

Legislative Council

Wednesday, the 3rd May, 1978

The PRESIDENT (the Hon. Clive Griffiths) took the Chair at 4.30 p.m., and read prayers.

LEGISLATIVE COUNCIL

Presence of Sir Leslie Diver: Statement by President

THE PRESIDENT (the Hon. Clive Griffiths): Honourable members, it is very pleasing for me to announce that this afternoon we have present in the Chamber a visitor in the person of Sir Leslie Diver, a previous member and President of this House.

I would like Sir Leslie to know that we are very pleased, indeed, to see him present and to observe that he is keeping in such good health.

ABORIGINAL RESERVES: EXCISION OF LAND

*Report of Aboriginal Affairs
Planning Authority and
Recommendation of Minister: Tabling*

THE HON. D. J. WORDSWORTH (South—Minister for Transport) [4.34 p.m.]: Section 25 of the Aboriginal Affairs Planning Authority Act, 1972-73, provides that the Governor may, by proclamation, amend the boundaries of reserved lands but requires that before his power may be exercised the Minister must lay before each House of Parliament a report on the matter by the Aboriginal Affairs Planning Authority together with the recommendation of the Minister for Community Welfare to the Governor.

Subject to the Minister's recommendation not being rejected by either House of Parliament in the terms of section 25, action may proceed by normal administrative means.

In accordance with the requirements of this section I submit herewith the report of the Aboriginal Affairs Planning Authority prepared in original form to enable tabling of the papers in the House.

If I may, I will proceed to table the two papers. In accordance with the requirements of section 25 of the Aboriginal Affairs Planning Authority Act, 1972-73, I now table the recommendation of the Minister for Community Welfare for the excision of land from Aboriginal Reserve 16682, together with the report which he duly sought from the Aboriginal Affairs Planning Authority.

In accordance with the requirements of section 25 of the Aboriginal Affairs Planning Authority Act, 1972-73, I now table the recommendation of the Minister for Community Welfare for the excision of land from Aboriginal Reserve 22433, together with the report which he duly sought from the Aboriginal Affairs Planning Authority.

The papers were tabled (see paper No. 161).

METROPOLITAN WATER BOARD PLAN 14926

Withdrawal

On motion by the Hon. I. G. Medcalf (Attorney-General) leave granted for withdrawal of the paper.

QUESTIONS

Questions were taken at this stage.

ROAD MAINTENANCE (CONTRIBUTION) ACT AMENDMENT BILL (No. 2)

Introduction and First Reading

Bill introduced, on motion by the Hon. D. J. Wordsworth (Minister for Transport), and read a first time.

CLOSING DAYS OF SESSION: FIRST PART

Standing Orders Suspension

THE HON. G. C. MacKINNON (South-West—Leader of the House) [4.53 p.m.]: I move—

That during the remainder of this first period of the current session so much of the Standing Orders be suspended as is necessary to enable Bills to be passed through all stages in any one sitting, and all messages from the Legislative Assembly to be taken into consideration forthwith.

This is a motion which is normally moved at this time of the year, and I think it is self-explanatory.

Question put and passed.

NEW BUSINESS: TIME LIMIT

*Suspension of Standing Order
No. 116*

THE HON. G. C. MacKINNON (South-West—Leader of the House) [4.54 p.m.]: I move—

That Standing Order No. 116, limit of time for commencing new business, be

suspended during the remainder of this first period of the current session.

This motion is complementary to the previous motion, and allows us to introduce new business after 11.00 p.m.

Question put and passed.

MURDOCH UNIVERSITY ACT AMENDMENT BILL

Third Reading

Bill read a third time, on motion by the Hon. D. J. Wordsworth (Minister for Transport), and returned to the Assembly with amendments.

JURIES ACT AMENDMENT BILL

Second Reading

THE HON. GRACE VAUGHAN (South-East Metropolitan) [4.56 p.m.]: I move—

That the Bill be now read a second time.

This is a Bill to amend the Juries Act to allow for women and men to be treated equally in regard to jury service.

As the Act is presently worded a woman may claim exemption from such service without reason. A man must, to claim exemption, comply with the provisions of the Act contained in the schedules or in certain sections of the Act.

The purpose of the Bill is to achieve two objectives: One is generally to eliminate discrimination between sexes by giving equal responsibility to males and females in contributing to the system of justice in the society, and the other objective is specifically to avoid possible prejudice on juries by having only those women on the jurors' books who elect not to use their cancellation right under the Act.

The system of juries embodies the concept of trial by persons selected from the society in such a way that a group as representative as possible of that society sits in judgment on one or more of its members. This Bill aims to bring juries in this State closer to that ideal situation.

The Act in sections related to summoning and empanelling ensures as far as it is able without interfering with the right of challenge that the numbers of men and women on juries will be in the same ratio as in the jurors' book. However, the option which women have to exemption without reasonable cause can and does mean that the ratio of men to women in a jurors' book is not the same as that in the general population.

The history of the parent Act has an important bearing on this Bill. The Hawke Government

introduced a Bill in 1957 which effected major changes to the jury system and, in fact, repealed the existing Act.

The previous year a Select Committee of this House had been set up to inquire into the operations of the existing Juries Act. Its report was used as a basis for the reforms incorporated in the present parent Act together with a draft Bill on the files of the Crown Law Department in 1945, and advice from the judiciary, the police, the Master of the Supreme Court, the Solicitor-General, and the Chief Crown Prosecutor.

However, as the chairman of the Select Committee was quick to point out in this House in 1957—

The Government paid no attention to the Select Committee's recommendation in regard to women's juries service:

The report of the Select Committee stated as follows—

Your committee recommends therefore that any amending legislation should provide that any woman should be excused from attendance upon being summoned as a juror if she has a child under the age of 14 years and desires to be excused for that reason or for any other valid reason whatsoever which she might advance to the summoning officer, the court or judge, such reason being in the opinion of the summoning officer, the court or judge, a reasonable one for applying for exclusion.

The Hon. Arthur Griffith went on—

Instead of making a provision that women, the same as men, shall be liable and eligible to serve on juries, but that they shall be entitled to exclusion for the particular reason I mentioned—that one only—the Government has included in this measure a provision a woman shall be liable and eligible to serve but that any woman, upon any grounds whatever may contract out of the service. If members are prepared to accept that clause then, for reasons which I shall adduce as I go along, the idea that both men and women called persons shall serve on juries will not be effective.

The Hon. Arthur Griffith also pointed out that the Government "still seems to be insisting that mention must be made of service on juries by women". The Select Committee's thoughts on that matter were that there should be no difference between men and women in regard to service on juries. Members of the Select Committee felt that men and women should be

treated as persons. They are persons who are intended to make up the jury panel.

The Hon. Arthur Griffiths predicted that because of the clause which became section 5, subsections (2) to (6), and which this present Bill would exclude from the Act, the aim of equal representation would not be effective because of women contracting out of service. The sheriff confirms that in most jury books the ratio of men to women is two to one. Despite the routine set down by the Act being followed in all its stages we find that, because of that provision which is incongruent with the rest of the Act, the aim of equal responsibility has been thwarted.

Specifically the Bill will amend the Act by excluding the reference to women contained in the long title, thus recognising, as recommended by the 1956 Select Committee, the principle of persons, not males or females, giving jury service.

Further the Bill seeks to amend section 5 by excluding the subsections relating to the cancellation of qualification of women without cause. The Act provides in several places for exemption including section 14, subsection (9), where particular reasons such as infirmity may be established, and section 27, subsection (1), which gives the summoning officer the right to excuse any person for any reason he sees as sufficient.

The Bill also amends section 27 by deleting subsection (2) which makes it obligatory for a court or judge to excuse women on the grounds of the evidence or issues in the trial, or for medical reasons. These provisions apply under the previously mentioned section 27, subsection (1) concerning the summoning officer.

It also amends part I of the second schedule by omitting reference to the wives of clergymen thus making them eligible for jury service. In addition, this phrase presumes that all clergymen are males. Also by substituting the word "spouses" for "wives" in the item relating to legal practitioners where for obvious reasons the marriage partners of legal practitioners should be excluded.

Members will realise that a Bill introduced and enacted 21 years ago which broke new ground by including women on juries must need certain reforms and I, therefore, commend the Bill to the House.

Debate adjourned, on motion by the Hon. G. E. Masters.

FAMILY COURT ACT AMENDMENT BILL

Second Reading

Debate resumed from the 2nd May.

THE HON. GRACE VAUGHAN (South-East Metropolitan) [5.04 p.m.]: The Opposition in this House has examined the Bill. However, we have not had very long to do that, and this is a fairly complicated piece of legislation. We express no opposition to it at this time, but if we do discover that something is hidden in it which we do not like it could be attended to in another place. We support the Bill.

THE HON. D. K. DANS (South Metropolitan—Leader of the Opposition) [5.05 p.m.]: In support of the remarks of Mrs Vaughan I am not happy with the fact that the Bill, which was introduced only last night in this House and which is a complicated measure, should be proceeded with today. At this stage I am only making a protest.

I am in the process of trying to have some staff made available to me. It is almost impossible for me to keep abreast of the legislation coming forward. We try to co-operate with the Government in the passage of legislation through this Chamber. However, on an important issue such as this, more time should have been given. In the future, if it can be arranged, we should have at least two or three days or even a week's adjournment to enable members to examine an important piece of legislation such as the Bill before us.

The Bill before us has had to be examined quickly. In the case of legislation which can be examined quickly and on which agreement can be reached, the Opposition will make every effort to enable it to have a speedy passage through this House.

THE HON. R. THOMPSON (South Metropolitan) [5.06 p.m.]: The Attorney-General may recall that initially some opposition was raised to the State taking over the functions of the Federal Family Court, because these were considered to be the functions of the Federal authority. However, since that time I can see the benefits of having a State Family Court to take over those functions. I agree with the Attorney-General that in this legislation we are breaking new ground, and I think it is a credit to the State to bring this about.

The State Family Court will now be able to settle all questions in the one court. I can remember one interesting incident in the debate in which counsellors were to be appointed to the Family Court. It transpired that I was proved to be correct and the Attorney-General was proved to be wrong. However, that is beside the point. It is a great credit to the State to have the Family Court operating in Western Australia.

I agree with the comments made by the Leader of the Opposition about the lack of time to consider this legislation. Today I did not bring my file on the matter with me, because I thought that more time would be given to members to prepare a detailed case on the Bill. For that reason what I am about to say will be given off the cuff, so to speak.

Whether or not the intentions in the Bill relating to property settlements will be conclusive, only time will tell. I do not think anyone can prophesy this legislation will work in exactly the way that the Government and the Attorney-General expect it to work. We can only say that hopefully we trust it will work in the way intended.

Many problems arise, and only a month ago I dealt with one. I cannot see that any solution to this case can be written into the legislation. I shall give a resume of the case which concerns a couple who have been divorced. The husband is an ex-serviceman, and there are three children to that marriage and they are now all of mature age.

The divorce took place, and both parties have since remarried. The husband has had another three children from the second marriage. Under this legislation could the property requirements be settled; and if so, who will settle them? I should point out that no ex-serviceman, under the Federal legislation, can be evicted from his home to enable it to be sold, and to enable a determination of the proportion of the estate to be made to the spouse.

That is one difficulty I can see in the legislation. In this case the husband, who is an ex-serviceman, has certain rights under the Act. If the same circumstances existed and the house in question is under a normal contract of sale, what would be the position? The Attorney-General may be able to tell us how the matter can be settled. As an eminent lawyer in his own right he might be able to give us some clarification on the matter.

To emphasise what I have said I should reiterate the facts. Let us forget about the ex-serviceman, because he cannot be evicted from his home in a property settlement as it is a war service home.

To give a hypothetical case, a couple may elect to be divorced, and subsequently remarry. The home may be under joint ownership. Let us say that in this case the husband has some children from the first marriage, and decides to live in the house; and let us suppose that the wife leaves the house, and the divorce takes place. Let us assume they both remarry, and the husband has another

family from the second marriage living in the house. In such a case how could a property settlement be made? Will the Family Court take the extreme action of putting the property up for sale?

It seems that in this legislation we are creating difficulties for judges and magistrates which are insoluble, because property settlements represent probably the most difficult issue to be determined in law. Over the years we have seen many letters to the editor in newspapers on this issue. It does not matter which party wins or loses; the loser is the one who wishes to bring justice to bear on the property settlement.

Could the Attorney-General give us some clarification on the operation of this legislation within the province of the amending Bill? Under the old system, property settlements worked well, but it was a costly exercise. I trust that the method proposed in the Bill before us will be a cheaper exercise.

In his second reading speech the Attorney-General referred to the laying down of guidelines. This difficulty arose in the system that applied in England where the judges ruled that reports should be drawn up on property settlements. If guidelines are not laid down covering property settlements we will find determinations varying from judge to judge. This will not inspire the public to have confidence in the legal system.

I support the Bill. I hope it works. I think we are legislating on very touchy ground in this matter.

THE HON. W. M. PIESSE (Lower Central) [5.16 p.m.]: I commend the Government for the intention behind the amendment. It is always very sad when marriages break up, and no matter how one tries to soften the blow one cannot get away from material matters when there is such a break-up. In fact I wonder sometimes whether we ought to be looking at ways of making marriage contracts more difficult to enter into in the hope that, by so doing, there will be fewer contracts, the ones that are made will be better, and fewer people will wish to get out of them.

I take note of the comments made by the Hon. Ron Thompson in relation to the many facets involved in the disposal of property or the settlement of property disputes. In my own area I have been involved in a case where there was a divorce simultaneously with a bankruptcy. Prior to this legislation, of course, the divorce was settled and the property was given to the wife who had a number of children to support. The supposition was that it was a nice, fair deal. The man had done the right thing. He had gone away

with someone else, but he had given his wife the house. However, the wife, of course, retaining ownership of the only piece of property involved in the whole business, is now very seriously worried by the bankruptcy payments, because she is the only person involved who has some property. Looking at the situation now it seems to have been a very difficult situation for her.

I am pleased to note that the Bill states that every effort will be made to ensure that there is no coercion or that there is no direction that a break-up or separation must take place. This is a very important part of the Bill, because once again I am familiar with cases where anxiety has been one of the major instruments in the marriage break-up; anxiety enhanced by wondering what will happen to the home or what will happen to the assets belonging to the parties. Albeit one party may have contributed to a greater extent than the other.

I am pleased to see the amendment and I hope it will work. I hope also that the Attorney-General will look very seriously at the situation of the disposal of property in conjunction with a bankruptcy.

THE HON. I. G. MEDCALF (Metropolitan—Attorney-General) [5.19 p.m.]: I should like to thank members for their contributions to the debate. I appreciate the comments made by the Hon. Grace Vaughan and the Hon. Des Dans indicating the support of the Opposition for the Bill, and also the comments by the Hon. Ron Thompson and the Hon. W. M. Piesse.

I express also my regret that the Bill has had to be considered so quickly. It would be most inconsistent of me if I did not do so.

The Hon. D. K. Dans: I tried to be as polite as possible.

The Hon. I. G. MEDCALF: I should have liked members to have a great deal more time to consider this Bill. I have been considering the terms of the Bill for some little time, and it is unfortunate that when one has to discuss these matters with people in different walks of life one does not obtain the necessary information as speedily as one would hope.

I am conscious of the fact that we want to try to get this Bill through in the current part of the session and I believe that explains the haste with which we have proceeded. The Bill must pass through the Legislative Assembly, and I shall ask that it be given priority treatment there.

It is very important that we should not leave this matter of property settlement between husbands and wives for a further period of six

months before we have legislation to cover it. Approximately 12 months ago the whole question was considered by the Standing Committee of Attorneys-General in Melbourne. One or two of the State attorneys said they were considering referring the power to legislate on matrimonial matters to the Commonwealth Government. I had indicated on a number of occasions that we did not need to consider that, because fortunately we had made arrangements for our own citizens some time previously. Indeed, that legislation was supported by the Opposition, as the Hon. Ron Thompson has mentioned. There may have been a little initial disagreement, but when looking at the debates since then I find that the Opposition was not opposed to the setting up of a State Family Court.

I was very pleased to be able to say that, generally speaking, our State Family Court was working well and we certainly did not have the problems experienced in some other States. The Attorney-General for New South Wales said there were no fewer than five courts through which people involved in matrimonial disputes might have to drag their families in order to resolve their problems—problems involving maintenance, adoption, and illegitimate children. These people might go to five separate courts before they arrived at a solution.

As far as I know, that position still remains in New South Wales today. It is an appalling situation. Naturally that State is in a position where the only way it can improve matters is by trying to resolve the situation in one exercise by handing it over to the Commonwealth. In theory that is all very well, but in practice it means that in future the Commonwealth Parliament will decide exactly what the law will be on these topics. Unless the Commonwealth has a uniform reference of power from the States which want to refer the matter to it they may end up with different laws in different States. This would not suit the Commonwealth and the Commonwealth would not want it.

When this matter was raised with the Federal Attorney-General a year ago he was not opposed to it, but he said, "I do not think they know what this means. It might be two years before we can resolve this." Twelve months ago these problems were discussed in New South Wales and Victoria. At that stage the Federal Attorney-General said it might take two years to find a solution. A period of 12 months has elapsed since then and the States are still talking about it. In another 12 months they may have reached a more advanced stage; but the measures they are talking about today are not as good as those contained in this

Bill. The measures being discussed by the States are that there must be a breakdown, or a likely or pending breakdown, in the marriage before the property clause may be used. Our Bill does not contain such a provision, because it means before a case commences there is an argument between the parties as to whether or not there is a likely or pending breakdown in the marriage.

Half a day will be taken up arguing that matter, and the associated costs will be incurred. We have said that there must be proceedings between the parties to the marriage. They do not have to prove there is a breakdown in the marriage provided there are proceedings between the parties to the marriage. If that is the case they may go straight into the Family Court without any preliminary argument.

The surprising aspect is that a greater number of the States have not decided to follow our course.

The Hon. R. Thompson: Can you answer a question? What is the situation where the parties to a marriage owned property prior to the marriage taking place and that property is brought into the marriage relationship?

The Hon. I. G. MEDCALF: The property comes into the marriage even though it is not the property of the marriage, so to speak. It is not the matrimonial property. It is the property of either of the parties, so the property of either of the parties could be involved. In other words, it is not only the matrimonial property which they may have acquired jointly. Separate properties are covered in this Bill also. I shall leave aside that situation, because I am illustrating it only to make it clear that this Parliament—and I believe the whole Parliament agreed to it—made a wise decision when it decided we should have a State Family Court. The fact that the other States have not followed suit is their loss.

On the question that was raised by the Hon. Ron Thompson it is quite true there are some very difficult questions, and I do not believe the Bill will resolve all of them. The problem, of course, is that human beings get themselves into some very difficult situations. It is not easy for a law to resolve all the problems that human beings create for themselves. That is the problem in codifying the law. One can never possibly conceive all the situations which will occur either in married life or in any other aspect of life. It is quite possible there may be cases which still create headaches and problems.

I would not know the solution to the case mentioned by the Hon. Ron Thompson. As I understand it, the husband and wife in the first

marriage owned their property jointly and the house had not been fully paid off. They were divorced and went their separate ways. They then remarried and the husband took on the responsibility of another family. Presumably the wife left the husband and the husband, therefore, was left in control and in possession of the matrimonial home, half of which the wife was entitled to, because she was a joint owner.

The question is a difficult one, because somewhere along the line the court would have to decide equity between the parties and would have to give the wife her equitable share of the house. This may mean that the court would make an order that the husband should make periodical payments to his first wife in respect of her share of the house. That might be very difficult for the husband, particularly as he had acquired another wife and another three children. Those are the difficulties that human beings get themselves into.

These situations are very difficult to resolve in practice, because the money will go only a certain distance, and if the husband is providing already for his first three children and also for the second three children there would not be a great deal left to pay off the balance owing on the house, as well as his first wife's share.

The court is given a very wide discretion; that is all I can say. The principles which apply now are quite different from the old common law provisions. By that I mean the provisions that apply in all other courts where property questions are decided. The principles now will enable the court to take into account whether a woman or a man has made an actual contribution in kind as distinct from a contribution in cash. The common law provisions which apply in other States do not take that into account. They require that one should assess the amount of actual money contributed. However, the Family Court Act goes much further and says that not only does one assess the amount of monetary contribution, but also one assesses the actual contribution made by either of the spouses to the improvement and the conservation of the home.

The behaviour of the spouse as a homemaker and parent is taken into account also. In other words, a wife—or a husband for that matter; but we shall take the case of a wife—may have been a dutiful wife. She may not have contributed a penny to the home, but she has brought up the children and contributed a tremendous amount by way of being a homemaker and parent. She will be entitled to credit for that under this Bill. She will be given credit for that, although she has never contributed a penny to the house and the title is in the husband's name. If, as sometimes

happens, the husband rushes off and decides to sell the house because he has had a dispute with his wife and wants to go off with someone else, she will now be able to claim that she has a proportionate interest in the house. It may well be she is entitled to the whole interest in the house. The court has to decide that.

The same situation could apply in reverse where the wife goes off and leaves the husband with the children. It is equally valid for the husband as it is for the wife. The Supporting Fathers' Association can take comfort from the fact that husbands and wives will be treated equally in this respect. I know it will give comfort to the Hon. Ron Thompson, because in years gone by I have heard him speak in an impassioned manner in this House on behalf of married women who have been taken down. On other occasions I have heard him speak in a very impassioned manner on behalf of husbands and supporting fathers. I am sure he will receive comfort from the fact that husbands and wives will now be treated equally. I am sure it will appeal to the Hon. Grace Vaughan who is a great advocate of equal rights for men and women.

I cannot answer the question asked by the Hon. Win Piesse, because it would depend on the circumstances. It is a very difficult situation. Under the bankruptcy laws anything given by a husband to his wife within a certain period—I think five years—comes back into his assets for the purposes of the bankruptcy. So the unfortunate woman may well be caught by her husband's bankruptcy, and here we have the difficulty that people do get into inextricable positions. There is a lot of luck in it, I suppose.

I thank members for their support of the Bill. While the judges will need the wisdom of Solomon to do justice to the parties, I am asking the House to do the right thing and pass this legislation, and I commend it to members

Question put and passed.

Bill read a second time.

In Committee, etc.

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

Third Reading

Bill read a third time, on motion by the Hon. I. G. Medcalf (Attorney-General), and transmitted to the Assembly.

POLICE ACT AMENDMENT BILL

Second Reading

Debate resumed from the 26th April.

THE HON. D. K. DANS (South Metropolitan—Leader of the Opposition) [5.33 p.m.]: Mr President, we agree to this piece of legislation, although I hope the Minister handling the Bill will give some further explanation of the Bill, particularly in relation to one clause.

If members look at the notice paper they will see an amendment is foreshadowed. At this stage I am not unhappy with the amendment but I am not quite sure what it will amend. On looking at the report of the debate on this Bill in another place, I have not been able to discover just what the particular clause means.

In his second reading speech the Minister said—

Finally, it is intended to make provision in the principal Act for a new offence to be created in that a person shall not compel another to abstain from carrying on or prevent or obstruct any activity which pursuant to the law of the State or the Commonwealth that person is permitted to carry on by virtue of being the holder of a licence, permit or other authority. This is a general offence which will have the object of preventing coercive interference with activities which are being carried out under a State or Commonwealth licence. It is felt that the Government has a duty to protect a licence issued by it, and that the person acting under its authority is free to go about his authorised business.

One could draw a fairly long bow and try to determine what is meant by "licence". We are all very much aware of the industrial disputations which have occurred on the waterfront in the last month or two, and as soon as I read clause 12 and saw the word "licence" my hackles started to rise. I hope the Minister handling the Bill will allay my suspicions.

On the waterfront anything to do with a licence is regarded as a very serious matter, because not very many years ago a Government, acting in the manner in which some Governments do in trying to prevent industrial disputation by enacting repressive legislation, brought in an Act which was commonly known as "the dog collar Act", which required people to have a licence to work.

The Hon. R. Thompson: What do you think of the amendment?

The Hon. D. K. DANS: I am not unhappy with the amendment but I would like to know what the

clause in the Bill actually deals with. I have an idea what it deals with but I would like to hear it from the Minister. I would be very unhappy if the definition of a licence were extended into the areas I have mentioned.

We saw that regulations relating to the waterfront were amended recently. I have had some talks with the Minister for Police and he assured me the legislation had been drafted long before any action was taken in respect of the amendment of the regulations of the Fremantle Port Authority. So before I could say I actually agreed to the amendment, I would like to know, chapter and verse, just what this clause means.

I could mention a couple of situations which might arise, but I will not do so. I will leave that to the Minister, because I think it is his duty to let me know what the clause means. I will not deal with the amendment at this stage, because I think it would be more appropriate to do so in the Committee stage.

A couple of other clauses in the Bill at least excite my interest. One is the provision enabling the Commissioner of Police to enforce discipline upon commissioned officers of the Police Force, which seems to suggest that perhaps the only power he had previously was to sack a commissioned officer. It appears the commissioner can still write across a commissioned officer's record of service "Not recommended for promotion". Without being explicit, the provision seems to enable the commissioner perhaps to fine a commissioned officer. In his second reading speech the Minister said—

Under the Act the only way a commissioned officer may be dealt with is before a board appointed by the Governor.

It is proposed by this Bill to make provision for the commissioner to enforce discipline upon commissioned officers and to allow such officers the right of appeal also to the Police Appeal Board.

When he is replying to the debate I would like the Minister to spell it out for the record that if the Commissioner of Police is to be given this extra power—and I am not arguing that he should not be given it—commissioned officers, just like any other public servants, will have available to them the avenues of appeal; in other words, that if an inspector or a senior inspector considers he should be promoted one step and someone from behind gets the job an avenue of appeal will be available to him.

I have no other objections to the Bill. I think it is perfectly logical. It also gives the commissioner

power to discipline police cadets, whereas previously all he could do in the case of even the most trivial offence was to sack a cadet.

The Bill also deals with other matters in respect of police districts and the boarding of vessels. I would like to say a few words about the latter matter. The Minister said in his second reading speech—

A further amendment to the Act provides for an officer or constable who has reasonable cause to believe that any ship, boat or vessel likely to be used for a voyage, the purpose of which is to do or attempt to do an act which if done within the State would constitute an offence, may without warrant enter into and take charge of or secure any ship, boat or vessel in order to prevent that voyage.

I have in mind the rubber boats which went out in front of the whale chasers. The motive of those people was very good, but I would come down heavily on their being prevented from doing this because in my opinion they would be endangering a vessel and those people serving in that vessel. I could not go along with that type of activity. My first concern would be for the safety of the ship and the persons who sail in her. The Minister went on to say—

It is considered that such powers are necessary in view of the offences which are taking place in our off-shore areas, such as drug trafficking and fisheries matters, which are a cause of concern to the Government, especially the area of drug trafficking.

Provision is included for an appeal to a magistrate, who will be empowered to order the release of the vessel unconditionally or on terms and conditions, or order that it be detained and make other appropriate orders.

I would like the Minister to give an assurance that if, for instance, the Hon. Gordon Masters' vessel were apprehended he would have quick access to a magistrate.

There is no problem in relation to ships with foreign flags—the matter is dealt with in a flash—but police officers, perhaps through inexperience or not being sure, but with the best of intentions, could severely inconvenience people who may be going somewhere on a weekend, if a magistrate were not ready, willing, and able to come down and release the vessel.

I would like the Minister to assure me that, when an officer of the Police Force apprehends a vessel in the belief that he has reasonable cause for suspicion, a magistrate will be available at all

times either to take action to make the order stick or if not to release the vessel.

One can well understand the consequences that could flow if a vessel was detained during a holiday period and it was three, four, or five days before a magistrate could attend and do the things the Bill says he may do, and it was subsequently found the vessel had been detained quite wrongly.

Subject to some explanation of the amendment dealing with licences—I would like to know what it means, and I have not yet been able really to find out—we support the Bill.

THE HON. I. G. PRATT (Lower West) [5.46 p.m.]: In supporting the Bill I would like particularly to express my support for the amendment mentioned by Mr Dans; that is, the one referring to the ability to take control of a vessel which it is anticipated may be used for illegal purposes, specifically in the area of drugs. The amount of hard drugs coming into Australia today through our northern shores both by boat and by plane poses a grave problem, and any legislation we can pass which will make it easier to apprehend people carrying out these activities is worthy of the support of the whole Chamber.

I cannot support this amendment strongly enough, because it will make it easier for us to combat the drug problem with which we are faced.

THE HON. G. C. MacKINNON (South-West—Leader of the House) [5.47 p.m.]: I thank members for their support of the Bill in principle. In fact I am forestalling matters a little, but I am sure when Mr Dans hears my explanation he will give his wholehearted support to the measure, because it is very much in line with what he wants. I thank Mr Pratt also for his support.

In another place a member asked whether my colleague, the Minister for Police and Traffic, was satisfied that the amendment proposed in the Bill could not be used against workers in situations of industrial dispute. That member expressed concern, as has the Leader of the Opposition in this Chamber—

The Hon. D. K. Dans: First of all I want to know what it means.

The Hon. G. C. MacKINNON: —that the provision could be used in industrial disputes. The Minister for Police and Traffic said that was not the intention of the Bill but he would have the matter studied to see whether the measure could be used in that way; and, if so, he would have an amendment drawn up and placed on the notice paper.

That amendment is on our notice paper, and I believe it places us in some difficulty; Mr Dans put his finger on one problem when he referred to people who go out in a ship, vessel, or boat.

The Hon. D. K. Dans: I could think of many more examples.

The Hon. G. C. MacKINNON: Of course. I am speaking purely and simply from the point of view of having studied the Bill, whereas Mr Dans is speaking from his practical experience as a seafaring man. Nevertheless, what occurred in respect of whaling is a classic example. The problem arises not only in respect of the intent of those people, or of the intent of the people to whom Mr Pratt referred; it is complicated by the division of jurisdiction between the Commonwealth and the State, and matters are currently in train in this regard.

Members are aware it has always been considered there is a three-mile limit to our waters, and there has been some dispute as to whether the point commences at high-water mark or at low-water mark, and that has an effect.

Mr Dans made reference to the fact that the licence could be issued by the Commonwealth or by the State. This again is a matter which is currently in the process of negotiation; that is, the management and legal jurisdiction in respect of certain aspects of fisheries, and whether the matter will be totally controlled and licensed under State jurisdiction, whether the licence will be issued by the Commonwealth but managed and policed by the State, or whether it will be done by way of a joint licence issued in the names of both the Federal and the State Governments and perhaps managed jointly by an authority consisting of both Federal and State Ministers.

These matters are currently under negotiation, as I think all members would be aware because of the proposed extension of national rights out to the 200-mile zone.

So we have a problem which was highlighted by the activity of the Green Peace movement in connection with whaling in respect of the limitation of the State in controlling such activities. It is possible, of course, for a ship to put to sea and move outside the three-mile limit, to move along, and then to come in close to shore and interfere with a person who has a licence under the Fisheries Act or some other legislation. Perhaps the vessel could be doing something in regard to drugs. There is a need to have legislation which empowers the police to take reasonable action.

Such cases are likely to occur at the major outports, and my colleague, the Attorney-

General, informs me that magistrates are readily available in such areas and he sees no reason for Mr Dans to be concerned about that matter.

It was drawn to the attention of the Minister for Police and Traffic in another place that it may be possible to use this legislation in respect of a legitimate industrial dispute—one which is a *bona fide* trade dispute. The Minister did not think that was possible, but he had the matter examined by Crown Law officers who agreed with him. Nevertheless, it was decided to clarify the situation.

Let us consider the situation of a group of workers who are properly employed on a job and a dispute arises, and one of them says, "Let us not do such-and-such"—tighten bolts, or whatever it may be. In that case this amendment will not apply. However, it will apply when a person who has nothing to do with the job gets in front of a boat and says, "You can't run over me" particularly when the boat owner is properly licensed by the Commonwealth or State authorities to do the job he is doing. In that context the Government was thinking of fisheries and boat licences of different sorts, something to which the Leader of the Opposition so rightly referred.

Therefore, it was decided to make the position clear, and with the best will in the world a genuine attempt has been made to clarify the situation by way of the amendment on the notice paper which states that it shall be a defence to a charge under the legislation to show that the intention was manifested in the course of a *bona fide* trade dispute. Therefore, a person can say to the magistrate, "This was a genuine trade dispute in respect of safety, hours of work, or pay" and that will be a proper defence and will be accepted by the court.

A Green Peace boat operator may say he was genuinely following his beliefs, but he could not say he was genuinely making a point in respect of a *bona fide* trade dispute.

I trust that explanation satisfies Mr Dans and he will give his wholehearted support to this provision as well as the others.

Question put and passed.

Bill read a second time.

In Committee

The Chairman of Committees (the Hon. V. J. Ferry) in the Chair; the Hon. G. C. MacKinnon (Leader of the House) in charge of the Bill.

Clauses 1 to 11 put and passed.

Clause 12: Section 67 amended—

The Hon. G. C. MacKINNON: I move the following amendments—

Page 7, lines 32 and 33—Delete the words "amended by" and substitute the passage—
"amended—

(a) by ;

Page 8, line 13—Delete the passage "to do." and substitute the passage—

"to do; and

(b) by adding at the end of the section a further proviso as follows—

Provided further that it shall be a defence to a charge of an offence contrary to paragraph (4) of this section to show that the intention was manifested in the course of a *bona fide* trade dispute between an employer and workmen engaged in the activity so empowered, and that the act, failure or omission complained of was committed by a person who was a party to that dispute."

This matter was examined in accordance with a promise made by the Minister for Police and Traffic in another place. The question was raised regarding whether the section as proposed to be amended could be used by the police in an industrial dispute. The Minister gave an assurance this was not the intent of the Bill, and promised it would be examined to ensure it could not occur. It was considered in order to make it abundantly clear that the provision is not to be used in that situation, this amendment should be moved. I recommend that it be agreed to.

The Hon. D. K. DANS: I thank the Minister for going on record as saying that this provision is not intended to be used in industrial disputes; that comment is very heartening. However, we are all aware that words appearing in *Hansard* cannot be used in a law case. Perhaps it would be better to say that the intention would be manifested in the course of a *bona fide* industrial dispute.

I wonder why the term "trade dispute" is used, instead of the term "industrial dispute"? It could well be that the term "trade dispute" has a much wider ambit and involves people outside the unions. I refer to people such as ship provedores who might be involved in a genuine dispute with a Japanese tuna boat. If that is the intention of the term "trade dispute" I am quite happy with its use, rather than to confine the provision to industrial disputes.

The Hon. G. C. MacKinnon: I think that term is considered to be wider. If you want the

provision to be narrowed down I am quite happy to comply.

The Hon. D. K. DANS: I was not suggesting that the provision should be narrowed down. The Minister seemed to have leapt with alacrity on my comment.

The Hon. G. C. MacKinnon: I am only trying to be helpful.

The Hon. D. K. DANS: I was merely looking for information. The Minister has said that the term "trade dispute" provides a wider scope, and I am happy with its inclusion.

Amendments put and passed.

Clause, as amended, put and passed.

Title put and passed.

Report

Bill reported, with amendments, and the report adopted.

Third Reading

Bill read a third time, on motion by the Hon. G. C. MacKinnon (Leader of the House), and returned to the Assembly with amendments.

Sitting suspended from 6.03 to 8.03 p.m.

House adjourned at 8.04 p.m.

QUESTIONS ON NOTICE

BIRDS

Research

128. The Hon. R. F. CLAUGHTON, to the Minister for Fisheries and Wildlife:

- (1) What research is currently being undertaken into Western Australian birdlife by—
 - (a) the Department of Fisheries and Wildlife; and
 - (b) other government departments or agencies?
- (2) What is the amount, if any, allocated for each of these studies for 1977-1978?
- (3) What grants have been made by the State Government to non-government organisations for this purpose for the 1977-1978 financial year?

The Hon. G. C. MacKINNON replied:

- (1) (a) The main items of birdlife research being undertaken by the Department of Fisheries and Wildlife are:
 - (i) an estuarine research programme.
 - (ii) Waterfowl and game management programmes.

(Other research involving birds includes reserve management and biological surveys.)

- (b) The information requested is not available.
- (2) Funds allocated for (i) and (ii) above in 1977/78 are approximately \$45 000.
- (3) The information requested is not available.

EDUCATION

Pre-school Teachers

129. The Hon. R. HETHERINGTON, to the Minister for Transport representing the Minister for Education:

- (1) Will the Minister table a letter sent on the 13th October, 1977, to Mrs. E. E. Waghorn, then Secretary of the Pre-school Teachers' Union of W.A., and a letter sent to all pre-school teachers on the 10th April, 1978, over the signature of Colin Mason, Assistant Director of Schools, Early Childhood Branch?
- (2) Is the Minister satisfied that these letters are not contradictory?
- (3) As the letter of the 10th April would seem to suggest that pre-school centre teachers are not eligible for permanency with the Education Department, is this now the policy of the Department?
- (4) Will the Minister make available a detailed statement of the terms and conditions of teachers employed in pre-school and pre-primary centres?
- (5) As some teachers regard the letter of the 10th April as pressuring them to persuade their committees to convert their pre-school centres into a pre-primary centre, can the Minister assure me that this was not the intention of the letter?

The Hon. D. J. WORDSWORTH replied:

- (1) Yes. (see paper No. 162).
- (2) Yes. The letter of the 13th October, 1977, outlined a proposal of conditions for teachers in Pre-school Centres. These conditions, having been considered at a meeting of the Pre-school Teachers' Union on the 14th October, were not accepted.

- (3) and (4) Teachers in pre-school centres have permanency or continuity of employment within the pre-school system under conditions of service identical with those of Government school teachers. Permanent status within the Education Department, as distinct from permanency as just defined, applies only to teachers who are employed in Government schools and who are subject to the conditions of the Education Act Regulations. These Regulations impose on such teachers conditions of employment which do not apply to those employed in pre-schools.

(5) Yes.

The letters were tabled (see paper No. 162).

LANDLORDS

Interest on Bond Money

130. The Hon. F. E. MCKENZIE, to the Minister for Transport, representing the Minister for Consumer Affairs:

With respect to the Annual Report of the Small Claims Tribunal Referee for the year ended the 30th June, 1977—

- (a) does the Government intend to act on his suggestion that consideration be given to compelling landlords to credit tenants with interest on bond money;
- (b) if so, when can we expect the legislation to be placed before Parliament; and
- (c) if not, why not?

The Hon. D. J. WORDSWORTH replied:

- (a) to (c) The suggestion made by the Referee concerning interest on tenancy bonds is currently being examined by officers of the Department of Labour and Industry who will take into account current practice in this field in other States before advising their Minister.

HEALTH

Asbestos Fibres

131. The Hon. Lyla ELLIOTT, to the Minister for Transport, representing the Minister for Health:

(1) Is the Minister aware of the fact that—

- (a) motor vehicles have asbestos fibre as a component of brake linings;
- (b) there is continual release of this fibre into the atmosphere as brake linings wear; and
- (c) there are 600 000 motor vehicles registered in Western Australia, over 400 000 of them in the metropolitan area?

(2) As there is overwhelming medical evidence that even minute amounts of asbestos fibre inhaled into the lungs can cause serious illness often leading to death, will the Minister advise whether the Public Health Department has conducted any inquiries into this matter?

(3) If it has not, will the Minister request his department to do so, and report the findings to Parliament as soon as possible?

The Hon. D. J. WORDSWORTH replied:

- (1) (a) Yes;
- (b) asbestos fibre in brake linings is contained in bonded material and when exposed to friction and heat in use, very little asbestos in fibrous form is released to the atmosphere;
- (c) Yes.
- (2) Since the early 1960s, repeated investigations of exposure to dust from worn brake linings in workers in service organisations reveal no evidence of health hazard.
- (3) Not applicable.

EXPORTS

Meat and Sheep: Quantities

132. The Hon. R. F. CLAUGHTON, to the Minister for Transport, representing the Minister for Agriculture:

- (1) For each of the years 1975, 1976 and 1977, what quantities of—
- (a) live sheep;
- (b) processed mutton; and
- (c) processed lamb;
- were exported to Middle East countries?
- (2) What is the projected total of live sheep exports for 1978?

The Hon. D. J. WORDSWORTH replied:

- (1) Exports from Western Australia were:—
- Live Sheep; Mutton*; Lamb*.

1975—1 037 547; 13 229 tonnes; 12 554 tonnes.

1976—1 827 479; 16 709 tonnes; 11 761 tonnes.

1977—1 643 729; 12 954 tonnes; 13 803 tonnes.

* Shipped weight.

- (2) No accurate projection can be made. 403 000 sheep were exported between January 1 to March 31, 1978.

- (2) and (3) There are no proposals currently before the Government to control clearing on the Blackwood or any other River Catchments.

135. *This question was postponed.*

CONSUMER PROTECTION

Flower Sales

133. The Hon. NEIL McNEILL, to the Minister for Transport, representing, the Minister for Consumer Affairs:

Will the Minister inform the House whether there are any conditions, or restrictions, which cover the selling of home-grown flowers by a retired person?

The Hon. D. J. WORDSWORTH replied:

If the sale of home grown flowers is from a private house or shop premises on a commercial basis the premises would be subject to registration as a shop under the Factories and Shops Act, 1963-1975.

WATER SUPPLIES

Catchment Areas Clearing Restrictions

134. The Hon. W. M. PIESSE, to the Attorney General, representing the Minister for Water Supplies:

In the near future—

- (1) is the area of land covered by the moratorium on clearing in the Wellington catchment area to be increased?
- (2) is there to be any restriction on clearing along the Blackwood River?
- (3) are any other water catchment areas likely to have land clearing restrictions placed on them?

The Hon. I. G. MEDCALF replied:

- (1) No. Clearing controls already exist over the entire catchment of the Wellington Dam, i.e. Collie River.

WORKERS' COMPENSATION

Premium Rates and Payments: SGIO

136. The Hon. F. E. McKENZIE, to the Minister for Transport representing the Minister for Labour and Industry:

- (1) For the financial years ended the 30th June, 1975, 1976 and 1977, what was the workers' compensation premium paid to the State Government Insurance Office by each of the following—

- (a) Public Works Department;
- (b) Metropolitan Water Supply, Sewerage and Drainage Department; and
- (c) Metropolitan Transport Trust?

- (2) For each of the financial years ended the 30th June, 1975, 1976 and 1977, what was the total amount, including hospital and medical expenses, paid out by the SGIO on behalf of injured employees of the—

- (a) Public Works Department;
- (b) Metropolitan Water Supply, Sewerage and Drainage Department; and
- (c) Metropolitan Transport Trust?

The Hon. D. J. WORDSWORTH replied:

The State Government Insurance Office is in competition with other Insurance Companies in the field of Workers' Compensation and the Office will be at a disadvantage if it is obliged to make public information which is considered confidential by Insurers. For this reason, and also for the reason that the figures can be misinterpreted if an attempt is made to compare the answers of item (1) with item (2), I do not propose to answer the question.

SHEEP EXPORTS

Industrial Dispute

137. The Hon. R. F. CLAUGHTON, to the Minister for Transport, representing the Minister for Agriculture:

- (1) Was the Western Australian Government represented at talks held in Adelaide and Melbourne during the recent meat industry dispute?
- (2) Was the Western Australian Government invited to join the investigating team organised by the Australian Government to examine marketing of meat in the Middle East?

The Hon. D. J. WORDSWORTH replied:

- (1) No.
- (2) No.

EDUCATION

Murdoch University

138. The Hon. R. HETHERINGTON, to the Minister for Transport, representing the Minister for Education:

In view of reports that Murdoch University will be in financial difficulty if its present level of funding is not maintained next financial year, will the Minister make urgent representations to the Federal Government to ensure the continued viability of this University?

The Hon. D. J. WORDSWORTH replied:

- (1) The Minister has responded already to the implications for Colleges and Universities of the Commonwealth Tertiary Education Commission Report for 1979-81, Triennium, Volume 1, "Recommendations on Guidelines".
- (2) The Commonwealth Universities Council will be in Perth this week for discussions with the W.A. Post-Secondary Education Commission and the Universities on their needs for 1979-81.

INDUSTRIAL ACCIDENTS

PWD, MWB, and MTT

139. The Hon. F. E. MCKENZIE, to the Minister for Transport, representing the Minister for Labour and Industry:

- (1) For the financial years ended the 30th June, 1975, 1976 and 1977, what was the accident rate per one hundred workers employed for each of the following—
 - (a) Public Works Department;
 - (b) Metropolitan Water Supply, Sewerage and Drainage Board; and
 - (c) Metropolitan Transport Trust?
- (2) For each of the above departments, what was the average time lost per accident during each month of the period April, 1977, to March, 1978, inclusive?

The Hon. D. J. WORDSWORTH replied:

- (1) and (2) The statistics available are based on the system established in the Australian Standard AS 1885-1976, Recording and Measuring Work Injury Experience. This method is uniform throughout Australia. The statistics in the form requested are not available.

EDUCATION

Temporary Teachers

140. The Hon. R. HETHERINGTON, to the Minister for Transport, representing the Minister for Education:

- (1) What number of teachers employed by the Education Department are members of the temporary staff?
- (2) What proportion is this of the total number of teachers employed?
- (3) What proportion of these teachers are married women?

The Hon. D. J. WORDSWORTH replied:

- (1) At the end of April, 1978, there were 3 980 full-time teachers who were members of the temporary staff. Of this number, more than half were new teachers appointed since February, 1977, whose length of teaching experience rendered them ineligible for permanent status.
- (2) 30.7 per cent of all full-time teachers.
- (3) This information could be obtained from teachers' records but is not readily available.