In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

House adjourned at 10.7 p.m.

Legislative Assembly

Tuesday, the 14th September, 1965

CONTENTS

The SPEAKER (Mr. Hearman) took the Chair at 4.30 p.m., and read prayers.

THE CITY CLUB (PRIVATE) BILL

Petition Presented

MR. DURACK (Perth) [4.33 p.m.]: I present a petition from the agents for The City Club Ltd. praying for leave to bring in a private Bill for "An Act to

resolve certain difficulties concerning the legal position of the 'The City Club Ltd.', a company duly registered under the Companies Act, 1893, and to vest the assets of the company in an association to be formed and registered under the Associations Incorporation Act (59 Vict., No. 20), 1895-1962, and for other purposes arising out of such difficulties and incidental to such vesting". I move—

That the petition be received.

Question put and passed.

Leave to Introduce

In accordance with the prayer of the petition, leave given to introduce a Bill.

Introduction and First Reading

Bill introduced, on motion by Mr. Durack, and read a first time.

Reference to Select Committee

MR. DURACK (Perth) [4.36 p.m.]: I move—

That the Bill be referred to a Select Committee consisting of the member for Avon (Mr. Gayfer), the member for Fremantle (Mr. Fletcher), the member for Murchison (Mr. Burt), the member for Victoria Park (Mr. Davies), and the mover, with power to call for persons and papers, to sit on days over which the House stands adjourned, and to report on Thursday, the 23rd September.

Question put and passed.

QUESTIONS (10): ON NOTICE

TRAFFIC POLICE VEHICLES

Distinctive Colouring and Marking

1. Mr. DUNN asked the Minister for Police:

(1) Is he aware of a practice operating in Queensland where police traffic cars are painted a distinctive colour and clearly labelled as police vehicles and operate on the roads in clear view for all motorists?

(2) If so, can he advise—

(a) is the practice proving effective;

(b) has any consideration been given to adopting a similar practice in this State?

Mr. CRAIG replied:

(1) No; but the information will be sought.

(2) Some police vehicles are painted navy blue with distinctive lettering or badges thereon. Consideration is being given to extending this practice.

PHOSPHATE DEPOSITS

Exploration Leases

2. Mr. W. A. MANNING asked the Minister representing the Minister for Mines:

(1) How many leases have been granted to explore for phosphate in Western Australia?

(2) What is the total area leased?

(3) What are the terms set down for development if commercial deposits are found?

Mr. BOVELL replied:

(1) and (2) Thirty temporary reserves have been granted this year of a total area of 55,263 square miles, authorising the holders to search for phosphate deposits. Four mineral claims of a total area of 1,020 acres are also in existence, having been approved some time ago.

(3) The conditions applying to the temporary reserves are as under. The mineral claims are granted under the provisions of regulation 55 of the Mining Act.

No actual conditions have yet been set down but in the event of discovery of commercial deposits, the reserve holders will be required to satisfy the Minister for Mines on this question. The Minister has in mind the great importance of discovering economic deposits of phosphate and their local value and use in Western Australia.

Western Australia
Mines Department
Conditions of Right of Occupancy of Temporary Reserve for Minerals
(Other Than Gold or Iron and Exceeding 300 Acres)

(1) The occupant shall within 14 days of approval of the right of occupancy appearing in the Government Gazette, mark at a corner of the boundary of the temporary reserve a landmark consisting of a post or cairn to serve as a commencing or datum point and shall advise the Minister for Mines in writing the position of such point.

(2) The occupant shall not use the land comprised in this reserve for any other purpose than that of prospecting for phosphate.

(3) The right of occupancy does not include any tailings or other mining materials lying on the land and the right is

reserved to the Crown to grant licenses in respect of such tailings or other mining materials, as provided under the Mining Act, 1904 and Regulations thereunder.

(4) The existing rights of any prospecting area, claim, lease or authorised holding, shall be preserved to the holder thereof and shall not be encroached on or interfered with by the occupant of this Reserve.

(5) The rights granted under this authority shall be no bar to any person desiring to acquire mining tenements for any mineral other than phosphate, in the said reserve or to any person desiring to acquire a holding under the Land Act, 1933, provided the land applied for does not include any of the occupants' workings which may in the discretion of the Minister for Mines be secured to the occupant of this reserve.

(6) This authority to occupy may be cancelled or the area reduced by the Minister for Mines upon application being made by any person for authority to prospect for phosphate, on any portion of the reserve if prospecting thereon by the occupant is not carried on to the satisfaction of the Minister for Mines. The Minister for Mines reserves the right to grant any mining tenement within the reserve upon being satisfied that the applicant for such mining tenement was already carrying out bona fide prospecting operations before the creation of the Reserve.

(7) Any land alienated or in the course of alienation, and any land reserved (not being Crown Land within the meaning of the Mining Act, 1904), and any land registered or to be acquired and held under the Mining Act, 1904 is excluded from this reserve.

(8) No transfer of this authority to occupy will be permitted without the approval of the Minister for Mines first obtained.

(9) Such further conditions as the Minister for Mines may from time to time deem necessary.

(10) The Minister for Mines may cancel the right of occupancy upon being satisfied that the whole or any of the conditions are not being or have not been fulfilled.

(11) The occupant of this reserve shall commence prospecting operations forthwith, and shall furnish the Minister for Mines with a quarterly summary report (in duplicate) applicable to operations being carried on within the said reserve.

(12) At the end of each calendar year or upon surrender, expiry, cancellation or abandonment, the occupant shall furnish the Minister for Mines with a complete report (in duplicate) of all operations carried out on this ground, including the following information:—(1) methods of exploration; (2) details and results of all geological and geophysical work; (3) details of excavations and drill holes; (4) nature of material tested with all assay results. Plans and sections are to be supplied wherever practicable.

(13) The rights granted under this authority shall be subject to the provisions of the Forests Act, 1918 and the Regulations made thereunder.

(14) The reserves are granted for a term of twelve months with right to two annual renewals subject to the surrender of 50 per cent. of the area at the end of each year, and to a suitable programme of search being supplied to the Minister.

AGRICULTURAL LAND: AMOUNT PRIVATELY HELD AND UNUSED

Premier's Statement

3. Mr. W. A. MANNING asked the Premier:

(1) Has he received a request that the Closer Settlement Act, 1927-1953, be implemented?

(2) Was he correctly reported by the A.B.C. on Wednesday, the 8th September, as saying that he did not know of any unused agricultural land privately held?

Board to Ascertain: Appointment Under Closer Settlement Act

(3) Would not the appointment of the board required under the Act be the best means of ascertaining the facts concerning such land?

(4) Will he take steps to appoint the three members necessary to constitute the board?

Mr. BRAND replied:

(1) Yes.

(2) The A.B.C. news service on the 7th September, 1965 reported that I would be interested to receive details of undeveloped land.

(3) and (4) An examination of the Closer Settlement Act, 1927-1953, is currently proceeding and a decision will be made when relevant information has been considered.

INSTITUTE OF TECHNOLOGY

Commonwealth Financial Assistance for Establishment

4. Mr. DAVIES asked the Minister for Education:

(1) Has any offer been received from the Commonwealth Government in regard to the £1,000,000 grant during 1965-66 for the institute of technology, recommended by the Martin report on tertiary education earlier this year?

(2) If so, what are the terms of the offer and what requirements must be met by this State?

(3) If not, does the Government intend to pursue the matter with the Federal authorities?

Mr. LEWIS replied:

(1) Yes.

(2) The Commonwealth Government will provide £500,000 on a pound for pound basis over the two financial years 1965-1966 and 1966-67, subject to the Commonwealth's approval of the building proposals.

(3) Answered by (2).

PASTORAL LEASES IN THE NORTH

Number

5. Mr. RHATIGAN asked the Minister for Lands:

(1) How many pastoral leases are there north of the 20th parallel to the Northern Territory border?

Acreage, Lessees, and Stock

(2) What is the acreage of each lease and who are the lessees?

(3) How many lessees reside on the properties and what are the names of each?

(4) How many leases are held by absentee holders and what are their places of residence, and in the case of shareholders, his or her place of residence?

(5) When was the first lease of each property taken up and by whom, and who in each case is the present lessee?

(6) What number of cattle or sheep does each lease carry?

Land Available

(7) Is land available for pastoral leases in this area; and, if so, where is it situated and what is the acreage of each block?

Mr. BOVELL replied:

(1) 104.

(2) to (6) Schedule of information available from departmental records, is tabled.

I might add that this is the only information available. It is not possible to give the details required by the honourable member, and these were details we were able to obtain from the departmental records.

(7) There is no land available for pastoral leasing in this area at present.

The SPEAKER (Mr. Hearman): I take it that the answers to questions (2) to (6) are tabled. Are they tabled for any particular time?

Mr. BOVELL: No.

The schedule was tabled.

"C"-CLASS HOSPITALS

Sites: Use of Portion for Car Parking

6. Mr. GRAYDEN asked the Minister representing the Minister for Health:

Does clause "N," section 6 of the schedule of the Health Act, 1911-1944, mean that three-fifths of the area of a site for a "C"-class hospital must be for the use and recreation of convalescing and ambulatory patients or may this three-fifths be bituminised and used as a car park?

Mr. ROSS HUTCHINSON replied:

Not necessarily. The regulation in question merely requires three-fifths of the site to remain "unbuilt upon and open to the sky" so it may therefore be bituminised and used as a car park.

BUS ROUTES

Numbering of Stopping Places

7. Mr. DAVIES asked the Minister for Transport:

(1) Is it still intended to number stopping places on M.T.T. bus and trolley-bus routes?

(2) If so, what progress has been made in this direction?

Mr. O'CONNOR replied:

(1) Yes. When a suitable solution to the problem of numbering dual routes is found.

(2) The problem is still being investigated.

OIL EXPLORATION AT MT. HORNER

Drilling

8. Mr. JAMIESON asked the Minister representing the Minister for Mines:

(1) What was the reported assessment of the oil drilling in the Mt. Horner site?

(2) Was more than one hole drilled in this immediate vicinity?

Mr. BOVELL replied:

(1) The final completion report from Mt. Horner No. 1 well has not yet been received. The company reported recovering a small quantity of oil/water mixture as a result of swabbing operations.

(2) Mt. Horner No. 2 well was drilled one mile south and half a mile west of Mt. Horner No. 1. It was abandoned as a dry hole at 6,746 feet.

WATER SUPPLIES: PASSMORE AVENUE, NORTH FREMANTLE

Servicing: Responsibility of Residents

9A. Mr. CURRAN asked the Minister for Water Supplies:

Is he aware—

(a) that his department has recently refused service to Passmore Avenue, North Fremantle;

(b) that his department has informed each resident that the water service is their own responsibility;

(c) that they must renew the pipes themselves at their own cost;

(d) that they must have their own meter service to the boundary of John Street?

Mr. ROSS HUTCHINSON replied:

The property through which a private track known as Passmore Avenue passes consists of Lots 47 and 48 John Street. Passmore Avenue is not a public road. The land comprised as Lots 47 and 48 is held under what is known to some of the public as "Purple Title". A number of owners have what is described as "one undivided eighth share only" of the two lots. No title contains any reference to a right-of-way or right of access over the land. The obligation of the Metropolitan water Board is to supply a free water service to the boundary of rated land. Any water pipes within the boundary of the rated land are internal reticulation of the land and are the responsibility of the owners of the land. The board has offered the owners of the land individual services to the boundary of the lots or alternatively one larger service to the boundary of the lots from which they may take their private internal services.

"PURPLE TITLE"

Definition

9B. Mr. CURRAN asked the Minister for Water Supplies:

(1) What is a "Purple Title" and in what year was it introduced?

(2) Is it still the law of the land?

Mr. ROSS HUTCHINSON replied:

(1) The term "Purple Title" is one used by some of the public because the land shown on the title deed is coloured purple and not green. It has been the practice of the Titles Office to issue deeds with the land shown thereon coloured purple when the land is held in undivided shares. The date the practice was commenced is not known but it has been in operation for many years.

(2) The practice set out in reply to (1) is still in operation.

ESPERANCE LAND AND DEVELOPMENT CO. AGREEMENT

Effect on District Development

10. Mr. MOIR asked the Minister for Lands:

(1) As the preamble to both the agreement and the amended agreement between the Esperance Land and Development Co. and the Government states that the purpose for making available 1.4 million acres to the company on extremely generous terms is to ensure rapidity of development in this district, does he believe this result has been achieved?

Comparison with Conditional Purchase Land. Development

(2) If the rate of growth of pastured acres which took place in the district between 1953 and 1957 had continued, would the rate of development under normal C.P. conditions have been faster or slower?

(3) What was the average price per acre of C.P. land sold in the Esperance Shire area during the year 1956-57?

(4) What was the average price of C.P. land sold in this area during 1960-61?

(5) What would this total over 1.4 million acres?

Cost of Land

(6) What was the price charged per acre to the company for the 1.4 million acres and what did the sum total?

Sales of Land

(7) What price per acre was received by the company for partly developed land at an auction sale in October, 1964?

(8) What was the total amount received by the company for the land disposed of at this sale?

(9) Has the company disposed of land similarly partly developed by private sale; if so, what are the details of price received, etc.?

(10) As the blocks disposed of at this auction sale had only been improved to the extent of logging, burning, and ploughing approximately one-third of each block, was such a sale in accordance with the terms of the agreement?

(11) Has a certificate of title been issued to all or any of the purchasers?

(12) If no certificate of title has been issued, will he indicate in what circumstances this will occur?

(13) What is the reason that he has not enforced subclause (c) of clause (12) of the agreement, i.e. "that the company will confer in the selection of settlers with a committee appointed by the Government for that purpose the intention being that not more than one holding shall be allotted to any one person"?

(14) Does there exist, or has there ever existed, any agreement or understanding, written or oral, between the Government and the company relating to the release of Crown Lands adjoining that held by the company?

Termination or Renegotiation

(15) Has the Government ever considered terminating or renegotiating the agreement with the company?

(16) If not, what are the reasons?

Mr. BOVELL replied:

(1) Yes. The agreement between the previous Government and Esperance Plains (Australia) Pty. Ltd. set aside 1,981,000 acres out of which the State was to make available 1,500,000 acres to the company.
Because the company defaulted in the performance of its obligations under the agreement and action to remedy these defaults was not taken by the then Government, the present Government was prevented from taking appropriate action.
The only legal course open to the present Government was to renegotiate the agreement, which resulted in an assignment to American Factors Associates Limited and Arcturus Investment and Development Ltd. as a partnership called Esperance Land and Development Company. The renegotiated agreement provided for the release of 454,369 acres to the Crown and approximately 1,432,165 acres to the new company. Areas of land have been selected progressively and development of these parcels has proceeded as required by the agreement. The company has applied for further acreage which will complete its entitlement of 550,000 acres at the 31st December, 1965.

(2) Slower. Because of development by the new company and sound practice initiated by the agricultural research station at Esperance the potential of the region has received wide publicity.

(3) 5s. 5d. an acre including survey fee.

(4) 8s. 11d. an acre including survey fee.

(5) At 5s. 5d. an acre the total sum is £379,166 13s. 4d. At 8s. 11d. an acre the total sum is £624,166 13s. 4d.

(6) The price, to the company, of 5s. an acre including survey fee was fixed by the original agreement. The company is not required to pay this amount until it applies for a Crown Grant of a parcel of land which has been developed to the extent required by the agreement.

(7) and (8) I have no official information on the price received by the company.

(9) No. Land sold privately was more fully developed. I am not aware of prices received.

(10) Yes. The company is still responsible for the development of the land sold at auction in accordance with the agreement.

(11) and (12) Crown Grants are issued to the company as required by the terms of the agreement. Transfer of title to a purchaser is effected by the company through the Titles Office.

(13) The provisions of this subclause are being complied with.

(14) When the original agreement was being renegotiated it was decided that continuous progressive releases of land were vital to the orderly development of the Esperance district.

To enable this desirable objective to be carried out and, as stated in (1) above, the company voluntarily surrendered to the Crown over 450,000 acres included in the original agreement. This land was released by the Government under conditional purchase during the period the company was preparing its land in accordance with requirements of the agreement.

It was agreed that, when the company was in a position to make its land available, consultations with the Government on land releases generally would be desirable. Since April, 1959, the Government has released land in the Salmon Gums and Esperance districts totalling 799,000 acres and release of further Crown lands in the area is a matter for decision by the Government.

(15) No.

(16) The terms of the agreement are being carried out by the company.

QUESTIONS (4): WITHOUT NOTICE

TOMATOES AT GERALDTON

Damage from Hormone Spraying

1. Mr. SEWELL asked the Minister for Agriculture:

   (1) Is he aware that extensive damage has been caused to tomato gardens in the Geraldton district brought about by hormone spraying to eradicate weeds?

   (2) If so, what action is being taken to compensate growers for losses incurred arising out of the damage caused by the spraying?

   Mr. LEWIS (for Mr. Nalder) replied:

   (1) Yes.

   (2) The affected crops have been inspected by departmental officers. It is their opinion, based on the pattern and type of damage, that this was caused by hormone spray drift from cereal crop spraying. The question of compensation is not one for the department.

KELLERBERRIN FLOURMILL

Closure and Resultant Unemployment

2. Mr. HAWKE asked the Minister for Industrial Development:

   (1) Has the Kellerberrin flourmill closed or is it likely to close in the near future?

   (2) Is the closure or any proposed closure likely to be permanent?

   (3) If not, for what period will the closure apply?

   (4) How many employees have been, or are likely to be affected by losing their employment?

   Mr. COURT replied:

   (1) The mill closed Monday, the 22nd August, 1965.

   (2) Yes, as a flourmill.

   (3) Answered by (2).

   (4) Sixteen.

WHEAT HARVEST

Handling by Railways Department

3. Mr. CORNELL asked the Minister for Railways:

   On Wednesday, the 4th August I asked the Minister a question regarding the ability of the railways to transport the pending season's harvest and he assured the House that after consultation with the acting Commissioner of Railways, that would be the case. I would like to ask him if that confidence is still maintained?

   Mr. COURT replied:

   Yes, unless there should be some request from the Australian Wheat Board of an abnormal nature which would impose a strain on the capacity of the railways; but at the moment I cannot see any unmanageable situation arising. However, I repeat: There could be some special request in the New Year which would cause a revision of the figures. There is very close consultation between the railways, Co-operative Bulk Handling Ltd., and representatives of the Australian Wheat Board; and there is no need for perturbation as far as we are concerned.

SUPERPHOSPHATE INQUIRY

Interdepartmental Committee: Names, and Tabling of Interim Report

4. Mr. CORNELL asked the Minister for Agriculture:

   In regard to the interdepartmental committee which inquired into superphosphate in this State, will he advise the names of the gentlemen acting on this committee, in view of the Press report in this morning's paper, which advised that an interim report had been issued; and will he lay on the Table of this House a copy of the report?

   Mr. LEWIS (for Mr. Nalder) replied:

   I cannot readily recall the names of the personnel on the committee, but I will obtain the information and supply it to the honourable member.

Mr. CORNELL: Further to the latter part of my question, it is quite obvious that an interim report has been issued. Will he table a copy of that report?

Mr. LEWIS: The report is not in my hands, but I will endeavour to secure the answer to the question and supply it to the honourable member.

BILLS (7): INTRODUCTION AND FIRST READING

1. Workers' Compensation Act Amendment Bill.
2. Factories and Shops Act Amendment Bill.

   Bills introduced, on motions by Mr. O'Neil (Minister for Labour), and read a first time.
3. Agricultural Products Act Amendment Bill.
4. Fruit Cases Act Amendment Bill.
5. Cattle Industry Compensation Bill.
6. Milk Act Amendment Bill.

   Bills introduced, on motions by Mr. Lewis (Minister for Education), and read a first time.
7. Painters' Registration Act Amendment Bill.

   Bill introduced, on motion by Mr. Graham, and read a first time.

LEAVE OF ABSENCE

On motion by Mr. I. W. Manning, leave of absence for four weeks granted to Mr. Nalder (Katanning) on the ground of urgent public business.

LOCAL GOVERNMENT ACT AMENDMENT BILL

Recommittal

Bill recommitted on motion by Mr. Craig (Chief Secretary), for the further consideration of clause 4.

In Committee, etc.

The Deputy Chairman of Committees (Mr. Crommelin) in the Chair; Mr. Craig (Chief Secretary) in charge of the Bill.

Clause 4: Section 525A added—

Mr. CRAIG: When the deletion of certain words in line 30 was moved, it was intended that the comma appearing after the word revenue should be deleted and the word "or" inserted. I therefore move a further amendment—

Page 2, line 30—Delete the comma after the word "revenue" and substitute the word "or."

Amendment put and passed.

Mr. CRAIG: I move an amendment—

Page 2, line 35—Delete the comma after the word "revenue" and substitute the word "and."

Amendment put and passed.

Clause, as amended, put and passed.

Bill again reported, with further amendments.

BUILDERS' REGISTRATION ACT AMENDMENT BILL

Second Reading

MR. ROSS HUTCHINSON (Cottesloe—Minister for Works) [5.5 p.m.]: I move—

That the Bill be now read a second time.

This small amending Bill is somewhat similar to the Albany Harbour Board Act Amendment Bill and the Bunbury Harbour Board Act Amendment Bill and has been introduced for virtually the same reason; that is, to provide payment of fees to the members of the board in accordance with recommendations made last year by an interdepartmental committee set up to consider the payment of fees to various Government boards, committees, etc.

At the present time subsection (4) of section 6 of the Act states specifically that board members shall receive an amount not exceeding £4 4s. for each sitting of the board which they attend. This maximum amount is already being paid to both the chairman and members.

In accordance with the recommendations made by the committee it is proposed to increase those fees to bring them into line with those of other similar organisations. However, to avoid the necessity of amending the Act each time a change is made in the fees, it is proposed that alterations to the fees for the board be those prescribed from time to time.

Under the Interpretation Act "prescribed" means "prescribed by the regulations." Thus members of Parliament will be kept advised of any alterations to the fees being paid to the chairman and members of this board, should any further changes be made.

Debate adjourned, on motion by Mr. Toms.

HOUSING LOAN GUARANTEE ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 7th September, on the following motion by Mr. O'Neil (Minister for Housing):—

That the Bill be now read a second time.

MR. HAWKE (Northam—Leader of the Opposition) [5.7 p.m.]: This Bill will amend the Housing Loan Guarantee Act in three directions. The first is to change

the existing system of valuation in regard to houses and land. Under the existing law the valuation of any house has also to include the value of the land upon which the house stands. The proposal in the Bill is to exclude, in future, the value of land. This will mean that more houses, other than is the case at present, can be brought under the scope of the Act. No doubt that will be the case when this amendment is approved by Parliament and comes into operation.

The second proposal deals with the granting to the Treasurer of a discretionary authority to advance moneys from the appropriate funds to enable houses other than new houses to be financed. I have no doubt that in the practical administration of this law in the past a number of experiences have been encountered where it would have been desirable to advance moneys for the purchase of houses other than new ones. However, because of the Act giving no authority for money to be advanced by the Treasury for the purchase of those houses they could not be purchased.

It is noted that the Treasurer will act in this situation only upon receipt of a recommendation from the Minister. Therefore the situation appears to be protected doubly. I am convinced the operation of this proposed new power will be beneficial to the administration of the Act.

The third proposal in the Bill is included to dispose of an existing legal doubt. Whether this legal doubt is strong, or absolute, or minor, I am not in a position to say. We did not have any information given to us by the Minister when he introduced the Bill. However, presumably at least one case has arisen, and probably more, where serious —or some—doubt has developed as to whether, when a house already under the provisions of the Act changes ownership by sale, the Treasurer has full legal authority to transfer the indemnity from the previous owner-purchaser to the new owner-purchaser. If there be any doubt at all, legally, Parliament should clear the doubt at the first opportunity. I support the second reading of the Bill.

MR. O'NEIL (East Melville—Minister for Housing) [5.11 p.m.]: I would briefly thank the Leader of the Opposition for the thought given to this measure, and perhaps I should amplify some of the comments I made at the second reading stage.

Members are fully aware of the two kinds of funds handled by building society movements. There are those funds allocated by the Commonwealth to the State for the purpose of encouraging home ownership. From these funds, sums of money up to £3,250 per home purchaser may be lent. The operation of the Housing Loan Guarantee Act has no effect upon those funds whatsoever. However, building societies may, and do, borrow money from financial institutions, such as banks, insurance companies, and the like; and the Housing Loan Guarantee Act operates with respect to those borrowed funds in this way: The Treasurer guarantees the lenders of the money the full amount. He guarantees the repayment of 100 per cent. of the amount borrowed by the building society. Now, if the building society reallocates that money to individual home purchasers, provided it does so under certain conditions the Treasurer may at the request of the building society grant an indemnity for the proportion of the funds which it so grants.

The situation at present is that if a building society lends more than 70 per cent. of the value mentioned in the Act, then that building society is indemnified with respect to the amount of money it lends in excess of 70 per cent, provided two other conditions are complied with: firstly, that the total amount of the loan does not exceed £4,800; and, secondly, that the value of the house to be constructed does not exceed £5,000.

I am sure that the amendments which are before the House on this occasion will assist in making funds available more effectively to home owners who borrow money through building societies.

Question put and passed.

Bill read a second time.

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

JETTIES ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 7th September, on the following motion by Mr. Ross Hutchinson (Minister for Works)—

That the Bill be now read a second time.

MR. SEWELL (Geraldton) [5.17 p.m.]: The Minister when introducing the Bill told us that one of the main reasons for bringing it forward was that at the present time the works permits, licenses, etc, governing jetties in this State are controlled by regulation, and the Government desires to have firmer control in order to make quicker decisions in regard to the granting of licenses and the prescribing of fees.

Being one of those who do not agree with the control of this country by regulation—a condition into which we seem to be drifting at times—I feel that this measure could be a step in the right direction, provided always that the Minister of the day does not abuse any power given to him.

It is proposed to amend section 4 paragraph (13) of the Act, which reads—

> Prescribing the conditions to be inserted in any lease or license granted under this Act and the fees to be payable for any such license.

If the Minister is successful with his amendment, that paragraph will read—

> Prescribing the conditions to be inserted in any lease granted under this Act.

There will then be a further paragraph (13a) added as follows:—

> Prescribing the fees to be payable for any license granted under this Act.

Section 7 is to be amended by adding after the word "license" in line 1 the words "on such terms and conditions as he thinks fit." If this amendment is agreed to the section will then read—

> The Minister may grant a license on such terms and conditions as he thinks fit to any person for the erection or construction of a jetty or for the maintenance and use of any jetty.

As I have said, being one of those who do not believe in government by regulation, I think this is a step in the right direction, and I endorse what the Minister said to us last week; namely, that because of the rapid growth in this State right along the coast, it will be necessary at times for the Minister to be in a position to make a decision quickly so as to be right on the spot in regard to our people, whether they are concerned with iron ore, fishing, or anything else. Therefore, following the Minister's speech, I support the Bill.

MR. TONKIN (Melville—Deputy Leader of the Opposition) [6.20 p.m.]: I regret very much that I do not share the views of the member for Geraldton on this question. I am not satisfied that the Minister has given the House the real reasons for these amendments.

The Minister said, when he introduced the Bill, that its purpose is to enable the Minister in charge of the department to issue licenses to build jetties on such terms and conditions as he considers fit for any particular type of jetty. At present the law prescribes what shall be done; and it has general application. Every person knows what is required of him if he wants to construct a jetty.

Now we are to get away from that position, and power is to be placed in the Minister to please himself with regard to each particular application. There need be no uniformity at all. He can grant all the exemptions he likes; and, in fact, he can completely override the existing legislation and regulations.

Under the existing law, if a person wants to use a slipway he has to make an application on form 3. He makes his application to the harbour master or the officer in charge of the particular slipway; and then he has to give details of the length of his boat, the beam of his vessel, its draught, its dead weight, its gross tonnage, peculiarities and particulars of keel, and any peculiarity of construction. That is all necessary in order to safeguard the jetty.

Under the amendment, the Minister can issue a license to use a jetty and he can exempt the license holder from compliance with any of the conditions of that regulation. Is that justifiable? Is it excusable? I say, definitely, "No"; and I have yet to be convinced that after all these years in prescribing the conditions under which jetties are to be constructed and used we have now reached the stage where it is necessary to let the Minister determine whether he will exempt the various applicants from the requirements of the law.

We will have a situation where some people will be obliged to comply with the law and others will, under the license, be specifically exempted by the Minister from so doing; because licenses are required for all sorts of things in connection with jetties—licenses to put pipelines on them and to use pipelines; and licenses to moor vessels at jetties. They will all be covered by this amendment, and the Minister will be able to issue licenses to individual persons specifically exempting them from the requirements of the law, which other people have to observe; and I say it is a very bad principle of legislation.

Under the law, when an application is made for a lease, the terms and conditions have to be inserted in the lease; and that will still be the law. Why should it be any different with regard to a license? If the Government can comply with a requirement that the conditions shall be stipulated in each particular lease, why cannot such conditions be stipulated in a license? And why cannot it be done by regulation and not left to the Minister to determine from time to time what sort of a license he will issue to this person or that person? That is not a good principle of legislation at all.

When licenses are granted by regulation, everybody knows the conditions which apply to the granting of such licenses; it is general knowledge. But under this amendment nobody but the Minister, the officers of the department, and the person concerned will know the conditions under which a license has been granted. I do not think that is a reasonable proposition.

If licenses are to be granted for the construction of jetties and for the use of jetties, the conditions applying to such licenses should be public knowledge; and that is the law at present. A regulation is promulgated and everybody knows the conditions which have to be complied with in order that a license may be obtained.

Under this amendment, however, there will be no such requirement at all. The Minister, within his office, can determine that the license will be granted on such terms and conditions as he thinks fit; and they can vary from person to person and from firm to firm. In that way they can give an unfair advantage to one firm as against another.

I am very much opposed to this type of legislation, which places in the hands of the Executive power to exempt from compliance with the law. All through the regulations which are promulgated under this Act there are definite conditions with regard to the existing jetties; and these conditions must be complied with in regard to such things as mooring vessels to the jetties, using the facilities on the jetties, and so on.

A number of these requirements impose substantial financial obligations on the persons using the facilities. But under the amendment the Minister will be able to grant a license to persons to construct jetties and to use the jetties, when constructed, under such terms and conditions as he thinks fit, and they may have no relation whatever to the terms and conditions which apply to other jetties; and I would remind the House that the term "jetties" is a very wide one and covers slipways and mooring places as well as jetties.

Recently one of the leading barristers in this State delivered a paper at the Third Commonwealth and Empire Law Conference in Sydney. When reading it through, I could not help thinking how his comments applied to the situation with which we are dealing. I am referring now to the report of his paper, Topic No. 4, "The Legal Profession," Plenary Session, "The Role and Responsibilities of Lawyers in the Modern World." I propose to quote from page 10 because it is very germane. The speaker was Mr. Burt, Q.C., and he said—

> I opened this paper by saying that a lawyer's paramount responsibility was to the law. I close by repeating it. Today frontal attacks upon the concept of law are common enough. For present purposes I leave them on one side. The more dangerous attack comes from those who use the law to destroy the law. "History, and not only ancient history, shows that in countries where democratic institutions have been unconstitutionally superseded, it has been done not seldom by those holding the executive power. Forms of government may need protection from dangers likely to arise from within the institutions to be protected."
>
> Law is essentially the control of power by fact, including opinion based upon fact. It says that if certain facts exist then this is the consequence. It may attach sanctions or it may merely state the consequence. The facts controlling the legal result are found by the judicial process. If the facts are not so found the consequence does not follow. Power uncontrolled by fact operates directly and being uncontrolled by fact it makes the judicial process and those who operate it irrelevant.
>
> So much has been written in recent years of the proliferation of law designed to control and to plan the modern welfare state that the essential and critical point has been overlaid and lost sight of. The point is that the operation of such laws has, so often, not been made dependent upon the existence of fact and when their operation is made dependent upon discretion no criterion is prescribed to control its exercise.

I pause here to point out that this applies directly to the present situation; that is, what will be done will be dependent upon the Minister's discretion, upon such terms as he thinks fit. So in those circumstances no criterion is prescribed to control the exercise of the power by the Minister. I now go on to quote—

> The result expressed quite simply is no law; and yet it is "legal."
>
> The power of the administration in the modern states is different from the power of private corporations and individuals, not for present purposes because "the servants of government are also the servants of the people and the use of their power must always be subordinate to their duty of service," but because it is so often granted in terms which deny the possibility of it being exercised "illegally."
>
> And this "no law" has another character. It does not operate to prohibit. It operates to permit. Freedom of action within whole areas is taken away with one short legislative chop, to be restored if and when and on such terms as the authority in its absolute discretion thinks fit. In this way the citizen is forced to be a mendicant and his freedom becomes but an addition of his licenses and the licenses lie in grant as a mere matter of grace.

That applies absolutely to the present situation. Right up to now we have been able to prescribe the conditions under which jetties, slipways, and mooring places can be constructed and used in accordance with the law. But now we are told that we have to depart from that procedure. We cannot design a law which will cover the situation, and so we have to put the power in the hands of the Executive in order that the Minister can issue a license under the terms and conditions that he thinks fit. It does not matter what Parliament or anybody else might

think about it, or whether unfairness or discrimination may arise from it. That does not matter, because this measure will grant the Minister absolute power which cannot be challenged to issue a license to a certain person which will give that person a distinct advantage. No-one can challenge this because if we agree to this Bill it will provide that the Minister can grant a license under any terms and conditions that he thinks fit.

It would not matter if anyone else became aggrieved as a result; it would not matter how much anyone objected to the Minister granting a license to some other person, because Parliament is going to say to the Minister, "We hand this power over to you. In future licenses to construct jetties, slipways, or mooring places shall be issued at your absolute discretion. You can prescribe the terms and conditions. You can make them as arduous as you like for some people, and as easy as you like for others." No-one can do anything about it because it is left absolutely to the Minister's discretion, and there is no criterion by which anyone can judge his action. Where is this going to end?

Next week we will have a proposition before us to allow railways to be constructed on the same basis, and to do all sorts of things at the absolute discretion of the Minister. If this is going to continue there will be no need for Parliament, because these things are to be done at the absolute discretion of the Executive. I make the strongest possible protest against this procedure. It is completely without justification to say that because some development has taken place in the north it is necessary to issue these licenses as quickly as possible. That cuts no ice with me! Other countries have had rapid development. Rapid development has taken place in New South Wales, Victoria, and Queensland, but the Parliaments in those States have not seen any necessity to hand over this sort of power to the Executive, and nor should they.

All through the years we have had control of this situation under the law. There is power under the law to make regulations governing the issuing of licenses. But that is not enough! The Minister now wants to amend the law so that he can grant exemption where and when he likes under any terms and conditions. By way of illustration, let me mention a few provisions dealing with the use of existing slipways. The following quote is taken from page 2365 of the *Government Gazette* dated the 1st August, 1961:—

GERALDTON AND BUSSELTON SLIPWAYS.

Schedule of Slippage, Haulage, Water and Electricity Charges.

(a) Slippage Fees.

Then it goes on—

FISHING BOAT HARBOUR, FREMANTLE.

Application for License to attach Crayfish Crates to Jetties.

That is a use of a jetty. There can be many uses to which a jetty can be put, but the law has been able to cope with the situation by regulation up until now. With regard to the new jetties which are to be constructed we are told it is impossible to prescribe the terms and conditions by regulation, and so we have to hand power to the Minister so that he can please himself how he shall issue the license. That will not be done by any vote of mine.

Parliament would be foolish to grant this power to the Executive, because little by little power is being taken from Parliament and put into the hands of the Executive—the very thing which Mr. Burt deplored when he read his paper to the law convention; that is, placing power in the hands of the Executive to grant licenses with no criterion by which one can judge. The license is to be granted simply at the whim of the Minister on such terms and conditions as he thinks fit, and nobody can take any action on it, no matter how unfair or unreasonable it might subsequently appear, because there is no criterion upon which such action can be calculated or judged.

Of course that is the purpose of this—to put the executive in that position. I would like to know the real reason why this departure from the usual course of events has to be made at this stage. I do not accept that this is a matter of such great urgency that the Minister has to have the power in his hands to issue a license because it cannot go through the ordinary channels of making a regulation. Surely the conditions applying in the north will, with a few exceptions as to details, be of a fairly general nature, and it would be possible to promulgate a regulation to cover that situation and to provide in it that, in regard to the special conditions, they shall be stipulated in the license. But that is no justification for asking Parliament to give up control of this—and we have control of it at the moment—and to hand over the control to the Executive so that the Minister may issue these licenses under any terms and conditions that he thinks fit. That is a power I am not prepared to give to the Minister in these circumstances, and I therefore propose to vote against the Bill.

MR. ROSS HUTCHINSON (Cottesloe—Minister for Works) [5.43 p.m.]: I thank the member for Geraldton for his support of the Bill. I consider he has adopted a realistic approach to the State's needs in this matter. The honourable member did say that he felt it was giving power to a Minister, but I suggest to him that the

Minister for Works would not abuse such a power. I also remind him—if he needs reminding—that all Ministers of the Crown, for many a long year, have had extremely wide powers which have been exercised—

Mr. Tonkin: Under the law, though.

Mr. ROSS HUTCHINSON: —with judgment; and here I even refer very kindly to the Deputy Leader of the Opposition who himself was a Minister of the Crown.

Mr. Tonkin: And who operated this law without seeing any necessity to alter it.

Mr. ROSS HUTCHINSON: Unlike the member for Geraldton, the Deputy Leader of the Opposition has seen fit to disagree with the Bill and its provisions, and he said that the Minister could please himself what he did under the terms of this legislation; that he could indulge in his own whims when setting the terms and conditions applicable to a license. He has used these phrases before. To most members in this House they seem to have real meaning only to the Deputy Leader of the Opposition himself.

I would point out that Ministers of the Crown do not indulge in whims or flights of fancy. They endeavour to do their best in a realistic way. Ministers possess great powers, but at the same time theirs is a very grave responsibility. It is only when their powers are used irresponsibly that legitimate criticism can be made. At times I criticise the Deputy Leader of the Opposition for the wrongful use he makes of his power, as Deputy Leader of the Opposition, in endeavouring to sway the House in his flights of fancy regarding justice and the like.

The purpose of the Bill before us is to facilitate the granting of licenses; not to indulge in whims or to abuse any power that is given to the Minister. The purpose is to try to arrange, as reasonably and as quickly as possible, the terms and conditions which suit the circumstances. I have tried to point out that it is very difficult indeed to write into a regulation all the terms and conditions which cannot be foreseen at the time; and it is impossible to foresee all the circumstances that could arise in regard to certain cases. A regulation might be amended again and again until it becomes difficult to interpret; and I could understand the Deputy Leader of the Opposition saying, "How is it that the Minister has allowed this sort of thing to happen? It is a regulation which virtually massacres the Queen's English. It does not have any sense, and it does not contain any real purpose."

The Deputy Leader of the Opposition is just clinging tenaciously to a section in the Jetties Act, or to legislative machinery within that Act, which has been found by experience to be unable to cope adequately with the varying conditions that apply within the State at the present time. He wants to cling to what has become an anachronic arrangement, and that is not untypical of the honourable member. In a week's time he could take the other side of the situation and argue just as much for it.

Mr. Hall: I do not think you will have to wait a week.

Mr. ROSS HUTCHINSON: I quite agree that I would not have to wait a week! The Deputy Leader of the Opposition tends to indulge in flights of fancy about a Minister abusing his power, or retaining a power which he could abuse. As a Minister of the Crown, the Deputy Leader of the Opposition had these great powers. As a matter of fact, he has put amending Acts on the Statute book which contained sections that completely set aside the provisions of those Acts.

Mr. J. Hegney: Give us an example.

Mr. ROSS HUTCHINSON: The Marketing of Barley Act and the Marketing of Potatoes Act.

Mr. Hawke: They are perishable commodities. But jetties do not perish overnight.

Mr. ROSS HUTCHINSON: I am glad to hear the addendum to the interjection of the Leader of the Opposition. The Deputy Leader of the Opposition, as Minister for Works, held these very great powers. He would be the first to deny that he ever abused his powers, and that it was wrong for him to do certain things. He always seems to find excuses. On one occasion he says it is a different situation, and on the next he argues that it is the principle and he stands for that principle. It seems to me that what was good enough for him to do as Minister for Works, is not good enough for anyone else. If that is the case, and if it is proved to be the case, then it appears to me to be manifestly unfair.

I have tried to point out that it has been found to be impossible to foresee all the relevant possibilities that could be written into a regulation that is made under the regulation-making power contained in the Act at the present time. So the purpose of this Bill is merely to facilitate the construction of jetties.

Mr. Tonkin: It goes further than that.

Mr. ROSS HUTCHINSON: Let us see what could happen in these matters. A jetty might have to be constructed at Dongara, Geraldton, or Carnarvon for various reasons which could not be foreseen. What happens in such cases is that the people who want to have the jetty built approach the Minister, and he in all probability refers them to his departmental officers. Discussions then ensue to ascertain the reasons for which it is required. When an agreement is reached that the jetty is required for various reasons, it goes before

the Minister, who examines the agreement to find out whether anything in it is manifestly unfair and may place a person in an invidious position. After the Minister has done that he gives his consent. That is the machinery adopted to put the proposal into effect.

One could read into our legislation all sorts of things which could be considered to be shockingly unfair, if they were abused by the Minister or by the Government in office. From time to time the Opposition can legitimately criticise the Government for its action for this or that reason. I would like to suggest that when terms and conditions which a Minister for Works might in the future prescribe for the building of a jetty are manifestly unfair to some party, and rightly raise the wrath of the Opposition or the back-benchers on the Government side, then that is the time to hammer the Government. But I suggest the Bill before us has been introduced to facilitate the natural work of the Government. There are no flights of fancy, and there will be no abuse of power by the Government. This is merely an effort by the Government to do the right thing.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (Mr. Crommelin) in the Chair; Mr. Ross Hutchinson (Minister for Works) in charge of the Bill.

Clauses 1 and 2 put and passed.

Clause 3: Section 7 amended—

Mr. TONKIN: I interjected when the Minister was speaking to indicate that the proposal in the Bill went a long way further than to facilitate the construction of jetties in the north or anywhere else. If we examine section 7 of the Act which the Bill proposes to amend, we find it reads—

> The Minister may grant a license to any person for the erection or construction of a jetty or for the maintenance and use of any jetty.

At the moment this provision is subject to the regulations. The Bill proposes to wipe out the existing law, by providing that the Minister may grant a license on such terms and conditions as he thinks fit for the erection or construction of a jetty, or for the maintenance and use of any jetty. If this is agreed to the Minister will be given the power to issue licenses for the construction of jetties at places like Geraldton, Bunbury, and Fremantle, under conditions which are different from those contained in the regulation. Furthermore, no-one would be able to challenge the action of the Minister.

The existing regulations are found in the *Government Gazette* of the 1st August, 1961, page 2341. They are as follows:—

Part II

To Apply to all Jetties within the Port of Perth.

Management and Use of Jetties.

> 68. Control of Jetties—All public jetties in the Port of Perth shall henceforth be under the control of the Department.

Then they go on to set out the use of jetties.

The amendment in the Bill will give the Minister power to issue a license to someone who is not already holding one, under terms and conditions which are different from those laid down in the regulations. If he does that no-one can challenge his action. I ask any member who has the necessary legal knowledge to deal with this matter by argument and by proof, to ascertain whether or not I am correct.

Mr. Ross Hutchinson: What is it that you fear that could be written into these terms and conditions?

Mr. TONKIN: I say that Parliament would be foolish to depart from the law, which has general application, and to place in the hands of the Executive the power to make a fresh law, under such terms and conditions as the Minister sees fit to make, when there is no criterion upon which that fresh law can be challenged. This is the very matter to which Mr. Burt, Q.C., drew attention in his paper, when he stated—

> If the facts are not so found the consequence does not follow. Power uncontrolled by fact operates directly and being uncontrolled by fact it makes the judicial process and those who operate it irrelevant.

Lower down he says—

> The point is that the operation of such laws has, so often, not been made dependent upon the existence of fact and when their operation is made dependent upon discretion no criterion is prescribed to control its exercise.

That is my complaint about this. Existing licenses have been issued subject to the law. There are certain safety precautions with regard to jetties and slipways which, up to now, have had to be observed under the law. However, this amendment gives the Minister power to set that law aside. Whether the Minister is going to exercise that power or not is another matter. This gives him the power to set the law aside in the interests of some individuals, and it is a very bad principle. It is one which no Parliament in a democratic country should stand for, and that is my complaint about this.

It would be possible to overcome these difficulties with regard to the construction in the north, but this amendment wipes out the protection of the law with regard to all existing jetties and slipways—and the Minister cannot deny it! Is that necessary or justifiable? Of course it is not; and I protest very strongly about it. I am surprised that the Government attempted it with the flimsy excuse it has advanced for doing so.

Mr. FLETCHER: I agree with the Minister in some respects, but with regard to others I am in opposition. He pretends to be surprised at the attitude of the Deputy Leader of the Opposition with regard to Ministers exceeding their powers under regulations. I am sure members in this Chamber are aware of the newspaper concern in respect of this also. It is relevant to read a leading article of the 13th September, which was only yesterday, as follows:—

> Mr. Turner, M.H.R. for Bradfield (N.S.W.), who comes from a blue-ribbon Liberal seat, does not aspire to be a minister. He can afford to be a government "rebel."

Let me say here that I was pleased to hear the member for South Perth take a similar attitude recently. The article continues—

> Because he bears that tag, it is probable that little notice will be taken of his speech in the budget debate. Not one minister was at the centre table to hear him.

This is the important part—

> More is the pity because Mr. Turner's point that parliament has declined as an institution in the eyes of the people was well taken.

Let me interpolate here to repeat that this is a leading article in *The West Australian*, which continues—

> As he observed, the fault lies with Parliament itself.

I ask the Minister: Is the Deputy Leader of the Opposition, as a member of Parliament and a member of Her Majesty's Opposition, justified or not in taking exception to too much power being put in the hands of the Executive as distinct from Parliament? To continue—

> Increasingly in Canberra parliament has permitted itself to become the rubber stamp of the executive.

What does the Deputy Leader of the Opposition attempt to do? He attempts to ensure that this State Parliament does not also become a rubber stamp of the Executive as stated in this article, from which I continue to quote as follows:—

> Important government measures are rushed through both houses in too little time to subject them to critical scrutiny or thorough review.

In view of that, would the Minister deny this side of the House the right to question extra power being put in the hands of a Minister? I do not deny the Minister's integrity or his honesty when he said that we cannot see around the corners for the purpose for which this legislation is intended; but I submit that the Minister, without knowing it, is being used by big overseas interests who want to establish jetties here on their terms and not on the terms of the Minister or those on this side of the House.

Coming events cast their shadows before, and I suggest this is a shadow of an event pending in relation to the installation of jetties and wharves not on the terms of Parliament, but on the terms of interests other than those here in Western Australia. The article continues—

> Mr. Turner noted a few recent examples: . . .

The article goes on to enumerate them and then continues—

> all have helped to speed the growth—

I ask the Minister's attention

> —of ministerial power and a corresponding decline in the influence and the voice of parliament.
>
> So has the failure of parliamentarians themselves to stand up for the institution.

Let me say here that I stand up on behalf of Fremantle as a portion of this State—and a very important portion—to voice my objection to more authority being put in the hands of the Minister. To continue—

> Government members put the party above parliament when they confine occasional criticism of the executive to secret party-room discussions.

That is the substance of this article, and it is very well justified. I feel that the Deputy Leader of the Opposition or any member on this side of the House is equally justified in voicing his objection to extra authority being put in the hands of the Minister.

Let me mention at this stage that anyone can walk on to the wharves in Fremantle to view the ships or to fish, if desired. This can be done at any hour of the day or night. However, I am aware that this does not apply in Cockburn Sound to a wharf which belongs to a big industrial establishment. No-one can walk on it at will.

I ask members: Is that wharf part of Western Australia or does it belong to some foreign power overseas? It belongs to Western Australia, and Western Australians should have the right to walk on it the same as they have the right to walk on the wharves at Fremantle. If they cannot, I will object on behalf of the people of Western Australia. I see in this measure a greater curtailment of the right of the individual, and to that I object.

Mr. SEWELL: Following what I said during the second reading debate, I must agree with the member for Fremantle that no-one should take the right away from members of this Chamber to express their approval or otherwise of the actions that the Government takes. I cannot see why the Deputy Leader of the Opposition and the member for Fremantle object to these licenses being issued.

In my opinion regulations have pretty well taken over in this country. We heard the quotation by the member for Fremantle, and I would say that it is the fault of the members of Parliament themselves, and Parliament in the Federal sphere, because they have allowed certain Governments to govern by regulation. In that way the members have not had a voice in things themselves.

I believe that this Bill would place the responsibility on the present Minister, and Ministers to follow, if the Act is not amended in the years to come. In this way the responsibility will be placed on the shoulders of the Minister, and I think that is where it should be.

Mr. TONKIN: I am glad the member for Geraldton explained his attitude because it is clear he does not fully understand the situation. With regard to a regulation, a move can be made in Parliament for its disallowance if it is unfair. It has general application and is published in the *Government Gazette*. Everyone knows the conditions, and there is no such thing as giving one person an advantage over another.

We are losing that control with this amendment, and we are saying with regard to the construction of new jetties and their maintenance and the use of existing jetties, that they shall not be covered by a regulation at all. No regulations will be made. Each case will be dealt with by the Minister in his office, and members of Parliament and the general public will have no knowledge of the terms and conditions under which a license is granted. That is the situation with which we are confronted.

I will agree with the member for Geraldton that it is not a good thing to take out of an Act of Parliament power that ought to be there and give it to the Executive to make regulations. But that is a trend which has been developing for years. However, there is the safeguard that when a regulation is made it has general application and the public at large knows the conditions. Then finally we have the power in Parliament to move for its disallowance if it is irksome.

Mr. Ross Hutchinson: You growled about regulations the other night.

Mr. TONKIN: All that will go under this amendment. It will not be necessary to make a regulation with regard to permits for the construction of new jetties or for the terms and conditions under which licenses will be granted for the use of existing jetties. The Minister will determine these things on the terms he thinks fit.

The point is that when a regulation is made it can be challenged in the courts on a question of fact. However, when we place the lawmaking power in the hands of the Minister to do as he deems fit, we cannot challenge it at all because we have no criterion of fact. We cannot say, "Here is a regulation which sets out that a license shall be granted under these conditions, and these conditions are not being complied with." That is going to go. If we challenge what the Minister does under this law, all he will have to say is, "Parliament told me I could issue a license under terms I thought fit, and that is what I have done. I thought these were fitting terms." And that is where it will stop.

Surely the member for Geraldton can appreciate the difference between having some control through a regulation which will have general application, and having no control whatever! We will not even know the conditions under which the various licenses are issued. Is that where a Parliament in a democratic country should be going? Where is that going to end?

Although I know it is difficult in party Government for supporters of the Government to criticise legislation, I would have hoped that in a matter of principle we should at least have the advantage of the views of members opposite. The Minister made no attempt to deal with my argument. He made a number of references to acts of mine with regard to barley marketing and so on, which did not at all deal with the point I am raising.

Section 4 of the Act says that the Governor may make regulations for the management, use, maintenance, and preservation of all jetties; and, if this amendment is agreed to, despite that provision the Minister will be able to grant a license on such terms and conditions as he thinks fit to any person for the erection, construction, use, or maintenance of any jetty; and so immediately there would be a distinct conflict between section 7 and section 4 of the Act.

The unfortunate part about this is that we are given a certain reason for something being done. The Government takes more power than is necessary to achieve that and subsequently the Minister comes along and says, "There is power in the Act and I am going to use it." Here is an illustration of that. When the Western Australian Marine Act was being altered the Minister of the day said—

> . . . it is proposed, by the Bill, to provide exemption for the masters—that is to say the masters and other officers—of the dredges to which I referred a little while ago while the

vessels are operating in Cockburn Sound. It is not intended to exempt the vessels from the surveying requirements of the Act.

That is what was said at the time. But along comes the present Minister for Works and he says, "It doesn't matter. Parliament gave us the power to dispense with the survey, and as Parliament gave us the power I am going to use it."

This situation is exactly the same; and the Minister, with regard to this amendment, says that its purpose is to enable the Minister in charge of the department to issue licenses to build jetties upon such terms and conditions as he considers fit for any particular type of jetty. He limits the explanation to that, and he takes power to enable the Minister to grant a license for the maintenance and use of any jetty. Although we may agree to give the Government the power to issue licenses for the construction of jetties, once it is in the law some future Minister can come along and say, "It doesn't matter what the then Minister for Works said. Parliament gave us power to control licenses for the use and maintenance of any jetty."

That is what I object to; and if the Minister only wants the power to facilitate the construction of jetties in various parts of the State he should do it on a criterion of fact instead of saying "As he thinks fit." The Bill should be altered to provide for "reasonable conditions" so that those conditions can subsequently be challenged in a court as to whether the Minister has acted reasonably or not. In that way we have some safeguard. To take unlimited power to override section 4 of the Act simply if the Minister deems fit is something we should not agree to do. I have made my protest about it as strongly as I possibly can and no vote of mine will give opportunity for doing what the Minister seeks to do.

Mr. EVANS: It may seem strange that I, being the member for Kalgoorlie, should wish to have a few words to say about legislation dealing with the erection of jetties, but it is not so much the construction of the jetties in which I am interested but in one point of law which is involved.

I join with the Deputy Leader of the Opposition in voicing objection to the particular form of power we are being asked to give to the Minister; namely, to allow the Minister to issue licenses on such terms and conditions as he thinks fit. In 1942 there was a famous law case decided by the House of Lords on ultimate appeal and that was the case of Liversidge and Anderson. I am sure the member for Perth will be aware of the significance of this case. There was also a later case decided by the Privy Council in 1954 concerning a controller of licenses and a litigant from Ceylon. One of the names I cannot remember and the other I cannot pronounce, so I will not be able to give the names involved in the second case.

However, as regards the Liversidge and Anderson case, a form was introduced under the National Security Act which gave the Home Secretary in England power under the National Security Regulations to arrest without trial a person who was known to be of hostile origin, or who associated with persons who were of antecedents hostile to the realm if the Home Secretary had cause to believe that such was necessary.

Such a person was arrested and taken into custody without trial. He appealed to the law courts and ultimately his appeal went to the House of Lords and it was rejected. His ground of contention was that it should have been competent for a court of law to call upon the Home Secretary to show that he had reasonable cause to believe; and it was held that that particular form of legislation did not require the Minister to be called upon by a court of law to show that he had reasonable cause to believe, and it was sufficient if the Minister stated he did have reasonable cause to believe.

That case was decided in 1942, under wartime conditions; and in 1954 the other case I mentioned was taken to the Privy Council from Ceylon. The members of the judicial committee did not actually distinguish the decision of Anderson and Liversidge but they did point out that that was a wartime conclusion; and possibly, if the facts had been repeated in a case later on, there could have been a different decision.

It was also pointed out in this Privy Council case that if the words "reasonable cause to believe" were included, or if a Minister were given certain power and the form of the legislation was such that the Minister would have to act in a reasonable manner, then the Minister, or the person who had had such power given to him, could be called upon by a court of law to show that he had acted in a reasonable manner. But the word "reasonable" had to be inserted in the legislative form; otherwise the earlier decision of Liversidge and Anderson would prevail and it would be sufficient for the Minister, or the person with authority, to say that he believed, or he had reasonable cause to believe, and so he acted as he thought fit.

I have an example of a form which I feel is the right way of doing this, and I refer to section 32A of the Traffic Act which says that where a member of the Police Force or an inspector has reasonable cause to suspect, then that person may do certain things. If this particular section became the subject of litigation, and an officer who had been given this power had acted in a certain manner, and objection was raised to the manner in which he had acted, that person could be called upon by the court to

show that he did have reasonable cause to believe. In other words, a court of law could look into the matter to see if the particular person, on the particular occasion, and in the particular circumstances did have reasonable cause to believe.

I think the provisions of that section could be applied to clause 3 of the Bill and could be incorporated into section 7 of the principal Act. I would much rather have that wording in the Act than what the Minister seeks to have by way of the Bill before us. If that were done it would give a court of law the right to inquire into the crcumstances and to see whether the Minister did act in a manner that was reasonable in the circumstances.

Mr. Ross Hutchinson: Would you support this if the word "fit" were deleted and the word "reasonable" were inserted in lieu?

Mr. EVANS: In essence that is why I am standing up. I would rather see the wording of the Bill altered in that way, and I would prevail upon the Minister to give it consideration.

Mr. ROSS HUTCHINSON: I doubt whether there is any real need for me to speak again, because this matter was debated at the second reading stage. But as I have not spoken in Committee it probably is incumbent on me to say a few words, and I would like to restate briefly why the Bill is being introduced. In the light of experience it has been found virtually impossible to prescribe conditions for the construction of jetties in advance—all the circumstances surrounding a situation when it is desirable that a jetty be built. So it was felt that the Minister was a fit and proper person in whom some power could be reposed for judging whether the terms and conditions were fit.

This is no outrageous power to give to a Minister. No Minister would formulate terms and conditions which were not reasonable and satisfactory to the case in hand. There is no reason for a Minister to do otherwise. There are many examples of a Minister having powers under the Act, and even such powers as the Minister thinks fit. When it is boiled down it deals with the powers held by Ministers to do these things.

I agree that in modern-day government a great deal of governing is done by regulation and by acts of the Executive. If this were not so Governments could not function properly. That is why Parliament has permitted this situation. Let us consider the powers held by some of our top civil servants. The Conservator of Forests has very wide powers, as those members who live in the southern constituencies particularly will appreciate. One has only to consult the Act to see the powers he possesses. Generally speaking, he is responsible to the Minister, but not subject to the Minister in many of the things he can do. The House has no recourse at all to many of the powers held by the Conservator of Forests. Parliament gave him these powers in the past so that the matters with which he deals would be removed from politics. I think the member for Balcatta would agree with this. No attempt has been made to change the position.

The Commissioner of Main Roads is another civil servant who has wide powers, and the Minister in some cases only has the power of veto. Again the House would have no recourse to the actions of the Commissioner of Main Roads. The Deputy Leader of the Opposition was at one time Minister for Works with jurisdiction over main roads and he would appreciate that there are facets of control held by the commissioner over which there may be some power of veto, but to which Parliament could not object. The Town Planning Commissioner is another civil servant who holds similar powers. Not one of these three gentlemen is responsible to Parliament.

Mr. Davies: They can all be dismissed.

Mr. ROSS HUTCHINSON: That is a pertinent remark; but it would be easier to have a Minister of the Crown dismissed for some improper action than it would be to have any of these three gentlemen dismissed.

Mr. Bovell: The Conservator of Forests can only be dismissed because of certain malpractices.

Mr. ROSS HUTCHINSON: The Minister himself should be a responsible person. He is responsible to the Premier, to Cabinet, to the Government, and finally to the people. Action could be taken against a Minister for anything improper he might do. The Minister is in office for only three years, after which he faces the will of the people. The powers given to a Minister to determine the terms and conditions for the building of jetties is to facilitate this work, and not for any dark or shocking purpose. I do not blame members for objecting in the strongest possible terms to the provisions of the Bill, but no-one can deny the right of the Government to put its case.

Mr. TONKIN: The whole of the Minister's argument was completely directed to the fact that this amendment is needed for the building of new jetties. He made no attempt to explain why he is taking power to issue licenses for the maintenance and use of existing jetties.

Mr. Ross Hutchinson: It is part and parcel of what is required for new jetties.

Mr. TONKIN: The Minister's entire argument has been that as development is taking place in the State it is necessary to avoid delay, and thus he wants to facilitate the building of new jetties.

Mr. Ross Hutchinson: Part of this must be for the use of jetties.

Mr. TONKIN: In taking this power to facilitate the building of new jetties, the Minister is taking power to issue licenses for the use and maintenance of jetties which have been in existence for years. There is no need to take that power if the Minister's reason is the correct one. Apparently it makes no impression upon him to point out that section 4 of the Act says that the Governor may make regulations for the management, use, maintenance, and preservation of all jetties. That might as well not be in the law if the Minister succeeds with this amendment.

Mr. Ross Hutchinson: You are exaggerating.

Mr. TONKIN: If that is so there are lawyers supporting the Minister who could quite easily take my argument apart.

Mr. Ross Hutchinson: Why does not the Conservator of Forests burn all the forests down?

Mr. TONKIN: What has that to do with it?

Mr. Ross Hutchinson: It is an abuse of power.

Mr. TONKIN: If the Minister only wants to facilitate the building of new jetties, why is he taking power to override the Act with regard to existing jetties?

Mr. Ross Hutchinson: I have said the power must be there for the use of jetties if we are going to have it for the building of jetties.

Mr. TONKIN: The whole of the Minister's argument has been the extreme urgency with regard to the building of new jetties. We cannot wait till he promulgates a regulation to deal with each one, so we must give him power to issue licenses as he deems fit. If that is all he wants this power for, why is he taking power to override the law with regard to existing jetties which have been used for many years? That is an argument with which the Minister has failed to deal. Nor did the Minister attempt to deal with the argument put forward by the member for Kalgoorlie. It was a valid argument, because the member for Kalgoorlie wants to substitute something which would provide a criterion of fact; something upon which the courts could adjudicate.

It is no good the Minister saying that Ministers do not act unreasonably. The member for Perth could give the Minister hundreds of cases from all over the world where courts have decided that Ministers have acted unreasonably. So it is reasonable to assume that in future there will be other Ministers who will act unreasonably, though perhaps mistakenly so.

There is nothing unreasonable in allowing an aggrieved person to test the matter in court. This is only a cloak for weakness. It enables a Minister who has acted unreasonably to be free from any action against what he has done, because the words so used provide no basis for testing the matter in court. That was the argument adduced by the member for Kalgoorlie. If we made the granting of licenses dependent upon reasonable circumstances, the question could be tested in court as to whether the circumstances were reasonable or not. But if the granting of licenses is to be such as the Minister deems fit there is no way to test it in court, because there is no criterion of fact upon which the Minister's action can be judged.

We are slipping badly if we agree to such legislation from day to day. This is not the first time it has happened. We had an undertaking from the Minister for Works, given publicly, that he would promulgate a new regulation in regard to the marine Act, because the existing one is too wide.

Mr. Ross Hutchinson: I will, too.

Mr. TONKIN: I hope the Minister will do so in plenty of time—before Parliament rises—to enable us to challenge it. I deplore the tendency to reduce the power of Parliament and place it in the hands of the Executive. I would recommend the Minister to read what the Premier said when he pointed out that if we start taking away power from Parliament freedom will be the first thing to suffer. That is what we are doing with this legislation. We are going to override section 4 of the Act, which will have general application, and give the Minister power to issue licenses on such terms and conditions as he deems fit.

Some other Minister later on might have a different idea as to what he deems fit. Why do we not set it down in the law, so we will know what the conditions are that will entitle a person to the issuance of a license? This would provide uniformity and there would be no possibility of favours being conferred. One only need mention IPEC and Ansett-A.N.A., where there would be a good deal of argument as to whether the Minister has acted reasonably as he deems fit. These things do occur, and it should be right and proper in a democracy to be able to challenge them in the court, even though Ministers have been known to take action to prevent such challenges in the courts. So Ministers do act unreasonably at times, and it is as well that Parliament should safeguard the situation.

Mr. EVANS: I would like to ask the Minister whether he would accept an amendment to his proposed amendment. I would like to see the words "he thinks fit" deleted and the words "are reasonable" substituted. The Minister would be given power to do certain things on such terms and conditions as are reasonable.

The Minister thought our words could be taken to be a reflection on his method of administering the department and the possible manner in which he might administer it in the future. I would like the

Minister to remember the words of Tennyson who said, "Men may come and men may go" but the brook goes on for ever. The present Minister will not always be the incumbent of his office and he cannot ensure that the actions of future Ministers will be reasonable. He said Ministers always act in a reasonable manner. If he is so confident; and if he is qualified to be so confident—and I do not think he is—he would raise no objection to ensuring that the legislation shall require Ministers always to act in a reasonable manner. I appeal to the Minister to give consideration to my proposed amendment.

Mr. Ross Hutchinson: I cannot agree to it.

Mr. EVANS: I cannot see why the Minister will not agree to it. He told us that a Minister could be expected to act in a reasonable manner at all times. I am simply asking for the legislation to require just that. The Minister cannot agree with his own contention that Ministers do act in a reasonable manner.

Mr. Ross Hutchinson: This is quite satisfactory.

Mr. EVANS: To whom? To the Minister?

Mr. Ross Hutchinson: To everybody.

Mr. EVANS: As far as the Commonwealth nations that can still appeal to the Privy Council are concerned, where the formula used in legislation is such that a Minister is given power to act as he thinks fit the Privy Council held that such a formula is not satisfactory at all, because a court could not be called upon to inquire into the facts to see whether the Minister concerned acted in a reasonable manner. It would be otherwise if the formula used required the Minister to act in a reasonable manner.

Mr. Ross Hutchinson: This is in other parts of our legislation.

Mr. EVANS: I know; but we have been slipshod in the past. I draw attention to section 32A of the Traffic Act where an attempt has been made to include the term "reasonable" to make a court competent to inquire into such circumstances. If my amendment is accepted the Minister may grant a license on such terms and conditions as are reasonable. If the Minister will not accept this amendment the only conclusion I can draw is that he is not being reasonable. I regret the Minister's decision.

Mr. DAVIES: I am disappointed the Minister will not agree to the amendment proposed by the member for Kalgoorlie.

Mr. Graham: It is reasonable enough.

Mr. DAVIES: We are concerned about the power given to the Minister in this Act; and we are more concerned that there is no right of appeal against the Minister's decision. On the argument advanced by the member for Kalgoorlie it is apparent that if the Minister does not intend to be unreasonable, but intends to apply this power in a fair and proper manner, he will agree to this amendment, and part of the fear felt on this side of the Committee will be overcome. There will be a right of appeal to a court of law against any decision the Minister may make.

The Minister has tried to justify this clause by referring to the powers which have been granted to civil servants and which have not been argued against. That in itself is no argument. We are aware that civil servants have wide powers; but we are also aware they are subject to action by Ministers and to Parliament. The Minister has suggested he is subject to the decisions of Cabinet and can be disciplined both by Cabinet and by Parliament.

I hardly think he is being practical in this regard. We know what would happen if a motion were brought before this Chamber regarding the action of any Minister. On party lines such a motion would go out; and I venture to say by the time of the next election the electors would have forgotten the manner in which the Minister was supposed to have transgressed. So I do not think any real challenge can be made regarding the action of a Minister. There is no challenge that would make a Minister think twice if he desired to do something we thought a little outside his jurisdiction or not acceptable. We are asked to accept this kind of legislation because of exceptional conditions and because of the progress being made in the north.

Mr. Ross Hutchinson: The progress has highlighted the need.

Mr. DAVIES: The Minister is a little in advance of my point. I was going to ask him this question: When sufficient jetties are built, will he give an undertaking that this power will be taken away from the Minister so that we can get back to the manner in which the Act has operated ever since it came into being?

Mr. Ross Hutchinson: That is being farcical.

Mr. DAVIES: I would like him to give an assurance that when the urgent necessity is no longer with us, an amending Bill will be introduced in order to return to the original position. I think everyone in Australia and in America is worried about the growing power of the Executive. No doubt the Minister has read many articles in recent magazines and newspapers on this subject. In fact, the member for Fremantle quoted an editorial from *The West Australian* of yesterday's date.

We must be concerned with this growing power and should not let it creep through without raising a protest. If it goes through now, there will be others to follow. We are quite justified in protesting against the powers given on this occasion. The Minister said it was impossible to prescribe in advance all the regulations that are likely to be required in the future in regard to the control and licensing of jetties; and for this reason he requires this power to act. Similarly, we are unable to look ahead and see what type of person the Minister for Works will be in the future and what we can expect of him.

I am concerned that the power is going to be given to the Minister, and I join with other members on this side in raising a protest. I would like the Minister to accept the amendment suggested by the member for Kalgoorlie, as this will allay some of our fears in that we would know that if a person feels he has some complaint, then at least there is a court to which he can appeal.

Mr. FLETCHER: I believe the present wording to be ill-chosen and provocative; and I am sure the Minister has not closed his mind to the prospects of a suitable amendment to the wording which implies dictatorial powers. As has been pointed out by the Deputy Leader of the Opposition, this Bill is to amend the Act not to regulate, but to grant a blanket authority to the Minister.

As I pointed out earlier, the Government bends over backwards to assist overseas interests, and I said I was concerned as a consequence. I have a suggestion to offer to the Minister which I think is democratic, and I ask him not to close his mind to it. It is this: that this would be better if it were worded, "on terms and conditions thought fit". I ask the Minister to think of that wording as distinct from the wording that now exists. "Thought fit" implies "as the Government thinks fit", "as Parliament thinks fit", or "as a court thinks fit" as distinct from "as the Minister thinks fit". That is more democratic verbiage than that which is used at the moment. I suggest that the wording as it is smacks of being provocative and dictatorial. I said earlier that I did not think the Minister had any wrong intent in bringing the Bill forward.

I am concerned with the way the measure is worded at the moment, and I think it would be detrimental to Western Australia. I would point out that a jetty already exists in close vicinity to Fremantle upon which the general public cannot intrude. Also, at North West Cape in Western Australia, Australian citizens are likely to be shot if they walk on a certain section of the country. Those are two places in this State where our citizens are not allowed.

I again ask the Minister to give consideration to my suggestion that clause 3 should read—

> Section seven of the principal Act is amended by inserting after the word, "license" in line one, the words, "on such terms and conditions as is thought fit".

I think that is of a more democratic nature than the verbiage at present proposed.

Mr. ROWBERRY: I wonder if the Minister is really as reasonable as he claims. He said that Ministers must at all times be reasonable people and do the right thing at the right time in the governing of the people.

Mr. Ross Hutchinson: I did not say that at all, of course.

Mr. ROWBERRY: The Minister led us to believe that, if I heard aright.

Mr. Ross Hutchinson: I did not in any shape or form say what you said.

Mr. ROWBERRY: Then the Minister is retracting that he is a reasonable type of man.

Mr. Ross Hutchinson: Now you are being silly.

Mr. ROWBERRY: The Minister put forward the belief that there is a situation which requires emergency powers being conferred on the Minister. If that were so, then he would agree that those powers should be limited to a certain period: until a time of emergency should pass. In my opinion, the member for Kalgoorlie gave the Minister ample opportunity to prove to this Committee that he was a reasonable person. All that the member for Kalgoorlie wants to have inserted is the words "reasonable under the circumstances".

Mr. EVANS: First of all, I would like to apologise to the Minister for not being able to acquaint him with the very important decision which I referred to, and which was made by the Privy Council in 1954. I feel that if the Minister had the opportunity to peruse that particular case he would have no hesitation in accepting the proposed amendment. I am not in a position to offer him the name of the particular case after having made a hurried search of Halsbury. Both of the people concerned came from Ceylon, and one name I cannot remember and the other name I cannot pronounce. In time I will give the Minister the name of the case; and as I am sure he does not wish to legislate in haste, he could report progress and give the matter some consideration. If the Minister was still satisfied to take the power he thought fit, after reading that case, I would be more satisfied than at this particular stage.

Mr. Ross Hutchinson: I will have a look at the case, but I will not report progress.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

BILLS (2) RETURNED

1. State Government Insurance Office Act Amendment Bill.
2. Education Act Amendment Bill.

Bills returned from the Council without amendment.

COAL MINE WORKERS (PENSIONS) ACT AMENDMENT BILL

Council's Message

Message from the Council received and read notifying that it had agreed to the amendment made by the Assembly.

SALE OF HUMAN BLOOD ACT AMENDMENT BILL

Receipt and First Reading

Bill received from the Council; and, on motion by Mr. Ross Hutchinson (Minister for Works), read a first time.

DOG ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 31st August, on the following motion by Mr. Lewis (Minister for Education):—

That the Bill be now read a second time.

MR. SEWELL (Geraldton) [8.25 p.m.]: This Bill comes to us from another place and is called the Dog Act Amendment Bill, 1965. It was rather peculiar to me that the Minister, when introducing it, did not bother about dogs in the first instance, but dealt with goats. The relationship between dogs and goats could be strange, perhaps, to an outsider. However, I think we all know that in Western Australia there are a lot of different kinds of goats. There are hairy goats, baldy goats, nanny goats, billy goats, kid goats, goats with beards and some without beards, some goats with four legs, and some with two legs.

The Minister said that this reference was to domesticated goats. I would say that domesticated goats are mainly those used in the back country for providing fresh milk for families and I understand they are a very valuable asset in that regard.

As the Act stands at present, if a domestic goat were attacked on a person's property by any of the dogs referred to, that person would not have the law on his side if he destroyed one of the dogs. However, he could have the law on his side if cattle were concerned in the attack. The Minister—rightly, of course—has altered the interpretation so that domestic goats will in future be called cattle. So far, so good.

The other two provisions are quite simple and necessary, and deal mostly with the native population. One provision allows natives to lay poison baits for the destruction of vermin, particularly dingoes. At present, natives are not allowed to use poison baits; but many of us who know the back country are aware that very often natives are just as capable as—and in some cases more capable than—their white brothers at handling poison baits for the destruction of vermin.

The third provision deals with dogs owned by natives. At present they are allowed one dog each and have to be provided with a free collar and disc by the local authority. But all dogs owned by a native will now have to be licensed and that will do away with the necessity for the police and local authorities to round up dogs from native camps and destroy them. I think it is a step in the right direction and it will bring natives in the south-west on to an even footing with the white population.

MR. LEWIS (Moore—Minister for Education) [8.28 p.m.]: I thank the member for Geraldton for his general support of the Bill. As he has stated in a few words, and as I think I mentioned when moving the second reading of this Bill, it is designed to bring domesticated goats—many of them quite valuable animals—within the definition of the term "cattle."

Regarding the other two provisions, the first one will give natives the legal right to lay poison baits, which they have not at the moment, although they are employed by many people in that way. As the honourable member pointed out, the Bill will give them legal rights, and remove the restriction, which is quite unjustified.

The third provision obliges the native to license his dog and again brings natives on to an equal basis with whites. The honourable member mentioned the disability of local authorities—police and so on—to periodically destroy surplus dogs which anyone can see roving around reserves, especially in fringe areas. Not only is this a bother to the local authorities, but until they are controlled they are a source of annoyance and of considerable material loss to those people who are running valuable livestock in the near vicinity. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

MARKETING OF ONIONS ACT AMENDMENT BILL

In Committee, etc.

Resumed from the 26th August. The Deputy Chairman of Committees (Mr. Crommelin) in the Chair; Mr. Lewis (Minister for Education) in charge of the Bill.

Clause 6: Section 11 amended—

The DEPUTY CHAIRMAN: Progress was reported on the clause to which the member for Avon (Mr. Gayfer) had moved the following amendment:—

> Page 3, line 29—Insert after the word "writing" the words "excepting that the board shall take delivery of certain prescribed non-keeping varieties of onions upon availability unless exemption under subparagraph (ii) of paragraph (d) has been granted."

Mr. GAYFER: I seek leave of the Committee to withdraw my amendment.

Amendment, by leave, withdrawn.

Mr. LEWIS: I have an amendment on the notice paper, but there is also one in the name of the member for Avon.

Mr. Graham: If he does not move it, nothing happens.

Mr. LEWIS: I wish to move my amendment, but the member for Avon's amendment comes before mine.

Mr. Graham: You just go ahead; you will find everything is all right.

Mr. LEWIS: I move an amendment—

> Page 3—Insert after paragraph (d) in lines 33 to 38 the following new paragraph to stand as paragraph (e):—
>
> (e) by inserting, immediately after the word "prescribed", in line two of subparagraph (iv) of paragraph (d) the passage ", including sales of particular prescribed varieties of onions, during specified periods, in respect of which the grower has given to the Board three months' notice, in writing, of his estimated production and approximate time of availability.

The section will then read—

> The Board may, in such cases and on terms and conditions as may be prescribed, exempt (either generally or in any particular case) from the operation of this section—

Then omitting subparagraphs (i) to (iii)—

> (iv) such other sales, purchases, or transactions as may be prescribed, including sales of particular prescribed varieties of onions, during specified periods, in respect of which the grower has given to the Board three months' notice, in writing, of his estimated production and approximate time of availability,

and may at any time revoke such exemption.

Mr. GRAHAM: I am somewhat surprised at the member for Avon for having caved in to the Minister in respect of his amendment.

Mr. Lewis: It is not a question of caving in at all.

Mr. GRAHAM: If the Minister will bear with me—

Mr. Lewis: You do not know the member for Avon.

Mr. GRAHAM: Yes I do. The honourable member sought to insert provisions in the Bill to protect the position of those growers who produce certain types of onions, with particular reference to what might be called the normal onion-growing period. For reasons that I am unable to appreciate, he would appear to be content to accept the amendment submitted by the Minister, which, of course, means exactly nothing.

From my reading of the Act, the board is not subject to the Minister. Therefore it is beyond the Minister's authority to give any assurance to members that the board will do certain things.

Those who listened closely to the Minister when he read the section as it will appear, assuming Parliament accepts his amendment, will appreciate that the game is given away in the opening words, because they are, "The board may" do certain things.

I suggest in all seriousness that it has the power at the moment to do all that it wants to do in order to meet the position which was outlined by the member for Avon; and these additional words are so much eyewash. They still do not amount to an assurance to Parliament, to the member for Avon, to the member for Balcatta, or to anybody else, that these things will be done.

I further join issue with the Minister on the question that what he is proposing is desired by the onion growers themselves. Indeed, I repeat the statement made recently by me in this Chamber that the growers are, in the majority, opposed to the proposition; and I say to him further that only last evening I was in consultation with the President of the Market Gardeners' Association and he confirmed my attitude as expressed earlier, which, members might recall, was based largely on the submissions made by the Market Gardeners' Association.

In respect of this particular clause, I would like to quote from a letter I received from that association on the 23rd August, 1965—in other words, some three

weeks ago, and after the Minister's intentions in regard to the Bill had been announced in the Press. The letter states—

> The board has shown a lamentable lack of marketing knowledge. A recent example was the placing of coolstore onions on the market floors at a price which was unattractive to buyers compared with the price of imported onions offering. The board had to confer with agents to help them out of their unbusinesslike methods.
>
> The amendment which would remove the free marketing period, is not acceptable to growers in Spearwood and other favoured positions in the metropolitan districts who grow early onions. Although results have been disappointing from Kalgoorlie, York and Carnarvon, considerable quantities of early onions are now grown as the result of the free marketing period. These onions are always a light crop and costly to produce. They are in competition with importations when marketed.
>
> Under control, the early onion crop —as has happened with early potatoes —would disappear. Growers would not be content to have 15 per cent. deducted in commission and be at the mercy of the board to pool such onions with those grown under more favourable conditions.
>
> The large proportion of local onions are marketed by the auction firms in the metropolitan markets. The board renders no service but collects 5 per cent. commission on the auction sales.

If the statements in this letter, signed by the Secretary of the Market Gardeners' Association of Western Australia, conform with the facts, and with the views of the onion growers themselves, then it would appear that what the Minister is inserting in the Bill is in fact valueless and what he is doing elsewhere is making this a marketing board benefit measure.

It will be interfering with what the onion growers want; it will be interfering with their marketing; it will be imposing a levy on them; and I hope and trust that the proceeds thus gained will not be used for more beer parties as happened in May last year for the purpose, of course, of endeavouring to obtain a certain viewpoint from the onion growers on a referendum which was to be held.

If the desire of the member for Avon, is that of the Market Gardeners' Association, then what the Minister has proposed in this amendment is completely worthless to both.

The Committee has already agreed to the withdrawal of the amendment submitted by the member for Avon and we can do nothing about it. In any event the Government has the numbers; and those who range behind the Government, and who know nothing whatever about this Bill, and could not care less, are making no attempt to inform their minds on it; and they will, of course, vote solidly with the Government in connection with it.

Mr. Court: How do you know?

Mr. GRAHAM: I happen to know.

Mr. Court: You do not speak for those members.

Mr. GRAHAM: Let me test the *bona fides* of the Minister. I will go no further than the three Government cross-benches; and, apart from the member for Avon who has expressed himself as one of authority in this matter, I challenge any of the occupants of those benches to express themselves generally or with regard to this particular question.

Mr. Lewis: I think they probably know more about it than you do.

Mr. GRAHAM: I am pleased of that interjection, because I said all the way through that in respect of this measure by which the Minister pretends to do something in the interests of the onion growers, I am not expressing my own viewpoint, but regularly and consistently I have quoted my authority, which is the largest organisation representing these people in the State of Western Australia. The Minister is submitting to us his viewpoint of the Onion Marketing Board, about which I had something to say the other evening; and what the member for Balcatta thinks is not so much concern as what the onion growers themselves think of the matter.

I say that the Minister, as a member of the Country Party, and a party which allegedly has the interests of primary producers at heart, should bestir himself in an endeavour to ascertain what the growers themselves want in this legislation. I know he will keep harking back to a certain referendum which was carried by a majority of seven votes, after the Electoral Department allowed a one-sided case to be presented to the growers; that is, the viewpoint of the Onion Marketing Board. It included in the envelope containing the ballot paper one aspect of the propaganda. That is a diabolical thing for any responsible body to allow.

In addition, we have a Minister of the Crown defending the situation, and both he and the Minister for Education standing up in this Chamber with a great big bulge on the side of their faces saying that there has been no attempt on the part of the Onion Marketing Board to produce a one-sided case and that there was no bias shown whatsoever. Yet we have this jaundiced case prepared by the Onion Marketing Board with neither of the two organisations representing the vegetable growers having anything to say on the question. So I round off by saying that I am not here to produce my own individual opinion on the matter.

I hope, therefore, that I have been recorded as saying that I am doing nothing more than speaking on behalf of these country producers, because some of them have had copies of *Hansard* sent to them. This is something more than the Country Party members have been doing, and it ill becomes the Minister to clutter up the Bill with superfluous words. They mean nothing and grant no more power to the Onion Marketing Board. It cannot give an assurance that anything will be done to protect those whom the member for Avon was anxious to protect; that is, those who produce this particular type of onion.

Mr. LEWIS: The member for Balcatta has waxed very vocal tonight in his defence of the so-called majority of onion growers, but his efforts did not ring true to me.

Mr. Graham: What are you going to say: that this letter from the Market Gardeners' Association is a lie?

Mr. LEWIS: This much-maligned Onion Board is the representative of the onion growers themselves. Since its inception many years ago, and despite the fact that the tenure of office is for three years only at a time, there have been only two growers' representatives. The first growers' representative was elected and re-elected year after year until he decided to retire, and his successor has been there ever since. This surely indicates that the onion growers themselves have confidence in their own representative.

The member for Balcatta would have us believe that the Onion Board is seeking to do something that it has never done before, and that it is seeking more powers. I would point out that that which the Onion Board is requesting by this legislation is something which it has been doing for years. Despite the fact that it is not obliged to do so, it may do these things.

Mr. Graham: It is obliged to do them owing to the amendment to the Bill moved by the member for Gascoyne. You have been poorly briefed.

Mr. LEWIS: This is something it has been doing for years and which it will continue to do.

Mr. Graham: Only because you are deleting that provision in the Bill.

Mr. LEWIS: It is something which it has been doing for years. It is a free period. A referendum was held; and although less than a majority of the growers voted and it was carried by a majority of only seven among those who voted, surely the apathy of the majority demonstrated that they were not perturbed about the amendments proposed in the Bill. Had they been upset about them surely they would have expressed their opposition by voting on the referendum.

Something has been said about a beer party that was held to influence the voting, and an indication has been given that the beer party was held and then, when those attending were well under the weather, a vote was taken. Such is not the case. There was a lapse of time between the beer party and when the vote was taken, and it was not a beer party in the true sense of the word.

Mr. Graham: It was not a bad one when the police had to be called in to quell the brawl!

Mr. LEWIS: It was provided by the growers' own money. Despite this, there was a lapse of many weeks between the time when this alleged beer party was held and the postal ballot. Therefore the growers were not influenced by the beer party, and the growers themselves have expressed their approval of the proposed amendment.

Mr. Graham: Tell us about the propaganda that was in the ballot envelope.

Mr. LEWIS: My object is to make the intention of the Onion Board more specific in respect of the period which has relation to a particular variety of onions; but if the member for Balcatta and the majority of the Committee do not care for this provision, they can vote against it. I admit there is not a great deal of force in it; but if the Committee does not like it, I am easy on the matter.

Amendment put and passed.

Clause, as amended, put and passed.

Title put and passed.

Bill reported with an amendment.

AUDIT ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 19th August, on the following motion by Mr. Brand (Treasurer):—

That the Bill be now read a second time.

MR. HAWKE (Northam—Leader of the Opposition) [8.55 p.m.]: This Bill contains a number of important amendments to the Audit Act, and I propose to deal with most of them. It is good to see in the measure a proposal to delete from the law the term or description "Colonial Treasurer." This must surely be one of the few last remaining terms in our legislation which have been left over from the good old, or bad old, colonial days. I welcome the change from that term or definition to the new one proposed—namely, "Treasurer of the State for the time being"—and I certainly like the words "for the time being."

The Bill also proposes to establish the Auditor-General as the permanent head of his department. That would, I think,

be desirable, because beyond any shadow of doubt the Auditor-General is, in practice, the head of the Audit Department and such a situation should oe laid down clearly in the law.

I am rather intrigued by the wording in the proposal in the Bill which aims at allowing an Auditor-General to have his term of service in that position, and with the Government, extended beyond the normal retiring age of 65 years. I am intrigued because of the use of the word "directed" in the appropriate part of the Bill. If members will look at page 3 of the Bill they will notice that a few lines down the page appear the words "unless directed by the Government to continue in office pursuant to", and so on. I think the choice of the word "directed" in this situation is unfortunate.

When we realise that the direction is to be issued by the Governor I think it is all the more unfortunate that the word "directed" is the one to have been chosen, because a little further on the Auditor-General of the day who would be "directed" to continue in office—so it would seem from this Bill—is given the choice of refusing to accept the direction: a choice to refuse to carry on. I know that in practice the procedure would most likely be that the Government would decide whether it would wish the Auditor-General of the day to continue in his position after reaching the age of 65. A representative of the Government—most probably, the Treasurer for the time being—would have a talk with the Auditor-General to find out whether he would be willing to continue in office for a short term after reaching the retiring age. In the event of the officer concerned not being willing to continue in office then, of course, the Governor would not issue any direction.

However, I think it is bad form to put into the law wording which indicates that the Governor is given power to issue a direction to an officer to continue his services, because such wording would seem to indicate that once a direction was issued the occupant of the office would be honour bound, as it were, to accept the direction, and to continue in office after having reached the retiring age. I therefore suggest to the Minister for Industrial Development, who is representing the Treasurer this evening, that the word "authorise" be substituted for the word "directed." That would be a much better word to use, and would give the Governor all the legal authority he required to extend the term of office of the Auditor-General after the retirement age has been reached, should that officer be willing to have his term extended.

Further down on the same page in the Bill we find the wording "the Governor may direct." Here again I suggest a change to the wording, "the Governor may authorise." Further on in that clause appears the following wording, "as the Governor directs." I suggest it should be amended to, "as the Governor authorises." Those are the suggestions I make for the consideration of the Government.

In this portion of the Bill the extension of the term of office after the retirement age has been reached is not to go beyond the 31st day of December next following the date of reaching 65 years of age by the Auditor-General of the day. I am not well enough informed at this stage to know whether it would be wiser in such a situation to give discretionary authority to extend the term of office to the 30th June next following the date at which the Auditor-General would reach 65 years of age. I am not sure, but I think it would be better for the extension of the term of office, after the retiring age has been reached, to go on to the end of the financial year.

Mr. Court: The reason the 31st December was used was to ensure that should the retiring age intervene while the Auditor-General currently in office was preparing his report for Parliament he should be allowed to remain in office to the end of the calendar year by which time his report would be presented to Parliament.

Mr. HAWKE: That might be legitimate and convincing; but nevertheless it seems some further consideration should be given in order that the significance as to the end of the financial year—if it has any significance in the work of the Auditor-General—might be looked into further.

At present, the next part of the Bill does not appeal to me. It proposes to amend section 7 of the Act. That section states the Auditor-General shall be deemed to have vacated his office if he does certain things—all of which I need not outline—if, except on leave granted by the Governor, he absents himself from duty for 14 consecutive days, or 28 days in any 12 months.

The Bill proposes to increase the first period of 14 consecutive days to 21 consecutive days; and the second period from 28 days in any 12 months to 42 days in any 12 months. Surely the Bill proposes in this amendment to set up an extraordinary situation. At the present time the Auditor-General is not entitled to absent himself from duty without leave for more than 14 consecutive days, or more than 28 days in any 12 months. It is proposed to double those periods. It seems to me an Auditor-General who absents himself without leave, without reason, or without excuse, from his tremendously important position for 14 consecutive days, or 28 days in any 12 months, deserves to have his appointment terminated. Such a person would be very seriously lacking in responsibility.

Mr. Court: Originally the annual leave amounted to 14 days, but now it has been extended to three weeks; therefore the period in the Act should be extended from 14 to 21 days.

Mr. HAWKE: When the Auditor-General goes on annual leave, it is leave granted by the Governor.

Mr. Court. It is not a specific approval.

Mr. HAWKE: This particular law lays it down in the following words: "except on leave granted by the Governor." In this Bill the Government does not propose to alter that, but it seeks to increase the time during which the Auditor-General can be absent from his job when he is not on leave, from a period of 14 consecutive days to a period of 21 consecutive days, and from 28 days to 42 days in any 12 months. That seems to be most irresponsible. I say no Auditor-General with any sense of responsibility would absent himself from his office without official leave for more than the periods set out in the present law—and those periods are long enough by all reasoning. Yet this Bill asks Parliament to double those periods.

Mr. J. Hegney: What is the reason?

Mr. HAWKE: I cannot imagine there is any good reason.

Mr. Court: It is entirely related to the periods of annual leave when the Auditor-General does not need specific approval.

Mr. HAWKE: I cannot swallow that. If that be the reason then this Bill needs other verbiage to clarify the position. If that is the reason let the Government put into this part of the Bill some wording to describe its intention; then the situation might be clearer and become acceptable. However, as the Bill is worded in this portion, it proposes to increase the period of 14 consecutive days to 21 days, and the period of absence without leave in any 12 months from 28 days to 42 days. I would ask the Minister for Industrial Development to have a close look at the point I have raised, and to request the Parliamentary Draftsman to introduce some new wording, if it is the intention of the Government to press the amendment to section 7 of the Act.

According to the marginal note to clause 6, the Bill proposes to appoint a deputy to the Auditor-General. After reading section 7 and the proposed amendment, it seems there is not very much difference between them. When I first read the Bill I thought the Government was proposing to appoint a deputy Auditor-General on a permanent basis; but on a closer perusal of the appropriate clause I formed the opinion that the person who is to act as the deputy will act as such only in circumstances such as illness, incapacity, or suspension of the Auditor-General. I would like some further information from the Minister for Industrial Development or from the Premier, if the second reading stage is not completed this evening.

Another part of the Bill proposes new wording to the section in the existing Act which prescribes that the Auditor-General shall surcharge an officer in Government employ who is responsible for any shortage or deficiency in connection with Government moneys. The existing law is mandatory in its application, so far as the duties of the Auditor-General are concerned. The Act lays down that the Auditor-General shall make a proper and a necessary surcharge against any officer who fails to balance the accounts which he handles. The proposal in the Bill seeks to give the Auditor-General a discretionary authority to enable him to make a decision as to whether or not a surcharge shall be raised against an officer in the situation I have outlined. I think the new proposal has a lot of merit. The present provision in the Act is cast-iron. It leaves no discretion whatsoever with the Auditor-General. He is bound by the law to go ahead and make the surcharge and possibly harass the officers concerned until the whole situation is straightened out.

The proposal in the Bill to leave with the Auditor-General's own judgment and discretion any action he has to take, and the type of action he has to take, seems to me to contain a deal of commonsense, and it has my support.

Another part of the Bill proposes to give the Auditor-General legal authority to charge fees for any audit carried out by him or his department where the authority concerned is not one which is directly and totally taking money from the Consolidated Revenue Fund and paying its total proceeds or the major part of them into the Consolidated Revenue Fund. In other words, this provision in the Bill will clothe the Auditor-General with legal authority to charge fees for audit duties carried out by his department in connection with State instrumentalities, boards, commissions, and whatnots.

This appears to be a justifiable authority to give to the Auditor-General because, when the services of his department and his officers are used for the purposes of carrying out audit operations for a State instrumentality or an organisation of that standing, then it is reasonable that the Auditor-General should have authority to decide when a fee shall be charged and also decide the amount of the fee which should be paid. I support the second reading.

MR. COURT (Nedlands—Minister for Industrial Development) [9.18 p.m.]: On behalf of the Treasurer I thank the Leader of the Opposition for his careful analysis of this Bill, and his comments on it. Anything to do with the Audit Act is, of course,

of great importance to Parliament because of the peculiar position in which the Auditor-General stands in relation to Parliament.

The main matters on which the Leader of the Opposition was concerned were the use of the word "direct" in respect of the Auditor-General's continuation of appointment; the use of the date the 31st December as the extended date of appointment; the extended period during which the Auditor-General may be absent without the specific approval of the Governor; and the special conditions surrounding the appointment of a deputy.

Dealing with the first point I must confess that, like the Leader of the Opposition, I felt this word "direct" rather jarred. I first encountered it during the Bill which was before the Legislative Assembly earlier, and which is No. 26 on the file. It dealt with the question of stipendiary magistrates and it used the same phrase which I queried for the same reasons raised now by the Leader of the Opposition. In that particular Bill it said that if the person is able and willing to continue beyond the 65th birthday, the Governor may at any time and from time to time direct the person to continue. I was told that once the person had agreed to continue, the legal way of making this binding and effective was for the Governor to direct. However, I will take the matter up with the Treasurer and suggest that he have a word with the draftsman to see whether more appropriate wording can be used, because it hardly seems fitting that the word "direct" should be used in this circumstance when, in fact, it is merely to give authority for a person to continue.

Mr. Hawke: I think it is a hangover from the old colonial days.

Mr. COURT: I think it might also be a hangover—not a hangover, but the jargon used by the legal people who feel that unless you direct you have not the force and effect. However, I will take the matter up with the Treasurer because I can see the significance of the remarks of the Leader of the Opposition.

The reference to the 31st December in clause 4 as being the date to which the Auditor-General's appointment can be continued is for no other reason than to enable him to continue in his office for the purpose of completing his report to Parliament, which is normally tabled during the session held in the second half of the year and refers specifically to the financial year ended the 30th June, 1965, in this case, and the 30th June in the appropriate year.

I think there is a lot of merit in allowing this appointment to continue to the 31st December so that the Auditor-General can not only complete his report, but also hand over to his successor. If, as suggested by the Leader of the Opposition, his appointment were continued to the 30th June the next year, we would find him going out of office right at a critical stage when he would be finalising the annual accounts and getting ready to write his report. Therefore I feel on reflection that the use of the date, the 31st December, as being the date to which his appointment can be extended is logical and, from a practical point of view, desirable.

The point that seems to cause the Leader of the Opposition most concern is the reference in clause 5 to the periods during which the Auditor-General can absent himself without leave of the Governor. I am assured that the reason for the changed dates is entirely the greater periods of annual leave that are given. It is not customary for the Auditor-General —and it is understandable—to obtain the specific leave of the Governor to have his normal annual leave, and therefore when this period has been extended from 14 days to 21 days it seems logical to make statutory provision that the Auditor-General may absent himself for 21 consecutive days, this being the normal annual leave period.

The existing Statute provides that the maximum period for such leave without the specific approval of the Governor, in any one year can be 21 days. The important thing is that this 21 days would be spread over the whole year, but at no time could he have more than 14 consecutive days. Now he can have 21 days, being the normal annual leave, and the total period throughout the whole year can be 42. I suggest this has been included with logic and it is a desirable measure to allow for the situation, for instance, when the Auditor-General, because of his duties, has to take two periods of annual leave in the one year—and this is not an exceptional set of circumstances and could arise.

It is to overcome the situation when the Auditor-General, as a responsible officer and head of a department, would have to get the specific leave of the Governor to have his normal annual leave, and for that reason I do not think the periods are excessive, bearing in mind that he cannot have 42 consecutive days' leave but only 21 consecutive days, and the total number of days throughout the year cannot exceed 42. This is only, of course, leave without specific approval of the Governor.

Mr. Hawke: I think it should all be more appropriately worded.

Mr. COURT: I am sorry. I have made a note of this. I noted the point that the Leader of the Opposition was not objecting so much to the period as to the way it appeared in the Bill, and I have made a note to take this up with the Treasurer to see whether it is desirable to clarify that this is for normal types of leave as

distinct from leave given for special purposes, such as leave without pay because of some private problem or need of the Auditor-General or because he was seconded to some other particular function.

The reference to the deputy is intended to clarify a situation and to introduce a practical solution when the Auditor-General is absent and to make sure that a person has the authority to act. It is not intended that every time the deputy is to act he will be given this appointment. It is intended that there should be a person given the authority of a Deputy Auditor-General. In other words he will be the deputy of the Auditor-General, and when he acts as such he will have the powers of the Auditor-General. It is also important to note that the person so appointed shall so make and subscribe before the Executive Council a declaration in the form contained in the schedule to the Act or to the like effect.

Mr. Hawke: That is in the existing Act too.

Mr. COURT: Yes. Before he can have the powers and responsibilities of the Auditor-General he has to make this form of declaration.

I do not think there are any other specific points that call for comment. The rest of the provisions of the Bill the Leader of the Opposition supports; and, of course, he has had previous experience as Treasurer in this particular matter.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (Mr. Mitchell) in the Chair; Mr. Court (Minister for Industrial Development) in charge of the Bill.

Clauses 1 to 4 put and passed.

Clause 5: Section 7 amended—

Mr. HAWKE: This clause deals with the proposal to increase certain periods of leave as allowed for in the section. The appropriate part of subsection (2) reads—

> The Auditor-General shall be deemed to have vacated his office—
>
> (c) If, except on leave granted by the Governor, he absents himself from duty for fourteen consecutive days, or for twenty-eight days in any twelve months.

I feel that the section would read far better if some reference were made to annual leave. Anyone reading this part of the section could easily gather the impression that the section was trying to make provision for dealing with some irresponsible Auditor-General who would just wander off from his duties, tell nobody about it, and go his own sweet way. I think the situation would be much clearer to everybody concerned if some direct reference were made to what these periods are all about. It would not be difficult to make the section state clearly what is intended, although I admit it will require some alteration to the drafting of the clause in the Bill.

I ask the Minister for Industrial Development to make a special note of the point I am putting forward in the hope that the Minister concerned, either the Minister for Justice or the Treasurer, will talk this over with the draftsman to see whether the section as a whole could not be made to read in such a way as to leave no-one in any possible doubt as to what is actually intended.

Mr. COURT: I will do as the Leader of the Opposition requests and as I indicated in my earlier remarks. This provision, of course, has remained in the legislation for many years and the only difference now is that the periods of absence without specific approval of the Governor have been extended. This has not brought any catastrophic results up to date, because Auditors-General are not the sort of people who walk off from their duties without some approval.

Mr. Hawke: That is so.

Mr. COURT: However, I can see the significance of the remarks of the Leader of the Opposition, and I will be only too pleased to discuss the matter with the Treasurer and, if necessary, with the draftsman. There is one comment I want to make; namely, that this is not an unusual provision in contracts of service where normally accepted periods of annual leave are prescribed as periods during which the incumbent of a particular office can absent himself without the specific approval of his superiors.

Mr. Hawke: I have no objection to the principle.

Mr. COURT: The honourable member wants it clarified that this is for the normal recognised period of standard leave?

Mr. Hawke: Yes.

Clause put and passed.

Clauses 6 to 24 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

PLANT DISEASES ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 2nd September, on the following motion by Mr. Lewis (Minister for Education):—

> That the Bill be now read a second time.

MR. ROWBERRY (Warren) [9.38 p.m.]: The Bill before us sets out to amend in certain ways the Plant Diseases Act by substituting for the word "any", being the first word in subsection (4), the passage, "subject to subsection (5) of this section, any," and by substituting for the words, "one month", in lines 1 and 2 of subsection (4), the words, "two months", so that the subsection will then read—

> Subject to subsection (5) of this section, any person who fails or neglects for two months to register an orchard as required by this section shall be guilty of an offence.

The Bill goes on to repeal subsection (5) of section 8, and at first sight I was a bit perturbed about this because subsection (5) now reads as follows:—

> Every orchard growing at the commencement of this section, and liable to be registered under this section, shall be so registered within one month after the commencement of this section, and the registration then effected shall continue in force until the thirtieth day of June next ensuing, and no longer.

It appeared, by the amendment in the Bill, that the power to enforce registration had been struck out of the Act. However, in the regulations promulgated in 1959 we find that one regulation takes care of this contingency and it is provided that registration shall be instituted from 1961 until 1962, for the one-year period; and for the period of five years it is from 1960 until 1965. Therefore it would appear that the present provisions of subsection (5) are no longer required, and subsection (5) is to be repealed and re-enacted to provide for a two-months' period of grace for a person who fails to register an orchard and, on top of that, he has another 21 days after having been served with notice that he has not registered his orchard. If he admits the offence and then registers the orchard he shall, in addition to the fee prescribed for the registration, pay a modified penalty of 10s. for the offence, and he escapes the extreme penalty of the Act as it now stands.

We have had some discussion in this House about the severity of penalties, and the Minister himself spoke about the reaction of the public to the disparity between fines and the costs involved. However, if we look at the penalty which is prescribed for a breach of subsection (4), we find it is £20 and, in addition, a daily penalty of £1 for each day or part of a day during which time the offence continues; and I do not think either orchardists or the public generally have much to complain about in that regard.

I think this could be described as a kindly Bill. After all, when we pass legislation in this House we do so for a certain purpose; and the purpose behind the passing of the Plant Diseases Act, and the registering of orchards, was to institute a fund which, with additional appropriations from Parliament, would be used for the eradication and prevention of plant diseases. Therefore, in my opinion, we are being very kind in allowing so much grace to orchardists who will not, in their own interests, register their orchards and provide funds for the protection of their livelihood.

In this regard, we must also realise there are acts of omission and commission, and an orchardist could quite easily forget to register his orchard. That fact could escape his notice, and it is quite easily done. As a matter of fact, I went through my file this morning, and I found I had failed to pay my water rates. They were three months overdue; and why water is still being supplied to my home, I do not know.

Mr. J. Hegney: They know you are a good payer.

Mr. ROWBERRY: In my view, there should be a difference in the case of a breach of the regulation by omission. The Minister probably took this into consideration when he re-enacted the section. I have no quarrel with the repeal of section 41 of the principal Act, which deals with the power to make regulations, because the Minister said this was taken care of by section 36 of the Interpretation Act, and I find this to be so.

With the reservation that I think the Minister or the Department of Agriculture has been a bit too lenient towards the breakers of the law, I support the Bill. As I said before, when orchards are registered and funds are provided these things are done in the interests of the public, and when a man fails to take steps for his own protection I have no quarrel with the full rigour of the law being applied to him. Although I am a kindly man by instinct, I feel we make laws and impose penalties for a certain purpose: for the protection of the public at large. In this case we are protecting the public at large. Accordingly, when we are too lenient with the penalties we mitigate the deterrent effect of those penalties, and this is what most people forget.

It occurs to me that the costs appear to be out of all proportion to the fine itself. In the course of his second reading speech the Minister said an analysis of the fines imposed indicates that they vary from £1 and costs to as much as £5 and costs, in exceptional cases. When the maximum to be imposed is £20, a fine of £5 is not exceptional. If "exceptional" means in regard to the number of times it is imposed, we might agree with the Minister. Further on the Minister said—

> A most desirable feature, and one that has caused a great deal of dissatisfaction to the public, is that often court costs are considerably more than the fine, and average in the vicinity of £2 14s. as compared with a fine of £1.

Here again we should consider that the costs of the case will act as a deterrent which, after all, is the purpose behind the penalty for a breach of the law.

I would not go so far as to agree with the penalty imposed on a person who purported to be acting as an optometrist—about which we read recently—where the fine was £1 and the costs were £75. That is a bit out of proportion. I would like to know why the costs were £75 and the fine only £1.

I support the Bill. I believe it is a step in the right direction, despite the fact that I do not think the penalties are severe enough, particularly when we are protecting people against themselves, and are enacting legislation such as we have before us tonight. I commend the Bill to the House.

MR. LEWIS (Moore—Minister for Education) [9.50 p.m.]: I thank the member for Warren for his general support of the Bill. The honourable member said that the penalty in the Act should be a deterrent; that the law was there to set out the obligation of the householder; and that if the fine was £1—as is the case nowadays for this offence—it was too lenient when compared with the magnitude of the offence.

I would remind members that while we make laws, and oblige people to keep them, we should not make harsh laws. We should temper justice with mercy. In this case the breach of the law is rather different from many other breaches of the law. The need to register and re-register orchards comes round once in 12 months. The only warning that is issued to householders in the ordinary course of events —and I am now referring to the backyard orchard for which the registration fee is 2s. a year—is a notice which appears in the Press, and on posters in various places, setting out that orchard registrations are due, and so on.

There are many honest folk in the metropolitan area—particularly those who are getting on in years—who, for various reasons, though not intentionally, overlook the obligation to re-register their orchard. They go on blissfully unaware of the fact that they are breaking the law, knowing that they have continued through their lives without a smudge on their characters, and knowing also that they will continue to be good citizens.

Suddenly they find there is a knock on the door. The dear old lady opens the door only to be confronted by a policeman delivering a summons informing her that she has failed to re-register her orchard; that here is the summons; that she can do nothing about it; and that she must go to court. She is fined £1, though she could be subjected to a £20 fine. The member for Warren suggested that £5 would not be too great in such cases. Costs, of course, are inescapable.

In most cases it is not the penalty imposed that is important but the thought in the minds of such people that they have broken the law and were not warned about it. I think it was the member for Beeloo who suggested the other night that we raise the fee from 2s. to some higher figure, which would help pay the costs of sending out notices to everyone, thus ensuring they would all know when to re-register their orchards. This might sound a simple way out, but it would penalise those who are alert to their obligations as citizens and who pay their 2s. I do not agree that we should raise the fee for those who register their orchards in order that notices might be sent out to those who are not so mindful of their obligations.

Mr. Davies: How many are involved each year?

Mr. LEWIS: The number is getting less each year, because the news is gradually spreading through the community that advantage may be taken by people in the community when they are re-registering their orchard to pay 10s. which will register them for five years in advance; and in return for this payment the department will undertake to send them a notice just before their registration expires. This is convenient, and it is no more costly. I have availed myself of this privilege, and I know that when the five years run out I will receive from the department advice that my orchard is due to be re-registered.

This idea is greatly spreading, and a lesser number of people are paying the annual fee of 2s. Nevertheless there are many thousands who still continue to pay the 2s.

Mr. Jamieson: I guarantee half the members here would not know whether they are preperly registered.

Mr. LEWIS: I would not know about that. It is felt that it would not be just to impose a harsh penalty on the otherwise good citizens of our State, and we have accordingly devised a means by which the dear old lady I have mentioned will receive by post a notice politely informing her that her registration is overdue; that the registration fee is 2s.; that she must pay this 2s. within three weeks; and that if she fails to do so a summons is likely to follow.

We feel that is likely to shake these good folk out of their lethargy and give them an opportunity to pay their 2s. plus the modified penalty of 10s. Many of them will be glad to pay the 10s. and escape court prosecutions. On the same notice there will be a reminder suggesting that people avail themselves of the opportunity to re-register their orchards five years in advance, and that notices will be sent out at the date of expiry of the registration.

Mr. Jamieson: That will not eradicate the fruit fly.

Mr. LEWIS: It was never contemplated that the 2s. per year would go towards eradicating fruit fly. This merely provides for the registration of orchards and enables inspectors to make inspections from time to time. On the question of the eradication of fruit fly I am happy to advise the House that there are 26 schemes now in operation.

Mr. Jamieson: There should be one overall State scheme.

Mr. LEWIS: These schemes for the eradication of fruit fly are growing. There are 26 in operation, and seven are due to commence. Apart from this a number of polls have yet to be arranged. A poll is taken of householders; and, if the majority of householders agree to the fruit-fly baiting scheme, the local authority is then empowered to institute such a scheme. I am not sure of the percentage, but I think it is 80 per cent. of householders, or less. I know it is more than a simple majority at any rate.

It costs more than 2s. per year for the backyard orchard, though the cost is modest. Up to date, however, the polls have been in favour of fruit-fly baiting schemes being instituted. These have been carried out and the results have been successful.

Mr. Rowberry: It is 60 per cent.

Mr. LEWIS: I knew it was more than 50 per cent., but I was not sure of the exact percentage. These schemes have been effected over a wide area, including the goldfields, the wheatbelt areas, the fruit-growing areas, and even in the metropolitan area.

Mr. Jamieson: No scheme in the metropolitan area can succeed unless they all come in on it.

Mr. LEWIS: I would not be prepared to say that, but I will go along with the honourable member by saying that no scheme will be 100 per cent. effective unless they all come in. The scheme conducted at Applecross—I believe this was the first in the metropolitan area; I could be wrong, but my information is that it was the first—was successful to the point where householders can now enjoy a lot more of their backyard fruit than they were able to enjoy previously. To that degree the scheme can be considered as moderately successful.

I have no doubt that when the whole of the metropolitan area comes into this scheme, further progress will be made; but up to date these schemes have been quite successful. The department is pushing on with the 26 in operation and further local polls will be arranged over a wide area. This fruit-fly baiting scheme will be at some cost—a few shillings—but not at great cost; and I think it points the way to the control, if not the ultimate eradicaiton of fruit fly.

Question put and passed.

Bill read a second time.

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

STATE TENDER BOARD BILL

Second Reading

MR. COURT (Nedlands—Minister for Industrial Development) [10.5 p.m.]: I move—

That the Bill be now read a second time.

In moving that this Bill be now read a second time I should explain that it is to establish the State Tender Board and provide it with the necessary powers and has been prepared as a result of the revision of the Audit Act and the Treasury regulations to that Act which have been reviewed and brought into line with modern financial practices. Legislation to amend the Audit Act has been separately submitted to Parliament this session.

The present Tender Board is constituted and functions under sections of the existing Treasury regulations to the Audit Act. During the review of the Audit Act and Treasury regulations attention was given to those regulations now governing the present Tender Board with a view to making necessary amendments. When these amendments were submitted to the Crown Law Department for drafting, officers of that department advised that the existing law governing the creation and operation of the Tender Board is defective in that there is no power under the Audit Act to establish such a board by regulation. In addition, the Crown Law officers stated that the board as it is now constituted places its members in an invidious position as each member is personally liable for actions taken by the board. This situation cannot be remedied by amendment to the regulations.

The Crown Law officers also stated that legislative power is required to permit the board to forfeit moneys as it does on occasions in connection with contracts. Because of these difficulties the legal officers recommended comprehensive legislation to resolve these matters and to remove any doubts as to the board's power to enter into contracts.

As the Audit Act is concerned with procedures for the keeping and verification of records of receipts and payments of public moneys, it is inappropriate to attempt to make a comprehensive amendment to it to endeavour to overcome the legal deficiencies of the present Tender Board arrangements. It has therefore been decided to adopt the recommendations of the legal

officers and submit to Parliament separate comprehensive legislation for the establishment and operation of a State Tender Board. For these reasons this Bill is now before this Legislative Assembly.

The Bill broadly follows the existing arrangements. It establishes a Tender Board to be appointed by the Governor of not fewer than 10 or more than 15 members of the Public Service. Currently there are 12 members; and the Bill allows for an increase in membership to meet future demands for increased services. The chairman will be appointed by the Treasurer and the board will be subject to the general direction and control of that Minister.

Provision is made for the newly-constituted board to take over from the existing board and to be responsible for the purchase, custody, and disposal of stores and provision of services for departments and Government instrumentalities.

The Bill provides the board with powers to carry out its functions and defines the procedures to be followed. Authority for the making of regulations to prescribe forms and other matters incidental to the administration of the proposed Act is included in the Bill. In short, this measure provides for placing the existing Tender Board arrangements on a proper legal basis. It has been carefully examined by the present members of the Tender Board and is endorsed by them.

In moving this Bill on behalf of the Premier, I commend it to members.

Debate adjourned, on motion by Mr. Jamieson.

TUBERCULOSIS (COMMONWEALTH AND STATE ARRANGEMENT) BILL

Second Reading

MR. ROSS HUTCHINSON (Cottesloe—Minister for Works) [10.9 p.m.]: I move—

That the Bill be now read a second time.

The purpose of this Bill is to provide for the continuance of the campaign started in 1948, and validated by a Bill in 1949, to ensure that necessary provision is made to set up in Australia and in this State adequate facilities for the diagnosis, treatment, and control of tuberculosis, and for the reimbursement by the Commonwealth to the State of expenditure for provision of these particular facilities.

The State Tuberculosis Control Branch and the Perth Chest Clinic commenced operating in May, 1948. Fremantle Chest Clinic was opened in May, 1953, and Kalgoorlie Chest Clinic, with a full-time chest physician and mines medical officer, has been functioning since March, 1957. In order to deal with the investigation of chest cases in other parts of this large State, facilities exist at most of the district hospitals for chest X-rays to be taken. This is an important part of the State tuberculosis control programme, the X-ray films being sent to the Tuberculosis Control Branch for reading.

The in-patient treatment of cases of tuberculosis was continued at Wooroloo Sanatorium until August, 1958, when the Perth Chest Hospital (now the Sir Charles Gairdner Hospital) was opened. All adult cases are admitted to this hospital (or the Repatriation General Hospital, Hollywood) for treatment, the very small number of cases amongst children being admitted to the Princess Margaret Hospital, the cost being borne by the branch.

Compulsory mass X-ray surveys were introduced in Western Australia in 1952 and are conducted on a State-wide basis. The fourth metropolitan survey is in progress, previous surveys having been conducted in 1954, 1957, and 1961. The more densely populated parts of the State have been surveyed twice and in some cases three times. The second survey of the Kimberleys is also in progress including an air-borne survey of outlying mission stations. One and a half million X-ray examinations had been carried out by 1964 and the 1¾ million mark is now being approached.

There has been a gradual decline in the incidence of tuberculosis during the past 15 years. There were 586 cases of pulmonary tuberculosis notified in 1950, 413 in 1955, 269 in 1960, and 176 last year. The 1948 death rate from pulmonary tuberculosis was 30.5 per 100,000 of the population and in 1964 this had fallen to 2.5. The incidence of this disease has also fallen, but much less dramatically, from 63.1 per 100,000 in 1948 to 22.3 per 100,000 last year.

Continued effort and vigilance are essential if this state of affairs is to be maintained, let alone improved upon. Any reduction in the present tuberculosis control programme would be dangerous and, in fact, if this disease is to be eradicated from our community, even greater effort may be necessary. The Commonwealth Government's insistence on compulsory mass X-ray surveys and the provision and maintenance of sufficient and adequately staffed chest clinics is fundamental to the success of the national campaign.

It is specifically stated in the Bill that the Commonwealth and the State will continue to participate in this work and that the Commonwealth will reimburse the State as follows:—

(a) Capital expenditure by the State on or after the first day of July, 1948, in the provision by the State of land and buildings for use in the diagnosis, treatment, and control of tuberculosis and in the erection and improvement of

buildings and the provision of furnishings, equipment, and plant for such use; and

(b) the net maintenance expenditure by the State in relation to the diagnosis, treatment, and control of tuberculosis during each of the financial years next occurring after the year which ended on the thirtieth day of June, 1948, to an extent not exceeding the amount by which that expenditure is in excess of the net maintenance expenditure in relation to the diagnosis, treatment, and control of tuberculosis during the year which ended on the thirtieth day of June, 1948.

These provisions are substantially the same—as are the other provisions of the Bill—as those existing previously in the arrangement which has been validated by the Commonwealth and State in previous Bills.

There are three provisions in this agreement which are not included in previous Bills dealing with the same subject. I refer to paragraphs 9, 10, and 11 of the agreement. These require that the State shall maintain compulsory X-ray surveys, appoint a director of tuberculosis, and provide adequate chest clinics. All of these measures were taken in Western Australia many years ago, and the inclusion of these specific requirements is directed at some other State—not named—which had lagged in their ante-tuberculosis measures.

The period of operation is from the 1st July, 1963, for a period of five years.

The delay in presenting the Bill as at this date is no fault of this State. The campaign has been continuing and the Commonwealth has reimbursed the State in the same way that it has in the past, even though a validating Bill has not been passed since 1963. Delay has been due to the difficulty the Commonwealth has been experiencing in getting other States to implement a more effective campaign of eradication of this disease in those States. I commend this Bill for consideration by the House.

Debate adjourned, on motion by Mr. Norton.

House adjourned at 10.17 p.m.

Legislative Council

Wednesday, the 15th September, 1965

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

QUESTIONS (4): ON NOTICE

PARLIAMENTARY SUPERANNUATION FUND

Contributions by Government

1. The Hon. F. J. S. WISE asked the Minister for Mines:

(1) Are any pensions or superannuation payments of any kind from State Government funds paid to members of Parliament on retirement or in defeat, unless weekly contributions over a term of years have been paid by them into a special fund?

(2) (a) In the case of superannuation payments made after the retirement or defeat of a member, are such payments governed by salaries, or are superannuation entitlements