not pay it, from a practical viewpoint it is impossible to imagine that the Commonwealth would ever voluntarily vacate such a field that it has previously covered. For those reasons, the Opposition is in complete agreement with the Minister and supports the bill.

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. D. P. Landa.

GAMING AND BETTING (GREYHOUND RACING CONTROL BOARD) AMENDMENT BILL

Second Reading

The Hon. D. P. LANDA (Vice-President of the Executive Council and Minister for Planning and Environment) [5.50]: I move:

That this bill be now read a second time.

The object of the bill is to amend the Gaming and Betting Act, 1912, in relation to the Greyhound Racing Control Board in five areas. Details of the amendments are set out in schedule 1. Item (1) of the schedule provides that the office of a member of the board is not, for the purposes of any Act, an office or place of profit under the Crown. This amendment is necessary in order to facilitate the appointment of persons of the highest possible calibre. At present certain persons can be precluded from accepting positions on the board because such acceptance may jeopardize their salary or pension rights in relation to other or former occupations.

Item (2) of the schedule extends to stewards appointed by the board the immunity at present conferred on the board, its members and secretary, where acting bona fide in the execution of their powers and duties under the Act. At the present time stewards do not have this indemnity and, as a result, have adopted an ultra cautious approach in instituting disciplinary proceedings against offenders. This is not in the best interests of the public, and the provision of indemnity for stewards will restore their confidence and remove fear of prosecution, which could lead to stewards incurring monetary loss or loss of their possessions.

Item (4) of the schedule authorizes the board to impose fines not exceeding $500 on clubs or persons participating in or associated with greyhound racing or trial tracks for breaches of the rules. Under the present provisions of section 561 (7) the Greyhound Racing Control Board rules may impose a penalty of $100. It is considered that this sum is quite inadequate as this particular figure was struck in 1948. The increase to $500 will simply update the penalty to a realistic figure in relation to modern-day values. I might mention that a similar figure was set recently in relation to the powers of the Trotting Authority of New South Wales under the provisions of the Trotting Authority Act, 1977.

Item 4 (a) of the schedule empowers the board, as an alternative to disqualification, to suspend any rights or privileges of persons participating in or associated with greyhound racing. I understand that in racing parlance there is a distinction between the words suspend and disqualification. When persons are suspended they may continue to attend racing meetings and train animals, but they are not allowed to race them. However, if offending owners or trainers are disqualified they are precluded from participating in or associating with greyhound racing. As a result, there are occasions where a fine is inadequate but disqualification is far too harsh for the offence committed.

Items (3), (5), (6), (7) and (8) of the schedule cover amendments to consolidate, by way of statute law revision, the rule-making powers of the board and, in consequence of the third and fourth amendments mentioned, to authorize the board to make rules conferring on stewards, the same powers as are exercisable by the board. I commend the bill to the House.

The Hon. E. H. HUMPHRIES [5.54]: The Opposition supports the bill. I agree with the Minister that it is desirable that membership of the Greyhound Racing Control Board be not regarded as an office of profit under the Crown. If it were it would mean many retired people who have had years of experience in the greyhound racing industry would be precluded from membership of the board. Members of a board of this kind would not receive much by way of emolument. It would be a pity to deny to the industry the expertise of such people.

The bill seeks to increase to $500 the fine of $100 that was set in 1948. This seems to be about the same percentage increase as has been applied to parking fines in the same period. Racing sports involve contests between animals. Originally people bred and trained their animals so that they could compete in straight-out sporting events, such as match races and fox hunting. Unfortunately, big money is now involved in contests between animals, and for that reason it is necessary to have more and more controls. I agree with the Minister that disqualification is sometimes too harsh a penalty, especially as in many instances it deprives a man of his livelihood. The Opposition commends the bill.

The Hon. R. G. MELVILLE [5.57]: I also commend the bill which is in keeping with the Wran Government's attitude towards these matters in this State. The sport of greyhound racing is increasing in popularity and value each year. This sport gives an ordinary person an opportunity to be an owner and to enjoy the excitement, leisure and pleasure that come from such ownership and participation. The improvement in blood lines clearly demonstrates how popular this sport is becoming. Indeed, in the greyhound industry a person can purchase a greyhound with top blood lines for about $1,000 or $1,500. We have very good blood lines here, from colonial sires and those imported from such places as Ireland. The Irish sires are becoming particularly evident today. The ordinary citizen now has a greater opportunity to take part in the sport of greyhound racing.

I agree that the proposal to indemify the stewards is one of the most progressive steps ever taken in this sport. The stewards will be able to do their work without fear of action being taken against them by owners or trainers. The Hon. E. H. Humphries referred to the increase in the fine from $100 to $500. When one considers the movement in the value of the dollar, I suppose this penalty might have been increased a little more. However, it will be a deterrent to wrongdoers. It will cover some of the misdemeanours that inevitably occur in sports of this type.

This measure is in keeping with the Trotting Authority Act. It offers a deterrent to people who might otherwise be inclined to commit improper deeds. I commend the activities and diligence of stewards. Their devotion to duty augurs for well administered and clean racing as is known in greyhound racing nowadays. In the past disqualification has been regarded as harsh especially when imposed upon people who own and train dogs. Greyhounds are valuable animals. The activities of suspended owners and trainers will be curtailed, though they will be allowed to visit registered tracks. Owners of greyhounds have to meet tremendous upkeep bills. The possibility of suspension will make them think before they commit any wrongful act. They will be aware that should they be suspended they will still have to meet costs associated with maintaining their animals with no opportunity to participate in the sport.

The proposal that persons who are appointed as members of the board shall be deemed not to hold office or place of profit under the Crown is a good one. It will allow people who have dedicated themselves to a sport the chance to serve in this way. It is a most progressive step. The people of New South Wales are fortunate to have continuing review of legislation relating to sport and the control of sport. This bill goes a long way towards gaining a much clearer and more specific Act to control greyhound racing. The ordinary person will have the benefit of participating in a sport that has been legislatively controlled in a progressive manner. I support the bill.

The Hon. D. P. LANDA (Vice-President of the Executive Council and Minister for Planning and Environment) [6.3], in reply: I thank honourable members for their support. I know that the Hon. R. ***G.*** Melville is an expert on greyhound racing which has become an important industry. Indeed, it is a million-dollar industry from which a lot of people get much enjoyment. Many people throughout the State engage in a cautious flutter on the greyhounds and gain entertainment in this way. This form of racing has been made easily accessible to ordinary people. Thoroughbred gallopers and trotters require capital commitment for management, training and -feeding at a much higher level than greyhounds. The Minister for Sport and Recreation and Minister for Tourism is well known to all members of this House as a man committed to assisting with impartiality and alacrity all avenues of racing. He has brought before Parliament legislation to facilitate the enjoyment of the betting and watching public, and to ensure that the activity is conducted with fairness and honesty.

I am sure that this bill has the total support of the greyhound racing industry, particularly the stewards. We are all aware that racing stewards perform a necessary though in many respects thankless task. I have no doubt that they are pleased to know that any legal risk which they might have run in the bonn *fide* exercise of their duties will now be statutorily removed and they may go about their duties without fear of having a court action which might have even the remotest chance of success taken against them arising out of the proper exercise of their duties and responsibilities.

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. D. P. Landa.

House adjourned, on motion by the Hon. D. P. Landa, at 6.7 p.m.