

the Territory generally—especially in the carrying of heavy cargo, such as building materials—the Commonwealth took a more generous view about our grant. The provision of the service provided an outlet for our local manufacturers which they would not otherwise have had.

For that reason we tried to keep the Darwin service well catered for. In recent times the A.N.L. brought in a new type of ship for the Darwin run but it caused industrial trouble. The new ship was intended to speed up the service and make the trip to Darwin more economical. Had the new A.N.L. service been fully effective it would have had some detrimental effect on our manufacturers, but that is only the narrow view.

The short answer to the question is that we do operate to Darwin, but we have to obtain a permit to go to a port out of the State. So far as State legislation is concerned we can only refer to a voyage from one point in the State to another point in the State.

Clause put and passed.

Clauses 7 to 12 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

House adjourned at 9.35 p.m.

Legislative Council

Wednesday, the 16th September, 1970

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

QUESTIONS (4): ON NOTICE

1.

TRANSPORT

Qualeup-Rocky Gully Area

The Hon. J. DOLAN, to the Minister for Mines:

- (1) Has the Minister for Transport considered the proposals submitted to him by the Director-General of Transport in late July of this year for a change in the transport pattern in the Qualeup, Kojonup, Frankland River, Rocky Gully area (vide P.12 of the Annual Report, 1969-70 of the Director-General)?
- (2) If so, what changes have been considered feasible by, and acceptable to, the Government, and to which implementation is proposed?

The Hon. A. F. GRIFFITH replied:

- (1) Yes.
- (2) None at this stage because the revised pattern of operation suggested would have resulted in possible instability of W.A.G.R. rail services including some reduction in the rail role between Katanning and Albany.

The Director-General has been instructed to restudy the work carried out in the southern part of the State to see whether there are any other possible approaches which will be beneficial to transport system users and which will not severely disadvantage or render the future of the rail services uncertain.

MILK

Quotas: Transfer

The Hon. N. McNEILL, to the Minister for Mines:

- (1) During the two year period to the 30th June, 1970, how many applications have been received by the Milk Board of W.A. from licensed dairy farmers for the transfer of their milk quotas to—
 - (a) other licensed dairy farmers;
 - (b) existing or intending dairy farmers who were not, at the time holders of a license?
- (2) In how many of the applications so received has there been the stated intention or desire to transfer the quota—
 - (a) with the sale or transfer of the whole or part of the property on which farming is carried out;
 - (b) without the transfer of land?
- (3) How many of the applications in (1) and (2) above have been granted, and in which categories?
- (4) In all cases where transfers have been approved by the Board, has there been any financial consideration or adjustment between the contracting parties in respect of such quota transfer made known to the Board?
- (5) Apart from the foregoing, what are the terms under which the transfer of milk quotas is permitted by the Board?

The Hon. A. F. GRIFFITH replied:

- (1) to (3) The information is not statistically recorded and therefore is not readily available.
- (4) No.
- (5) The transfer of milk quotas is approved by the Board only as an integral portion of a licensed dairy business, which is sold on a walk-in-walk-out basis as a going concern.

The only exception is in the instance of a licensed dairy property becoming unsuitable for dairying because of urban development or other similar reason. In such case the Board has approved of the transfer of the dairying business as a going concern to an approved property previously unlicensed.

3. WORKERS' COMPENSATION

Volunteer Fire Fighters

The Hon. J. J. GARRIGAN (for the Hon. R. H. C. Stubbs), to the Minister for Mines:

- (1) (a) Are volunteer firemen, whilst fighting fires, insured to the full extent of their normal wages; and
- (b) if not, to what extent are they compensated?
- (2) To what extent are they covered in relation to doctors' and specialists' fees, and travelling allowances?
- (3) Is compensation available for any disability of a permanent nature?

The Hon. A. F. GRIFFITH replied:

- (1) (a) and (b) Volunteer firemen registered with the W.A. Fire Brigades Board are insured as if a worker under the Workers' Compensation Act. There is an extra cover to allow payment up to the equal of his weekly wage but the extra amount shall not exceed \$20 per week.
- (2) and (3) As for the Workers' Compensation Act.

4. MILK

Standards

The Hon. N. McNEILL, to the Minister for Mines:

- (1) How many reports were received by the Milk Board of W.A. during the 1969-70 season of milk samples from licensed dairies being below the required minimum legal standard in—
 - (a) butter fat;
 - (b) solids not fat?
- (2) Is any action being contemplated by the Board against dairymen whose milk samples fail to meet the required standards?
- (3) Is it possible for a herd testing scheme to be introduced in Western Australia similar to, and in conjunction with the Grade Herd Recording Scheme for butter fat, which will assist dairy farmers to combat the low solids not fat problem in dairy herds?
- (4) If so, is such a scheme being considered?

The Hon. A. F. GRIFFITH replied:

- (1) Under the Scheme for Milk Improvement, the following samples from licensed dairies were below standard:—
 - (a) Butterfat—4.
 - (b) Solids-not-fat—74.
- (2) The Scheme for Milk Improvement will continue to be implemented.
- (3) Such a scheme is possible but excessively costly and not considered feasible.
- (4) A solids-not-fat scheme in conjunction with the Grade Herd Recording scheme is not being considered, but alternatives for measurement of protein and butterfat contents of milk from individual cows are under consideration which could assist dairy farmers with low solids-not-fat problems.

PETROLEUM (SUBMERGED LANDS) ACT AMENDMENT BILL

Introduction and First Reading

Bill introduced, on motion by The Hon. A. F. Griffith (Minister for Mines), and read a first time.

LEAVE OF ABSENCE

On motion by The Hon. W. F. Willsee (Leader of the Opposition), leave of absence for six consecutive sittings of the House granted to The Hon. F. R. H. Lavery (South Metropolitan) on the ground of ill-health.

On motion by The Hon. W. F. Willsee (Leader of the Opposition), leave of absence for six consecutive sittings of the House granted to The Hon. R. F. Hutchison (North-East Metropolitan) on the ground of ill-health.

FAUNA CONSERVATION ACT AMENDMENT BILL

Third Reading

THE HON. G. C. MACKINNON (Lower West—Minister for Fisheries and Fauna) [4.40 p.m.]: I move—

That the Bill be now read a third time.

THE HON. R. F. CLAUGHTON (North Metropolitan) [4.41 p.m.]: When listening to the second reading debate on this Bill I gained the impression that the measure chiefly intended to control the slaughtering or—in more moderate terms—the cropping of the red kangaroo in the north of the State and the grey kangaroo in the south. One of the provisions in the Bill ostensibly provides greater protection to our flora and fauna by making provision for a penalty of \$1,000. However, here again it was my impression that this penalty was more of a device to try to deter the illegal killing of, in particular, the red kangaroo.

These may be quite worthy aims. It is necessary to control the killing of the red kangaroo and, as the Minister said during his reply, it may be necessary to kill to destruction the grey kangaroo in some parts of the south. I will not protest at that. However, if the provisions of the Bill are to promote the protection, preservation, and conservation of our indigenous flora and fauna then we must also have some further action in the field. The protection, preservation, and conservation of our fauna depends not only upon the legislation we actually pass, but also upon the steps we take to implement it.

From what I have been able to discover very little effective work is being done in the field. We have seen some efforts made, but the extent of the destruction of wildlife which is taking place throughout the State, and the lack of knowledge regarding the habits of these creatures and their needs as far as territory and sustenance are concerned, leave a great deal to be desired.

Moves have been made already to create a ministry of conservation and now that section 10—which is an administrative provision—is being amended I would like to see the organisation of this ministry commenced. I feel that the amendment in the Bill simply indicates the continuing growth of the department as it now exists and is not a sign that we will see a ministry of conservation established shortly.

It is perhaps revealing that section 9 of the Act exempts Government departments from the provisions of the Act so that officers of the various departments may destroy specimens of protected creatures and their habitat without being subject to any penalty. If our aim for conservation is genuine we would expect to see something more tangible being done in the areas over which we have direct control.

Section 14 of the Act, which is being amended by this Bill, states that all fauna of the State is wholly protected unless otherwise declared by the Minister. Yet during his speech I understood the Minister to say that the fauna which is protected is in fact listed, and that there is not a general provision with exemptions declared by the Minister. I may have misunderstood the purport of what he said. However, it appears to me that the Minister said that apart from those species declared under the regulations fauna is not protected.

Here again, I find that the Act is a little confusing. The definition of "fauna" has been amended, and we have had amendments to section 14 which affect the definition. So it is not really clear what is intended. I hope that at some future stage the definitions will be tidied up so that their purport is clear. I hope also that the confusion as to whether fauna, with some exemptions, is totally protected, or whether in fact it is the other way around, will be cleared up.

The Minister made reference to species which in the past have become extinct through various causes and he indicated that this was only natural. We must agree with this, of course, but at the same time surely we should make every effort to preserve what we have and not take action which would unnecessarily contribute to the extinction of the species we have in our care. Owing to the isolation of Australia from other land masses, we have in effect almost a fossilised representation of flora and fauna which, to a large extent, are found nowhere else in the world. I feel it is up to us to make the greatest possible effort to see that they are preserved.

THE HON. G. C. MacKINNON (Lower West—Minister for Fisheries and Fauna) [4.48 p.m.]: At the close of this debate I am a little alarmed at the fact that Mr. Cloughton has misunderstood the Bill to the extent he has because the amendment dealing with the large penalty of \$1,000 has nothing whatsoever to do with kangaroos. This is particularly surprising in view of the article which appeared in the Press this morning referring to the rare birds of this State and the prices they bring on the overseas markets. Members will recall that I mentioned some quite high prices which could be secured for smuggled avian fauna. I referred to the fact that we could run the department without recourse to Treasury funds if we could sell a few of those birds ourselves.

However, the prices I quoted—high as they may have been—were infinitesimal in comparison with the prices quoted in the Press this morning. I think that article provided an indication of the value placed upon the rare fauna, whether it be animal or bird, which from time to time appears in our State. Of course, certain Government departments must be allowed a degree of freedom, because by its nature our fauna at times reaches pest proportions.

In these circumstances, of course, the Agriculture Protection Board comes into the picture. The fact that we have amended this Act over the last few years is surely sufficient proof of a genuine desire on the part of the Government to do whatever it can in regard to the conservation of fauna.

The mere fact that this particular department is changing and growing in some of its forms has virtually no bearing upon the nature or the establishment of the ministry of conservation, which could be quite independent and could still leave all the other aspects of conservation and environmental control—whatever these might be—in the hands of the particular Ministers involved.

From the examinations I have made it would appear that there are only about two Ministers who are not in some way or other involved in conservation, as it applies to environment, to animals, to the

question of clean air, the matter of waterways, potable water, and so on. Virtually every Minister is affected and I should not imagine that one Minister will be able to control the lot.

I would like to point out that the provision relating to definitions has been amended since Mr. Claughton has been a member of this House. I thought they were sufficiently clear, but I will have my department look at the matter. Species, however, whether protected or not will, of course, vary from time to time according to the seasons. The department distributes a booklet and I am sure any member who cares to ring the department will be able to secure the booklet in question. Indeed, I will ask the department to send up copies of the booklet so that these might be available to members.

The booklet deals with various animals and birds, whether they are protected or not. It also refers to whether there is an open season or whether seasons are proclaimed from time to time. I would point out that even in the case of seasons—whether these are open or not—these must be varied according to the biological needs of the animals.

Members will recall that last year we had no duck shooting season. I might add that at the moment the season seems good enough and I have very little doubt about a duck shooting season being proclaimed this year. I know there are one or two members who are interested in this. I notice that a reference was made in the Press to the effect that some officers of the department will decide this issue. This is not quite right. The officers will advise the Minister and he will make the decision.

The Hon. R. Thompson: You had better go the whole way and tell us when the season will open.

The Hon. G. C. MacKINNON: We have almost made up our minds about this matter. As Mr. Thompson, who takes a keen interest in such matters, will know, consideration must be given to such aspects as birds on the wing, hatchings, and so on.

Question put and passed.

Bill read a third time and transmitted to the Assembly.

HONEY POOL ACT AMENDMENT BILL

Second Reading

THE HON. G. C. MacKINNON (Lower West—Minister for Health) [4.54 p.m.]: I move—

That the Bill be now read a second time.

This brief measure has only one objective, which is to change the title of the corporate body administering the honey pool.

The corporate name of the administering body is at present The Trustees of the Honey Pool of Western Australia. This title is to be changed by this Bill to The Honey Pool of Western Australia.

The reason for the proposed change is that the trustees have advised that the length and complexity of the existing title, being so cumbersome, is creating difficulties as to its meaning—both in local business and in the many countries to which the pool exports its products.

It is suggested that the briefer title now proposed will overcome these disadvantages, and I commend the Bill to the House.

Debate adjourned, on motion by The Hon. J. Dolan.

METROPOLITAN WATER SUPPLY, SEWERAGE, AND DRAINAGE ACT AMENDMENT BILL (No. 2)

Second Reading

THE HON. L. A. LOGAN (Upper West—Minister for Local Government) [4.55 p.m.]: I move—

That the Bill be now read a second time.

The object of this Bill is to amend the Metropolitan Water Supply, Sewerage, and Drainage Act in two respects. Firstly, it is to harness for the use of the Metropolitan Water Supply, Sewerage and Drainage Board, unused loan allocations of local authorities and bank overdrafts obtainable by local authorities for extending water works and services, and to enable the board to take over such works which may be provided from these funds under certain conditions; and secondly, to enable the Metropolitan Water Supply, Sewerage and Drainage Board to make a by-law enabling amended specific standards or specific requirements, mainly with regard to plumbing requirements, to be approved by the board or a delegated person, thus obviating the need for continuous alterations to an existing by-law which provides for those standards or specifications.

In 1968, the legislation controlling the operations of the Metropolitan Water Board was amended to allow the board to acquire sewerage works provided by local authorities from loan funds or overdraft funds. The intention of this amending Bill is to extend that power to acquire sewerage works to include water works and services also.

The terms upon which water works could be acquired by the board would be the same as those providing for the acquisition of sewerage works; namely, those into which the local authority had entered when raising the money by loan or overdraft. To allow this provision in the Metropolitan Water Supply, Sewerage, and Drainage Act to be effective, it is necessary also to introduce complementary

amendments to the Local Government Act, to enable the local authorities concerned to dispose of any such water works to the Metropolitan Water Board.

Under the board's by-laws, there are appendices or schedules which provide for standard drawings or specifications. The amount of detailed specification required in certain aspects of the board's operations, particularly with respect to materials like copper pipes and plastic pipes and fixtures, is becoming so cumbersome as to cause the schedules to outgrow the by-laws in size. There is, in fact, no need for such extensive detail to be published, as appendices to the by-laws, for the reason that plumbing control in the metropolitan area rests unquestionably with the water board.

It is considered that, under these circumstances, it would be more practical that the board, or a specified person authorised by the board, approve of standards and specifications rather than continue the existing procedures, which entail continuous amendment to by-laws of plumbing details which must vary from time to time as new materials become available.

The principle involved, which is now proposed to be applied in the Metropolitan Water Supply, Sewerage, and Drainage Act, is not new. Similar provisions are made in the Health Act and in the Local Government Act.

Debate adjourned, on motion by The Hon. W. F. Willesee (Leader of the Opposition).

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 2)

Second Reading

THE HON. L. A. LOGAN (Upper West—Minister for Local Government) [4.58 p.m.]: I move—

That the Bill be now read a second time.

This Bill follows as a complementary measure to the amendment to the Metropolitan Water Supply, Sewerage, and Drainage Act to allow water works provided by a local authority out of loan funds or bank overdraft to be sold to the Metropolitan Water Supply, Sewerage and Drainage Board on specific terms and conditions. It extends to water works the same conditions as were agreed to in 1968 with respect to sewerage works.

Debate adjourned, on motion by The Hon. W. F. Willesee (Leader of the Opposition).

PETROLEUM (SUBMERGED LANDS) ACT AMENDMENT BILL

Second Reading

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Mines) [5.00 p.m.]: I move—

That the Bill be now read a second time.

I think this is an occasion when I can take advantage of the motion the House agreed to a few days ago in order that a longer period of adjournment can be made available at the conclusion of the introduction of the Bill.

One of the matters dealt with by the Commonwealth-State offshore petroleum legislation was the problem of extending the rule of law to those who, by reason of their being involved in the work of the petroleum industry, were working, and perhaps living, in the offshore area.

All State Acts contain provisions—virtually identical—for extending the law of the particular State to its adjacent offshore area. There are complementary provisions in the Commonwealth Act.

Some time after the abovementioned provisions were enacted, the Crown Solicitor of Victoria expressed the opinion that they were not as effective as they were meant to be. The matter was subsequently reconsidered by the Standing Committee of State and Commonwealth Attorneys-General, and, at the direction of that body, by appropriate law officers of the States and Commonwealth. The law officers, whilst not conceding that the arguments of the Victorian Crown Solicitor were valid, generally agreed that the said provisions should be made as free from doubt as possible. The present Bill gives effect to their ideas for achieving this goal. It provides, in effect, that—

- (a) The Commonwealth Petroleum (Submerged Lands) Act, 1967 and the State Petroleum (Submerged Lands) Act, 1967, operating as separate laws, should apply in an adjacent area the general body of law, criminal and civil, in force in the land area of the State concerned.
- (b) Those laws should be applied to the full extent permitted by the convention of the continental shelf, which confers on a coastal State sovereign rights for the purpose of exploring the continental shelf and exploiting its natural resources.
- (c) The mining laws in force in the land territory of the State should be excluded in so far as matters dealt with in those laws are covered by parts III and IV—the Mining Code—of the Petroleum (Submerged Lands) Act, 1967.
- (d) There should be provision to enable laws to be modified or adapted, where necessary, by regulation to fit them to the special circumstances of offshore operations.

A Bill, virtually identical with that now submitted, has already been passed into law in South Australia. I am advised that

all other States and the Commonwealth will be introducing similar legislation before the end of this year.

Debate adjourned, on motion by The Hon. W. F. Willesee (Leader of the Opposition).

PREVENTION OF CRUELTY TO ANIMALS ACT AMENDMENT BILL

In Committee

The Deputy Chairman of Committees (The Hon. F. D. Willmott) in the Chair; The Hon. G. C. MacKinnon (Minister for Health) in charge of the Bill.

Clauses 1 to 3 put and passed.

Clause 4: Amendment to section 13—

The Hon. G. C. MacKINNON: Mr. Claughton was quite right in what he said yesterday, and I will be making the necessary adjustment in a proposed new clause when we have dealt with all the clauses as printed.

Clause put and passed.

Clauses 5 to 8 put and passed.

Clause 9: Amendment to section 23—

The Hon. G. C. MacKINNON: Again Mr. Claughton was correct when he said there was a misprint in the parent Act. In order to correct this, I move an amendment—

Page 3, lines 13 to 15—Delete all words and substitute the following:—

Section 23 of the principal Act is amended—

(a) by substituting for the words "For the purposes of section three which relates to offences of cruelty", in lines thirty-four and thirty-five, the words "In relation to offences against this Act"; and

(b) by substituting for the words "Ten pounds", in line forty-two, the words "Forty dollars".

The Hon. R. F. CLAUGHTON: I am pleased the Minister has had this matter examined, and that the error is now being corrected.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 10 put and passed.

New clause 5—

The Hon. G. C. MacKINNON: I move—

Page 2—Insert after clause 4 the following new clause to stand as clause 5:—

Amendment to s. 14. (Killing of animals.) 5. Section 14 of the principal Act is amended by adding after the word "constable", in the penultimate line, the passage "veterinary surgeon,".

This amendment is necessary as a result of an oversight in drafting, and I thank Mr. Claughton for drawing our attention to it.

New clause put and passed.

Title put and passed.

Bill reported with amendments.

WORKERS' COMPENSATION ACT AMENDMENT BILL (No. 2)

Second Reading

Debate resumed from the 15th September.

THE HON. J. J. GARRIGAN (South-East) [5.11 p.m.]: My colleague and friend (Mr. Stubbs) obtained the adjournment of the debate on this Bill, but unfortunately he is not here today. Although I have not made any notes on the Bill, I will do the best I can.

This measure is seeking to do something for those unfortunate people who have been unable to do anything for themselves, and I commend the Minister for introducing such a Bill. It refers, among other things, to *de facto* wives, who are, after all, human beings the same as is every member in this Chamber.

Some miners, particularly in the towns I represent, have a *de facto* wife, as is the case, I suppose, in any town which is the centre of heavy industry. Unfortunately, when these miners work underground, or even on the surface, they often meet an untimely death. Others, of course, because of long service underground, die as a result of an industrial disease, thus leaving their *de facto* wives without an income.

I do not intend to reiterate what has already been said on this Bill. I believe Mr. Ron Thompson gave a very good resume of its contents last night. However, I would like to refer to one particular amendment; that is the one in clause 4, which is designed to provide for compensation in respect of a worker dying from or affected by mesothelioma. The *de facto* wife and children of a worker must be protected, and I am very glad that this protection is being provided for under the Bill.

I am sorry the Minister for Mines is not present at the moment, because I want to relate my own experience which will serve as an illustration of what can happen in regard to industrial diseases. About 18 months ago I went to the Kalgoorlie laboratory, as is expected of all miners and ex-miners either once or twice a year, depending on the state of their health. I went through the normal channels to have an X-ray taken of my chest and lungs, and subsequently received a slip of paper with these words on it: "Within the normal range." If the Minister can tell

me what "within the normal range" means I can take the message back to my constituents, and they will be very happy to get it.

The Hon. G. C. MacKinnon: It is a matter of health so I can find out for you.

The Hon. J. J. GARRIGAN: It is a matter for both portfolios—Mines and Health. I was not very happy with the result of my examination so I thought I would again act as a guinea pig and as a guide for other people who might face similar circumstances. I filled in the necessary forms, papers, or documents that are supplied in Kalgoorlie at the office of the Public Health Department and I had to go before a board composed of three doctors. One of the doctors said, after the examination, "Mr. Garrigan, you are in very bad shape but you will hear in due course the result of this examination by the board."

The result was astounding to me, because I was assessed as having 70 per cent. disability from silicosis, yet three weeks prior to that I was told I was within the normal range. That was my experience and I am merely mentioning it to members to show what happens.

To my mind the whole Workers' Compensation Act should be scrapped. We should start afresh and have a thorough examination of the whole procedure from the laboratories in Kalgoorlie right down to the State Government Insurance Office.

There are cases in Kalgoorlie today of workers who have been assessed as having 40 per cent. or 50 per cent. disability through industrial disease; they have left the industry but they cannot get proper compensation. If a person has an eye knocked out or an arm torn off he is compensated in accordance with the provisions of the Workers' Compensation Act; but a worker suffering from an industrial disease is not compensated for the damage caused to his lungs by working in industry.

I know of 30 cases in Kalgoorlie of people who have been assessed at 30 per cent. to 40 per cent. disability, but they cannot get compensation. Mr. Stubbs and I would be the only two members in this House who have a full knowledge of what an industrial disease can do to a person, because both of us have been affected by it. Dr. Hislop, who is a most competent medical practitioner, would know from a medical angle what effects it has, but both Mr. Stubbs and I know it from the personal angle. In the old days the doctor at the laboratory assessed people, and if a miner was not satisfied with his assessment he went to his local doctor. If he was not satisfied with that opinion he could go to a doctor who acted as an umpire. I know Dr. Hislop has acted in this connection

on many occasions and he knows of many cases of unfortunate people who suffer from silicosis.

There is only one way to overcome the problem, and to iron out the deficiencies in the Act—that is, to have an all-party committee, or a Select Committee to inquire into all aspects of the Act in an endeavour to cater for those unfortunate people who are suffering from industrial disease known as silicosis or asbestosis. Nobody knows better than those who work in the industry, or those who have worked in the industry, the dire effects of industrial disease.

I am not retiring from Parliament because I do not like the life; I am leaving Parliament because industrial disease has caught up with me. Therefore, I suggest to both the Minister for Mines and the Minister for Health that at some time in the very near future an all-party committee, or a committee of some sort, should be set up to investigate the whole position. The members of the committee should go to Kalgoorlie to take evidence from those who are so vitally affected by silicosis or pneumoconiosis. With those few remarks, I have much pleasure in supporting the Bill.

THE HON. G. C. MacKINNON (Lower West—Minister for Health) [5.20 p.m.]: I thank members for their comments on the Bill and their support of it, in general. Despite certain criticism there has been support of the measure.

During the course of his speech Mr. Ron Thompson asked me some specific questions and also made some general comments. He mentioned a case and referred to it as case "H." This was a perfectly normal case, and the Workers' Compensation Board had some difficulty in determining just where the benefits under the Act should lie and who, in fact, were dependants. Apparently the difficulty lay in assessing dependency; and secondly, in assessing what was meant by the words "members of a family."

It was the first case of this nature brought before the board and the board made its decision in accordance with its beliefs and judgment. The matter was taken, under appeal, to the Supreme Court which made a differing judgment. However, there is nothing unusual about this; that is why we have courts of appeal. In fact, there are some advantages in this procedure because in this way we get rulings. Up to that stage one has opinions from lawyers, and the judge rules on the question. The amendment in the Bill which deals with *de facto* wives should, we hope, clarify the situation in this regard; because the Government believes that under certain circumstances the *de facto* wife should in fact be the beneficiary

of what benefits accrue under the Act. That is why the amendment has been introduced.

There is nothing unusual about the procedure which was adopted in regard to the case mentioned by Mr. Ron Thompson. It enables clarification to be obtained in regard to the provisions of an Act. Quite often there is a considerable amount of argument and some confusion and through the procedure which was adopted in this case a matter can be clarified for the benefit of all.

The questions Mr. Ron Thompson asked me were as follows:—

Which of the following persons will receive compensation and what amounts will be payable—

- (1) The lawful wife of the deceased worker?
- (2) Each of the three lawful children of the wife of the deceased worker?
- (3) The *de facto* wife of the deceased worker?

Let us link questions (1) and (3). In actual fact, both could, or either one could—that is, provided this Bill is agreed to. Previously, of course, *de facto* wives did not receive compensation, but if the Bill is accepted a *de facto* wife would be eligible in law and she could, in some circumstances, I believe, get total compensation. Perhaps the compensation could be apportioned, depending on the judgment of the court; and that is why we have courts. If the court ruled that they were both dependent then, under those circumstances, they could both benefit either equally or in different proportions. If one were totally dependent and the other only partially, the compensation could be divided in different proportions. If one were totally dependent, and the other not dependent at all, one or the other could benefit.

The other questions the honourable member asked were as follows:—

- (4) The child of the *de facto* wife and the deceased worker; and
- (5) The two children of the *de facto* wife's lawful marriage who were part of the household of the deceased worker and the *de facto* wife.

In this case the *de facto* wife brought with her into the relationship two children of her own by her legal husband. Again, it is a matter for decision by the board or the court—whether the children of the legal wife or the *de facto* wife are dependent. Provided they are in fact dependent at the time of death then entitlement lies. This previously presented difficulties because the shares had to come out of the same limited sum, but members will recall a previous amendment which has allowed for weekly payments up to the

age of 16, and even beyond that to 21 years of age if the children are fully dependent. It is suggested that that arrangement which was introduced by the Government in a previous amendment makes for a far happier situation in this regard.

I think I have answered the questions posed by the honourable member but one could bring up other cases and perhaps it would be improper for me, or for any other Minister, to stand in the place of a court and try to give a decision. Each case is a matter for the judgment of the court at the time, and it depends upon the degree of dependence of a particular person.

Several members spoke about the problem of setting a time limit on the relationship with a *de facto* wife. I think Victoria is the State which has no time limit in its legislation; it leaves the matter entirely to the court to determine on the basis of dependence. We in this State elected to follow the New South Wales example of setting a period of three years. Again, of course, the board or any court which reviews the situation would have to take into account the degree of dependence.

It would appear to me to be reasonable that some sort of period should be set. It may be that in the fullness of time it is found that there is some alternative system which might be better. This will depend on the view of the court. The ceremony of marriage, in itself, is an important and binding one. Despite the modern permissive society I still believe most people consider it a binding contract entailing considerable responsibility. Therefore it would appear reasonable that the proper wife—the legal wife—should receive some sort of protection; and the protection afforded her is that the *de facto* relationship should clearly be shown to be of lasting duration. The time chosen is three years.

Time might prove that this provision needs to be amended; but at the moment the Government believes it should be left at three years. The provision has worked satisfactorily in New South Wales. It is, in effect, an alternative to a contract of marriage.

It has been suggested that this period might be broken by a holiday. Dependency in ordinary matrimony is not broken by the fact that the wife goes to see her people, or goes on holidays, and the courts—

The Hon. R. Thompson: Yes, but that is not specifically mentioned in the Act, whereas this is.

The Hon. G. C. MacKINNON: I am advised that the courts, by the same token, would not take any cognisance of the temporary departure of the wife. It comes back to the matter of dependence. If a

de facto wife goes away for two weeks, or a month, or for whatever period, and it can be shown that she is in fact dependent over that period, she is a dependant and it is a continuing relationship.

I am advised that as far as the law is concerned it is fairly clearly set out that the continuity of a *de facto* relationship would be interpreted in much the same way as in a legal marriage. A temporary absence—which makes the heart grow fonder, they say—does not affect the interpretation of a *de facto* relationship. In short, it does not affect the dependence which has been proven. It is a matter of dependence. A marriage is not terminated by a brief departure from the marital home; nor is a *de facto* relationship thereby terminated.

There was some discussion with regard to the amounts of payments. This argument could go on and on. The payments are affected by variations made by the Industrial Commission. I understand that an application of some magnitude is currently before the commission. The Government believes that the amounts now set are reasonable in all the circumstances.

Mr. Ron Thompson asked why the 8th May, 1970, was the date selected with regard to mesothelioma. This date was selected because a reference to mesothelioma was inadvertently omitted from the previous amendment. The 8th May, 1970, was the date upon which the previous amendment was agreed to, so claims have been backdated to that date.

The Hon. R. Thompson: Your answer is in line with the question I asked.

The Hon. G. C. MacKINNON: The only other query I can recall is the one raised by Mr. Clive Griffiths. I am told it is commonly believed that in order to attract compensation the disease must be specifically mentioned in the third schedule. That is not so. If an infectious disease can clearly be shown to have been contracted because of the nature of the work, it is a compensable complaint.

The Hon. R. Thompson: I would not believe that.

The Hon. G. C. MacKINNON: A disease contracted under those circumstances would be treated as an injury by accident, provided only that there was reasonably convincing evidence of the source of the infection. I have no doubt that this would be fairly difficult to prove. We have only to think of the general nature of the disease mentioned by Mr. Clive Griffiths; that is, hepatitis. It would be very difficult to prove where hepatitis was in fact contracted because it can be contracted virtually anywhere, even in one's own home. I can readily think of cases in which it would be infinitely easier to determine the source of infection. There are in this State special institutions for

the care and handling of certain complaints, and if a person happened to contract an infection at one of those institutions the source of infection could be very easily shown.

The Hon. Clive Griffiths: I will send a copy of your speech to the State Government Insurance Office.

The Hon. G. C. MacKINNON: That will not do any good because that is where the information came from.

The Hon. R. Thompson: They speak with two tongues, if they told you that.

The Hon. G. C. MacKINNON: If I worked at a school and I caught a cold in the nose which necessitated my taking a couple of days off, I would have difficulty in establishing whether I caught the cold in the school, or in a bus, or because I did not take my vitamins that morning. However, if I worked in the infectious diseases ward of a hospital—say, a tuberculosis ward—and I actually contracted tuberculosis, I have no doubt that could be clearly established. With regard to the particular example given by Mr. Clive Griffiths, I doubt very much whether any medical authority could say unequivocally where the condition was contracted. According to the best advice I have been able to obtain the Act provides that a disease which is proven to have been contracted in the course of the occupation is compensable.

I hope I have resolved any doubts members may have had about this very worthwhile Bill. There was some comment about the number of amendments. As a Government, we take pride in the fact that this Act has been brought up for review and alteration 11 times in the years we have been in office, which is a fairly good record.

Question put and passed.

Bill read a second time.

In Committee

The Chairman of Committees (The Hon. N. E. Baxter) in the Chair; The Hon. G. C. MacKinnon (Minister for Health) in charge of the Bill.

Clause 1 put and passed.

Clause 2: Amendment to section 5—

The Hon. R. THOMPSON: I would like to be able to say I understood the Minister's answers to the questions I posed, but unfortunately I cannot do that. As a matter of fact, he has further confused the issue. I referred to the case of "H," to be found in the *Western Australian Reports* at pages 161 to 173. The questions I asked were as follows:—

Which of the following persons will receive compensation and what amounts will be payable—

(1) The lawful wife of the deceased worker? . . .

(3) The *de facto* wife of the deceased worker?

The rough note I took of the answer is: "Both could or either one could. *De facto* could get all or the court could rule."

We are right back where we started from, when Mr. Justice D'Arcy could not understand the interpretation in section 5 of the Act. The Minister's explanation confirms my view that we do not know what we are doing in inserting this provision in the Act at the present time. It now means that the Workers' Compensation Board, after its defeat in the "H" case in 1968, will be loath to rule on this question. From the Minister's answer, I would say the board would not know how to determine the case.

There is not one member in this Chamber who could honestly say that the passing of this legislation would enable the wife, the *de facto* wife, and the *de facto* wife's children to receive set percentages of compensation. Such cases will be subjected to Supreme Court hearings or appeals. Fortunately there are not many occasions when such cases arise but every time there is such a case, where a *de facto* wife and a lawful wife are in conflict, the matter will ultimately go to the Supreme Court. I do not think we should agree to legislation containing such interpretations.

The Hon. G. C. MacKINNON: Mr. Ron Thompson is quite right in what he says, and I think it is a highly desirable situation. He thinks it is bad; I think it is good.

Let me give another example. We will suppose that a dastardly fellow leaves a very deserving wife and a couple of children, and enters into a *de facto* relationship with an extremely wealthy woman. Because the woman is very wealthy, he is still able to send some money to his legal wife. In other words, his legal wife is dependent upon him. The *de facto* relationship with the wealthy woman lasts for three years, and he is killed. Should the wealthy woman automatically be given the full compensation, just because she is a *de facto* wife? Or should the court have the right, in the circumstances of the particular case at the time, to ensure that the benefits under this Act flow to the legal wife, with whom the man was not actually living at the time of his demise? I believe we must leave things to the court. It could be one; it could be either; it could be both.

The Workers' Compensation Board was not defeated. I would be surprised if a lower court regarded a case won on appeal as a defeat. It is not a competition.

The Hon. I. G. Medcalf: Nobody likes to be overruled.

The Hon. G. C. MacKINNON: No, but by the same token the board is not fighting for the Holy Grail of supreme justice. It is not a football match. We have a series of courts to determine justice. Mr. Ron Thompson is correct in saying that the provision leaves the matter flexible.

The Hon. R. Thompson: Confused, not flexible.

The Hon. G. C. MacKINNON: I suppose there is always confusion when one deals with possible cases, but these people will be dealing very rarely with actual, factual cases. Here is Mr. A, and there is Mrs. A, who has two children; he is now living in a *de facto* relationship with Mrs. X, who also has one child, and he has been sending his legal wife so much money. She has been dependent to some extent, but she has written a couple of best-sellers and does not need any maintenance, or she is still in need of maintenance. Such a case would be looked at factually and a determination would be made about what should be done.

The Hon. Clive Griffiths: Do you think that this flexibility is better than treating a case in a categorical fashion?

The Hon. G. C. MacKINNON: Yes. It would be disastrous if legislators tried to perform the work of a judge. Surely this is the essence of our system of the sovereignty of legislative power and judicial power. If we start to say precisely what a judge shall do in every circumstance, it would be disastrous. Human beings do not fit into patterns as readily as that. I think flexibility is desirable, and I hope the Committee will agree with me.

The Hon. R. THOMPSON: I will not be sidetracked as easily as that.

The Hon. G. C. MacKINNON: I am not trying to sidetrack you; I am merely trying to explain.

The Hon. R. THOMPSON: The Minister unintentionally tried to sidetrack me, because he started by saying, "If a person is living in a *de facto* relationship with a wealthy woman." I posed my questions on a case that was before the court.

In this case "H" left his wife and three children in New South Wales in 1961. He came to Western Australia and lived with another woman in a *de facto* relationship and there was one child of the issue. The *de facto* wife had two children as a result of a previous marriage, so the question of a wealthy wife does not come into this case. At no time did "H" support his lawful wife. The authorities tried to catch up with him but eventually they found they could not, and so he did not pay any maintenance to his lawful wife. It is on this case that I want some clarification, and the Minister has been unable to give it to me.

The Hon. G. C. MacKINNON: Mr. Ron Thompson is talking about a situation that existed but will no longer exist when the Bill is passed.

The Hon. R. Thompson: Of course it will.

The Hon. G. C. MacKINNON: No, it will not, because I believe there are some wrongful elements in relation to it. Let me make it quite clear to the Committee that I am now about to postulate what may have happened. The situation was that "H" left his wife and some children in another State without maintenance. In other words, they were not dependent on him. In making a guess, let us say that the Workers' Compensation Board, on reviewing the case, decided, on a question of humanity, that the *de facto* wife and her family whom "H" had been supporting deserved the benefits that accrued under the workers' compensation legislation. An appeal was made to the Supreme Court, and at that time the Act had not been amended to permit a *de facto* relationship. Therefore the Supreme Court had no alternative under the existing law—

The Hon. R. Thompson: I am not quibbling about the decision; it was right.

The Hon. G. C. MacKINNON: —but to grant the benefits to the wife. But in the case mentioned by Mr. Ron Thompson it could be that the court was wrong on a question of humanity.

The Hon. R. Thompson: Yes; there was no flexibility.

The Hon. G. C. MacKINNON: That is correct. Guessing once again, I would imagine that, under the present situation, the Supreme Court would uphold the decision of the Workers' Compensation Board, because the dependent person would have been a *de facto* wife. If the deceased worker had not maintained his previous wife at any time for five years prior to his death, and she had made satisfactory arrangements for her maintenance and the maintenance of her children, it is likely that the benefit under the legislation as amended would flow to the *de facto* wife and her dependants. The decision of the court would be based on all the evidence that had been brought before it, and the law at that time. The honourable member has asked me to guess, and I have guessed. I hope that satisfies him. That is all I can do.

The Hon. R. THOMPSON: I assure the Committee that I did not want the Minister to guess. I wanted him to find out what the true position is. I can make a guess myself. On the case that was brought before the court the judge ruled correctly according to the law at that time. Under section 7 or 8 of our legislation, which has since been amended, I

think that if "H" had moved to Western Australia and had not paid any maintenance for a period of five years whilst he resided in Western Australia, his wife would not have been entitled to compensation, anyhow. The same applies to a migrant who comes to this State from Italy and leaves his family in his home country.

I do not like the provision, because according to what the Minister has said, the board would not know how to decide. First of all, the Minister said that the case in question would have no bearing, but I say it would have all the bearing in the world, when the board has to make up its mind on the apportionment of compensation. The apportionment could be made to the *de facto* wife and not to the legal wife. I am not saying that the *de facto* wife is not entitled to any benefit. I am not putting forward a case for one side or the other. I am merely trying to get some clarification on how the rulings will be made.

The Hon. G. C. MacKinnon: That is for the determination of the board.

The Hon. R. THOMPSON: The Minister has not satisfied me in regard to this question. If that is his final say I would be inclined to ask for an expert legal committee to be constituted to define all the definitions of the Workers' Compensation Act. As I said yesterday evening, the Bill is clouded with thick fog at present. If the Minister will look at the meaning of "dependants" and at the determination of justices on what a dependant is, he will find that a man is his own dependant according to the definitions that were placed in the Act in 1948.

The Hon. G. C. MacKinnon: If he is dead he will have a difficult task in trying to maintain himself.

The Hon. R. THOMPSON: If the Minister looks at the decision that was made he will see that a man is his own dependant. It sounds ridiculous, but on the point of view taken by the judges it is a fact.

I will now go on to questions (2), (4), and (5) that I asked. Question (2) related to each of the three lawful children of the wife of the deceased worker—that is, the three lawful children who live in New South Wales. Question (4) refers to the child of the *de facto* wife of the deceased worker; and question (5) to the two children of the *de facto* wife's lawful marriage who were part of the household of the deceased worker and the *de facto* wife.

I took only a rough note of the Minister's reply, but the essence of it was that the entitlement at the time of death was a matter for decision by the court. This clouds the issue completely, because judges have already ruled that the children of the household—the lawful children

of the *de facto* wife—are not entitled to compensation. As a result, this case could be quoted as a precedent before the court and could be taken into consideration. Mr. Medcalf can correct me if I am wrong, but my understanding of the position would be that this would be a precedent that could be quoted before a court. In other words, before a court it could be stated that according to what was set out in the 1969 law report a ruling had been given that the lawful children of a *de facto* wife were not entitled to compensation. Would that decision be regarded as a precedent, Mr. Medcalf?

The Hon. I. G. Medcalf: It would be a precedent, but whether it would be a precedent for the case that had to be determined would depend on the law.

The Hon. R. THOMPSON: On looking at the seven or eight cases that were quoted as precedents, it was found that the justices took these points into consideration. Several coal companies, a timber company, and others were involved. To my mind, by passing legislation of this nature we are doing injustice to the Workers' Compensation Act; that is, by accepting definitions of this nature. I do not know how the Workers' Compensation Board will be able to determine any case.

The Hon. G. C. MacKINNON: Until this amendment becomes law the legal wife, in effect, is the dependant. When a *de facto* relationship has lasted three years, as mentioned before, the point at issue is "dependence," not relationship. Previously the point at issue was relationship. The fact is the legal wife and children in New South Wales had a relationship with the worker, despite the fact that they were not dependent upon him, and at law they were still entitled to benefits. This amendment seeks to base the question on "dependence." I repeat that the children of either the legal wife or the *de facto* wife will benefit provided they were dependent on the deceased worker at the time of his death.

The Hon. R. Thompson: Will the Minister repeat what he has said?

The Hon. G. C. MacKINNON: The children—whether they be of the legal wife or of the *de facto* wife—would be entitled to claim dependence, provided that at the time of the death of the worker they were dependent on him.

The Hon. R. Thompson: Do you mean wholly dependent?

The Hon. G. C. MacKINNON: Not necessarily wholly dependent. That is why the matter must be left to the court to decide. It was not long ago that any payments had to come out of the lump sum; but with the method of weekly payments a happier situation has developed. It must be left to the board or

court to decide on the question of dependency, and in my opinion that is a fair and reasonable method. It is worthy of a trial, despite the general reservations of Mr. Ron Thompson.

The Hon. R. THOMPSON: A thousand arguments, one way or the other, could be adduced in respect of claims. I am aware this legislation does not come within the portfolio of the Minister for Health, and I am not casting any reflection on him.

The Hon. G. C. MacKINNON: I thought I was doing a good job.

The Hon. R. THOMPSON: The Minister is trying to do a good job, but unfortunately this matter does not come within his portfolio. On this occasion I would much prefer to see the Minister for Labour on the other side of the House.

The Hon. A. F. Griffith: Some of us are trying to understand why you cannot understand!

The Hon. R. THOMPSON: I could come out with a nasty remark in reply to that interjection.

The Hon. A. F. Griffith: It would not be the first time.

The Hon. R. THOMPSON: The Minister should not tempt me. We are throwing this matter into utter confusion. I hope that in the course of time I will be proven wrong, but I feel that we are leaving the position up in the air.

I draw attention to the definition of "dependants" in the Act. It states—

"Dependants" means such members of the worker's family as were wholly or in part dependent upon, or wholly or in part supported by, the earnings of the worker at the time of his death, or would but for the incapacity due to the accident, have been so dependent. . . .

We come to the point that the lawful wife or the lawful children, who have not been dependent either wholly or in part on the deceased worker, should not be entitled to compensation.

The Hon. G. C. MacKINNON: I could not agree with you more: I have already said that.

The Hon. R. THOMPSON: The Minister said it was a matter for the decision of the court, as to the entitlement of the wife or children at the time of death. The case which I have referred to will still have a bearing on the question.

The Hon. G. C. MacKINNON: It is only after the passage of this Bill that the *de facto* wife of three years' standing will have entitlement.

The Hon. R. THOMPSON: I am referring also to the lawful children of the *de facto* relationship.

The Hon. G. C. MacKINNON: The children of the *de facto* wife, but not the man's children.

The Hon. R. THOMPSON: That is right. That position will not be changed by this Bill, because in no place are those people covered by the definition of "widow" or "wife."

The Hon. G. C. MacKinnon: Are they not covered by the definition of "dependants"?

The Hon. R. THOMPSON: Before the Act was amended they were covered by the definition of "dependants" but two judges ruled against that.

The Hon. G. C. MacKinnon: But the *de facto* wife cannot be recognised by the court until the passage of this amending legislation.

The Hon. R. THOMPSON: That has no bearing on the matter. In the case I mentioned the children were dependent on the wage earner at the time of his death. The answer given by the Minister to my question is not correct.

The Hon. G. C. MacKinnon: It is not correct, in your opinion.

The Hon. R. THOMPSON: According to the case it would not be correct. Although they were dependants through the *de facto* relationship at the time of the death of the worker it was ruled by the judges that the children were not dependants. If the Workers' Compensation Board were to take that ruling into consideration in determining like cases it would not award compensation to the children.

The Hon. G. C. MacKinnon: There would be different circumstances in each case.

The Hon. R. THOMPSON: There could be a thousand such cases.

The Hon. G. C. MacKinnon: There have not been a thousand such cases.

The Hon. R. THOMPSON: There would be a thousand ways in which this could be applied. As the Minister does not know and I do not know—

The Hon. G. C. MacKinnon: I do know, but I cannot convince you.

The Hon. R. THOMPSON:—and as other members in the Chamber do not know it looks as though we will have to leave this matter to the judges.

Sitting suspended from 6.07 to 7.30 p.m.

The Hon. R. THOMPSON: This clause stipulates a period of "three years immediately before" in respect of a claim being made, and the definition reads as follows:—

"Widow" or "Wife", in relation to compensation payable in respect of the death of a worker, includes a woman who for not less than three years immediately before the worker's death, although not legally married to him, lived with him as his wife on a permanent and *bona fide* domestic basis

and "Wife", in relation to any time while a worker is being paid weekly payments of compensation, includes a woman who, at that time, is living with him as his wife on a permanent and *bona fide* domestic basis, although she is not legally married to him, and who has been so living for not less than three years immediately before that time.

I think it is quite unfair and unjust to include the wording "three years immediately before that time." I accept that what the Minister said would probably happen, and if the *de facto* wife was in hospital, or she was on holidays, then those circumstances would be taken into consideration. However, it would still have to be proved that she was being maintained by the worker.

Another case could be where the worker was in the north-west employed on a project. He could be away for a period of six months, and I consider this could be sufficient grounds for a claim that the woman was not living with him. There are no words in the amendment to say that the woman had to be maintained by the worker. The interpretation of a widow or wife will be different from the interpretation covering dependants.

I think that in this definition of a widow or a wife there should be words to the effect that she is being maintained. That would cover the situation—as long as the woman was maintained as a *de facto* wife—if the worker was out of the State, in hospital, or working in the north-west. I think that would be sufficient proof and would tidy up the interpretation.

The Workers' Compensation Board is regarded very much the same as the judiciary. Although the members of the board could not be legally defined as magistrates, they sit on a bench in court session. To tie them down to the period of three years immediately before the worker's death is a reflection on the members of the board inasmuch as they are supposed to be able to administer the Act and interpret the definitions of the Act.

By interjection the Minister stressed that an earlier provision allowed for flexibility. However, this definition does not allow flexibility. As a hypothetical case, what would happen if a couple had been living together on a *de facto* basis for two years and 11 months, and the man was killed? Under the stricture of this interpretation the woman would not even be entitled to claim, and if the woman had been pregnant when the man was killed then a claim could not be made for the child either, when it was born.

I said earlier that I did not intend to move any amendments, but the more I look at this clause the more I feel that something should be done. I suggest that in

lines 6 and 7 on page 2 of the Bill the words "not less than" should be deleted. Then, in line 7 delete the word "immediately" and insert the word "approximately" so that the definition would then read as follows:—

"Widow" or "Wife", in relation to compensation payable in respect of the death of a worker, includes a woman who for three years approximately before the worker's death . . .

The Hon. A. F. Griffith: How would the board interpret the word "approximately"?

The Hon. R. THOMPSON: I am attempting to do something with a rather badly drafted interpretation. I do not say that the word "approximately" is the correct word, but it is the only word I can think of which will allow for flexibility and allow the board to have some discretion. A judge uses discretion when he rules one way or another on a matter which is not a defined question of law.

The Hon. G. C. MacKINNON: I hope the Committee will agree to give this definition a trial in its present form. This move is to comply with requests made since the Act was last before us. Might I suggest, without any disrespect whatsoever, that the honourable member is being a little inconsistent. Previously he was asking us to be much firmer with regard to certain definitions and certain aspects of the Bill in order to guide the board, and perhaps, appeal courts, regarding the way in which payments should be made. We have here, in fact, given some guidance which the honourable member seeks to loosen.

We have two alternatives. We could act as though the *de facto* wife was a member of the family, and that is what we are doing. We are extending the definition of members of the family. Alternatively, we could cover the situation by saying that any *de facto* relationship will be the decision of the court, and then the court has to determine the relationship. This is purely and simply a matter for the board to decide.

The Hon. R. Thompson: The Minister is referring to both the court and the board.

The Hon. G. C. MacKINNON: Appeals will be made to the court. A man could leave his wife today, set up a *de facto* relationship tonight, and then die next week. It would be up to the court to determine whether or not the *de facto* wife was a dependant. I suppose under those circumstances it would be decided that the period was not long enough. The alternative is to lay it down. The three-year period applies in New South Wales, and the Government in this State has also decided on the three-year period as a reasonable point of commencement. The period has to be one which indicates the

sort of genuineness which one normally associates with the entering into of a marriage contract which, as I said earlier, we still regard as binding.

I would point out that the example used by Mr. Ron Thompson regarding the woman and child is not quite right. The definition of a dependant must be read in conjunction with the definition of a member of a family which is contained in the parent Act. The definition includes an ex-nuptial son or daughter, so the child mentioned by Mr. Thompson in his example would be a dependant. This point probably just slipped the honourable member's memory.

I hope the Committee will accept the Bill as it is framed. We believe the definition will set a limit, leaving a certain amount of discretion to the board, and we believe this is reasonable. In view of what Mr. Thompson said earlier, in regard to other aspects of the Bill, I thought he would have welcomed some guidance to the board. The Government feels this is a fair enough start in this field and I hope the Committee will agree with the definition.

The Hon. R. THOMPSON: I want to make it quite clear that I was not expressing my personal opinion in the thought I put forward which the Minister considered were inconsistent. I was voicing the opinions of judges who dealt with the appeals. They were the ones who levelled criticism at Parliament and the gobbledy gook way interpretations and definition are written into the Act.

The Hon. G. C. MacKinnon: It was probably amended in Committee.

The Hon. R. THOMPSON: I did not want to prolong the discussion, but the Minister has provoked me by saying that we must refer to the definition of "dependants."

The Hon. G. C. MacKinnon: The definition of "members of a family."

The Hon. R. THOMPSON: I ask the Minister to read again the definition of "dependants." It says—

"Dependants" means such member of the worker's family as were wholly or in part dependent upon, or wholly or in part supported by, the earning of the worker at the time of his death or would, but for the incapacity due to the accident, have been so dependent . . .

The child to whom I referred would not have been born at the time of the worker's death. The wife would not be able to claim compensation and, in my opinion, the child when born would also not be entitled to compensation under this interpretation.

The definition of "member of a family" does not include an unborn child. I cannot read this into the definition and I do not think anyone else can, either.

I am not being inconsistent when I say that I was criticising all the interpretations in the Workers' Compensation Act, as it stands at present. I want clarification of the whole Act and not just one portion.

On the point under discussion, we are not giving the discretion which should be given and which, if given, would mean that a great deal of money would be saved on appeals and the time of the Full Court would not be taken up to the extent that it will be. It is only reasonable to assume that at some time or other a case similar to the one I have mentioned will come before the board. It is far too strict to stipulate a definite period. What would happen if the people concerned had lived together for two years 263 days? The Act specifically says that they must live together for three years—full stop! Parliament should allow a little latitude. The board comprises honest people who will interpret and administer the law with the utmost caution. I think we would be doing them an injustice if we do not allow some flexibility. Earlier this evening the Minister said that he believed in flexibility so far as one section of the Act is concerned, but he apparently does not believe in flexibility so far as this provision is concerned.

The Hon. A. F. Griffith: If the period was two years and not three years would the honourable member argue in the same way?

The Hon. R. THOMPSON: No, because this is based—

The CHAIRMAN: Order!

The Hon. CLIVE GRIFFITHS: I rise simply to repeat that I, too, do not like a static three-year period. I would be just as emphatic if the period were two years, because I believe there should be flexibility. There could well be situations where people have lived together for 18 months on a *de facto* basis and be just as genuine as those who have lived together for three years. The man in question could have sincerely intended to spend the rest of his life taking care of the woman and their children.

I agree with Mr. Ron Thompson on this point. I have known instances where people have been penalised under other legislation for the sake of two or three weeks. One case which comes to mind is that of a person who was penalised to the tune of \$900 for the sake of two or three weeks, because the Act stipulated a definite period of two years and the actual period fell short of this by a few weeks. On this occasion there was no flexibility because a definite period was stated in the Act.

The Hon. A. F. Griffith: Would the honourable member apply this argument to an increase in penalties?

The Hon. CLIVE GRIFFITHS: I do not know what the Minister is driving at.

The Hon. A. F. Griffith: I am simply asking you.

The Hon. CLIVE GRIFFITHS: I do not want to be sidetracked. I will think about the Minister's question and answer him later. So far as this legislation is concerned, I believe there is a good argument for giving the board the right to decide on the merits or otherwise of each case as to whether a genuine relationship existed. In every case which involves a *de facto* wife it will have to be proved to the satisfaction of the board that a genuine relationship had existed for three years. This sort of proof would have to be gathered together and presented to convince the court that the three-year period had been complied with. It will not present any greater difficulties for the board to gain evidence that a relationship which had existed for a shorter period was a genuine one and deserving of compensation.

I do not intend to prolong discussion and make an issue of this point. I want to have my views recorded and, on this occasion, they coincide with what Mr. Ron Thompson has said. I am not agreeing simply because he stated an opinion, but because I hold this opinion myself.

I interjected on the Minister and asked whether he believed flexibility should be given precedence over a static situation. The Minister said, "Yes" and went on to explain that members ought not to be judges. In the same way that the Minister believes it is not unreasonable to accept a period of three years, I believe it is not unreasonable to suggest that the court ought to have some discretion. I leave the situation at that.

The Hon. G. C. MacKINNON: There are a few more words I can add. The arguments advanced by Mr. Clive Griffiths and Mr. Ron Thompson apply whether the period is three years or is non-existent. There comes a stage where a decision has to be reached whether a certain person is, in fact, a dependant. Some time has to be chosen. A day longer or a week longer might convince a board, but it might not be satisfied with a day or a week less.

There is still the same sort of flexibility on the question of dependence. We are deciding at the moment what constitutes a reasonable period in an endeavour to differentiate between a casual liaison—or a series of casual liaisons, of which I am told some people are capable—and a permanent one. We want to decide a period which is sufficiently permanent to enable the relationship to be regarded by a properly constituted authority as taking the place of a regular union by marriage.

The suggestion is that to differentiate between a casual relationship and a serious one, we should state a period of three

years. It is as simple as that. If any other time were selected, we would still have exactly the same problem mentioned by Mr. Clive Griffiths. Someone has to make a decision on the basis that under a certain period it could be a casual relationship but over a certain period, a permanent one.

The Hon. F. J. S. Wise: The same criteria could be applied to the marital state.

The Hon. G. C. MacKINNON: Yes, but marriage is an accepted institution which is not entered into lightly.

The Hon. A. F. Griffith: Sometimes it does not last longer than a week.

The Hon. G. C. MacKINNON: The parties concerned accept a legal responsibility. It is a contract. There is nothing more I can add on this point. The position has been explained, and I suggest that the Committee should see fit to accept it as it is. Then we can see if it works. It works in New South Wales and the Government believes it is possible for it to work in Western Australia.

The Hon. R. THOMPSON: I will have a final word, because I want to answer an interjection made by the Minister for Mines who asked whether I would still hold the same view if the period was two years. I would not hold the same view for certain reasons. Last night I drew attention to the Victorian legislation and compared it with the New South Wales Act. It is all too easy for the Government to pick out the hardest line when dealing with workers' compensation. The hardest line in the New South Wales Act stipulates, practically word for word, a three-year period. We know it is the Government's aim to insert a three-year period in our legislation. I am not trying to make the period two years, four years, or 18 months. If I had my way and the support of members in the Chamber I would move to delete some words so that the provision would be left to the discretion of the board in the same way as it is in the Victorian legislation.

It is completely at the discretion of the board in Victoria but, instead of this, the Government has taken one part of the New South Wales Act and has applied it to the Western Australian legislation. Incidentally, the first schedule payments will be amended with the passing of this measure, but I notice that the Government has not taken the first schedule payments in the New South Wales legislation and applied them to our legislation. Had it done so workers in Western Australia would be better off by far so far as weekly payments are concerned. The Government has taken a hard line from one Act and applied it to our legislation, but it has not taken a generous line from the New South Wales Act and applied it to our legislation.

I would like the Minister to defer discussion on this clause so that he may confer with the Minister for Labour. I do not want to take it out of the Minister's hands and ask for certain words to be struck out and others to be inserted. However, if it is the Government's desire to retain the three-year period I would like to see some flexibility around this term. This should be left to the discretion of the board whose members would take into consideration, say, the pregnancy of a woman and the number of children.

The Hon. G. C. MacKinnon: I have spoken to the Minister and he believes that this is satisfactory.

The Hon. R. THOMPSON: Two children could be born to people who lived together for a period of less than three years. Under the circumstances of the measure the woman would not be entitled to compensation although she would have the responsibility of rearing the children to the age of 16 or 21 years. She would not be entitled to a widow's pension either, strange to say. The result would be that the woman in question would have to resort to assistance from the Child Welfare Department and would become a burden on the State although a premium had been paid to an insurance company which should provide finance to the tune of \$10,000 for her welfare and the welfare of her children. Instead of this the woman would be a burden on the State, because she would not be entitled to the Commonwealth social services widow's pension.

That is why there should be some discretion. Ultimately it will cost the State a great deal of money if the Government sticks to this hard line.

Clause put and passed.

Clauses 3 and 4 put and passed.

Clause 5: Amendment to first schedule—

The CHAIRMAN: I advise the Committee that I have authorised the Clerk to correct a typographical error in line 38 to insert inverted commas before the word "six."

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

BILLS (5): RETURNED

1. Coal Mine Workers (Pensions) Act Amendment Bill (No. 2).
2. Child Welfare Act Amendment Bill.
3. Offenders Probation and Parole Act Amendment Bill.
4. Roman Catholic Vicariate of the Kimberleys Property Act Amendment Bill.

5. Petroleum Pipelines Act Amendment Bill.

Bills returned from the Assembly without amendment.

FACTORIES AND SHOPS ACT AMENDMENT BILL (No. 2)

Receipt and First Reading

Bill received from the Assembly; and, on motion by The Hon. G. C. MacKinnon (Minister for Health), read a first time.

Second Reading

THE HON. G. C. MacKINNON (Lower West—Minister for Health) [8.03 p.m.]: I move—

That the Bill be now read a second time.

This Bill is brought to the House to provide facilities for the introduction of a new system of registration of factories, shops, and warehouses and, in the main, to strengthen the provisions of the principal Act in respect of trading hours. While dealing with the closing of shops outside normal hours of trading and increasing penalties for breaches of those provisions, the Bill proposes revision of trading hours for the sale of motor vehicles and clarifies the position in regard to the sale of goods by shops which are permitted extended or uncontrolled hours of trading.

It has become evident over the past few years that there has been an increasing tendency for some retailers to circumvent the closing provisions of the Act, thus effecting sales of goods outside the prescribed trading hours. Such practices have become noticeable, particularly in the field of used motor vehicle trading, and it would seem that the 100 or more prosecutions undertaken so far this year have not deterred after-hours trading, which still persists.

This Bill provides for motor vehicles to be retailed until 10 o'clock on Wednesday evenings and this should in some measure meet the obvious demand for extended hours in this particular field. The proposal in this regard now before members is supported by the Chamber of Automotive Industries and also the Western Australian Automobile Chamber of Commerce. Those authorities have expressed concern at the incidence of after-hours activities by used motor vehicle dealers and, consequently, support any move to curb this practice. On the other hand, opposition in other quarters to any extension of trading hours has been clearly demonstrated.

Arising from the existence of some weaknesses which have become apparent in the shops closing provisions of the principal Act, there are proposals in this

measure designed to eliminate these weaknesses and, incidentally, increase penalties which may be imposed for breaches of the Act in this direction.

The definition of "shop" is to be widened and an amendment to section 93 removes words which it is considered have a nullifying effect on the closing provisions of the Act.

As a further deterrent to after-hours trading, a penalty clause applicable to breaches of the closing provisions and the sale of goods outside appropriate hours is added. The penalties now proposed will allow fines up to \$200 against a first offender, \$300 for a second offence, and \$500 for a third or subsequent offence.

With the present tendency towards diversification of stocks, complications have arisen with the principal Act as regards extended hours of trading for certain classes of goods in shops which stock other lines. But to confine the stock of a shop which is permitted extended hours of trading rigidly to the goods to which those hours are applicable would, in many cases, be too restrictive. For instance, motor vehicle traders who desire to open of a Wednesday evening, could be precluded from stocking accessories or goods other than those specified. Amendments to the principal Act which are now proposed will allow the sale of exempt goods at any time, set specified hours for the sale of restricted goods, and allow the sale of other goods during normal trading hours only.

Another proposal directed at the prevention of illegal extensions of trading hours which follows legislation presently existing in both New South Wales and Victoria, relates to advertising. This new provision will prohibit advertising in such a manner as to promote the business of a shop by stating, implying, or suggesting that such shop will be open for business at a time when, under the provisions of the principal Act, it is required to be kept closed.

As previously mentioned, registration matters are dealt with in this measure. All current registrations of factories, shops, and warehouses cover the calendar year from the 1st January to the 31st December. Registrations made during the currency of a year, irrespective of when effected, expire on the 31st December.

Under this method, the handling of registration renewals, which are concentrated into the period January-February in each year, imposes a severe strain on the resources of the Department of Labour.

There is this further aspect: the Act also places the onus of effecting and renewing registration on the occupier of a factory, shop, or warehouse and it has been found that this procedure entails considerable reminder action by departmental staff, together with the consequent demand for fees from those occupiers who have failed to register at the appointed time. It is

proposed to overcome these disabilities by allowing a period of registration to vary from seven months to 18 months, the objective being to permit expiry dates to be staggered through the calendar year.

Under these provisions, registration procedures are to be changed to a system of remitting combined notices and forms of registration by means of an addressing machine. The odd periods of registration will be necessary only during the process of staggering the renewal dates, for once that has been achieved registrations will be current for 12 months from the date on which they are effected. This innovation, apart from benefiting departmental organisation, will provide a superior service to occupiers who will be reminded through the mail to renew registration when it becomes due. I commend the Bill to the House.

Debate adjourned, on motion by The Hon. R. Thompson.

CIVIL AVIATION (CARRIERS' LIABILITY) ACT AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by The Hon. A. F. Griffith (Minister for Justice), and read a first time.

Second Reading

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Justice) [8.10 p.m.]: I move—

That the Bill be now read a second time.

The principal Act proposed to be amended by this Bill was passed in 1961. Its purpose was to cover intrastate airlines in a manner similar to the carriers' liability coverage which was provided in 1959 by Commonwealth legislation for interstate airlines and those operating within Australian territories.

It will be appreciated, therefore, that the main operative provisions of this legislation are to be found in the Commonwealth Act—the relevant provisions being contained in part IV. The Commonwealth legislation carries a similar title to the State's principal Act. It is a measure which determines the liability of an airline operator for damages as a result of death or injury to a passenger or loss of, or damage to, baggage. The legislation conforms with two international agreements to which Australia was a signatory—the Warsaw Convention of 1929 and the Hague Protocol of 1955. The purpose of those agreements was to foster international air transportation by making it an acceptable investment and insurance risk and by providing a uniform contractual liability in lieu of one stemming from a multiplicity of different legal systems.

Briefly, the methods adopted by the agreement are the limitation of the liability which might confront an airline

operator as the result of a disaster; the prescription of uniform passenger tickets, baggage checks, and waybills; and the prescription of conditions under which liability to make compensation will be determined.

As members will appreciate, the constitutional power of the Commonwealth to legislate in these matters is limited to interstate operations and those within its own territories; hence the necessity for State legislation which invokes these provisions in respect of intrastate flights.

Section 6 of our principal Act achieves this objective by validating the main provisions of part IV of the Commonwealth Act—stating *inter alia*, "The provisions of Part IV of the Commonwealth Act . . . and the provisions of the Commonwealth Regulations apply . . . as if those provisions were incorporated in this Act."

As it would not be apparent from the reading of State legislation, I will mention that the Commonwealth legislation has been amended in acknowledgment of substantial changes in value standards since the limits of liability were fixed in 1955. For instance, the average earnings of males in Australia has doubled. The Commonwealth has increased the limits of liability accordingly. For death or injury to a passenger, the maximum is increased from \$15,000 to \$30,000. For loss or damage to baggage the increase is from \$200 to \$300, and for hand luggage from \$20 to \$30.

As I have implied, the original Federal legislation related to airline operations only, but in another recent amendment the Commonwealth Act has been extended to cover charter aircraft operations also. The stepping up of charter operations which we have witnessed in this State has also been evident in other States of the Commonwealth and, indeed, interstate charter flights have long since ceased to be a rarity.

The purpose of the Bill now before members is to adopt the same amendments in regard to intrastate air transport in Western Australia.

The Commonwealth legislation does not relate to flights such as "joyrides" which commence from and terminate at the same landing ground. This is unnecessary because the Commonwealth jurisdiction is concerned mainly with interstate flights. This Bill seeks to extend the liability provisions to include, as I have mentioned, "joy flights" as well as charter flights. In clause 3 of the Bill will be found the requisite definition of a "contract for the carriage of a passenger." The latest information available is that "joyrides" or other flights commencing from and terminating at the same landing ground are included in proposed legislation being put forward in New South Wales, Queensland, and Tasmania. Advice is still awaited from Victoria and South Australia.

I feel that, in legislation of this nature where State and Commonwealth legislation are required to be read as one, it would have been of little benefit to members had I restricted my remarks solely to the brief amendments contained in the amending Bill; and from the explanation given I believe that the objective being sought in this brief measure will become more apparent to members than if I were to deal with its clauses exclusively.

Debate adjourned, on motion by The Hon. R. F. Cloughton.

ROAD AND AIR TRANSPORT COMMISSION ACT AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by The Hon. A. F. Griffith (Minister for Mines), read a first time.

Second Reading

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Mines) [8.16 p.m.]: I move—

That the Bill be now read a second time.

The major feature of this Bill gives protection for the State Shipping Service against loss of business to other ship-owners seeking to enter the field when profitable cargoes are offering, while not accepting the responsibility of maintaining a regular service to the public.

The remaining clauses are associated with the definition of an omnibus. This might appear to be a little removed, but it is an amendment that has to be made while we are amending the Act to provide protection for the State Shipping Service.

When members read clause 2 of the Bill, they might wonder why it provides for the Queen's approval. Constitutionally, any measure to regulate the coastal trade of a British possession requires the personal assent of Her Majesty before it can become effective.

The Traffic Act originally defined an "omnibus" as any vehicle used to carry passengers at separate fares. For reasons concerned mainly with the licensing of drivers, the Traffic Act now limits the definition of "omnibus" to a vehicle designed to seat more than eight passengers.

As a smaller vehicle cannot be registered under the Traffic Act as an omnibus, the present wording of section 32 of the Road and Air Transport Commission Act prohibits the commissioner licensing such a vehicle for operation in an omnibus service. For many years, five-passenger cars have been used in omnibus services—that is, to carry passengers at separate fares—and in some country areas where traffic is light, this is the only way to provide a service economically.

The amendment proposes to delete the words "as an omnibus" so that the section would then read—

A licence shall not be granted for an omnibus under this part unless the vehicle is licensed in accordance with the Traffic Act, 1919.

As to other clauses; it will be noted that any vessel of less than 80 tons register is excluded from the definition of a "ship." In other words, the provisions would not apply to vessels under 80 tons.

Under the meaning given to "coastal trade" in subsection (2) of proposed new section 47A, the control would apply only to ships carrying cargo from one port to another within Western Australia. Subsection (3) excludes the State Shipping Service from the obligation of applying for permits.

Clause 7 sets out the main provision as new section 47B. In effect, it prohibits a ship engaging in the coastal trade without a permit issued by the Commissioner of Transport and places the responsibility on the master, owner, charterer, and agent of a ship.

A distinction is made between a "license" which the commissioner may grant for any period up to three years and a "permit" which would cover a single voyage only. I think this system is well known to members in respect of road transport.

Subsection (8) provides for fees to be prescribed for the issue of licences or permits. It is difficult to estimate the cost of administering these provisions but the intention is that the level of fees be sufficient to cover only the administration cost.

In clause 8, we have detailed the circumstances under which the commissioner would be obliged to grant permits. This is drawn up on the basis that a license or permit will not be refused if the State Shipping Service is unable or unwilling to meet the demand, having regard to the nature of each case and its urgency and importance.

Under subsection (2) of new section 47C, the commissioner would be obliged to take into consideration the public interest, the needs of ports and their hinterland, and the public funds invested in the State Shipping Service.

Clause 9 sets out the enforcement provisions as a new section 47D, to empower authorised officers to board ships and inspect cargo and the relative documents. A penalty of \$300 is provided on conviction of any person in charge of a ship who refuses to allow inspection of the ship or its cargo or documents, or to state his name and address.

Clause 10 states that a prosecution for an offence may be brought at any time. With the movement of ships to and away

from the State, the legal processes entailed in enforcement cannot always be undertaken within the normal statutory limit of six months.

Clause 11 sets out a new section 47F. This is a saving provision to avoid any conflict with the Western Australian Marine Act, 1948.

In reviewing the need for protecting the State Shipping Service from what has been called "pirating" of the more profitable cargoes by "foreign" ships, first regard must be had for the development of our northern regions and the people who live and work there. In some of the less distant places, such as Carnarvon, road transport has been found to be an adequate substitute for shipping, but as we move further north—particularly into the Kimberley—we must still regard the shipping service as essential to the economy of those areas.

If we were concerned only with the spasmodic loading of construction materials as the different projects developed, the simple answer would be to do away with the State Shipping Service and abandon the capital invested in it, leaving the various industrial undertakings to charter whatever shipping they may require for large consignments. But we cannot overlook the thousands of small consignments ranging from foodstuffs, general stores, and other domestic requirements for individuals, to stores and equipment for industrial concerns. These require a service which can be relied upon to operate as regularly as possible whether a particular consignment is profitable to it or not.

Full utilisation of shipping space and facilities is the keynote to economy and for this reason the larger volume of big consignments is essential to the State Shipping Service. The benefit from this traffic assists in maintaining the "week-in week-out" service essential to the north.

The future of the State Shipping Service and its value to the State have received much consideration in the last few years. Any thoughts of doing without it are untenable at this stage. On the contrary, its importance justifies the expenditure of some millions of dollars in modernising the fleet by the purchase of special barge-carrying vessels or "LASH" ships as they have been called.

This type of investment cannot be warranted unless it can be made to produce the greatest possible return—in service to the community and in dollars to the State. This is the justification for proposing the type of legislation now before the House. Industrial development will not be hampered because there is ample scope for authorising the operation of other vessels on occasions and under circumstances when the State Shipping Service cannot meet the demand.

Members will appreciate that the Bill is being introduced at this stage because of the proposed introduction of this new type of ship. In the meantime, we have changed the conditions under which permits will be given for cargoes moving by road north of the 26th parallel. These permits are available from the 1st September on an "as-of-right" basis, subject, of course, to complying with the necessary traffic laws and so on. The only exclusions at the moment are in respect of refrigerated cargoes when services are necessary to communities on a reliable and regular basis, and in respect of the Shire of Carnarvon.

We believe this will not only enable the residents of the north to be more selective in their choice of transport to meet their needs, both as to economics and convenience, but it will also pave the way for the day when the "LASH" ships have to compete more vigorously and on an economic basis in an ordinary commercial way in the north. It was felt that those ships should be given this protection against "pirating."

I hasten to add that there is no suggestion that other ships will not be allowed to operate on our coast, but this Bill does give the commission a chance to judge each application on its merits, and where the State Shipping Service can be used, it will be used.

Clause 12 is the final clause in the Bill. It seeks to add a new subsection to section 49 of the principal Act to provide for the conviction of any person who hinders or obstructs an authorised officer of the Road and Air Transport Commission acting in the course of his duty or who threatens, intimidates, or abuses an officer. Although there are sections of this nature in other Acts—and with provision for a penalty much more severe than \$100—there is nothing in the present Road and Air Transport Commission Act.

On various occasions, officers carrying out their duties have been subjected to intimidation and abuse, and even physical violence. Therefore, there should be some provision to guard against this sort of thing and this clause has been included for that purpose.

I commend the Bill to the House.

Debate adjourned, on motion by The Hon. F. J. S. Wise.

AERIAL SPRAYING CONTROL ACT AMENDMENT BILL (No. 2)

Second Reading

Order of the day read for the resumption of the debate from the 15th September.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (The Hon. J. M. Thomson) in the Chair; The Hon. A. F. Griffith (Minister for Mines) in charge of the Bill.

Clauses 1 and 2 put and passed.

Clause 3: Section 10 repealed and re-enacted—

The Hon. A. F. GRIFFITH: I inquired across the floor of the Chamber whether Mr. Dolan had any questions in connection with this clause. I did so because I was absent last night during the second reading debate and because Mr. Logan has gone to a meeting tonight on behalf of the Government. I propose to go as far as I can on the Bill and if I am unable to answer the honourable member's questions I will certainly report progress.

The Hon. J. DOLAN: I am concerned about the whole clause, the provisions of which have come back to us from 1966. Members will recall that in 1966 we repealed and re-enacted section 10 and after waiting a further two years, without the Act being proclaimed, we are again being asked to repeal and re-enact section 10.

While speaking to the second reading I asked the Minister whether he could inform us if the insurance position had changed and, if it had, which insurance companies would provide the cover, what the cover would be, and so on. I said that if the position had not changed from what it was in 1966 and 1968 there seemed to be no sense in going on with the clause and passing the Bill, because the same position will obtain and, perhaps, in 1972 we will again be asked to repeal and re-enact section 10 and we will still find that the legislation has not been proclaimed.

That was the whole point of my query last night, and when I saw that the Minister was not here to answer all the queries, I naturally thought the Bill would be postponed. Therefore, I have no option but to oppose the clause on those grounds.

I honestly believe we have got nowhere. All we have done is to increase the difficulties facing the insurance companies. Previously they had to provide only for spray drift, but now they must also provide coverage for properties on which spraying takes place. That represents an extra burden on the companies. What justification is there for persisting with this clause unless the Minister can give us the answers we want? If he can indicate that a satisfactory cover can be procured, and that operators, farmers, and all concerned will be happy, I would have no objection to it at all.

Last night the Minister assured me that he had some answers, but I have not received them. Unless I can be given an assurance that coverage is procurable, and unless I have all the information I have

sought, I must oppose the clause. To a certain extent I feel that the situation is a little bit Gilbertian.

The Hon. A. F. GRIFFITH: No-one intends to treat this Bill so that it appears in any way to be Gilbertian.

The Hon. J. Dolan: That is what it seems.

The Hon. A. F. GRIFFITH: I realise now that I have made a mistake, and I apologise. When I consulted the notice paper and saw that Mr. Abbey had obtained the adjournment of the debate, I thought he was going to speak, but the Bill went through the second reading.

The Hon. F. J. S. Wise: I think he obtained the adjournment for the Minister.

The Hon. W. F. Willesee: That actually was the arrangement last night.

The Hon. A. F. GRIFFITH: I apologise again. What I propose to do is to read the notes provided by the Minister. If they do not satisfy the honourable member, we will not go any further, but will report progress in order that more information might be obtained. The notes read—

The \$30,000 cover still does not include the property on which the spraying is taking place—

The Hon. J. Dolan: That wipes out part of the Bill immediately.

The Hon. A. F. GRIFFITH: Wait until I have read it all. As I said, the notes read—

The \$30,000 cover still does not include the property on which the spraying is taking place— "... loss of or damage to the property (including livestock) of any other person." The premium payable to cover damage to the owners' property would be prohibitive. The proposed amendments will enable the Act to operate with the insurance cover offered by the underwriters. This is the basic reason for the amendments.

Of course, it would. It is necessary only to get a public risk policy on a farm to see what sort of premium would have to be paid. To continue—

Proclamation of the Act in its present form would have required aerial operators to provide insurance cover that was not available. Legally, therefore, they could not have continued aerial spraying.

The security section has been in the Bill since it was first introduced and is fundamental to the legislation. The acceptance of security lodged in another State is to assist aerial operators who move from one State to another.

Insurance companies involved in the pool are listed on the attached policy of the Australian Aviation Underwriting Pool Pty. Ltd.

The policy offered by the underwriters has been discussed with the operators and is acceptable.

With the type and rate of application of the chemicals in general use with aircraft little, if any, damage to native vegetation would be expected but this aspect should be kept under review.

Mr. Medcalf also raised a point, and the comments I have with regard to his remarks are as follows:—

The desirability of uniform legislation is mainly associated with the fact that aerial sprayers frequently operate in two or more States during a period of twelve months. They would be presented with a problem if security and other requirements differed markedly in the various States.

The cover available was discussed with underwriters before the legislation was drafted. Subsequently they were not prepared to confirm all proposals and legally the policy offered did not meet all requirements nominated in the legislation. As mentioned by Mr. Medcalf, Underwriters cannot be instructed to provide a policy in a defined form. The policy now being offered is regarded as satisfactory and, if the Bill is passed, the Act could be expected to be in operation next season. Regulations have already been drafted.

Mr. Heitman raised a point to which the comment is as follows:—

Mr. Heitman stated that the Bill does not go far enough but did not indicate the extensions he had in mind.

The intention of this Bill is to enable insurance cover available to be accepted in order that the Act may be proclaimed.

If that is insufficient information, I will not go any further.

The Hon. J. DOLAN: I thank the Minister for his assurance that he will not go any further, because I am not happy with the Bill and I am not satisfied that it provides what is sought under clause 3. I would appreciate it if I could have a copy of the notes the Minister read.

The Hon. A. F. GRIFFITH: Let me make it clear that I am not giving any undertaking that the Bill will not go forward.

The Hon. J. Dolan: I understand that.

Progress

Progress reported and leave given to sit again, on motion by The Hon. A. F. Griffith (Minister for Mines).

ADJOURNMENT OF THE HOUSE: SPECIAL

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Mines) [8.38 p.m.]: I move—

That the House at its rising adjourn until Tuesday, the 22nd September.

Question put and passed.

House adjourned at 8.39 p.m.

Legislative Assembly

Wednesday, the 16th September, 1970

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

QUESTIONS (36): ON NOTICE

1. FREMANTLE YACHT CLUB

Facilities

Mr. FLETCHER, to the Minister for Works:

- (1) To what extent does the Government intend to assist re-establish facilities for the Fremantle Yacht Club?
- (2) Will assistance include a suitable area of waterfront?
- (3) Where will this area be located in relation to the site likely to be allotted to—
 - (a) South Quay Pty. Ltd.;
 - (b) the fishing boat harbour?
- (4) Will assistance include—
 - (a) a club house (which became isolated by the fishing boat harbour);
 - (b) a slipway and/or a launching ramp;
 - (c) a protective groyne or break-water?

Mr. ROSS HUTCHINSON replied:

- (1) Not yet decided, pending outcome of negotiations now taking place between South Quay Pty. Ltd. and the Fremantle Yacht Club.
- (2) Yes.
- (3) (a) On the preliminary plan submitted by South Quay Pty. Ltd. an area was shown in the south-west corner of the basin for use by the club.
- (b) No allocation of a permanent site within the existing fishing boat harbour is contemplated. If the proposal by South Quay does not proceed, a site will be allocated immediately south of this harbour.
- (4) (a) to (c) See answer to (1).