

HON. E. M. HEENAN (North-East) [5.31]: I secured the adjournment of the debate on this Bill in order that I might look through it, which I have done, and I commend it to the House. Its objects are to repeal the Crown Suits Act, 1898, and to define in a concise manner the methods by which an individual can take proceedings against the Crown. In this instance the Crown is defined as the Government of Western Australia. The legal position of an individual who wants to take proceedings against the Crown at present is set forth in the Crown Suits Act, which is not a very satisfactory piece of legislation, as experience and the decisions of courts over the years have proved.

This little Bill seems to bring about a reform which should be appreciated and will simplify the position. It simply means, in effect, that the individual will be able to take legal proceedings against the Crown in almost the same way as he can against a fellow citizen. The limitations are that he will have to give notice within three months of his cause of action arising, and within a further period of three months he will have to institute his action. That will give the Crown an advantage which is not enjoyed by the ordinary individual, but it is a restriction which I agree is necessary. If a person wants to take legal proceedings against a road board or municipality, a somewhat similar restriction applies because notice has to be given and action taken within a certain time.

Hon. A. Thomson: Is that the law at present?

Hon. E. M. HEENAN: Yes. The Bill contains a proviso which safeguards the individual in cases where, for some good reason, he was not aware that he had a cause of action. I do not think there is anything more I can or need say upon the measure. It appears to me to be a useful piece of legislation and one which will simplify and codify the legal relationships of the individual and the Crown, which at present are wrapped in a good deal of obscurity.

Question put and passed.

Bill read a second time.

In Committee.

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

House adjourned at 5.40 p.m.

Legislative Assembly.

Tuesday, 30th September, 1947.

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The SPEAKER took the Chair at 4.30 p.m., and read prayers.

QUESTION.

BOVINE T.B.

As to Transmission and Tests.

Mr. ACKLAND (on notice) asked the Minister for Agriculture:

(1) Are the medical people perfectly correct in their diagnosis of bovine T.B. in children?

(2) Is it transmitted through the milk?

(3) Can they detect the presence of T.B. bacteria in the milk?

(4) If so, why not test the cow's milk?

(5) If this is not so, why say the T.B. is transmitted through milk?

(6) Is it true that, if the test is carried out similarly on humans and horses, the result is the same?

The MINISTER replied:

(1) Yes. From investigations made in Victoria, it has been shown that up to 25 per cent. of the children with glandular tuberculosis are infected with the bovine type of tubercle bacilli.

(2) It can be transmitted through the milk.

(3) Yes. The procedure, however, is cumbersome and the examination of the milk is made through guinea pig inoculations. The time taken for this test is not less than six weeks.

(4) As above. The time factor prevents this. Also, the cow may be infected with tuberculosis without its milk being infected.

(5) Answered by (3) and (4).

(6) There is a tuberculin test for humans, but horses are not tested as tuberculosis is an uncommon disease in these animals.

LEAVE OF ABSENCE.

On motion by Mr. Rodoreda, leave of absence for two weeks granted to Hon. P. Collier (Boulder) on the ground of ill-health.

BILLS (3)—REPORTS.

- 1, State Housing Act Amendment.
 - 2, Municipal Corporations Act Amendment.
 - 3, Road Districts Act Amendment.
- Adopted.

BILL—STIPENDIARY MAGISTRATES ACT AMENDMENT.

Second Reading.

Debate resumed from the 25th September,

HON. E. NULSEN (Kanowna) [4.37]: I listened attentively to the Attorney General when he introduced this Bill, which is similar to one introduced by me some 12 months ago. As a matter of fact, it will have exactly the same effect. The measure I brought in provided for the appointment of a coroner under the Public Service Act; but, although he was to be appointed under that Act, he would be required to have the same qualifications as a stipendiary magistrate and required to serve as such in a stipendiary magistrate's district. However, notwithstanding that he would hold the qualifications of a stipendiary magistrate, he would not be a stipendiary magistrate if he acted in a stipendiary magistrate's district. My measure proposed to strike out Section 9 of the parent Act; this Bill seeks to amend that section. As I said, in my opinion the effect will be precisely the same,

because stipendiary magistrates' districts can only be created by the Governor-in-Council and are only revocable by the same means.

As the measure will have the same effect as the one I introduced, I offer no objection to it. It will obviate the inconvenience of a justice of the peace who has been appointed a coroner in the Perth magisterial district not being able to sit unless another justice sits with him. That is very inconvenient. While I would not say there is congestion in the Perth court, a voluminous amount of work is done there, and when the coroner is not engaged on coronial work he can be of great help in the court. I am pleased that the Bill has been brought down. The magistrate in the Perth court will get assistance, and the people, generally, will benefit. I have nothing more to say about the measure other than I am not too certain, as a layman, that it will have any different effect from the one I introduced 12 months ago, which was thrown out in another place. That Bill sought to delete Section 9 of the Stipendiary Magistrates Act. I agree with the Bill, and recommend that it be passed.

Question put and passed.

Bill read a second time.

In Committee.

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

ASSENT TO BILLS.

Messages from the Lieut.-Governor received and read notifying assent to the following Bills:—

- 1, Supply (No. 1), £3,100,000.
- 2, Constitution Acts Amendment Act (No. 1).
- 3, Industries Assistance Act Amendment (Continuance).
- 4, Increase of Rent (War Restrictions) Act Amendment (Continuance).

BILL—COAL MINE WORKERS (PENSIONS) ACT AMENDMENT.

Second Reading.

Debate resumed from the 18th September.

MR. MAY (Collie) [4.45]: The Attorney General, when introducing the Bill, dealt rather extensively with the technical side of the parent Act and explained pretty fully the necessity for the measure. The Coal Mine Workers (Pensions) Act provides for the retirement of workers from the industry at the age of 60 years. It also sets out that a single man, on retirement, shall receive a pension of £2 per week, and a married man 25s. in addition for his wife. Provision is also made for any children who may be under the age of 16 years when the worker retires. However, when the retired miner reaches the age of 65, he is automatically brought under the Commonwealth social service pensions, either the invalid or old-age pension. If such a retired miner is able to produce sufficient assets to exclude him from the operations of the Invalid and Old-Age Pensions Act, he is forced to apply for a pension, under those two headings, according to the State Act. Immediately he does that, he comes within the province of the means test.

Under the State Act, cognisance must be taken of any invalid or old-age pension received by a retired miner, and it is automatically deducted from his pension under the Coal Mine Workers (Pensions) Act. That, to a degree, worked out nicely—not too nicely from the miner's point of view, but at least it was workable until increases were made in the invalid and old-age pensions. Two increases have taken place since the original coalmine workers' pensions scheme was brought into existence—one of 5s. 6d. in 1945 and the other of 5s. in 1947. Because the State Act was operating, the retired miner did not, unfortunately, receive the benefit of the increase in the social service pensions, inasmuch as any addition to them has had to be deducted from the State pension, in accordance with the State Act. As a consequence, although the social service pensions were increased on these two occasions, the Collie miners did not receive the benefit.

When this discrepancy was discovered, the Labour Government, which was in power in 1945, took the necessary steps to authorise the tribunal to pay to the miners the increase of 5s. 6d. Again in 1947, when the second increase in the social service pensions was granted to the extent of 5s. the present Government took similar action.

Speaking on behalf of the men concerned, I would like to express their appreciation of the action taken by both Governments in that regard. The necessity has arisen to validate the payment of those two increases and for that purpose the amending legislation has been introduced to deal with the section concerned in the parent Act. The Government has introduced the Bill to validate the payment of those two increases and to make the necessary provision until December, 1948, to meet any further increases that may be granted up to that period in connection with old-age and invalid pensions, so that the Collie miners shall continue to receive the benefit of any such increases.

The Bill also seeks to amend the Act in relation to the section whereby the miners who are receiving a pension under the Coal Mine Workers (Pensions) Act but are ineligible to receive the invalid or old-age pension when they reach 65 years of age, shall be given the benefit of any rise in the cost of living. As the position stands today, they cannot receive that advantage. Under the Commonwealth Act of 1940, when the measure dealing with invalid and old-age pensions was amended, a proviso was included for any adjustment that was likely to be made as a result of an increase or decrease in the cost of living. The amendment was embodied in what is known as Section 24 (1) (a). A similar amendment was also included in the State Coal Mine Workers (Pensions) Act. However, in 1944, shortly after the Collie miners' pension fund became operative, the Commonwealth again amended its Act by omitting Section 24 (1) (a), which meant that the tribunal administering the State miners pension fund was unable to grant any miner who was receiving only a pension under that legislation and was ineligible to receive the Federal social service pension, any increase as a result of a rise in the cost of living.

The Bill before the House, therefore, seeks to repeal the applicable section in the Collie Coal Miners (Pensions) Act in order that those receiving the full pension of £3 5s. a week for a married man or £2 a week for a single man, may be able to enjoy the benefit of any increase in the cost of living which, as members are aware, has a tendency to rise at present. Briefly, those are the reasons for the amendments

embodied in the Bill. They are both small alterations but most necessary in view of changing conditions.

Hon. F. J. S. Wise: There is nothing in the Bill to overcome the actuarial difficulty.

Mr. MAY: That is why provision is made in the Bill to extend the operation of Section 13 until December, 1948, and in the meantime it is proposed that actuarial inquiries shall be made into the position of the fund because it has been stated that that fund is at present not financially sound. Before any action can be taken to amend the Act in a more comprehensive manner that might be advisable. In view of the condition of the fund, an actuarial investigation should be carried out to ascertain what is necessary in order to place it on a sound financial basis. I am given to understand that that inquiry is proceeding and the actuary's report is expected shortly. In view of the possibility of the parent Act being overhauled, the Collie Miners' Union and other industrial organisations engaged in the industry, have met and prepared a list of amendments that they regard as necessary in the light of experience since the Act came into force.

I understand those amendments have been submitted to the Government for its consideration, and the unions concerned have received an assurance that, when the Government remodels the principal Act, the unions and the companies concerned will be given an opportunity to view the amendments that the Government may decide to submit to Parliament. I feel that course is necessary and no doubt it is a fine gesture on the part of the Government—always supposing that it takes notice of the amendments suggested by the unions.

Hon. A. H. Panton: That is the main thing.

Mr. MAY: I know that the unions' amendments will be so modest that the Government will feel compelled in the circumstances to include them among those to be incorporated in the principal Act. I shall leave the matter at that and, when the amending legislation is before the House on some future occasion, I shall have a good deal more to say. In the meantime, I commend this short measure to the House and hope it will be passed.

THE ATTORNEY GENERAL (Hon. R. R. McDonald—West Perth—in reply) [5.0]: I wish to refer to only two points mentioned by the member for Collie. The first is, as he stated, that an actuarial examination of this fund is now proceeding and, with the actuary's report, there will be submitted to the board that controls the fund proposals for a new scheme that will be actuarially sound. When the report has been received, as the member for Collie has rightly said, it will be produced for the examination of the mine-owners and the unions as to their views and, ultimately, as soon as possible, will be brought before Parliament for approval or otherwise.

Hon. F. J. S. Wise: Do you think it may be difficult to get the fund actuarially sound without increasing the rate?

The ATTORNEY GENERAL: It is certain that there must be some increase in the contributions, and the point is from what source the contributions will come. All we can do for the time being is to find out the exact position and what contributions will be necessary to make the fund actuarially sound, and then it must be the subject of consultation between the Government, the miners, and the mine-owners, and ultimately the subject of consideration by Parliament.

The only other point is this: The member for Collie rightly said that the intention of the Act, by Section 15, was that the pension would be automatically raised or decreased in accordance with increases or decreases in the cost of living that would be made under previous legislation to old-age pensioners. When the relevant provision in the Invalid and Old-Age Pensions Act was repealed, the whole basis of Section 15 of our Act collapsed. Section 15 never operated and was never able to operate. As it has had no effect, we now propose to remove it from the Act where it is simply surplusage but, if we take it out of the Act, this will not mean that the coalminers' pension will at present advance with any cost of living increases. That was the intention, but there are no means at present under the Act by which those increases can take place. In view of the situation actuarially of the fund, I do not think the increases can be justified for the time being until we get the result of the actuary's examination.

Mr. May: The fund is solvent at present.

The ATTORNEY GENERAL: I would rather put it in another way, namely, that the fund will be able to meet its liabilities for some time to come. As the hon. member said, the Bill is necessary to validate action taken to meet the circumstances and tide over the intervening period between the present and the time when we shall receive the actuary's report and the new recommendations and have a chance of submitting them to all interested parties for their consideration. Then, if we cannot do it this year—it may be difficult at this stage of the session—the necessary legislation will be brought to Parliament next year. Meanwhile, this Bill will take care of the situation and preserve the status quo until the necessary examination has been made.

Question put and passed.

Bill read a second time.

In Committee.

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

BILL—LAW REFORM (CONTRIBUTORY NEGLIGENCE AND TORT-FEASORS' CONTRIBUTION).

Second Reading.

Debate resumed from the 25th September.

MR. SMITH (Brown Hill-Ivanhoe) [5.7]: I have to admit at the outset that this is a technical Bill. It seems to me that the measure will substitute for the common law doctrine of last opportunity on the subject of negligence a statute providing that claims for damages founded on negligence shall take into account the contributory negligence of all parties and that judgment shall be given and damages shall be apportioned on that basis. Broadly speaking, I should say that is an explanation of the Bill.

I have read the speech made by the Attorney General in moving the second reading and I think he painted rather a black picture of the plaintiff's opportunities in connection with actions founded on negligence under the common law. At the same time, I think it must be admitted that it would be very difficult to find any sections of the public—bench, bar, motorist, insurance company or member of the public—which are

satisfied with the law as it is at present administered. The doctrine derived from this principle of last opportunity is that the responsible person is he who, seeing the consequences of negligence or negligently refuses to see them, has put into action a force by which the injury was produced. Of course, this doctrine has grown out of very ancient usage which is not altogether without merit. Most ancient usages have some merit in them, and this particular doctrine has the merit that it throws upon each individual in the community the primary burden of guarding himself from danger.

From what I have read on the subject, however, it seems that evidence that the plaintiff's own action contributed to the mishap does not necessarily dispose of the action in the defendant's favour. The Attorney General seemed to convey the impression that it did, but I would suggest, with all due deference, that the defendant who has been culpably negligent is excused from liability only if he can show a want of that degree of care which the plaintiff should have exercised in the circumstances to protect himself. If the plaintiff has taken all the care the law requires of him, the defendant will not be able to deliver himself from responsibility for the effect of negligence on his part.

It is rather an important point in connection with this measure, I think, because in those circumstances and under those conditions where the plaintiff can show he has exercised all the care the law requires of him, he will probably, under the existing law, get full damages on the claim he has founded on negligence, but in future, under this measure, the amount of damages will be reduced by the degree of negligence that can be attributed to the plaintiff. In that connection I should like to point out that this rule of last opportunity, which the Attorney General seemed to indicate as being so definite in its application, although fairly general, is honeycombed with exceptions. We find that the court recognises that it is not always politic to make a negligent plaintiff bear the loss. If it can find a sound reason to make a negligent defendant shoulder the responsibility, it does not hesitate to do so. I think it can be taken for granted, in considering this measure, that there are under the existing law quite a number of fairly well-defined exceptions which would apply in the

plaintiff's favour because of decisions given in particular cases in the past.

There is one aspect of the law as it exists, and will apparently continue under this measure, too, which is that it is not for the doer of the harm to excuse himself, but it is for the person who suffers the harm to prove that the injury was due to the negligence of the defendant; that is, the onus of proof is on the plaintiff to show negligence on the defendant's part which resulted in the plaintiff's injuries, and then the defendant has the task of proving that, but for the negligence of the plaintiff which contributed to the mishap, he would have come to no harm. I think that even in that particular the defendant is in the better position of the two. But one thing that seems to me to be clear is that the plaintiff cannot even succeed if he proves the defendant had a later opportunity to avoid the consequences of contributory negligence. So apparently the plaintiff's only hope, if his negligence has contributed to the mishap, is to prove that the defendant could have avoided the consequences of the plaintiff's negligence.

In this State and throughout the world generally, there has been a very definite increase in road accidents, and in one State of Canada there is a law which puts the onus on the defendant and not on the plaintiff of proving that he was not negligent. That is in Manitoba, and it would be interesting to find whether that onus being thrown on the defendant in these cases has had any tendency to reduce traffic accidents. I think a case could be made out against the contention that the onus should be entirely on the plaintiff in connection with these cases. I know that in his speech the Attorney General made some reference to Admiralty law and collisions of ships at sea, but the difficulty of sizing up the situation in collisions at sea and damages incurred by ships is not as great as that involved in collisions on land, where the circumstances cannot be as well defined in many instances as they can be with regard to collisions at sea.

There is another aspect of this Bill to which I would like to draw attention and I think it should be considered when we are examining the Bill and the changes it will effect; and that is that regard must be had to the fact that we have abolished in this State trial by jury in actions for damages

against owners and drivers of motor vehicles. That was done under the Motor Vehicle (Third Party Insurance) Act and it passed both this House and another place without any discussion whatever; and any member interested in the matter will find it dealt with in Section 16 of that Act. It has a rather widespread application, bringing in not only that Act but other Acts as well. So obviously as, under this Bill, most of the cases that are going to be tried in connection with negligence or cases for claims founded on negligence will be concerned with motor accidents, I think the question must naturally arise whether it would not be better to have trial by jury in those cases rather than by a judge. After all, there is no question of law involved in the matter. The decision rests entirely on the facts of the case.

The only instance in which a question of law could arise would be where a case had not been made out that was regarded as sufficiently sound to refer it to the jury. But having referred it or decided that the facts of the case are worthy of a decision, in my opinion a jury would make a better decision than a judge in the matter. I am indebted to a book for what I know on this subject. It was written by Dr. Mazengarb and deals with "The law relating to negligence on the highway." In it he says—

The English Law Revision Committee favours clothing the tribunal of fact with greater powers by treating the broad question in the type of action we are considering—

That is the type of action under this Bill—
—as one of fact rather than as one of law and enabling a jury to apportion the damages according to the degree of fault.

This Bill, unless I have misread it, provides in those cases heard before a jury—that is, other than motor vehicle cases—that the jury will assess the total damages and the reduction but the court will assess the contribution where there are joint tortfeasors. If the tortfeasor came in with a claim as a result of subsequent action, I could understand the court assessing the contribution. But if he is joined in the original claim I can see no reason why the jury could not assess the contribution of the joint tortfeasors as well as the total damages and the reduction. In connection with these juries Dr. Mazengarb also states—

The experience of lawyers who carefully and impartially observe the jury system in operation leads to the view that notwithstanding

those weaknesses which are inseparably associated with the frailty of human nature, the jury is the ideal tribunal for the determination of disputes on questions of fact arising out of the common affairs of mankind. Frequently jurors when they discuss among themselves the general impression which they have received from the evidence are able out of their own practical experience to see points and make deductions which have escaped the notice of both counsel and judge.

I think that is a very important statement concerning juries and their association with cases of the kind that will be dealt with under this Bill. We have to remember that in future the plaintiff is going to be on a better footing in the court although he will still have on him the burden of proof. In future we cannot overlook the fact that there are going to be more of these cases which will be concerned with assessing damages and reducing them on account of the plaintiff's negligence and apportioning the contribution by the joint tortfeasors. I think that is an important change that will be brought about as a result of this measure—the responsibilities of courts in future in connection with it and of juries in such cases as are heard by them. So I think there will be more reason why these cases should be heard before a jury, if this Bill goes through, than there is at present. As a matter of fact, it raises the question whether we should agree to this legislation, knowing as we do that the majority of cases under it will not be tried by a jury.

I think the Attorney General will admit—or I do not suppose he would admit it, but I think other people might allege at any rate—that there is a good deal of pretence in the Act of apportioning damages among a number of tortfeasors or reducing the total to the plaintiff on account of his contributory negligence as will be done under this Bill. In my opinion 12 jurymen would do that better than one judge and that is why I am advocating some alteration of the law in that connection. I do not expect the Attorney General to make the alterations under this Bill, but I do think it is worthy of consideration, seeing that he is effecting a change in the law, that in future cases of claims for negligence or claims founded on negligence as a result of accidents through motor vehicles should also be heard by a jury. I can imagine a judge coming to conclusions almost as good as those of a jury; but I cannot imagine his being able to give

plausible reasons for so doing; and the trouble is that the onus is on him to do that. But a jury gives its verdict for what it believes to be good reasons and it is not put to the impossible task of justifying with satisfying exactitude its decision or decisions—and that is a point worthy of consideration.

The second part of the Bill, as the Attorney General pointed out, is much the same as Section 3 of the law reform Act of 1941 which it repeals. There are some slight but significant changes in it which indicate that legislation is like currency—it comes into circulation, gets knocked about in the process and soon comes back to the Mint again. The law reform Act was only passed in 1941. It was introduced by the Minister for Justice and if I remember rightly it had the support of the Law Society and I assume that a great deal of consideration had been given to its provisions. In Section 3 there was a provision for tortfeasor contributions whether the tort was a crime or not; and that disappears in this Bill. In fact, a tortfeasor under this Bill cannot recover contributions from another if he is or might be found guilty of any indictable offence. But this is not all a question of indictable offences.

What the Bill actually provides is that except in the case of an indictable offence arising out of some negligent act or omission no contribution may be claimed by a person responsible for damages in tort if, in the circumstances of the case, he is or is liable to be found guilty of any indictable offence. What kind of indictable offence is referred to there? We have excepted, in the Bill, the indictable offence arising out of some negligent act or omission. What other kind of indictable offence arises under a measure relating to the common law doctrine of contributory negligence? I have asked several legal people to tell me, but none of them has been able to do so. In this measure and in the original Law Reform (Miscellaneous Provisions) Act there are references to circumstances under which persons are indicated as being persons who would, if sued, have been liable. One asks, who are those persons who would, if sued, have been liable? How can we tell whether a person is liable, until such time as we have sued him? Does he admit his liability? I should not think it likely.

In the provision with relation to the exception of the indictable offence arising out of some negligent act or omission, we have the words "who is responsible for damages in tort if in the circumstances of the case he is or might be found guilty". It has puzzled me and I do not know what it means, but perhaps there is an explanation of it. In the Bill also, although Section 3 of the original Act did make provision for certain people to be indemnified—I suppose whether they were indemnified or not would be a question of law, and at the discretion of the court—we have specified those who are to be indemnified. All I ask in that connection is whether it is wise to specify them. I feel that Section 3 of the law reform Act is what should be contained in this Bill.

There are here certain alterations in phraseology that are inconsequential, and there may be a satisfactory reason for specifying those who are to be indemnified. I would like to hear those reasons, if they exist. I cannot make out why the words "whether a crime or not" have been omitted from the Bill while they appear in Section 3 of the law reform Act. A consequential amendment to which I have already referred is the proviso. Apart from those few remarks, I have pleasure in supporting the Bill. On the whole I believe it will be likely to give litigants in claims for damages, both plaintiffs and defendants, better consideration than they get under existing circumstances.

THE ATTORNEY GENERAL (Hon. R. R. McDonald—West Perth—in reply) [5.35]: I am indebted to the member for Brown Hill-Ivanhoe for the consideration he has given to the Bill, and for the points of interest he has raised. His statement of the general principle of the Bill is correct. I think he put the first part of the Bill in a few words when he said—

Hon. J. B. Sleeman: What did he say?

THE ATTORNEY GENERAL: I have a note of it here. He said that the intention, in connection with these cases, was to make the issue one of fact rather than of law. That is a very important principle and the hon. member is correct in stating that that is one of the intentions of the first part of the Bill. The law regarding negligence has grown into a somewhat technical state. We

have the doctrines of approximate cause, the last opportunity, and various rules that have risen up in the practice of the courts in order to try to arrive at some determination as to the responsibility of the defendant or plaintiff, as the case may be. In this matter the judges have said that they have found great difficulty in summing up to juries what the law really is in the case of collisions, particularly collisions between motor vehicles, which form an overwhelming proportion of actions for negligence today.

The idea of the Bill is to take away the artificial rules which, in some cases, defeat the injured person's right to recover damages although the defendant has been grossly negligent, and to substitute a more commonsense provision, under which the courts can say "Here are two parties and they have both been negligent and damage has been occasioned. We assess the proportions in which they should meet this loss at so much on each side." That reduces these cases, as the hon. member said, from being largely cases of law to mainly cases of fact. The hon. member referred to juries, and I think they are worthy of consideration. It is true that the first part of the Bill will make cases of collision and negligence matters of fact to an extent far greater than before, and far less matters of law. That being so, I think he is right in saying it is worthy of consideration whether juries should not play a larger part.

It is also worthy of consideration whether we should not re-examine that provision in the third party insurance legislation which eliminates juries from actions in which that Act is involved. I do not wish to discuss at length the merits of the jury system, but it has great advantages and, in the opinion of its critics, certain defects, in that a plausible barrister may get away with things, before a jury, to the disadvantage of a litigant who may not be represented by so plausible an advocate; but on the other hand I feel that the jury system is a very valuable one, and I would have no hesitation in seeing it extended and more widely used than it is at present. After all, the jury system means that the people, generally, take part in the administration of the law, and I think that is a valuable thing when they can be part and parcel of the legal administration and accept responsi-

bility, having been given opportunity of taking part. I am therefore prepared further to examine that part of the measure.

Other matters were raised and, if the hon. member is agreeable—as he supports the Bill in principle—I would like to deal with them in the Committee stage and make some reference to the various matters he has raised when we are dealing with the relevant clauses.

Hon. F. J. S. Wise: What about the aspect the hon. member raised regarding the proviso on page 6 of the Bill?

The ATTORNEY GENERAL: That is a change in the legislation. Under the measure passed in 1941 the provision regarding joint tortfeasors or wrongdoers applies whether the tort is a crime or not. I submit to the House—it is a matter for the House, or later for the Committee, to decide—that although that provision was in the English Act it is going too far, because practically every crime is also a tort and the people who commit crimes are also tortfeasors, the crime being the public side of their act, while the tort is the civil side of the same act. Every man who is in the dock in the criminal court and liable to be imprisoned for his offence against the public interest is, at the same time, civilly liable to the person who has been injured by the act of which the accused is charged. In this amendment I have thought that we went too far in providing that there should be a contribution, even in the case of a crime.

An example of such a claim is where two join together to steal from someone. That is a tort against the owner of the property. Another example is where two join together to assault and rob someone. That is a tort against the victim of the assault and robbery. A third case is where people join together to conspire to defraud someone of property. That again is a tort and the people concerned are joint tortfeasors. I have always thought that, in accordance with the old principle of the law, if one robber might be compelled to refund, this law should not help him to recover a contribution from a colleague in the robbery or assault or fraud. We are going too far in extending the protection of the law to people who commit offences of a grave character against society, so we exclude from the benefit of contributions people who join together to commit serious offences—that is,

indictable offences, those for which they can be punished by a maximum of three years' imprisonment. Therefore, serious offences are not included among those in respect of which, under this Bill, there can be a claim for contribution.

Even in connection with serious indictable offences, we make an exception of one class, and that is the one in which the people concerned may recover a contribution from each other in respect of an indictable offence arising out of some negligent act or omission. It may be, and sometimes is, a matter of manslaughter through the killing of a man as a result of negligent driving of a motorcar, and two men may be involved in that class of offence. But where there is a wrong caused by some concerted intentional act which amounts to a serious offence, then, as I have said, apart from the negligence constituting an indictable offence, one party cannot turn round to the other and say, "Well, I have to repay some of this money which you and I acquired by fraud, and I want you to give back your proportion too."

Hon. F. J. S. Wise: What is the meaning of the words "is or might be found guilty"?

The ATTORNEY GENERAL: That term amounts to this: When a case arises which may involve a claim by one tortfeasor for a contribution from another tortfeasor, it does not always happen that the parties have been previously charged with a criminal offence. Quite possibly they have not been charged at all. There may be, therefore, no verdict or decision that they had committed an indictable offence. When the matter comes before the court on a claim by one tortfeasor for a contribution from another tortfeasor, the court is in the position that, if the claimant party has been found guilty of an indictable offence then, apart from the exception I have mentioned, he has no claim to a contribution. But the court can also say, "Was this act, on the facts, an indictable offence"? If the court holds it was an indictable offence, then it has power to say that it will not order any contribution, for the reason that it cannot very well wait to arrive at any such decision until possibly some person takes action which brings him before a jury.

Hon. F. J. S. Wise: But it really tries it at that time.

The ATTORNEY GENERAL: The court certainly may arrive at the opinion that the facts amounted to an indictable offence and it can say, "In view of the court's opinion that the facts amount to an indictable offence, we do not propose to assist you or give you the protection accorded by this law." I think that is the best way we can manage the situation because we cannot ensure before a contribution claim is brought forward, that the matter will have been determined by a jury. The court has to be in a position to say that on the facts an indictable offence was committed and therefore it is not prepared to grant the individual any relief. I think that is a reasonable position in which the court should be left. Other matters were raised during the course of the discussion, which I shall be prepared to deal with at the Committee stage. I do not wish to speak at any undue length in replying to the debate, but if there is any aspect of the measure that members do not like, they have the power to make the necessary amendments in Committee.

Question put and passed.

Bill read a second time.

In Committee.

Mr. Perkins in the Chair; the Attorney General in charge of the Bill.

Clauses 1 and 2—agreed to.

Clause 3—Definitions:

Mr. SMITH: I move an amendment—

That at the end of the definition of "Fatal Accidents Act" the following words be added: "or any Act now or hereafter in force in substitution for or amending the same."

I understand that the Fatal Accidents Bill now before the House is one in substitution for the Fatal Accidents Act, which means the Imperial Act as adopted and as amended by Act No. 37 of 1900. In that event, there is need for an extension of the definition in order to include the measure before the House if it should subsequently be passed.

The ATTORNEY GENERAL: I think the point is covered by Section 14 of the Interpretation Act, which reads—

Where in any Act reference is made to any other Act, or to any provision thereof, such reference shall be deemed to include a reference—

(a) to all Acts amending such other Act and to all Acts amending such Amending Acts or any of them, and to any Act substituted for such other Act, or for any such of such amending Acts; or

(b) to the corresponding provision of the amending or substituted Act, as the case may require.

At the same time, I have no objection to the amendment as providing for something which it is desired to maintain.

Amendment put and passed; the clause, as amended, agreed to.

Clause 4—Where contributory negligence established, court may apportion damages between parties:

The ATTORNEY GENERAL: This is the crux of the first part of the Bill. It provides that a plaintiff shall not be debarred, by reason of contributory negligence, although such damages will be reducible in accordance with the degree of negligence attributed to him. Clause 4 gives what may be described as a new right—a right to recover damages where at present damages could not be obtained by reason of the contributory negligence rule defeating the claim of the plaintiff. That is the broad principle; the court can look at the conduct of both parties and assess damages according to their respective contributions in the way of negligence which resulted in the damage occasioned. To that there is a proviso under paragraph (a) by which the right given by Clause 4 is subject to any contract that has been made. For example, the Commissioner of Railways, when issuing a free ticket, makes a stipulation that he is not to be held liable for the negligence of his servants. If I received a free ticket, I would accept that condition and could not take advantage of this provision on account of having accepted a contract limiting the normal rights I would have.

Similarly the proviso in paragraph (b) means that, if there is a limitation of liability such as is imposed in a number of cases by Act of Parliament, this clause is subject to that limitation. The liability of the Commissioner of Railways is limited in amount in certain cases, and this new provision will not override any limitations of liability imposed by other Acts of Parliament. Subclause (2) is necessary to link up the provisions of Subclause (1) with the provisions

of the Fatal Accidents Act. Clause 4 relates to the matter between the two principals, whereas under the Fatal Accidents Act, one of the principals being dead, the plaintiff will be the representative of the principal in the person of his parent, child, widow and so forth, as the case may be.

In Subclause (2) also, a modification is necessary on account of certain rights given under the law reform Act of 1941 by which, in the case of the death of a man, his estate, in certain circumstances, may sue for and recover damages that may have been occasioned to his property. That again is linked with the provisions of Subclause (2) and Subclause (1).

By Subclause (3) the principles of the Act apply even though one or more of the parties may, by reason of negligence, be guilty of a punishable offence. By Subclause (4) the principle is stated that, when there is a jury it shall be for the jury to assess the damages and to say how much the damages are to be reduced by reason of the proportionate negligence for which the plaintiff must accept responsibility. When there is a jury, it is to be the judge of fact and therefore must bear the main responsibility for the amount of damages and how they are to be apportioned.

Clause put and passed.

Clause 5—Contribution may be claimed by a person ordered to pay damages from any other person responsible.

THE ATTORNEY GENERAL: This clause links up the right of action and the principles of action, which are set out in Clause 4, with the provisions contained in the second part of the Act by way of contribution between the tortfeasors. As the first part is conferring a new right of action, it is prudent to say that there shall be applicable to this new right of action the principles which under this part of the Bill are applicable to existing rights of action. It simply carries forward to the new right of action under the first part the principles applicable to the ordinary rights of action which are dealt with in the second part.

Clause put and passed.

Clause 6—Effect on party's right to recover workers' compensation:

THE ATTORNEY GENERAL: There is a similar provision in the case of

workers' compensation. Once again, this is a new right of action and therefore it is prudent to make certain that the worker, who may have a claim under the Workers' Compensation Act, will not be placed in any adverse position when he makes a claim under Clause 4 of this Bill. A worker who considers he has a claim under Clause 4 by reason of the negligence of the defendant may sue for negligence; but, if he recovers less than he would have got by way of compensation under the Workers' Compensation Act, then he may get the full amount he would have recovered under the Workers' Compensation Act.

Hon. A. H. Panton: Will it make a difference to the Workers' Compensation Act?

THE ATTORNEY GENERAL: This is for the advantage of the employer. If the plaintiff is an employee and gets payment of workers' compensation from the defendant, the employer, under circumstances where the employee might have sued somebody else for negligence, then the employer who has paid the workers' compensation can take over the employee's rights and recover from the wrongdoer the amount of damages which the employee himself might have recovered if he himself had been sued. That sounds very complicated; but, shortly, where the employer pays workers' compensation he succeeds to any rights, which the employee had and which he did not exercise, to recover compensation from some third person. This is to link up the rights under this Bill with the ordinary principles which apply where the person injured is also entitled to benefits under the Workers' Compensation Act.

Clause put and passed.

Clause 7—(a) Judgment against one tortfeasor no bar to action against another:

Mr. SMITH: I move an amendment—

That in line 12 after the word "tort" the words ("whether a crime or not") be inserted.

The amendment, if passed, would bring the Bill into conformity with the Law Reform (Miscellaneous Provisions) Act passed in 1941. That Act was drafted under the supervision of the Minister for Justice and I presume was very well considered at the time. It contains provisions that were the result of most careful consideration. The proviso at the end of this clause is conse-

quential to the words I am moving to have inserted. It would have the effect of punishing a person twice for the same offence. Having paid the penalty for his crime as the result of a fine or a sentence, he is then to have a further penalty inflicted on him under this measure in not being able to sue some other joint tortfeasor.

I cannot imagine any cases coming under a Bill of this description, but in the proviso we find that exception is made in certain cases of indictable offences and the Attorney General spoke of indictable offences such as stealing and assault. But under this proviso an indictable offence such as manslaughter would be excepted, which I should think would be regarded as a much more heinous crime under the Criminal Code than stealing or assault, so I do not think the proviso is likely to do justice to people. The law reform Act which the Attorney General introduced and which was passed in 1941 is the measure we should stick to in this respect. If the amendment is accepted I intend to move later for the deletion of the proviso.

THE ATTORNEY GENERAL: The Act from which our 1941 Act was taken is the English Law Reform Act of 1935 and that English Act contains these words: "Whether a crime nor not." In the 1941 Act this Parliament carried those same words forward. Since that time, it has been pointed out to me by an authority that in introducing that Bill with those words included in it I did not give the matter as much consideration as perhaps I should have done. It was suggested that the law is not meant to help those who are guilty of serious offences to share the spoils of their crime.

I remember in one of the text books a case referred to very shortly that is supposed to have started in the English High Court of Justice 200 years ago. The plaintiff in his statement of claim said that in conjunction with the defendants they practised their profession on Hounslow Heath, and on such and such a night they had occasion to meet the stage coach and treated with certain gentlemen if the coach in respect of certain watches, rings and moneys. The result was a profitable transaction, and the proceeds had been received by the defendants who had not accounted to the plaintiff for his fair share. Although it was put in very guarded and diplomatic language, the astuteness of the judiciary saw

through the transaction and Ned Kelly, or whatever was the name of the legal prototype in that case, did not succeed; the judge struck his action out.

That is perhaps an extreme case. But if we included the words "whether a crime or not", it would mean that there could be a lawsuit perhaps not very edifying between participants in a crime as to how they were to share the liability. It is not quite the same side of the subject as the illustration I gave from England; but if people participate in a crime like conspiracy to defraud and the sufferer or the injured person makes one of the conspirators part up with some of the property or disgorge some of the property he got from the injured person, it might not be very desirable that he should be able to come to court and ask that the other participants in the fraud should contribute their pro rata share. On general public policy it has been thought that the courts will not help those who are largely concerned in crimes. I see the point raised by the hon. member, but what I have thought here is that we will protect sufficiently all people who may commit an indictable offence through negligence or omission, and exclude those who join together to commit offences of a more serious kind or those reprobated by public opinion, such as stealing or conspiracy to defraud. So this Bill proposes that that class of person shall not be helped, whereas the person who may incur liability through the effects of negligence may be helped. I suggest that my recantation of my previous phrase is justified and that the Bill as now drawn might be allowed to proceed.

Sitting suspended from 6.15 to 7.30 p.m.

MR. SMITH: When the Attorney General compared persons, to whom the provisions of this clause refer, to robbers who might be sharing spoil, I did not find his argument very convincing. These people not only have no spoils to share, but have had certain damages inflicted on them that they would be endeavouring to share. During the tea suspension I have given further consideration to the clause and have come to the conclusion that the Attorney General has gone a long way further in connection with wrongdoers, and the question of the law assisting them, than I would go if I had my way. He certainly allows persons

guilty of indictable offences, arising out of some negligent act or omission to invoke the law to get a proper contribution in respect of damages. Because of that, I think he goes a long way against the law that he so ably dealt with. As I feel that persons other than those are non-existent, or not likely to exist in circumstances in which they would seek remedies under the provisions of this clause, I do not intend to press the amendment any further.

Amendment put and negatived.

The ATTORNEY GENERAL: Paragraph (c) of Subclause (1) says that a tortfeasor may claim contribution from other tortfeasors, thereby obliging them to pay a proportionate share of the amount paid out by the first tortfeasor held liable. But it goes on to say that—

No person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability for which the contribution is sought.

The cases in which indemnity may arise are then set out. That is new in this Bill. The reason is that indemnity, in these circumstances, arises in three fairly well defined classes, and it was thought to be helpful if the legislation set out those classes and gave some clear indication as to the different circumstances in which the indemnity would arise. An example, under subparagraph (i) might be the case of Burroughs and Rhodes—a rather famous case arising out of the South African Jameson raid. Burroughs was induced by Rhodes to take part in this expedition against the Boers, because Rhodes led him to believe that protection against the Boers was needed for English women and children in Johannesburg. The raid was repulsed by the Boers. In the circumstances Burroughs and Rhodes might have been sued as joint tortfeasors—people who had taken part in unlawful aggression—and if they had occasioned damage both might have been sued. But if Rhodes had been sued and had paid out damages he would not have been allowed to recover part of those damages from Burroughs, because Burroughs had acted in good faith on representations made by Rhodes, and therefore Burroughs would be entitled to be indemnified by Rhodes against any liability he might have incurred through acting on those representations.

Under subparagraph (ii) it may be that an auctioneer sells goods which someone says are his property. In that case, if the goods belonged to a third person, both the auctioneer and the person who gave the instructions for sale, would be liable as joint tortfeasors. But the auctioneer is a person entitled to indemnity against the person who gave him the instructions on which he acted in good faith. Therefore, if the person who gave the instructions to the auctioneer were held liable to the true owner, he could not call upon the auctioneer to contribute damages which the wrongdoer, who had given the instructions, had paid.

The third case, under subparagraph (iii), means that if, for example, an employee, on the instruction of his employer, does some act in good faith, and not knowing it is illegal, then both the employee and the employer might be liable to the person injured. In that case the employee is entitled to be indemnified by the employer, and if the employer should be called upon to pay money to the person injured, he cannot turn round under this provision and say, "I want indemnity from the employee in respect of part of what I have paid." These are the three main cases where the right of indemnity would qualify the obligation to make contribution as between joint tortfeasors. For the sake of clarity it has been thought desirable to set out in the Bill those three classes. The only other amendment involved is that in Subclause (2) which says—

In any proceedings for contribution under this section the amount of contribution recoverable from any person shall be such as may be found by the court to be just and equitable; and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

As between two wrongdoers the court may say, "I am not going to make one of them pay anything at all," or the court may fix the proportion or may say, "I am going to make one party pay the whole lot, because that party is the person really to blame and the one who has caused the whole of the trouble." In the 1941 Act the words were, "The amount of the contribution shall be such as may be found by the court to be just having regard to the extent of that person's responsibility for the damage." Those words "having regard to the extent

of that person's responsibility for the damage" have been left out of the Bill and the words, "and equitable" have been inserted. The reason for that is that the words which I propose should be omitted have been commented on by an English judge as being surplus words, because his view apparently was that if the court has to find a just contribution the other words are more or less included in the word "just," so in order to meet that criticism and put the matter in reasonably clear phraseology, it will now read in effect, that "the amount to be paid shall be such as may be found by the court to be just and equitable." I think these provisions are in accordance with the principle and intentions of the Act, and they are designed to make it clearer and to remove, in the last case, any superfluous words.

Clause put and passed.

Clause 8—Person pleading limitation not entitled to benefit of Subsection (1) of Section 4:

The ATTORNEY GENERAL: The meaning of this clause is as follows:—Suppose two parties have a collision and one is the Commissioner of Railways, with his train, and the other the owner of a truck passing over a crossing. They may both sue each other and the court would normally decide the proportion of damage to be carried by each of the two parties, but the Commissioner may plead his Act and say, "You are too late in suing me. I have a limitation under my Act and you cannot sue me except within six months. It is now more than six months since the collision." If the Commissioner succeeds by virtue of some such limitation, and defeats his adversary's claim in that way, he cannot at the same time succeed in his claim against the other side. If he pleads such a special limitation on his own behalf he cannot take advantage of the fact that the other party has not a corresponding protection. If it applies to one side, it is to apply to both.

Clause put and passed.

Clause 9, Title—agreed to.

Bill reported with amendments.

BILL—MAIN ROADS ACT (FUNDS APPROPRIATION).

Second Reading.

THE MINISTER FOR WORKS (Hon. V. Doney—Williams-Narogin) [7.47] in moving the second reading said: This Bill, although relatively small, is undeniably of some importance as, failing its acceptance by the House, the main roads and bridges of the metropolitan area would run some little risk of going without repairs for the next three years, and possibly even longer.

Hon. A. H. Panton: Is that a threat or a promise?

The MINISTER FOR WORKS: Except in two minor directions—that is as to the period covered by the Bill and as to the title of the appropriate Commonwealth Act—this Bill contains absolutely nothing new in main roads legislation. With those two exceptions the Bill is identical with the 1944 measure brought down by the member for Northam.

Hon. F. J. S. Wise: Did you not vigorously oppose the introduction of the measure originally?

The MINISTER FOR WORKS: I anticipated being asked that question and I do not mind replying to it in due course, but I do not want the hon. member to interrupt just now. The measure is, to all intents and purposes, continuous. Most members know that the main roads and bridges and also the major developmental roads and bridges in this State are financed from funds drawn from the petrol tax and, though not to the same degree, from traffic funds collected within the metropolitan area. It must be understood by members that the Bill concerns itself only with the traffic fees section of this arrangement. The Title sets out the method adopted in making these fees available to the Commissioner of Main Roads, but that Title, as is very often the case with Titles, is not capable of over-easy interpretation and therefore needs some explanation, particularly as a service to members new to the House.

I think the confusion may be lessened somewhat if I briefly explain the functions of the two accounts that are named in the Title. The Main Roads Contribution Trust Account is the account created for the purpose of receiving the 22½ per cent. of the

net balance of metropolitan traffic fees or, in certain circumstances, an equivalent amount from the petrol tax, this sum being for the special purpose of the construction, improvement and maintenance of the principal roads and bridges within the metropolitan area. On the other hand, the Main Roads Trust Account is an account into which is paid the State's quota of the petrol tax under the Commonwealth Aid Roads and Works Act, which was recently enacted by the Commonwealth to take the place of the previous Federal Aid Roads Agreement that expired a few months ago. That fund—and it is a very large one running into something like £1,000,000—provides the funds for the construction, maintenance and supervision of main and developmental roads throughout the State. Over the past six years, during which the traffic fees have been transferred and Consolidated Revenue has benefited to the same extent, the amounts involved in the adjustment have been—

	£
1941-42	30,198
1942-43	25,640
1943-44	30,190
1944-45	30,696
1945-46	33,643
1946-47	35,218

Having regard to the fact that traffic fees are now up to 100 per cent. of their former strength and since there are more cars upon the roads, the amount for the current year is likely to be in the vicinity of £45,000 to £48,000. Time was, before 1941, when the 22½ per cent. of traffic fees was paid direct to the Commissioner of Main Roads, and placed in the Main Roads Trust Account, but in that year, that very alert body, the Grants Commission, fastened on to the idea that Western Australia, unlike the Eastern States, was not paying towards the servicing of the loan funds that had been spent upon the making and maintaining of main roads. It so happened that in that year the Commonwealth Government discounted the grant to Western Australia by no less than £65,000 for the purpose, I suppose, of demonstrating to us that it was a body not to be trifled with. I do not complain of its having taken that action; possibly to do so was right and proper.

Hon. F. J. S. Wise: You do not believe it was the real reason.

The MINISTER FOR WORKS: I am not sure that I believe it now. Still, I am prepared to argue that point with the hon.

member in Committee; not now. Thus it happened that, in 1941, we passed the first of a series of Bills, all of them on all fours with the measure now before the House and all of them providing for annual interest and sinking fund payments by requiring that 22½ per cent of the balance of the metropolitan traffic license fees collected be transferred to Consolidated Revenue from the Main Roads Contribution Trust Account, and, as a set-off against this provision, a similar amount has each year, through the enabling statutes, been transferred to the Main Roads Contribution Trust Account from the Main Roads Trust account.

I find some difficulty, when mentioning this Title—I believe most Ministers have done so—to give it in its correct order, and to be on the right side, I have adopted the course of reading it. The Bill provides for a further three-year period, which is following the line set by my predecessor. His Bill of 1944 carried on to the end of the three-year period that then faced him, and similarly this measure will carry on till December, 1950.

Hon. F. J. S. Wise: When does the new agreement expire? Is it not 1950?

The MINISTER FOR WORKS: Yes, in 1950. I think that has always been the practice with these Bills.

Hon. F. J. S. Wise: It was a seven-year period previously.

The MINISTER FOR WORKS: It was never a seven-year period to my knowledge.

Hon. F. J. S. Wise: The petrol tax.

The MINISTER FOR WORKS: I am not referring to the petrol tax.

Hon. F. J. S. Wise: This Bill has a distinct reference to it.

The MINISTER FOR WORKS: I believe that on all previous debates on this subject, successive Ministers have admitted that such legislation should not extend beyond the life of the Federal Aid Roads Agreement. Now we have a similar statute but under a different name and for a different period. I should say that nobody is likely to query the wisdom of it, and thus it is that the duration of the measure is for the complete period of the present agreement. I move—

That the Bill be now read a second time.

On motion by Hon. A. R. G. Hawke, debate adjourned.

BILL—DRIED FRUITS ACT, 1926, RE-ENACTMENT.

Received from the Council and read a first time.

BILL—CHILD WELFARE.

In Committee.

Resumed from the 3rd September. Mr. Perkins in the Chair; the Minister for Education in charge of the Bill.

Clause 23—Exclusion of persons from hearing:

The CHAIRMAN: Progress was reported on Clause 23, to which the member for Fremantle had moved an amendment to strike out the following words:—"unless (i) the court expressly authorises the same; or (ii) the same be made by any person in the performance of his official duties pursuant to this or any other Act or regulations."

The MINISTER FOR EDUCATION: I oppose the amendment because I think it would be unfortunate if it became law. The desire of the member for Fremantle is quite apparent to me; it is to do away with the unsavoury type of newspaper report which in some instances—and only in some instances—has been the cause of dissatisfaction to many of us in the past. In its present form, the Bill subscribes to a great extent to that belief by providing that reports of proceedings shall not be published unless the court expressly authorises the publication, or the publication be made by some person in the performance of his official duties pursuant to the Act or the regulations. Dealing with the first point, where the court expressly authorises publication, the magistrate may in his discretion authorise publication to some degree.

If the member for Fremantle succeeds with his amendment, the magistrate will not be able to allow anything whatever to be published. That, in my opinion, is carrying the restriction a little too far. As to the second point, that is, the prevention of any person in the performance of his official duties from making any publication, I pointed out to the hon. member some time ago, when we were discussing this matter earlier, that publication did not mean only a report in the newspaper. It means any publica-

tion whereby information might pass from the knowledge of one person to another. If we do that, we shall make it almost impossible for the officials of the Child Welfare Department to carry on their work, because they are obliged to make reports to their superiors and to the Minister; they are also obliged to give, to some extent, statistics to the Government Statistician. They are even obliged, I am told by the Crown Law Department, to furnish the University with information to enable investigations to be made by it into the matter of child welfare generally. I would refer the hon. member to Clause 126 of the Bill which merely reproduces Section 14 of the amendment Act of 1941. It is as follows:—

Whenever any child has been committed to the care of the State or has been committed to an institution or has been convicted under this Act, the fact of such committal or conviction shall not be disclosed to any person, except with the consent of the Minister, or be admitted as evidence in any court of law, except a Children's Court.

Therefore, one aspect of publication in the general sense, and not as referring only to newspaper and other publicity of that nature, is dealt with by Clause 126. I may tell the hon. member that it is impracticable to prevent Commonwealth officials from requiring and obtaining information from State officials under such legislation as governs the Navy, the Army and the Air Force.

The CHAIRMAN: I think it would be better, as this is a new subclause and subject to further amendment, not to complicate the discussion with such matters.

The MINISTER FOR EDUCATION: If that is your ruling, Sir, I will refrain from going further into the matter. I hope the Committee will not agree to the amendment.

Hon. J. B. SLEEMAN: The Minister has not given any valid reason for objecting to the amendment. I do not want publicity given to any cases heard in the Children's Court. Some of these young offenders are of very tender years. For instance, we saw a report in the newspaper of two boys, aged six and seven years, who had been charged with taking pennies from milk jugs. The report described the whole case and in consequence the neighbours knew who the boys were. Then there was the case of another boy, aged 13, who was charged with riding a bicycle on a footpath. Soon we shall have

the spectacle of a man, when taking his seat in Parliament, being told that he had been charged with stealing money when a lad. Then there was the case of a young man who tried to join the Police Force. I knew him very well. He was of good physique, as well as of good character, but the detectives found out that he had been convicted in the Children's Court of an offence when he was very young. He was debarred from joining the Police Force because of that conviction and because he had made a false declaration, as he did not disclose the conviction against him in the Children's Court. He thought he was signing a perfectly true statement, but he was debarred from joining on that account. There have been other cases with regard to the Navy, too.

The MINISTER FOR EDUCATION: On a point of order, I think the hon. member is confusing himself with the amendment you ruled that I was not permitted to discuss while we were considering this one. The point I was trying to make in regard to the amendment now before us was that the publicity was being severely limited by comparison with the present Act, and that it would be impossible for the department to carry on if it were not able to give information to members of its own service. The hon. member is dealing with the next amendment.

The CHAIRMAN: I will only permit the hon. member to make reference to that as an illustration in connection with the words he desires to have deleted.

Hon. J. B. SLEEMAN: I hope the Committee will agree to strike out the words. I do not want any publication at all. The Minister says the department cannot carry on without advertising to the world what young children of tender age do. If that is so, let them go out of business.

The MINISTER FOR EDUCATION: The hon. member is hardly being fair. I did not suggest it was necessary for the Child Welfare Department to make public to the world what was taking place. What I said was that if they could not publish any information, using the word "published" as meaning passed from officer to officer, which that word covers, they could not carry on their business.

Hon. J. T. TONKIN: If I were satisfied that the word "published" meant what the

Minister says it does, I could not support the member for Fremantle, but I am not so certain. I find that in the New Zealand Act the provision dealing with this question is framed in these words:

Save with the special consent of the presiding magistrate or Justices it shall not be lawful for any person to publish a report of any proceedings taken before a Children's Court; and in no case shall it be lawful to publish the name of any child, or of its parents or guardian, or any other name or particulars likely to lead to the identification of the child.

There is a complete prohibition in that section of the publication of the name and certain details which could lead to the identification of a child. If that is so and not even with the consent of the magistrate can a child's name be mentioned, how could that exclude the use of records for departmental purposes? Otherwise such records would be meaningless. It would not be much use getting a record of a case if there were nothing by which to identify it. New Zealand does not regard the word "publish" in the same way as the Minister regards it.

If I felt that the amendment imposed a complete prohibition upon keeping any records in the department I would be obliged to vote against it, because I know how impossible it would be to run the Children's Court efficiently without having some knowledge of the case history of children who have been before the Court several times and the way they have been dealt with. If the information can be given to the department by the court under the amendment moved by the member for Fremantle I propose to support it, because I agree it is most undesirable that any persons outside the department should have information about cases which come before the court.

Hon. J. B. SLEEMAN: Since the Minister has given me his version of the word "publish" I have sent for the dictionary and I find the meaning given there does not coincide with the Minister's interpretation. It says:—

"Publish" means to make public; to make known to people in general; to promulgate; to cause to be printed and offered for sale; to issue from the press to the public; to make known by posting or by reading in a church (to publish banns of matrimony).

I think the Minister's interpretation is wrong altogether, and I do not think that this amendment would mean that one officer in the Child Welfare Department would be prevented from discussing the matter with another officer.

The MINISTER FOR EDUCATION: I am not offering to the hon. member my own opinion on this subject but that of the Crown Law Department under date the 4th September, 1947, which reads as follows:—

As to "publication" (your minute paragraph 5 subparagraph (1)), one meaning of "publication" is divulging, another is to make known to one or more persons. The meaning of "publication" in relation to defamation is, of course, too well known to you to require any exposition of it from me. It would, therefore, follow that if any of the above meanings were attached to the word as they well could be in the circumstances, officials whose duty requires the knowledge could not be made aware of what had transpired.

That, I think, in essence is the statement I made to the Committee in respect of this word "publication" or "publish," as the case may be. I do not ask the hon. member to accept any legal interpretation from me but from the officers of the Crown Law Department, to whom, in deference to the hon. member, I specifically referred the matter.

Hon. J. B. SLEEMAN: That does not satisfy me, either. When we get an opinion from the Crown Law Department, as the Minister calls it, we are getting an opinion of the legal gentleman who, for the time being, is employed as Crown Solicitor, or from another officer of the Crown Law Department. The gentleman who is now in the Crown Law Department was a few months ago a legal practitioner in the Terrace. If I had time and money to spend in consulting K.C.'s. of Perth I might get two or three different opinions concerning that word. When the Crown Law Department is referred to it means a legal gentleman who is employed at the department at present, who has not been there for very long, and who may not be there tomorrow. He may be raised to the Bench or resign and return to private practice. We have four or five lawyers on the other side of the House and have heard them disagree in front of us. I am not going to take too much notice of the Crown Law Depart-

ment's interpretation. I prefer the dictionary.

Hon. J. T. TONKIN: I do not think anybody could be very definite about this in view of the wording of the clause and the information we have had from the department. If there is anything in the Minister's contention that unless publication is authorised no records can be kept, that will mean that if records are to be kept the magistrate will have to order publication in every case.

The Minister for Education: I did not suggest that no records should be kept but that they could not be passed from one person to another. If they were kept by one person that would not be publication.

Hon. J. T. TONKIN: We come back to the same thing. If these records are to be of any value in the department they will have to be passed from one person to another. The magistrate will, therefore, have to give express authorisation in every case of publication. If that is not done we will have cases before the court, where, if the publication is not expressly authorised, there can be on the Minister's contention no record which can be passed from place to place. In other cases, if the magistrate does so authorise, we will have these records which can be passed from place to place. The more I think about it the more I come to the conclusion that the legal interpretation of the word "publication" is not a sound one, but that its proper interpretation would be with reference to publication outside. That brings me back to the section in the New Zealand Act which definitely says, "In no case shall there be publication of the name of the child." Even with the magistrate's express authorisation, a child's name would not be published in the departmental files, so that the child could not be identified. It seems to me that the definition of the word "publication" which has been supplied by the Crown Law Department, is not the one that is applicable here.

Amendment put and a division taken with the following result:—

Ayes	18
Noes	19
	—
Majority against .. .	1
	—

AYES.

Mr. Fox
Mr. Graham
Mr. Hall
Mr. Hawke
Mr. Hoar
Mr. Kelly
Mr. Leahy
Mr. Marshall
Mr. May

Mr. Needham
Mr. Nulsen
Mr. Panton
Mr. Sleeman
Mr. Smith
Mr. Styants
Mr. Tonkin
Mr. Triat
Mr. Rodoreda
(Teller.)

NOES.

Mr. Abbott
Mr. Ackland
Mr. Bovell
Mrs. Cardell-Oliver
Mr. Cornell
Mr. Doney
Mr. Grayden
Mr. Hill
Mr. Mann

Mr. McDonald
Mr. Murray
Mr. Nolder
Mr. Nimmo
Mr. North
Mr. Seward
Mr. Thorn
Mr. Watts
Mr. Wild
Mr. Brand
(Teller.)

PAIRS.

AYES.
Mr. Collier
Mr. Johnson
Mr. Reynolds
Mr. Wise
Mr. Read

NOES.
Mr. Keenan
Mr. Leslie
Mr. Yates
Mr. McLarty
Mr. Shearn

Amendment thus negatived.

Hon. J. R. SLEEMAN: I move an amendment—

That a new subclause be added as follows:—

“(3) It shall be unlawful for any report of the proceedings of the court or for any decision made or conviction registered by the court to be divulged or furnished to the Police Department or to the Navy, the Army, the Air Force, the State or Commonwealth Public Services.”

I do this in the interests of our rising young men. The Services referred to in the amendment get the records from the Children's Court and say, “We cannot have Willie Jones because he was convicted in the Children's Court.” Such a boy cannot get a job in the Commonwealth Public Service, nor is he allowed to fight for his country. We should not allow this to continue. A young man should not be penalised because of some childish folly.

The MINISTER FOR EDUCATION: I think the Committee will agree, after hearing me, that it is not competent for this Parliament to pass a law of this nature. The furthest we can go—and I have already mentioned it—is to the extent that Clause 126 provides. It states—

Whenever any child has been committed to the care of the State or has been committed to an institution or has been convicted under this Act, the fact of such committal or conviction shall not be disclosed to any person,

except with the consent of the Minister, or be admitted as evidence in any court of law except a Children's Court.

The situation is that the defence affairs of Australia are controlled by the Commonwealth, and it has complete power in respect of the legislation in which it is concerned, as has been substantiated many times in recent years. I propose, notwithstanding the dubious expression a few moments ago of the member for Fremantle to quote to him an opinion given many years ago on this subject. It is still, according to the present officers of the Crown Law Department, valid law, so there has been agreement in this matter for quite a number of years; and that opinion in the first instance was given by a legal practitioner who is now a judge of the Supreme Court.

Hon. F. J. S. Wise: You would agree that the older it is, the more valid it is.

The MINISTER FOR EDUCATION: I refuse, at this stage, to enter into a discussion on that subject. I think it has no relevance to the issue. This opinion was given by Mr. J. L. Walker, at that time solicitor of the Crown Law Department:—

In my opinion the request of the Commonwealth contained in the letter hereunder should be complied with.

2. The maintenance of the Military and Naval Forces is necessary to preserve the Crown's prerogative in regard to the making of war and the defence of the British Dominions, and the right to control those forces in Australia has been conferred by the Constitution Act upon the Commonwealth acting for the Crown.

3. It follows, therefore, that the interests of the Crown in the Commonwealth and in this State are the same so far as concerns the Military and Naval Forces in Australia, and no question arises as regards the conflict between the sovereign rights of the Crown in the Commonwealth and those in the State.

4. The position is that the Crown through its Minister in the Commonwealth is entitled to obtain from the Crown through its Minister in the State such information as the Commonwealth Defence Act empowers the former Minister to obtain, and in such case in my opinion any provision of the State Child Welfare Act would not bind the Crown so as to prevent the Minister instructing his officers to give to the Commonwealth that information which the Commonwealth Defence Act empowers the Minister to obtain.

That arose out of a communication from the then Prime Minister, dated 8th May, 1926, in connection with this very question now

brought before the Committee by the member for Fremantle. On the 8th May of that year the Prime Minister wrote to the then Premier of Western Australia—who I understand was the member for Boulder—as follows:—

I desire to inform you that it is the practice when considering applications for entry into the Royal Australian Navy to make inquiries regarding the character of the applicant. In this connection it has been customary to forward to the State police a form A.R. 4(a) as per sample attached.

It is stated by the Defence authorities in Western Australia, in regard to youths under the age of 18 years who may have committed offences, that no information in connection with such offences can be supplied, as the State Children Act of 1907 precludes any person giving particulars of any convictions whatsoever in such court under penalty of £100. It is also stated that in respect of offences committed by adults, the Police Regulations preclude such information being disclosed except after the conviction in a court of law for a later offence. Consequently the information desired by form A.R. 4(a) is not procurable in your State.

Section 74 (1) of the Defence Act 1903-1918 provides that any person, of whom information is required by any officer or person to enable him to comply with the provisions of the Defence Act relating to enlistment or enrolment, who refuses or neglects (without just cause, proof whereof shall lie upon him) to give such information, or gives false information, shall be guilty of an offence . . .

In order to maintain the moral standard of the Royal Australian Navy, and to avoid any prejudices in regard to recruiting persons of unblemished character, the Naval Board have found it necessary to make a standing order to the effect that the antecedents of all applicants must be ascertained before they can be accepted for service in the Royal Australian Navy.

In those circumstances, no matter how undesirable the practice may be—on that I have no argument with the member for Fremantle—it is not competent for the State to prevent the Commonwealth from receiving this information, because it is unlawful for the State to do so. If the Commonwealth asks for the information it is entitled, having the superior authority in regard to the defence power, to obtain it, and therefore any provision in the Bill to the contrary would have no force or effect, and in those circumstances should not be put there.

Hon. J. B. SLEEMAN: I think we should tell the Commonwealth that we are not pre-

pared to do something that is to the disadvantage of our youths and the Defence Forces of the Commonwealth. We should tell the Commonwealth that a youth convicted in the Children's Court may later want to join the Navy and may be as good a man as any in the Commonwealth Parliament or in this Chamber today. Simply because he was guilty of some childish misdemeanour, is it to be said that he is not fit to fight for his country? It is a lot of rubbish, and the matter should be taken up with the Commonwealth Government. We should say we are not prepared to do this thing which will act both against our boys and against the Armed Forces.

Mr. MARSHALL: Does the Minister intend to oppose the amendment of the member for Fremantle simply because it is unlawful for this State to refuse to give the Naval authorities records and decisions of the Children's Court? We can strike out that part of the amendment, if necessary, and agree to the rest of it.

The Minister for Education: We have the rest in Clause 126.*

Mr. MARSHALL: I will be guided in my decision by the member for Fremantle. I do not think we should entirely pass over the proposed amendment simply because of the Commonwealth law governing the Navy. Although the Commonwealth law may override State law, I do not think the Commonwealth Government and its laws are all-virtuous.

Members: Hear, hear!

Mr. MARSHALL: This is one Commonwealth law with which we can find fault and I agree wholeheartedly with the member for Fremantle. I, for one, was guilty of many childish misdemeanours. Had the minions of the law been able to keep pace with me in those days I would seldom have been outside the Children's Court. I do not suppose I am the only member who has committed such childish offences. It is wrong in principle to condemn worthy citizens because of youthful pranks, and it should not be tolerated. I believe the Premier should take the matter up with the Prime Minister.

The MINISTER FOR EDUCATION: I think it would be almost unheard of deliberately to insert in State legislation a provision that was known to be contrary to the over-riding Commonwealth law, and that is why I am opposed to that portion

of the amendment which has reference to the Navy, the Army and the Air Force. As to the rest of the amendment, Clause 126 states—

Whenever any child has been committed to the care of the State or has been committed to an institution or has been convicted under this Act, the fact of such committal or conviction shall not be disclosed to any person, except with the consent of the Minister, or be admitted as evidence in any court of law, except a children's court.

Thus the Bill, so far as it can lawfully control the matter, does so in those terms and prevents any information as to a conviction being given to anyone over whom the State has control, except the Children's Court. I would be prepared to agree to the deletion of the words "except with the consent of the Minister" if the member for Fremantle saw fit to propose an amendment to that effect. The only exception I want is that the information may be available for use in a children's court for the guidance of a magistrate, who will be dealing only with children at the time.

Hon. J. B. SLEEMAN: Why should we not engage in some conciliatory work and agree to include the amendment in the Bill? I refuse to believe that the Commonwealth Ministers for the Army, the Navy or the Air Force would raise any objection to such a provision. I do not think any one of those Ministers would demand such records. Just because this is in accordance with some old law and has been part of the Commonwealth legislation for many years, objection has been raised to the amendment; but if at any time the Commonwealth Ministers concerned should object to the provision, I will be prepared to support the repeal of the subclause I seek to have included in the Bill. I am satisfied there will be no such objection, because I believe the Ministers concerned are thinking men who will listen to reason. They will not want to secure information about what a man had done when he was a boy.

Mr. WILD: I disagree with the member for Fremantle when he said in effect he was content to leave this matter to reasonably-minded men to consider the connections of these little boys. On this occasion at any rate, I agree with the Commonwealth Government because it is in the interests of the Navy, Army and Air Force that the provision be retained.

Hon. A. H. Panton: For what reason?

Mr. WILD: It does not necessarily mean that because a boy has a conviction recorded against him for stealing an apple, it would be held against him, but it must be remembered that there are men in the permanent Forces who earn their livelihood in that way and, in the interests of Australia as a whole, only the cream of the youth of the Commonwealth should be included in the Services. I consider the Naval Board the Army and the Air Board should be in a position to ascertain exactly what the antecedents of a boy may have been. The conviction may not necessarily have been for stealing an apple because there could be convictions for many other offences that I need not mention here.

Mr. Kelly: What about the chap who does not get caught? Is he any better?

Mr. Hoar: Like the member for Murchison!

Mr. WILD: If a boy were convicted of stealing an apple, I do not think any board associated with the Services would turn him down because of that fact.

Hon. A. R. G. Hawke: They do.

Hon. J. T. Tonkin: It has been done.

Mr. WILD: They may have done so.

Hon. A. H. Panton: There is no "may" about it; they have done so.

Mr. WILD: I would dispute that. I was sitting on a board—

Hon. J. B. Sleeman: On a point of order! Does the hon. member dispute my word when I say we have got in touch with the Navy about this matter?

The CHAIRMAN: Order! The member for Swan will continue.

Hon. J. B. Sleeman: I want to know whether the hon. member disputes my word. If he does, I want him to withdraw the statement.

The Minister for Lands: Don't be so childish!

Hon. J. B. Sleeman: For how long has the Minister been running this Chamber? He cannot run the Lands Department!

The CHAIRMAN: Order! The member for Swan—

Hon. J. B. Sleeman: On a point of order. Mr. Chairman, I want to know whether the hon. member disputes my word.

The CHAIRMAN: Order! I am giving the member for Swan an opportunity to make his point clear. If he is reflecting upon the member for Fremantle, I shall ask him to withdraw.

Mr. WILD: I do not desire to reflect upon the member for Fremantle. I said it was not possible.

Hon. J. B. Sleeman: You said you did not believe it.

Mr. WILD: I said I did not believe a Commonwealth Minister would do it. If I were a member of one of the Service boards, I would not be worthy of my seat if I rejected a man because as a boy he had been convicted for stealing an apple. On the other hand, there are certain convictions that could be brought under the notice of such a board that would fully justify it in rejecting a man who sought admission to the Service concerned.

Hon. J. B. SLEEMAN: I am surprised that a member who held the rank of major in the Army could cast a slur on the youth of this State.

Government members: Oh, oh!

Hon. J. B. SLEEMAN: The hon. member said that the reason the information was wanted was that the Armed Services had to have the cream of the nation. I tell the member for Swan that some of these lads who committed minor offences when young turned out to be the cream of the nation.

The Chief Secretary: And some have been for years in prison.

Hon. J. B. SLEEMAN: If members opposite were to ask, they would find that the men who fought best were among those who had been wild in their younger days. They are the cream of the nation. I have heard an officer of the Army say that some of the wildest young fellows were the finest soldiers at the front. We all know the song about the "black sheep" who turned out to be the best boy in the family.

Mr. FOX: We should proceed along the lines suggested by the member for Fremantle and endeavour to get the Commonwealth Government to bring its law into conformity with what is proposed to be included in the Act. I am surprised at the member for Swan talking as he did. He suggests the cream of the people of Australia are wanted for the Navy, the Army and the Air Force. The best soldiers are

those who have been a bit radical as boys. "Sissies" who have never been in trouble at all are not those that are wanted in the Services. One boy who had had a couple of convictions for trivial offences recorded against him in the Children's Court applied to join the Navy and was turned down. I went to the Navy Office and pointed out that the boy, under Naval discipline, would probably turn out a really good citizen, but the authorities would not accept him. I appealed to the late John Curtin, who did his best to get the regulation cut out, but was unsuccessful. I understood that the regulation had been modified and was surprised to hear the Minister say that it had not. I am opposed to any publication of these cases. The tribunal should not have been termed a court. We should cut out the austerity associated with a court and provide some nice room—

The CHAIRMAN: Order! The hon. member is getting away from the amendment.

Mr. FOX: I think most members have erred in that direction. We should accept the amendment and endeavour to get the Federal authorities to bring their law into conformity with ours.

Mr. TRIAT: I am amazed at the opposition to the amendment. I realise that Commonwealth law over-rides State law, but possibly Federal Ministers might agree that misdemeanours committed by children should not be a bar to their entering the Services. The member for Swan said we required the cream of the nation to win wars. In Nelson's time, no character test was applied to the seamen who were press-ganged into the Navy. They were dragged out of all sorts of hovels and pushed into the Navy, and they fought very successfully. I presume that much the same applies to the British Army. The King's shilling was often passed in public houses to get men to enlist, so why should we trouble so much about a child having committed an offence. No childish prank should count against a person in after years. A person who has been convicted in the Children's Court is eligible to become a member of Parliament, but is not eligible to become a sailor in the Navy. The position is ridiculous.

Mr. BOVELL: I consider that the attitude of the Commonwealth is right. A board

making selections for the Services should have an opportunity of learning the whole history of the candidate.

Mr. Triat: After he becomes 18 years of age, not before.

Mr. BOVELL: No reasonable board would hold a trivial offence against a candidate. We need the cream of the nation to be the leaders of our Forces.

Hon. A. H. PANTON: The leaders do not do all the fighting.

Mr. BOVELL: They are required to do the planning. Boards should have every opportunity to select the right type of candidate for entry into the Services. The Minister has amply stated the case and I have no hesitation in supporting the clause.

Hon. A. H. PANTON: To hear these aristocrats of the Army and Navy talking is highly amusing. One would imagine that the only time boys were required for the Services was peace-time.

Mr. Bovell: I did not say anything about peace-time.

Hon. A. H. PANTON: If the hon. member had not peace-time in mind, it would be a sorry day for the nation if the history of every boy and girl applying for entry to the Services were considered in war-time. Every man who went overseas during the 1914-18 war knows that boards did not worry about past history. In nearly every city of Australia, police officers tapped well-known offenders on the shoulder and advised them to enlist or they would be put in gaol, and I was under the impression that the A.I.F. of that time was a fairly decent fighting force if not a very decent moral force. There might be some argument in the contention as applied to candidates being selected for Duntroon, but I venture to say that the member for Swan, in recruiting men, would be satisfied if they were of good physique, sound mentally and capable of being trained as soldiers. He would not worry about their past history or whether their mothers and fathers had been married. Men of that class have made the British and Australian Armies. To suggest that it is urgently necessary to make such details available to boards is ridiculous.

Mr. Bovell: They should have an opportunity to know those things.

Hon. A. H. PANTON: The Honorable Minister knows something about recruiting in war-time and I imagine that she did not inquire too much into the past of your fellows required for the Army and Navy. It is the sergeant-major who wants to know what kind of soldier a young man will turn out when he gets into the recruit camp. I support the amendment. It is nearly time, as the Premier said, to tell the Commonwealth what we want.

Hon. J. T. TONKIN: There is much substance in what the Minister says. To insert the amendment in the Bill would not have much effect. There is no substance in the arguments of the member for Sussex and the member for Swan.

Mr. Bovell: That is a matter of opinion.

Hon. J. T. TONKIN: Is it? If it is, it is a fairly general opinion, because very few people think along the lines of the member for Sussex and the member for Swan on this point.

Mr. Bovell: What experience have you had?

Hon. J. T. TONKIN: Had the hon. member listened to what the Minister said, he would know that the Minister was quite in agreement with the desires of the member for Fremantle; but, in view of the overriding powers of the Commonwealth Government, he thought it futile to accept the amendment. But here is a wonderful opportunity for the Government to prove its mettle. This Government said it would stand up to the Commonwealth Government; it was not going to be the puppet of the Commonwealth Government, as the Minister inferred the previous Government had been. We are in general agreement over the amendment—I except the member for Sussex and the member for Swan. We agree that it is wrong that a young man should be followed by misdemeanours committed by him during infancy. The Children's Court does not exist to punish children, but to correct them and enable them to live decent lives when they attain manhood. That cannot be done if, when they attain manhood, there is no record against them of what they did while infants.

The Minister for Lands: Does the Army accept infants?

Hon. J. T. TONKIN: Yes.

Hon. A. H. Panton: The Minister was in the Army.

The Minister for Lands: I was very young, I know.

Hon. J. T. TONKIN: The Army should not concern itself about the records of infants; it wants men.

Mr. Bovell: Well, the Army is concerned.

Hon. J. T. TONKIN: It should not be.

Mr. Bovell: It is.

Hon. J. T. TONKIN: During the recent war, it became necessary for the magistrate of the Children's Court and Canon Collick, of Fremantle, to make special representations to the Navy in order to induce the Navy to accept boys who had appeared before the Children's Court, it is true, but who nevertheless subsequently had no stain on their characters. That was carrying the matter a bit too far. I agree with the Minister that if the amendment is inserted in the Bill, it certainly cannot over-ride the Commonwealth's powers; nevertheless, the Government would have the opportunity to try itself out and to convince the Commonwealth that, in demanding this information, it is doing something which now is not in conformity with the general acceptance of the position. Again, I except the member for Sussex and the member for Swan, who think differently and have yet to be educated along these lines.

Mr. MARSHALL: It is astonishing to me to think that we should have in our midst members who are so un-Christian.

Members: Oh!

Mr. MARSHALL: Men who would never forgive and never pardon, but condemn on every possible occasion.

Hon. A. R. G. Hawke: Because they are not the cream.

Mr. MARSHALL: They do not forgive. The fact that an infant commits a misdemeanour and figures in the Children's Court is never to be forgotten and never to be forgiven.

Mr. Bovell: Who said that?

Mr. MARSHALL: That is the position.

Mr. Triat: The Army and the Air Force.

Mr. Bovell: Not the Air Force as I knew it.

The CHAIRMAN: Order!

Mr. MARSHALL: I am not aware of what knowledge the member for Sussex has. All this amendment proposes to do is to ensure that when an infant commits a misdemeanour, the Navy, the Army, the Air Force and the Civil Service, or those in authority in Government departments, both Commonwealth and State, shall not be given any information as to the record or the conviction. I cannot understand why members should raise any objection to the amendment. Instead of making progress towards higher ideals, we are doing our best to hold back, if we keep before a young fellow the fact that he made some small mistake when an infant.

Mr. May: By being found out.

Mr. MARSHALL: That is true. I cannot understand members who adopt that attitude.

The Chief Secretary: Why do you not try to get it remedied? Your Party is in power in the Commonwealth Parliament.

Mr. MARSHALL: Now the Chief Secretary has mounted his political hack! He is at the barrier and is going for a good joy ride! He has the whip!

Hon. J. B. Sleeman: He will never get in the lead.

Mr. MARSHALL: No. He will never pass the judge's box first, either. Notwithstanding that the Commonwealth law will prevail if we pass the amendment, it will at least give the Minister an opportunity to resist furnishing information of this nature to the Commonwealth.

Hon. A. H. Panton: Let the Commonwealth come over here and get it.

Mr. MARSHALL: If the Commonwealth Government decided to take legal action against the State authorities, or against the State Minister, for refusing to give the information the Government could at least resist up to that point. If I happened to be Minister and such an occasion arose, I would not be too easy with the Commonwealth authorities who solicited information which might in after years act detrimentally against a very honest citizen.

The MINISTER FOR EDUCATION: I am sorry that I did not have the opportunity during the time when this matter was really of some importance—to wit, during any part of the war period—to establish that example is better than precept. That opportunity was more available to the hon.

member who has just spoken. It is somewhat surprising to me, therefore, to find such activity among my friends opposite in regard to this matter, when that activity would have been better displayed at some earlier period of the State's history.

I was greatly attracted by the observations of the member for North-East Fremantle; and although I am not prepared to put into this Bill something which is obviously contrary to the superior law and which the hon. member sees reason for, I will submit to the Commonwealth Minister for Defence the whole of the observations that have been made by members opposite on this subject and my own concurrence therein as quickly as I can arrange for the matter to be prepared, with a view to endeavouring to ensure that such information, notwithstanding the provisions of the Commonwealth law, shall not be sought. Beyond that I think I need not go. In the meantime I hope the Committee will not insist that a clause which is obviously invalid and is admitted by many members opposite as well as by myself and by the department to be so, is included in the Bill.

Mr. READ: I know that the powers of the Commonwealth Parliament over-ride those of the State, but the sentiments expressed by many members on this side of the Chamber, are those which I hold myself. I feel that many of our promising youths have been penalised by the fact that these Naval regulations exist. I do not consider that we have aristocrats and autocrats who choose the personnel of the Navy. I know it is a matter of regulations laid down for the recruiting officers providing means by which they can inquire into the antecedents and character of applicants. I know of two instances in which this regulation acted to the detriment of the people concerned. There were two youths from my electorate—fine boys of 17 and 18 years of age—who, when they were seven or eight, had appeared before the Children's Court and had convictions recorded against them for minor offences. They were of good parents but one of them in his youth had stolen some cigarettes, and that debarred him from joining the Navy.

Some of our most brilliant citizens have been those whose brains developed more slowly than those of others. Some who were dull up to the fourth and fifth standards have turned out to be most brilliant.

What those boys did in early youth they would not think of doing when their brains had developed. Whilst we shall have no power, even if this amendment is passed, I take it that our agreeing to the amendment would constitute a strong protest against the operation of these convictions being a detriment to the advancement of youths in these particular Services in after life.

Hon. J. B. SLEEMAN: If we pass this amendment, the Minister will be able to say to the Commonwealth Government, "The State Parliament has agreed to this and we are taking the matter up," and I am sure he would then be successful in his approach to the Commonwealth authorities. The only people I see who are opposed to this are the officers—members who have been officers. The Minister himself is in favour; only in his imagination he sees there is trouble in the way. I would like to hear some of the privates on this matter—Private Toodyay, or Trooper Beverley. I would like them to tell us what they think—whether they consider that a boy who stole an apple is not fit to rub shoulders with them when they are going to fight an enemy on the battlefield or on a ship. If they do their job, those members will vote for this amendment.

Mr. NIMMO: I will speak from the lower deck of the Navy.

Hon. J. B. Sleeman: That is what I wanted.

Mr. NIMMO: During the 1914-18 war we were very jealous of the character of the men in the Navy. We did not want any of bad character. I am not speaking of people who took an apple or some small thing like that. The percentage of men who wanted to join the Navy was very small, but it will be found that the Navy generally, as a rule, has a big number of volunteers from which to select a few. In 1914 I volunteered to go home to join the English Navy at 1s. a day, and they wanted to know my character. I was not ashamed of it. In the lower deck of the Navy there is something that the men have to stand up for. The expression is used, "We keep our ditty boxes unlocked"; that is a big thing in the Navy.

The number of men that will want to join the Navy will not be large, but the Navy will have plenty to pick from, and plenty with good characters. The member for South Fremantle said that we did not want

the "sissies" in the Navy. I can name plenty of "sissies" who have done a very good job in the North Sea and in the Mediterranean. They have, perhaps, been braver than many of us who thought we were good when our knees were knocking. From the point of view of the Navy, I support the Bill.

Hon. E. NULSEN: I support the amendment. We should have a change of psychology. Whenever we want a change we get opposition from the other side. Surely members there are not so traditional and orthodox that they will not alter their minds. I cannot see why a young boy or girl of 18 years of age should be penalised for the rest of his or her life because of some slight misdemeanour. Those who nearly always turn out the best are the ones who were radical when they were young. The amendment will have some influence on the Minister, or whoever is in charge of those persons who do not like people with a blemish on their characters, irrespective of their age. We are going too far.

No man, who has through vim and vitality got into some mischief and been convicted in the Children's Court, should be penalised, because of that, for the rest of his life. Why should the Services mentioned in the amendment be permitted to see the court records to find out whether an infant had some slight conviction? There are many who have not sufficient energy to do anything wrong, I suppose, as the member for Fremantle pointed out, everyone here would have a conviction recorded against him for something if he had been found out. I know I would myself. We are going to penalise the unlucky little boy or girl who has done some small mischievous thing not in accord with the law. I have pleasure in supporting the amendment.

Hon. J. B. SLEEMAN: I move—

That the Committee do now divide.

The Attorney General: What, the gag from the Opposition side! It is the first one this session.

Motion put and a division taken with the following result:—

Ayes	10
Noes	28

Majority against 18

AYES.

Mr. Fox
Mr. Kelly
Mr. Leahy
Mr. Marshall
Mr. May

Mr. Nulsen
Mr. Rodoreda
Mr. Sleeman
Mr. Triat
Mr. Pantou

(Teller.)

NOES.

Mr. Abbott
Mr. Ackland
Mr. Bovell
Mrs. Cardell-Oliver
Mr. Cornell
Mr. Doney
Mr. Graham
Mr. Grayden
Mr. Hawke
Mr. Hegney
Mr. Hill
Mr. Hoar
Mr. Mann
Mr. McDonald

Mr. Murray
Mr. Nalder
Mr. Needham
Mr. Nimmo
Mr. North
Mr. Read
Mr. Seward
Mr. Smith
Mr. Styants
Mr. Thorn
Mr. Tonkin
Mr. Watts
Mr. Wild
Mr. Brand

(Teller.)

PAIRS.

AYES.
Mr. Collier
Mr. Johnson
Mr. Reynolds
Mr. Wise
Mr. Read

NOES.
Mr. Keenan
Mr. Leslie
Mr. Yates
Mr. McLarty
Mr. Shearn

Motion thus negatived.

Amendment put and a division taken with the following result:—

Ayes	17
Noes	21

Majority against 4

AYES.

Mr. Fox
Mr. Hawke
Mr. Hegney
Mr. Kelly
Mr. Leahy
Mr. Marshall
Mr. May
Mr. Needham

Mr. Nulsen
Mr. Pantou
Mr. Read
Mr. Sleeman
Mr. Smith
Mr. Styants
Mr. Tonkin
Mr. Triat
Mr. Rodoreda

(Teller.)

NOES.

Mr. Abbott
Mr. Ackland
Mr. Bovell
Mrs. Cardell-Oliver
Mr. Cornell
Mr. Doney
Mr. Graham
Mr. Grayden
Mr. Hill
Mr. Hoar

Mr. Mann
Mr. McDonald
Mr. Murray
Mr. Nalder
Mr. Nimmo
Mr. North
Mr. Seward
Mr. Thorn
Mr. Watts
Mr. Wild
Mr. Brand

(Teller.)

PAIRS.

AYES.
Mr. Johnson
Mr. Wise
Mr. Reynolds
Mr. Collier
Mr. Read

NOES.
Mr. Leslie
Mr. McLarty
Mr. Yates
Mr. Keenan
Mr. Shearn

Amendment thus negatived.

Clause put and passed.

Clauses 24 and 25—agreed to..

Clause 26—Court may refrain from imposing punishment or fine:

Hon. J. B. SLEEMAN: Seeing that we have lost every run so far, I think we should put a stop to convictions being recorded in the Children's Court. To that end, after the word "court" in line 2, we should insert the words "shall not record a conviction against any child." Why should children be convicted as are criminals? Such an amendment would prevent any conviction being recorded in such cases.

Clause put and passed.

Clauses 27 and 28—agreed to.

Clause 29—Power to apprehend neglected or destitute or incorrigible or uncontrollable children:

Mr. NEEDHAM: I move an amendment—

That paragraph (d) be struck out.

No matter how serious might be the charge preferred, I do not think any child should be retained in gaol. There has been a lot of debate this afternoon about not disclosing information relating to convictions recorded against children, because of the effect that such disclosures might have on the future careers of the children concerned. If anything would injure a child in its future life, I think detention in a gaol would do so. Even though it did not become known to some future employer, the fact would rankle in the child's mind and would undermine his self-esteem. So serious a view has been taken of this matter that a deputation from the Combined Orphanages Association, which represents all the churches that have orphanages in this State, waited on the Honorary Minister with a view to securing the deletion of this portion of the Bill, and protesting against its being included in legislation, and against any child being detained in a gaol. Despite that deputation, we find this provision in the Bill.

I can recall this matter having been brought up in the House frequently during the past 14 years, and I know that the present Special Magistrate, Mr. Schroeder, has repeatedly protested at being compelled to remand boys and girls to the lock-up. I believe he protested to the Government of that day that he was compelled, owing to lack of proper accommodation, to remand

boys and girls to that undesirable place, but the answer was that there was no proper accommodation for them. Probably that will be the argument adduced against my amendment, and the Minister in charge of the Bill may say that there is no other place in which to hold such children pending the decision of the court. The deputation from the Combined Orphanages Association suggested a receiving home.

I believe some effort should be made to prevent children being branded as inmates of gaols. During the period that a child is on remand or awaiting the decision of a court, it should be placed in surroundings entirely separate from anything in the nature of a gaol. In this enlightened age we should provide machinery to prevent a child being placed in a gaol or lock-up. If there is no room in a receiving home, then some other accommodation should be found. I appeal to the Minister to accept the amendment and eliminate this most reprehensible part of the Bill.

The MINISTER FOR EDUCATION: I regret I cannot agree with the member for Perth that paragraph (d) should be deleted. The right to place any child in a police gaol or lock-up, apart from other prisoners, is subject to the proviso that no child shall be detained in such a place "unless the charge pending is of so serious a nature that his safe custody is of paramount importance." It is not true to say that the Bill provides that every child could be placed in a lock-up or gaol; it does nothing of the kind. There have, of course, been cases where young people under 18 years of age are virtually at the stage of manhood—the member for Perth must agree with that—and have the physical strength of a man. They have been known to have committed such offences as robbery with violence, and the difficulty of keeping them in the circumstances in some place not particularly meant for the reception of such persons, must be obvious to every member of the Committee.

The law provides, as the Bill does, that there can be no unnecessary delay, not more than 24 hours, between the time the child, who may be anything up to 18 years of age, is apprehended and brought before the court. Moreover, it is not only in the City of Perth that this paragraph has application. There are naughty children in

every part of Western Australia, and there are those that come within the definition of "child" in the Bill who have the physical strength of adults and who, from time to time, are apprehended in country districts. In those circumstances, it is not easy to find a place where such children can be kept safely for 24 hours, unless they are detained in a lock-up. There again all the time remains the proviso that such a course cannot be adopted "unless the charge pending is of so serious a nature that his safe custody is of paramount importance."

While I would much prefer to see some separate premises provided, at the moment nothing of the sort is available in the metropolitan district and there are certainly no such facilities in the rural areas. In fairness to members of the Committee, I would explain that at the present time no-one under 14 years of age is ever sent to a juvenile lock-up, irrespective of whether the offence involved is serious or otherwise. That course, I am advised, has applied during the past 12 months. Further, no girl at all has ever been accommodated in any such place in recent months. It is desirable that some other accommodation should be found for the reception of all persons who come under the definition of "child," no matter what the offences they are charged with may be, other than an ordinary gaol or lock-up or even a juvenile lock-up associated with it. As a matter of fact, steps are being taken to provide such a place where children could be placed in safe custody, but not anything that could be described as a police gaol or lock-up. The member for Perth knows as well as I do that such provision cannot be made overnight.

Although Treasury approval has been obtained for the expenditure, we have to await the ordinary processes of building. In the meantime, it is impossible to provide facilities for those few cases where the lock-up is at present being used. We should not hamstring the Child Welfare Department or police officers in this regard, bearing in mind that there are cases in the rural areas where the safe custody of a child cannot be provided satisfactorily by other means. In the metropolitan district, until some better place is provided, as I frankly admit should be made available, we must take advantage where necessary of the lock-up. I trust the Committee will retain the

paragraph, accepting my assurance that as little use as possible will be made of existing premises and, as soon as it can be done, some other provision will be made in anticipation of overcoming the difficulty which the member for Perth sees, and which is appreciated by most of us.

Hon. J. T. TONKIN: I think the Minister's argument on this paragraph is flawless, because occasionally we have children who are very difficult to manage, far more so than some adults. In such cases ordinary methods of dealing with children are not sufficient. Special measures have to be taken. There are one or two aspects on which I should like further information. The Bill provides that an officer authorised by the Minister may, without warrant, apprehend a child. This means there is a general authorisation and not an express authorisation for a particular case.

The Minister for Education: I understand it to be an express authorisation.

Hon. J. T. TONKIN: That satisfies me. The proviso is the important part of the clause because it indicates that only in special circumstances will a child be lodged in the lock-up, but I want to know in whose opinion will it be of paramount importance. The proviso does not say. I have known some officers to regard a minor matter as being of paramount importance and to act precipitately. If it is to be in the opinion of the Minister, a magistrate, or somebody who can be relied upon to give the matter calm and careful consideration, I am prepared to agree. There are occasions when the lock-up is the only place where a difficult boy can be lodged in safe custody, but I should like to see some responsible person authorised to decide whether it is a question of paramount importance.

The MINISTER FOR EDUCATION: I am unable to say as to the means by which the position can be safeguarded. These words have been in the Act for many years, and I understand no difficulty has arisen. Certainly, in my short period in office, there has been no difficulty. To make specific reference to a particular person would be difficult. If the paragraph be passed, I shall try to find ways and means of gratifying the hon. member's wishes and having something inserted in another place, but I do not wish to take the risk of doing the wrong thing.

Mr. NEEDHAM: It has been contended that there is no proper accommodation where a child could be lodged pending a decision on his offence. While it is difficult to provide such accommodation, the longer this provision remains law, the longer will the plea be advanced that there is no suitable accommodation. If we delete the paragraph, it will be an indication to the Minister that suitable accommodation should be provided and, in addition, we shall no longer be placing the stigma of gaol on a child. The Minister said that a child would not be detained in a lock-up for more than 24 hours.

The Minister for Education: I said without being brought before the court.

Mr. NEEDHAM: That is so, but I have known children to be kept in a lock-up for more than 24 hours.

Amendment put and division taken with the following result:—

Ayes	3
Noes	31
Majority against	28

AYES.

Mr. Needham		Mr. Sleeman	(Teller.)
Mr. Nulsen			

NOES.

Mr. Abbott		Mr. May	(Teller.)
Mr. Ackland		Mr. McDonald	
Mr. Bovell		Mr. Murray	
Mrs. Cardell-Oliver		Mr. Nalder	
Mr. Cornell		Mr. Nimmo	
Mr. Doney		Mr. North	
Mr. Graham		Mr. Panton	
Mr. Grayden		Mr. Rodoreda	
Mr. Hawke		Mr. Seward	
Mr. Hegney		Mr. Styants	
Mr. Hill		Mr. Thorn	
Mr. Hoar		Mr. Tonkin	
Mr. Kelly		Mr. Triat	
Mr. Mann		Mr. Watts	
Mr. Marshall		Mr. Wild	
		Mr. Brand	

PAIRS.

AYES.		NOES.
Mr. Collier		Mr. Keenan
Mr. Johnson		Mr. Leslie
Mr. Reynolds		Mr. Yates
Mr. Wise		Mr. McLarty
Mr. Read		Mr. Shearn

Amendment thus negatived.

Clause put and passed.

Clauses 30 to 37—agreed to.

Progress reported.

BILL—WHEAT MARKETING.

Second Reading.

THE MINISTER FOR AGRICULTURE

(Hon. L. Thorn—Toodyay) [10.5] in moving the second reading said: At the present time, control over marketing of wheat is exercised by the Commonwealth under the Defence (Transitional Provisions) Act, 1947. However, this Act terminates at the end of December of this year and it is desirable to have a State plan on the statute-book ready for proclamation in order to avoid the inevitable chaos which would result upon the Commonwealth relinquishing control, should that Government not extend its present Act for a further period. The Bill will ensure the continuity of organised marketing machinery. It is with this object in view that the Government is introducing the Bill now before the House, to enable the board to be constituted to meet the situation if it arises. We all know there was a doubt whether the Commonwealth would continue its legislation, and the reason for bringing in this Bill, as I have already stated, is to make provision in the case of an emergency. It will be recalled that towards the close of the previous Government's term of office a Royal Commission was appointed to inquire into the various aspects of the stabilisation and marketing of wheat. The terms of the Commission's reference included—

1. (b) To ascertain what schemes or courses of action are open to the State, both before and after the termination of Commonwealth control of wheat marketing, including the possibility of the creation of a Western Australian pool independent or as part of a national stabilisation scheme.

(d) To examine whether a marketing scheme, either State or Commonwealth controlled, should operate with the sole object of marketing wheat to the best advantage, or whether, and to what extent, the machinery of marketing should be linked with and form an integral part of a general scheme aiming to stabilise the industry for a period of years.

(f) To ascertain whether a Western Australian pool may be legally and satisfactorily organised on a compulsory basis, and, if so, to advise whether it would be necessary or advisable for the State to acquire the right, title and interest in the wheat, or merely to act in a fiduciary capacity and market the wheat on behalf of the producer.

2. To make recommendations in regard to any one or more such schemes or courses and the machinery for implementing the same.

After discussing wheat marketing to some extent and dealing with various aspects of the question, the report summarises the benefits to be derived from a pool on a State basis as follows:—

(a) A State pool can be established on a firmer legal and political foundation than a Commonwealth pool, thereby achieving a much greater chance of permanent and peaceful existence.

(b) The management will be more in co-operative contact with producers within the State and may in consequence be expected to meet their requirements with greater understanding. There are trained officers in this State the equal of any in Eastern Australia.

(c) Short of a return to open marketing, a State pool provides the only practical way in which wheat marketing can be rescued from the unfortunate position it has reached, i.e., a cog in the machinery of internal and external politics. Furthermore, the development of pools in each State will provide an automatic safeguard against arbitrary bureaucratic control over a very widely-spread industry.

(d) Assuming average production conditions throughout Australia and as long as it is public policy to sell wheat for internal consumption at the 5s. 2d. (bagged) level of prices when export wheat is, say, 10s., a State pool will give W.A. growers a greater return than a Commonwealth pool to the average extent of more than £200 each per year calculated over 8,000 growers. Should export prices fall to a point below the 5s. 2d. level, then the flour tax begins to operate again. The proceeds of the flour tax are distributed on a production basis throughout Australia. It has been suggested some future Federal Government might alter the distribution of the tax to a basis of flour consumption in place of wheat production. Assuming wheat dropped to 3s. 2d. at ports, such a change in distribution procedure would adversely affect W.A. about 3½d. per bushel annually. Such a change of procedure in distribution of the flour tax would raise serious political objections by other States as well as by W.A., and is not, in our opinion, a practical proposal as viewed from the political angle. Moreover, farmers in Eastern States would benefit less than 1d. per bushel by such an alteration of the method of distribution.

(e) Because of a more favourable geographical position in relation to principal buying countries, charter rates are lower from W.A. than from Eastern States ports. The State pool would automatically conserve this natural benefit to our own growers. A State pool can handle wheat at sidings, mills and ports as economically as a Commonwealth pool.

(f) A State pool can organise the sale of wheat to millers and stock feeders on such terms and conditions as may be laid down by Parliament without meeting the difficulties

which confront a Commonwealth pool. The State pool would, however, automatically limit the concession to Western Australian consumers, thereby conserving the State's income.

The relevant recommendations of the Commission's report are as follows:—

That in order to make timely preparation for the possibility that the Federal Government ceases to control wheat marketing by reason of the termination of the Defence (Transitional Provisions) Act, on 31st December, 1947, or for any other reason, a Wheat Marketing Bill on the lines indicated in this report be brought before the State Parliament not later than August, 1947.

This Bill has been in the printer's hands for quite a while but owing to pressure of work it is a little late in being introduced in the House. However, the Government has done everything in its power to have it placed before members a bit earlier. The Commission's recommendations continue—

That in the event that the Bill passes through Parliament successfully, proclamation be withheld until October, 1947, or such earlier date as may be decided should the Federal Government announce its decision to vacate the field of wheat marketing.

That the Act be administered with a view to assisting and encouraging wheatgrowers to look upon wheat marketing as a task for the industry itself working on co-operative self-help lines freed from political influences.

That the first period of the Act be from the date of proclamation until the end of the 1950-51 selling season, but subject to extension or amendment thereafter, according to the will of Parliament and the wheat producers.

The Bill provides, in the first instance, for a temporary board, appointed by the Governor and consisting of the Chairman of Co-operative Bulk Handling Ltd.; the Chairman of the Wheat Pool of Western Australia constituted under the Wheat Pool Act, 1932 (No. 54 of 1932) and three members nominated by the Minister. This temporary board will continue only until such time as the board proposed in the Bill is appointed, or for a period of 12 months, whichever is first. Should the board not be appointed at the conclusion of the 12-months period, the Governor may, at the request of the Minister, extend the operation of the temporary board until the board proper is constituted. It is intended that a board of five members shall be appointed—four being elected by the growers and one nominated by the Minister, all appointments being made by the Governor.

The marketing of wheat, which is the primary function of the board, is governed by relevant clauses in the Bill which cover the delivery of wheat to the board and the effects thereof; the issue of the necessary certificates; and the making of payments as well as the sale of wheat by the board. Provision is also made for the board to submit a report of its proceedings to the Minister at least annually and for this report, together with the accounts as last audited and a copy of the auditor's report, to be laid before both Houses of Parliament. Quite apart from the merits or otherwise of open marketing, the essentials of open marketing are not at present available owing to world conditions and a form of pooling seems to be the only alternative. While consideration could be given to the establishment of a voluntary pool as was done after the 1914-18 war, there exists a strong desire amongst farmers that all growers should be brought into a common organisation such as proposed in this Bill. Proclamation will necessarily be delayed, not only until it is known whether the Commonwealth Government intends to extend for a further period that portion of the Defence (Transitional Provisions) Act, 1947, which applies to wheat, but until it is known whether the Commonwealth Government intends to acquire that portion of the 1947-48 crop which would, in the ordinary course, be delivered to country sidings prior to the terminating date of the Defence (Transitional Provisions) Act, on the 31st December next.

Wheat retained by the grower for use on his farm; wheat which has been purchased from the board; wheat sold by the board and wheat subject to interstate trade will not be within the scope of this Bill. Although the Constitution of Australia preserves the freedom of trade and intercourse between the States, this Bill, when proclaimed, would be valid provided wheat intended by the owner for interstate trade was specifically exempted. This would have little material effect on the quantity of wheat received by the pool, as high transport charges incurred by sending wheat to the Eastern States would act as an effective deterrent unless the price obtainable was much higher than in Western Australia. It would appear that the small percentage involved would have very little effect upon the operational efficiency of

the pool. In the organisation of a pool, the sentiment of loyalty plays a very vital part. While it is desirable that the State should, in the first instance, acquire the rights, title and interest in wheat, the State should strive to attach to the plan conditions of a true partnership in responsibility between executive officers and staff of the pool on the one hand, and the participants on the other.

It is proposed that the Act will continue to operate until the 31st October, 1951. However, provision is made for a ballot of growers to be held during February of 1951 to ascertain whether they desire the Act to continue in its present form, or whether the board constituted under this legislation shall continue to operate on a voluntary basis with the grower. All growers who delivered wheat to the board during the 12 months immediately prior to the 31st October, 1950, shall be entitled to vote at this ballot. Naturally, in wheat dealings provision is made for the selling of futures, a factor that in the past has played a big part in the trade of the Commonwealth of Australia in the wheat industry.

The financing of a wheat pool involves a tremendous amount of money. So that finance can be received by the local board to pay for the wheat progressively, it is necessary for futures to be sold, but great care must be taken in such matters. The board will see that they are backed by wheat held in this State. As we know, in the past wheat prices have fluctuated a lot and growers and buyers have held on to wheat much to their detriment. If this board considers the price offering to be a fair one, it will have power to sell futures. It is far better to accept a reasonable price than to gamble in wheat and hold it for a higher figure.

Hon. F. J. S. Wise: Has the board the right to ensure that sufficient quantities for home consumption are retained in the State?

The MINISTER FOR AGRICULTURE: The board will have that power under the Bill. It has not power to control wheat that goes in certain directions, but I take it that it will see that home consumption requirements are maintained in this State. I assume there are Commonwealth regulations which would prevent the over-export-

ing of wheat required within the Commonwealth. In any case, it is a most important point and should be definitely ascertained. We should see that that protection is included in the Bill. I have some definitions of hedging, which is the selling of "futures, and I would like to quote two of them for the information of the House. I quote first the definition given by A. A. Hooker in his book "The International Grain Trade." It is as follows:—

Hedging is a method employed by many dealers in cash commodities to protect themselves against losses which might result from price fluctuations. It is effected by making with cash purchases and sales practically simultaneous futures transactions on the opposite side of the market, a futures purchase offsetting a cash sale or a futures sale offsetting a cash purchase. The dealer, the manufacturer, merchant or other agent who uses the hedge seeks to protect a normal profit by avoiding the risk of losses attendant with price fluctuations and, at the same time, foregoing the possibility of making a speculative gain.

The second definition is that given by Thomas T. Hoyne in his pamphlet "Is the Chicago Board of Trade a Gambling House?" It is as follows:—

Hedging is a kind of insurance against heavy losses; it makes dealing in cash grain a safe business. As already explained, the exporter who buys wheat from the farmer sells in the futures market a like amount of wheat as a hedge. This protects him, if the market declines, until he has re-sold the actual wheat he bought from the farmer, at which time he buys in the futures he sold short.

These quotations are available to members. I have here a plan of the set-up of the handling of the wheat from the grower to the handling authority and to the oversea agents. It gives a full illustration of the movement of the wheat from the grower to the market. This plan is available to any member who wishes to peruse it. I feel that the Bill will have the support of this Chamber because it is essential that we should be in a position to be able to handle the wheat harvest of Western Australia if it is necessary. I saw in the Press some time ago that the Commonwealth Government proposed to continue its wheat marketing stabilisation scheme for the next seven years. The Act is to be continued only until the end of this year, so it will be necessary for the Commonwealth Government to introduce further legislation if it intends to carry on the scheme.

Hon. F. J. S. Wise: Did not the Royal Commission recommend that the State Government ascertain its intention?

The MINISTER FOR AGRICULTURE: Yes, it did.

Hon. F. J. S. Wise: Have you ascertained them?

The MINISTER FOR AGRICULTURE: I am not sure. I suppose we cannot ascertain them until we know whether that Government is going to continue the Act.

Hon. F. J. S. Wise: The Royal Commission suggested that the Government should make inquiries.

The Minister for Education: The Commonwealth Government has been asked.

The MINISTER FOR AGRICULTURE: I take it that it has been asked. The previous Government set up this Royal Commission, and I feel sure that the work it has done is invaluable to the wheat industry of Western Australia. This Government is only acting on the recommendations of that Commission. We know that some of the most practical men in connection with wheat in Australia were on the Commission. That has been recognised by the Leader of the Opposition and those associated with him, and also by this Government, and, to a large extent, we are acting upon those recommendations. We have, undoubtedly, made inquiries through our department as to whether the Commonwealth Government intends to continue the scheme. The point I want to make is that it is essential, on the recommendations of this Royal Commission, that we should, in the interests of the wheatgrowers of Western Australia, be prepared to carry on wheat marketing in a stabilised form if the Commonwealth Government drops its interests in the matter. As I said before, I feel confident that we will get the assistance and support of both sides of this Chamber in putting on the statute-book suitable legislation which can be used if the occasion arises. As I have stated, this measure will not be proclaimed unless it is necessary. I move—

That the Bill be now read a second time.

On motion by Hon. J. T. Tonkin, debate adjourned.

INCREASE OF RENT (WAR RESTRICTIONS) ACT AMENDMENT.

Second Reading.

Debate resumed from the 25th September.

HON. F. J. S. WISE (Gascoyne) [10.30]: This Bill had its introduction foreshadowed by the Attorney General when introducing the continuance Bill to ensure that the Act did not expire as at today's date. I think Message No. 8, from the Lieut.-Governor, received and read today, gave his assent to the measure to continue the operation of the Increase of Rent (War Restrictions) Act of 1939-1947. This Bill gives the House the opportunity to review certain amendments to overcome some of the difficulties experienced in rent control since the Act was proclaimed in 1939. One of the most important things contained in the Bill is the provision that shared or sublet accommodation shall come within the control of the Act and therefore be the subject of appeal, if necessary, and subject to review by the rent inspector provided for under the measure.

I note that the definition given of shared accommodation follows closely that in the parent Act. It gives a certain word, and I am surprised that the member for Northam should have such a word in his Bill. It means any sort of dwelling-house and the outbuildings associated therewith. Included in the definition is this word, which I do not think many members could pronounce. It is "messuages," which Webster's dictionary says is pronounced "mes wi" and is in connection with that part of the definition of land that this definition of shared accommodation applies to. I think all members will have had experience of the extortionate rentals charged for subdivided accommodation. The attempt in this Bill is to ensure that a rent inspector shall have opportunity of fixing the rental for the subleased parts of the property. There is provision also that there can be an appeal against the rent assessed by him to be a fair rent for the portions of the building sublet.

Another part of the Bill deals with the vexed problem of paying a premium for a key or for the wheelbarrow or any other part of the appointments of a home or its

garden. The part that appears to me to be difficult, in giving effect to that clause if it becomes a section of the Act, is how to get the information on which to take action under that provision, one of the difficulties associated with the problem being that accommodation is so much at a premium and is so desperately needed by some people that there is no prospect of their disclosing an unlawful act, if such action is taken by them, and they would not report either the owner of the property or themselves in making a report to the effect that they had done something quite unlawful in paying a premium to occupy a property or even, as the Bill suggests, to get information as to whether a property may be available for them to lease. Although a step towards overcoming some of the unfortunate happenings of today, it is not likely, in my view, that it can be successfully applied.

One part of the clause containing that principal also has in it the provision that where properties have been leased since the 31st August, 1939, and under-standard rent has been charged for such properties, the owners or lessors may, without any breach of the Act, raise the rent to the standard rent in spite of any leases that might be held by the lessees giving them authority to have such properties at rentals below the standard rental. That might be quite unfair to a lessee who has, because of special circumstances, had concessions given him in a lease granted since the 31st August, 1939. Yet under the provisions of the Bill, in spite of the lease or any covenant expressed in it giving the lessee some particular concession for reasons that the lease only would disclose, the lease may be waived and the lessor shall have the right to charge the standard rent after giving two weeks notice. On the notice paper tomorrow will be an amendment in my name for the purpose of overcoming that feature, which I think is quite unfair to the lessee if the rent, fixed as a concession rent, was arrived at for fair and reasonable considerations.

The Bill also makes possible an approach to the court to determine the fair rent of land, premises or property, that is being sublet. There is no such provision in the parent Act. There the provision is for the lessee or lessor, under Section 7, to apply to the court under certain circumstances, and in accordance with the provisions of

that section for a review of the rental that may be charged or paid. This provision, has the intention of covering also the subdivided internal portions of dwellings, business premises or rental properties, where the rent has not in the past been fixed by the court under the terms of the 1939 Act.

There is also a provision whereby the rent inspector, after determining the rent for the shared accommodation, may be able to enter into an agreement or arrangement between the parties as to the rent charged. In that case there is provided an appeal against his decision and I have no objection to that provision as expressed in the Bill, but I think there is a flaw in the clause that deals with the subdivision of a dwelling-house intended to be let separately as a residence or, as the Bill says, as a flat. I think the Attorney General will follow very closely what I suggest and will agree to the amendments that will be proposed.

I would like to have much more information in connection with the clause that deals with exemptions from the provisions of Section 15 with regard to licensed premises. That section concerns the right of a landlord to evict in certain circumstances if the person concerned has been disorderly or has been a nuisance to his neighbours, in which case the lessor has the right to apply to have that individual evicted. There are other very minor conditions that affect eviction only, but the amendment proposed in the Bill exempts from the application of Section 15 all those premises that come within the purview of the licensing laws. Thus it will be possible in future, if this provision is agreed to, for the owner of licensed premises, on giving "reasonable notice," to use the wording of the Bill, not to be "less than three months" of his intention to do so, to reacquire the property and to cancel the lease. I certainly think the House requires a lot more information in that respect. As I understand it, when transactions take place in connection with licensed premises, certain premiums are payable, and are paid, to owners as ingoing.

I quite appreciate that in the parent Act, the definition of "standard rent" embraces any bonus or any particular payment. But such bonus or payment in connection with

licensed premises becomes a very heavy impost upon the lessee who very often holds a lease of short duration. Although the rental provisions in the principal Act will still apply and it will not be possible validly to increase the rent, there will be, if it is possible to cancel such leases on account of certain misdemeanours not merely in respect of rent-restriction legislation but of the licensing laws as well, instances of where the lessee will be able to take action. If action is taken by the police, he will have to wait until the license is reviewed by the Licensing Court before he can regain possession of his property.

I think the Attorney General will agree that what is proposed in the Bill may leave the matter so widely open as to be positively unfair to the general community. I think very careful scrutiny must be made of Clause 12 with that point of view in mind. Although it will be advanced that licensed premises were not included in similar legislation passed in other States, there are in this provision regarding exemption many aspects in addition to those I have mentioned and which require close scrutiny and explanation by the Minister. In general, I support the Bill, but I hope the several amendments that will be placed on the notice paper will be found acceptable by the Government.

THE ATTORNEY GENERAL (Hon. R. R. McDonald—West Perth—in reply) [10.45]: I shall be glad to examine the amendments indicated by the Leader of the Opposition who was kind enough to supply me with a copy of them in advance. Tonight I have not had time to consider them sufficiently in order to say what I think about them, but it does appear to me there is merit in some of the suggestions he has made, and I shall certainly be glad to give them consideration. With regard to the matter of hotels, the Commonwealth Government apparently considers that such premises are on a different basis, not because a hotel lease is merely a lease of the premises but because it is also a lending of the license; and if it is not adequately conducted, there may be a reduction in the value of that license. I presume that was why the Commonwealth Government from the start of its regulations excluded hotels, and last year when it re-promulgated those regulations under the Defence (Transitional

Provisions) Act, it repeated the exemption of licensed premises, which had been the position under the prior regulations. Without going unduly into details, the main question is the rendering of efficient service through hotels, as to which there has been a certain amount of complaint.

It is now thought that the time has come when the people are entitled to enjoy better accommodation not only in the way of bedrooms but of service in the dining-rooms, especially in the country districts. There have been hotels throughout the State and also in the metropolitan area that have had many rooms completely closed up and that at a time when there was a great demand for accommodation. I am glad to say that the Licensing Court has been overcoming that problem, and I recently read a letter from the Town Clerk of Fremantle in which he expressed thanks to that tribunal for the additional accommodation that had been made available in hotels through its activities, and pointed out that hotels were now made use of to the fullest extent. With respect to the exemption being in line with Commonwealth policy, it is a matter for members to consider whether they think there should be restored some degree of control on the part of hotelowners to ensure that their tenants are rendering adequate service and, if they are not, whether they should be replaced by tenants who would be prepared to do so.

Hon. F. J. S. Wise: They are very stringent provisions in our licensing laws.

The ATTORNEY GENERAL: There are certain such provisions, but the Licensing Court cannot exercise the same detailed supervision as could be done by hotelowners themselves. They know their people much better and can appreciate the efficiency and the bona fides of a licensee. They can, if they think necessary, replace an inefficient licensee by someone they regard as more suitable. This does not allow a hotelkeeper to terminate an existing lease unless there has been such a breach of the lease as the lessee has agreed shall be the cause of determining the lease. I think it will be found—though I cannot speak with authority—that, during the time this legislation has been in force, eight years now, a great many leases have expired. They are usually for five or seven years, and the

people hold those tenancies from week to week. They are really weekly tenants.

Hon. F. J. S. Wise: So that they would all be within the ambit of this Bill.

The ATTORNEY GENERAL: A great many would be. Some might have received renewals or been granted further terms, and they would be in the same position as they would be in normal times in the absence of legislation, but weekly tenants are in the position that if they think their leases are going to be terminated, they do not care very much about providing accommodation for the general public. They are mainly concerned to make money while they can.

This matter is one for the House to decide. While I was considering the position, I referred the question to the Licensed Victuallers' Association, as I wished to hear what the organisation representing the licensees had to say. I received a letter from the chairman, Mr. Johnson, in which he supported the provision that the normal situation should arise as between lessor and lessee in the case of hotels, as has applied in other States. I do not appear to have the letter with me, but during the Committee stage I shall quote it as an expression of opinion from the Licensed Victuallers' Association. However that is the question, whether we shall fall into line with the Federal provisions and allow the landlords and lessees of hotels to arrange their own affairs, particularly where it is a matter of providing the best accommodation possible for the travelling public now that something like more normal times are returning.

Question put and passed.

Bill read a second time.

House adjourned at 10.54 p.m.