

Legislative Council

Tuesday, 3 August 1982

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

LEGISLATIVE COUNCIL

Staff: Appointments

THE PRESIDENT (the Hon. Clive Griffiths): Honourable members, since its last meeting, two significant appointments have been made to the Council's staff. In July, Dr Martyn Forrest was appointed as the Secretary to the Standing Committee on Government Agencies. I am sure that the standing committee will benefit greatly from his knowledge and expertise.

On 23 June, His Excellency the Lieutenant Governor and Administrator appointed Mr Laurence Marquet to be the Clerk of the Parliaments and Clerk of the Legislative Council. The new Clerk was a table officer in the New Zealand House of Representatives, and his appointment represents a departure to the extent that he is the first Clerk of the Council to be qualified in law. I trust that members will take every opportunity to make use of his skills.

It is a matter for regret that the Clerk Assistant of the Council, Mr Les Hoft, has been unwell since the first week of July, and is about to undergo surgery. It is not expected that Mr Hoft will return to duty until the end of October. I am sure that members will join me in wishing him a quick recovery.

BILLS (36): ASSENT

Messages from the Governor received and read notifying assent to the following Bills—

1. Companies (Administration) Bill.
2. Companies (Consequential Amendments) Bill.
3. Land Tax Assessment Amendment Bill.
4. Government Railways Amendment Bill.
5. Parliamentary Commissioner Amendment Bill.
6. Acts Amendment (Country Water and Sewerage) Bill.
7. Stamp Amendment Bill (No. 2).
8. Machinery Safety Amendment Bill.
9. Coroners Amendment Bill.
10. Companies (Co-operative) Amendment Bill.

11. Public Trustee Amendment Bill.
12. Acts Amendment (Criminal Penalties and Procedure) Bill.
13. Off-shore (Application of Laws) Bill.
14. Liquor Amendment Bill (No. 2).
15. Superannuation and Family Benefits Amendment Bill.
16. Lotteries (Control) Amendment Bill.
17. Acts Amendment (Motor Vehicle Fees) Bill.
18. Motor Vehicle Drivers Instructors Amendment Bill.
19. Skeleton Weed and Resistant Grain Insects (Eradication Funds) Amendment Bill.
20. Fire Brigades Amendment Bill.
21. Real Estate and Business Agents Amendment Bill.
22. Health Amendment Bill.
23. Electoral Amendment Bill.
24. Western Australian Meat Industry Authority Amendment Bill.
25. Petroleum (Submerged Lands) Bill.
26. Petroleum (Submerged Lands) Registration Fees Bill.
27. Supply Bill.
28. Metropolitan Water Authority Bill.
29. Metropolitan Water Supply, Sewerage, and Drainage Amendment Bill.
30. Western Australian Water Resources Council Bill.
31. Iron Ore (Hamersley Range) Agreement Amendment Bill.
32. Uranium (Yeelirrie) Agreement Amendment Bill.
33. Public Service Arbitration Amendment Bill.
34. Acts Amendment (Soil Conservation) Bill.
35. Local Government Amendment Bill.
36. Reserves and Land Revestment Bill.

BILLS (4): LEAVE TO INTRODUCE

On motion by the Hon. I. G. Medcalf (Leader of the House), leave granted to introduce the following Bills forthwith—

1. Money Lenders Amendment Bill.
2. Administration Amendment Bill.
3. Supreme Court Amendment Bill No. 2.
4. Workers' Compensation Supplementation Fund Amendment Bill.

BILLS (4): INTRODUCTION AND FIRST READING

1. Money Lenders Amendment Bill.
2. Administration Amendment Bill.
3. Supreme Court Amendment Bill. No. 2.
Bills introduced, on motions by the Hon. I. G. Medcalf (Attorney General), and read a first time.
4. Workers' Compensation Supplementation Fund Amendment Bill.

Bill introduced, on motion by the Hon. G. E. Masters (Minister for Labour and Industry), and read a first time.

QUESTIONS

Questions were taken at this stage.

WESTERN AUSTRALIAN MARINE BILL

Second Reading

THE HON. G. E. MASTERS (West—Minister for Labour and Industry) [5.02 p.m.]: I move—

That the Bill be now read a second time.

This Bill is a complete overhaul of the Western Australian Marine Act 1948-1980. There are a number of objectives in the presentation of the Bill which will be explained in some detail later.

The primary objective, however, is to update Western Australia's principle maritime Statute while at the same time reflecting the changes which have taken place in the maritime scene in Australia and, indeed, internationally.

Before going into a detailed explanation of what this fairly complex and comparatively large Bill seeks to achieve, a brief outline of the evolution of marine legislation in this State is provided.

In introducing the 1948 Act, the then Minister noted that matters relating to navigation and other marine issues were the subject of 12 separate Acts as well as the English Merchant Shipping Act. The consolidation at that time of the necessary provisions of the 13 Acts obviously called for some skill and it is fair comment to say that it was a job well done.

Prior to that action in 1948, the original State Act was the Navigation Act 1904 which covered foreign-going and interstate shipping as well as intrastate voyages. The subsequent passing by the Commonwealth of the Commonwealth Navigation Act in practice left the State with control of intrastate shipping only, and that is the situation today.

It is interesting to note that many of the topical issues of today were of concern at the time of introducing the 1948 Act.

As mentioned earlier, this Bill is a complete overhaul of the Western Australian Marine Act 1948-1980. It includes a reorganisation of the content of that Act both to improve the ease of application and interpretation and to accommodate the adoption of uniform shipping laws and codes.

It also gives effect to the State and Commonwealth agreement on jurisdiction over shipping and navigation issues and to several international maritime conventions to which Australia is a party. In addition, the Bill removes the need for the certification of marine surveyors, provides realistic penalties for breaches of the Act and introduces measures to ensure improved maritime safety.

At this stage, it is my intention to outline to the House something of the nature of the seven basic objectives contained within the Bill rather than attempting to go into lengthy detail of the individual clauses which can be dealt with better in Committee.

The first objective is to re-write the Western Australian Marine Act 1948, which owing to the passage of time has become outdated and cumbersome in its application. Frequent amendment over more than 30 years has resulted in a patchwork Act in which related matters are dealt with in separate parts. Its present condition is the cause of difficulty in interpretation and application.

The second objective is to provide legislative power to adopt the uniform shipping laws code endorsed by Ministers in the Marine and Ports Council of Australia.

For a number of years there has been concern among Australian marine authorities, and in the maritime industry generally, at the diversity of the disparity between laws and regulations relating to the survey, manning, and operation of commercial vessels in Australia. That concern found expression through the Association of Australian Port and Marine Authorities, which represents all the Commonwealth and State authorities, including the Department of Marine and Harbours and the various port authorities of Western Australia.

As long ago as 1971 the association formed a uniform shipping laws committee which established working groups of Commonwealth and State technical officers. The working groups, on all of which Western Australia was represented, drafted a series of codes dealing with

a number of matters related to commercial vessels.

Examples of the type of matters covered include—

- examinations and certificates of competency,
- safety manning,
- mercantile marine (crew engagement and discharge),
- construction,
- crew accommodation,
- load lines,
- stability,
- engineering,
- life saving appliances,
- fire appliances,
- radio equipment,
- miscellaneous equipment,
- survey and certificates of survey,
- emergency procedures and safety of navigation,
- collision regulations, and
- hire and drive vessels.

During drafting by the working groups the codes were continually referred to industry for comment and after any necessary amendment were adopted by the Council of the Association of Australian Port and Marine Authorities as codes.

In 1979 the completed codes were placed before the Marine and Ports Council of Australia and in that year the consolidated uniform shipping laws code was adopted by Ministers as a basis for uniform legislation for all States, the Commonwealth, and the Northern Territory.

It is considered necessary to legislate for the introduction of the uniform shipping laws in Western Australia to eliminate the disparity between different legislation throughout Australia which imposes costs and impediments on operators of vessels moving from one jurisdiction to another.

Furthermore, the code will implement the requirements of international conventions to which Australia is a party, such as the convention on training, certification, and watchkeeping for seafarers. Failure of the States to enact necessary legislation would undoubtedly encourage the Commonwealth to consider unilateral legislation.

The third objective is to give effect to Western Australia's part of the "package agreement" worked out between the States and the Commonwealth on jurisdiction over shipping navigation issues to which the Commonwealth gave effect with the Navigation Amendment Acts 1979 and 1980.

The "package agreement" applies jurisdiction by the voyage concept and replaces the old

territorial basis for control of shipping. The Commonwealth has legislated for all trading ships on overseas and interstate voyages, for all fishing vessels on overseas voyages, and for some categories of offshore industry vessels.

The States have retained legislative power over all trading ships on intrastate voyages, fishing vessels on intrastate and interstate voyages, and private pleasure craft.

The fourth objective is to incorporate in State legislation certain international maritime conventions. Although the Federal Government is the party to the conventions, it is necessary for Western Australia to give effect to the conventions in its own jurisdiction, otherwise Commonwealth law would prevail within the State.

There are four such conventions, and to assist members in their appreciation of the Bill a brief description of the purpose of each is provided.

The first is the Convention on the International Regulations for Preventing Collisions at Sea, 1972. This convention gives effect to the prevention of collisions at sea regulations which already are applied by the existing Act to coast trade, harbour and river, fishing and private vessels in the State's jurisdiction. The Bill seeks to apply the regulations to all vessels in the territorial sea, waters to landward of the territorial sea, and inland waters. The effect would be to apply the collision regulations to all vessels in WA waters rather than only to vessels already under State control in those waters.

Commonwealth law will apply the collision regulations outside State jurisdiction. This is the only part of the Bill which ties jurisdiction to a territorial concept instead of a voyage concept.

A further convention which has been incorporated is the International Convention for Safe Containers, 1976. This convention provides for approval of the structure and safety of all containers used in international transport, including the domestic section.

Containers moving within the State which originated or were destined for overseas would be subject to the convention. The Bill provides power to make regulations to give effect to the requirements of the convention that all containers be periodically tested and inspected and be marked in a prescribed manner.

The third convention is the International Convention Relating to the Limitation of Liability of Owners of Sea Going Ships, 1957. Previously the liability of ship owners in Western Australia was governed by part VIII of the United Kingdom Merchant Shipping Act 1894,

which applied the 1924 liability convention. The 1924 convention limits the liability of the owner of a seagoing ship for compensation to third parties, claims for property damage, compensation for death or bodily injury, etc., to an aggregate sum of £(stg.)8 per ton of the vessel's tonnage.

The Bill has the effect of repealing part VIII of the Merchant Shipping Act and providing for the implementation of the 1957 convention, which limits the shipowner's liability to the considerably higher figure of 1 000 francs (\$A60) per ton of the ship's tonnage for property claims, 3 100 francs (\$A186) per ton for personal claims, and 3 100 francs (\$A186) per ton aggregate for personal and property claims.

Three hundred tons is deemed to be the minimum tonnage of a ship under the convention. The franc referred to has a special gold value for conversion to other currencies. Owing to fluctuation of currency values, the amounts quoted are approximations only.

The international convention does not apply to non-seagoing ships. Therefore, a special section is included in the Bill to limit the liability of owners of ferries which are not seagoing ships.

A person suffering injury or loss aboard a ferry will have a common law remedy in negligence against the owner of the vessel. The Bill requires that any vessel licensed under the legislation must insure against such liability. To keep insurance needs within realistic bounds it is proposed that the owner should be allowed to set a limit to the extent of his liability.

Liability will be limited to \$45 000 for each passenger, with no minimum overall sum specified. This figure is based on the limitation prescribed by the Civil Aviation (Carriers Liability) Act. Hence, a person suffering injury or loss aboard a ferry will, if negligence is established, be assured of at least \$45 000.

The last of the conventions is the International Convention for the Safety of Life at Sea, 1974, and the protocol of 1978 relating thereto. The Bill provides for regulations to be made giving effect to chapter V of the annexe to the International Convention for the Safety of Life at Sea, 1974, and the 1978 protocol to that convention.

Chapter V of the convention is concerned with various safety matters such as weather messages, distress calls, safe navigation practices, and pilot ladders. All other chapters of the convention apply the convention's regulations to ships on international voyages only. Chapter V applies to all ships, and the regulations will apply its provisions to vessels under state jurisdiction.

The fifth objective of the Bill is to repeal the provisions for certification of marine surveyors which were included in the 1948 Marine Act. The uniform shipping law codes embrace all aspects of the regulatory function of a marine authority concerning commercial craft.

In recent times, Western Australia has been the only State which has had any legislative coverage of the certification of marine surveyors, and such provision is, because of irrelevance and difficulties in administration, considered to be unnecessary and unenforceable. This view is shared by the other States.

As marine surveyor certification provisions such as those present in the existing Act are not recognised as necessary in other States' legislation or in the formulation of the codes, such provisions do not appear in the uniform shipping law codes. If the present marine surveyor certification provisions are retained in this State, the concept of uniformity of marine law between the States will be diminished.

The marine legislation in all other States and the British legislation—the Merchant Shipping Act—from which most States originally inherited their legislation, no longer carry any reference to legislative supervision of the marine survey or marine consultancy industry. The Bill, in repealing the 1948 Marine Act, will remove the anomalous requirement for the certification of marine surveyors.

The sixth objective is to update the penalties for breaches of the Act. Following a review of the penalty provisions of the Western Australian Marine Act and regulations, it was considered necessary to increase penalties to a more realistic level, having regard to the erosion of the real level of penalty brought about by inflation and to avoid serious inconsistencies between penalties provided under State and Commonwealth legislation for similar offences.

The seventh and final objective is to introduce provisions to cover specific deficiencies in the 1948 Act. These include three matters of significant importance to the regulatory work of the State's marine authorities, including the Department of Marine and Harbours, which will administer this legislation when it is enacted.

The first relates to the licensing of persons letting out boats for hire. The 1948 Marine Act previously required the licensing of all boats let for hire but imposed no obligations on the proprietor of hire boats to hold a licence conditional on his meeting any or specific safety requirements. The Bill remedies this deficiency.

A second matter relates to the power to detain vessels. The 1948 Act does not enable an unseaworthy or inadequately equipped vessel to be stopped from proceeding into unprotected waters, and an offence is not committed until the vessel is actually operated in unprotected waters. As members would appreciate, this may well prove too late. The Bill provides the marine authority with power to detain such a vessel in protected waters until the appropriate requirements are met. The Bill provides also a penalty for not complying with a detention order.

Another matter relates to the prohibition of particular vessels from certain waters. Circumstances arise where the operation of a particular vessel or a particular class of vessel is considered inappropriate for an area of water due to either the vessel's size, its lack of manoeuvrability, bridge clearances, depth of water, or similar problems.

Under the 1948 Act powers exist to close certain waters to all vessels, and these powers are used to close areas such as the Mandurah bar for reasons of safety. However, should only those powers be available it would be necessary to exempt every other vessel except the particular vessel or vessels which were unsuitable. The Bill simply provides power to prohibit a certain vessel or class of vessels without affecting the accessibility of those waters to all other vessels.

From the foregoing remarks, members will be aware that this Bill represents a major step forward in the tidying up of marine legislation in this State. It reflects more adequately the requirements of the marine authorities and the Government in their desire to provide a proper framework for the regulation and control of maritime matters. That such control is necessary has been clearly shown in the past both in this State and throughout Australia and the maritime countries of the world.

The Bill is the result of a great deal of effort on the part of the Parliamentary Counsel and senior officers of the Department of Marine and Harbours. It will be of real benefit to those involved in its administration and, of equal importance, more easily understood by shipping and boating interests.

This Bill is a further step in the Government's plan to update the marine aspects of the transport scene in Western Australia.

The PRESIDENT: Order! There is far too much audible conversation in the House and I did not realise that the Minister was coming to the end of his speech.

The Hon. G. E. MASTERS: I commend the Bill to the House.

Debate adjourned, on motion by the Hon. D. K. Dans (Leader of the Opposition).

House adjourned at 5.18 p.m.

QUESTIONS ON NOTICE

ELECTORAL: ELECTORS

Removal from Roll

317. The Hon. GARRY KELLY, to the Chief Secretary:

Is the name of an elector who fails to answer the Electoral Department's form 40 struck from the roll and, if so, why does the department then send a notice to the roll address stating that the elector's name has been removed from the roll?

The Hon. R. G. PIKE replied:

The member's attention is invited to section 156 (15) of the Electoral Act. We should note that the elector whose name has been removed must be required to furnish a new claim for enrolment. The notice is sent to the only address known to the Electoral Department; that is, the address for which the elector was enrolled.

LEGISLATIVE REVIEW AND ADVISORY COMMITTEE

Cost

318. The Hon. J. M. BERINSON, to the Attorney General:

For the last year for which figures are available—

- (a) what were the actual or estimated costs of the operation of the Legislative Review and Advisory Committee, and
- (b) what were the main components of these costs?

The Hon. I. G. MEDCALF replied:

- (a) For 1981-82 actual expenditure was \$32 591.
- (b) The main components were—

	\$
Committee members' fees	6 300
Salaries and allowances	4 637
Travelling expenses	927
Other	727

32 591

**CRIMINAL INJURIES
COMPENSATION ACT**

Amount Payable

319. The Hon. J. M. BERINSON, to the Attorney General:

In each of the States and Territories—

- (a) what is the maximum amount payable under the respective equivalents of the Criminal Injuries Compensation Act; and
- (b) what was the date on which each of these amounts was set?

The Hon. I. G. MEDCALF replied:

(a) and (b)

New South Wales	\$10 000	28/5/79
Victoria	\$10 000	28/10/81
Queensland	\$ 5 000	1/7/75
South Australia	\$10 000	1/7/78
Tasmania	\$10 000	4/8/76
Northern Territory	\$ 4 000	1976
Western Australia	\$ 7 500	18/10/76

**TRAFFIC: MOTOR VEHICLE
INSURANCE TRUST**

Statute of Limitations

320. The Hon. J. M. BERINSON, to the Minister representing the Minister for Local Government:

- (1) Has the Minister examined the actions of the Motor Vehicle Insurance Trust in relying on the Statute of Limitations under circumstances severely criticised by the State Full Court on 22 June 1982?
- (2) If so, what conclusions has the Minister reached, and what remedial action, if any, has been or is proposed to be taken?

The Hon. R. G. PIKE replied:

- (1) and (2) I am advised by the Minister that she is having the position examined by Crown Law and expects to receive a report within the next few days.

**TRAFFIC: MOTOR VEHICLE
INSURANCE TRUST**

Deficit

321. The Hon. J. M. BERINSON, to the Minister representing the Minister for Local Government:

What was the surplus or deficit of the Motor Vehicle Insurance Trust for—

- (a) the six months to 30 June 1982; and
- (b) the 12 months to 30 June 1982?

The Hon. R. G. PIKE replied:

- (a) and (b) The information requested is not yet available.

QUESTIONS WITHOUT NOTICE

**TRAFFIC: MOTOR VEHICLE INSURANCE
TRUST**

Deficit

76. The Hon. J. M. BERINSON, to the Chief Secretary:

With reference to his answer to question on notice 321, will he undertake to provide the information when it becomes available?

The Hon. R. G. PIKE replied:

Yes.

ELECTORAL: ELECTORS

Removal from Roll

77. The Hon. GARRY KELLY, to the Chief Secretary:

Would it be true to say that the ultimate penalty for not voting in Western Australia is to have one's name removed from the electoral roll?

The Hon. R. G. PIKE replied:

I think the question seeks an opinion and it is not my job to give an opinion.

The PRESIDENT: The question is out of order.

PARLIAMENTARY PRECINCT

Sale of Land

78. The Hon. GARRY KELLY, to the Leader of the House:

In view of the Government's announced intention to sell Heathcote and Sunset land, when is it anticipated that the Government will announce the sale of the parliamentary precinct?

The Hon. P. G. Pandal: What a stupid question!

The PRESIDENT: Order! The honourable member would know that I ruled earlier this session that questions without notice to Ministers in this House in regard to matters for which a Minister in another place is responsible, are out of order unless that Minister is given some notice.
