

Legislative Assembly

Thursday, 20th September, 1951.

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

QUESTIONS.

FISHERIES.

As to Season's Salmon Catch.

Mr. KELLY asked the Minister for Fisheries:

(1) Did he see the report recently published in the Press that the Western Australian salmon catch for 1951 should exceed the 1950 catch by 3½ million pounds?

(2) On what basis would this calculation be made?

(3) At what centres are increases anticipated?

(4) Is it a fact that the salmon catch at Hopetoun for 1951 is far below normal?

(5) What is the total catch to date at this centre?

(6) If the salmon take from Hopetoun for 1951 is showing a considerable decrease, will he indicate possible reasons for this low catch?

The MINISTER replied:

(1) (2) and (3) I saw a Press statement that last year's Western Australian salmon catch of 3½ million pounds should be exceeded in 1951. The Press statement purported to be given by an expert of the C.S.I.R.O., and I am not aware on what basis the calculation was made, nor at what centres an increase was anticipated by him.

(4) Yes.

(5) Nil.

(6) Fish occurrences have been spasmodic and of small quantity. Fishermen have been disinclined to rely thereon and are working elsewhere.

METROPOLITAN WATER SUPPLY, SEWERAGE AND DRAINAGE.

As to Revenue and Interest Charges.

Mr. MARSHALL asked the Minister for Works:

(1) What was the total amount of revenue received under the heading of "Metropolitan Water Supply, Sewerage and Drainage" for the year ended the 30th June, 1951?

(2) What is the approximate amount of interest estimated to be paid on the capital invested in such works for the same year?

The MINISTER replied:

(1) £804,030.

(2) £394,523.

EDUCATION.

As to Construction of School, Wonthella.

Mr. SEWELL asked the Minister for Education:

When does he anticipate that construction work will commence on the Geraldton North (Wonthella) School?

The MINISTER replied:

It is hoped to commence construction work on the school site and outbuildings (lavatories, shelter accommodation, etc.) within the next two months.

The erection of the two prefabricated buildings proposed for North Geraldton will be undertaken to synchronise with the completion of these works.

HEALTH.

As to Responsibility for Excess Starch in Sausages.

Mr. HUTCHINSON asked the Minister for Health:

(1) Is she aware that if retailers of small goods sell goods such as sausage meats which contain an excessive amount of starch contrary to the provisions of the Health Act, these retailers may be charged under the Act as having committed an offence?

(2) As the retailers have no part in the manufacture of these goods and have no way of checking the requirements of the Health Act, does she think this is just?

(3) Will she consider amending the Health Act in order that charges may be laid at the source of the offence and so obviate from the retailer the unfair odium which often attaches itself to the retailer when he is so charged?

The MINISTER replied:

- (1) Yes.
- (2) No.
- (3) Yes. An amendment to the Health Act is already under consideration.

TRAFFIC.

As to Congestion, Parking and Control Lights.

Mr. NEEDHAM asked the Minister representing the Minister for Transport:

In view of the continued danger to life and limb owing to the increasing traffic congestion in the city and metropolitan area, will he inform the House what is being done to—

- (a) relieve the congestion on the Beaufort-st. Bridge and at other centres in the metropolitan area;
- (b) provide parking space for motor vehicles away from city streets;
- (c) install a system of traffic control lights?

The CHIEF SECRETARY replied:

(a) Traffic congestion in St. George's Terrace has been relieved by the abolition of angle parking. Congestion on the Beaufort-st. Bridge and other similar centres is being studied with a view to remedial action.

(b) A parking space has been provided by the City Council in conjunction with the Government, behind Christian Brothers' College, and another at the foot of Mill-st. A special parking area for doctors' vehicles has been provided in Mount-st. Private parking space is a matter for private arrangement, but public parking facilities will be discussed as necessity arises with the local authorities concerned.

(c) Information on traffic control lights as operating in the Eastern States has been collected and consideration is now pending until the return of an officer who is making a special study of this question in England.

CHILD WELFARE.

As to Delinquent Boys Gaoled.

Hon. J. T. TONKIN asked the Minister for Child Welfare:

- (1) How many boys were sent to Fremantle Gaol in each year after appearances in the Children's Court during the years 1948, 1949, 1950 and 1951?
- (2) Is there a boy under 15 years of age at present in Fremantle Gaol?

The MINISTER replied:

- (1) 1948, four; 1949, seven; 1950, 11; 1951, 11.

Of these, four boys are included who were the subject of such orders on a total of nine occasions, i.e., 28 boys only were affected.

- (2) No.

POWDERED MILK.

As to Possible Reason for Shortage.

Mr. GRAHAM (without notice) asked the Attorney General:

Will he have investigations undertaken immediately to see whether there is any relationship between the shortage of condensed and powdered milk in various parts of this State and the report in this evening's "Daily News" that the Prices Minister in Victoria has announced an increase of 2d. per tin for powdered milk and 1½d. per tin for condensed milk?

The ATTORNEY GENERAL replied:

Yes.

SUPERANNUATION.

As to Legislation to Increase Payments.

Hon. J. T. TONKIN (without notice) asked the Premier:

Is he in a position to give any indication of when the Government will bring down legislation or take steps to increase the pensions paid to those on superannuation?

The PREMIER replied:

I hope to do this before the end of the present month. I can inform the hon. member that the Government will be prepared to make the legislation retrospective to the 1st October.

BILL—BUILDING OPERATIONS AND BUILDING MATERIALS CONTROL ACT AMENDMENT AND CONTINUANCE.

In Committee.

Resumed from the 18th September. Mr. Perkins in the Chair; the Minister for Housing in charge of the Bill.

The CHAIRMAN: Progress was reported on Clause 5, "Section 32 repealed and re-enacted," to which Mr. J. Hegney had moved an amendment that paragraph (a) of Subsection (1) of proposed new Section 32 be struck out.

Mr. J. HEGNEY: I now ask leave to withdraw my amendment, with a view to moving a further amendment in lieu.

Amendment, by leave, withdrawn.

Mr. J. HEGNEY: I move an amendment—

That all words in paragraph (a) of Subsection (1) of proposed new Section 32 down to the word "than" be struck out.

If this amendment be defeated, I propose to move that the penalty provided in the existing Section 32, namely, £200 be inserted in the clause instead of £100, and that the penalty of six months' imprisonment shall stand. If my amendment be not carried, I understand the Minister will move an amendment as to the £100 penalty.

The MINISTER FOR HOUSING: I cannot agree with the member for Middle Swan. The intention behind these added penalties is that they will be a deterrent to those who commit breaches of the Act. I think everyone will agree that offenders have not been treated as severely as they should be. Within the past 48 hours, one of our magistrates has seen fit to impose the maximum penalty provided. This is the first occasion on which that has been done. When imposing the penalty, the magistrate used the word that has been used by one of the members of this House. The magistrate apparently read an account of the debate on this Bill, which evidently caused him to use the word "savage", because when referring to a sentence of imprisonment, he said, "This would be too savage."

Mr. Rodoreda: He did not impose the maximum penalty, because £200 is not the maximum penalty.

The MINISTER FOR HOUSING: It is the maximum pecuniary penalty. To my knowledge, it is the first time that such a severe penalty has been imposed. Also, the publicity that these added penalties received had effect very quickly. Three people contacted me in regard to them. One of them wrote asking if he could see me because he thought he had committed a crime.

Mr. J. Hegney: They realise that crime does not pay!

The MINISTER FOR HOUSING: Exactly! Not that we want magistrates to throw people into gaol, because that has been done on only two occasions since the Act has been in force. Nevertheless, the object of this clause is to impose more severe penalties on offenders to act as a greater deterrent.

Mr. GRIFFITH: I am obliged to ask for some guidance in this matter. The member for Middle Swan has moved to delete certain words from (a) down to the word "than." May I draw attention to the fact that Clause 4 has been passed? That clause covers offences of a summary nature and also those of a criminal nature. I cannot see the force of the amendment moved by the member for Middle Swan because the whole object will be nullified. Speaking to this clause the other evening, I told members of the Committee I was strongly opposed to people who had committed offences under this measure being committed for an indictable offence, and I have not changed my mind. I see from the notice paper that the Minister has a further amendment which I consider makes the penalties harsher. Not only does he seek the right to have a man tried summarily in a police court, but also he desires the right—provided the Attorney General agrees—to have an individual indicted before the criminal court for a misdemeanour which is made a criminal offence.

Hon. J. B. Sleeman: He is getting more savage!

Mr. GRIFFITH: There is no reason to commit a man to the criminal court and have him branded as a criminal for the rest of his life. If the Minister had been prepared to increase the pecuniary penalty to a reasonable amount, I would have supported him, but I cannot understand why he desires to divide a summary offence into two sections to provide that a man be dealt with summarily or else dealt with in the criminal court. I appeal to the Minister to do something about this. If the amendment by the member for Middle Swan be not carried, and the Minister moves the amendment he has on the notice paper, then I will oppose it strongly.

I cannot support an action that will brand a man as a criminal and put him into gaol for two years. The Minister commented on a magistrate fining an offender £200, the maximum pecuniary penalty. Not only did the magistrate comment on the legislation—I do not consider that he should comment on legislation; too often magistrates and judges pass remarks on legislation passed by this House—but he also said that six months' imprisonment would be too harsh a penalty for a crime of this nature.

Mr. MARSHALL: Does the member for Middle Swan intend to move for the insertion of other words including the words "one hundred pounds"? If he does not, the amendment will not make sense, and I think it is your prerogative, Mr. Chairman, to refuse to accept an amendment if it does not make sense.

The CHAIRMAN: The Minister desires to insert certain words and, if the member for Middle Swan moved for the deletion of the whole of paragraph (a) and failed, it would be impossible for the Minister to move his proposed amendments. I am therefore accepting the amendment of the member for Middle Swan in two parts as being the better way out of the difficulty.

Mr. J. HEGNEY: If my amendment be passed, I propose to move for the insertion of the penalty in Section 32 of the Act with the exception that I should like to make the fine £200 instead of £100.

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

Ayes	13
Noes	23
Majority against	10

Ayes.

Mr. Griffith	Mr. Needham
Mr. Guthrie	Mr. Nimmo
Mr. Hearman	Mr. Sleeman
Mr. J. Hegney	Mr. Totterdell
Mr. Hutchison	Mr. Yates
Mr. Marshall	Mr. Bovell
Mr. McCulloch	

(Teller.)

Noes.

Mr. Abbott	Mr. Lawrence
Mr. Ackland	Mr. McLarty
Mr. Brady	Mr. Oldfield
Mr. Brand	Mr. Owen
Dame F. Cardell-Oliver	Mr. Rodoreda
Mr. Cornell	Mr. Sewell
Mr. Doney	Mr. Thorn
Mr. Graham	Mr. Tonkin
Mr. Grayden	Mr. Watts
Mr. Hawke	Mr. Wild
Mr. Hill	Mr. Kelly
Mr. Hoar	

(Teller.)

Amendment thus negatived.

Hon. J. B. SLEEMAN: I wish to move an amendment, "That in line 4 of paragraph (a) the word "twelve" be struck out.

The CHAIRMAN: I could not accept that because the Committee has already decided to retain the words of the paragraph down to and including the word "than" in line seven.

The MINISTER FOR HOUSING: I move an amendment—

That in line 7 of paragraph (a) of Subsection 1 of proposed new Section 32 the words "one hundred pounds" be struck out and the words "the cost of the unlawful transaction" inserted in lieu.

This amendment is more or less in accordance with the wishes expressed by members on Tuesday evening when it was suggested that a man who used a few shovelfuls of cement should not be subject to a fine of £100. Under my amendment, it will be mandatory for the magistrate to impose a fine equivalent to the cost of the unlawful transaction, so that if a man uses a bag of cement, he must be fined the equivalent value, or if he unlawfully builds a £2,000 house he must be fined £2,000.

Mr. RODORED A: The amendments foreshadowed on the notice paper make a difference to my view of the penalty clause. I was strongly opposed to a minimum of £100 because a person who offended to a limited extent only would still be heavily fined. The intention here is to inflict a penalty according to the amount of material or labour used. This will solve the difficulty. I would otherwise, like the member for Canning, have voted for a previous amendment. The member for Canning said he was opposed to an indictable offence but, in common with other members, he agreed to it when Clause 4 was passed. This amendment which makes the punishment fit the crime is most suitable, and I am in favour of it.

Hon. A. R. G. HAWKE: I would like the Minister for Housing or the Attorney General to say whether the word "cost" as used in this and two other amendments is the best which could be adopted. The word "cost" does not seem to me to be the most appropriate one. I have some doubt whether, in the legal sense, it could be interpreted easily by the court.

The CHAIRMAN: Order! I think the Leader of the Opposition, when speaking to the amendment to delete words, will have to show that the other words proposed to be inserted are not as appropriate as the ones to be deleted.

Hon. A. R. G. HAWKE: I am in favour of the principle involved, but at the same time I would not like to alter the clause along the lines of the amendment unless I was reasonably sure that the subsequent amendments that we are likely to put in are the best, safest and most reasonable that we can decide upon in the circumstances. As far as I am able to judge, the word "cost" in the succeeding amendments is very ambiguous. The cost of an unlawful transaction could mean anything. "Monetary value" or some such term might be more appropriate.

The ATTORNEY GENERAL: The term "cost of the unlawful transaction" is defined in a later amendment. I think the draftsman found some difficulty in meeting what was desired. It is possible that some word such as "value" would be more appropriate. If the Minister approves, I suggest that the amendment be allowed to go through as it is, and it can subsequently be altered in the Legislative Council, if necessary, or on recommendation here.

Mr. McCULLOCH: The meaning of the words "the cost of the unlawful transaction" is a bit hazy to me. If a house is shifted from one block to another, would that constitute an unlawful transaction.

Mr. Marshall: Yes, within the meaning of the Act.

Mr. McCULLOCH: A man might buy a house in Wiluna for £600, and under the amendment he would be fined not less than the cost of the unlawful transaction. Many a house in the back-blocks is bought and taken away on a jinker. I do not like these words at all. The shifting of a house, by means of a jinker, from one block to another, without the permission of the Housing Commission, should not be unlawful.

Mr. GRIFFITH: In answer to the member for Pilbara, the reason I voted for the previous amendment was that I was under a misapprehension. I thought certain amendments were to be introduced in connection with Section 31, but they were passed before anybody had a chance to do anything about them. I would like the Minister for Housing to say who is going to assess the cost.

The Attorney General: The magistrate.

The Premier: The Housing Commission.

Mr. GRIFFITH: I doubt whether the magistrate would have the ability to assess the value put into a building.

The Premier: He would arrive at the cost on the evidence before the court.

Mr. J. HEGNEY: For the first time, I am thinking along the same lines as the member for Canning. We know the Housing Commission will have inspectors who will assess the cost, but will the magistrate be guided by their estimates. Will he take the estimate of someone who has prepared a valuation for the other side or will he call in a valuer himself? The work involved might be considerable.

The ATTORNEY GENERAL: The position is that it is the duty of the magistrate to determine the cost. On the other hand, it would be the duty of the prosecution to put before the court the information and evidence required to assist the magistrate in coming to a conclusion. At the same time, it would be open to the defendant, after he had been found guilty, to put before the court evidence in mitigation of the penalty, or the amount of the penalty. If no evidence were given, the magistrate would have to come to his own conclusions. I should say he would then make the penalty a small one.

Amendment put and passed.

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

That in lines 2 and 3 of paragraph (b) of Subsection 1 of proposed new Section 32 the words "one thousand" be struck out.

I shall endeavour to have these words cut out of the next clause. We were unfortunate yesterday because the Minister intended to cut them out, but something intervened and he changed his mind.

The ATTORNEY GENERAL: I point out another legal technicality. In each case the maximum penalty is limited, so in respect of a summary action the maximum penalty that could be imposed would be £500, irrespective of the amount or cost of the work. The work might have cost £1,000, but the magistrate could not impose a penalty of more than £500. If the offence were serious—say the work in question cost £2,000—and the Crown thought a penalty of more than £500 should be imposed, the defendant would have to be indicted, and then the maximum penalty that could be imposed would be only £1,000, although, as I have said, the cost of the work was £2,000.

Hon. J. B. SLEEMAN: I am surprised at the Attorney General raising that argument. Whether we want the £1,000 penalty cut out or not, we must still do it. What happens if the transaction is worth £2,000 and we have a maximum of £1,000 in the Bill? We cannot have it both ways because a little further down the measure say a fine of not exceeding the cost of the unlawful transaction.

The ATTORNEY GENERAL: My interpretation is that the maximum monetary penalty on summary jurisdiction is £500 and on indictment £1,000 irrespective of the cost of the work.

Hon. J. B. Sleeman: But then it says not less than the cost of the unlawful transaction.

The ATTORNEY GENERAL: It says that the minimum penalty shall be not less than that but it must be subject to the maximum penalty.

Mr. GRIFFITH: Far be it from me to pit my knowledge against that of the Attorney General, particularly on a legal question, but I read this clause very clearly. Paragraph (b) says that in the case of an indictable offence there shall be a fine not exceeding £1,000 or a term of imprisonment not exceeding two years, or both. It then goes on to say, "or subject to the provisions of the next succeeding subsection, a fine of not less than the cost of the unlawful transaction." I ask the Attorney General to have another look at this.

Hon. J. B. Sleeman: He had better have two looks.

Mr. GRIFFITH: I suggest it means that the court may impose a fine not exceeding £1,000, or a term of imprisonment for two years; if the magistrate so desires he can commit the individual to gaol for two years, or both. However, if the magistrate does not like any of those penalties he can fine the person a sum equivalent to the cost of the unlawful work. If that work involves £2,500 then I think the fine could be that sum as well.

Mr. RODOREDA: Whatever we do about this, I think the clause will have to be recommitted. In paragraph (b) we refer to "the next succeeding subsection." Yet the Minister, according to the notice paper, intends to move to delete Subsection (2).

The Minister for Education: But another one is going in in its place.

Mr. RODOREDA: That does not make sense to me because, as the Bill stands, Subsection (2) provides that the judge or magistrate may, on recording his reasons, deal with the case as if the section did not provide for a minimum penalty. This is becoming most involved and, as pointed out by the member for Canning, the magistrate can record all sorts of penalties. If the Minister for Housing is wise I think he will report progress so that the clause can be re-submitted to the draftsman. The idea behind it is quite a good one but it is very difficult to put into words, although that should not be beyond the capacity of the draftsman.

The MINISTER FOR EDUCATION: I do not think the matter raises as many difficulties as certain members have suggested.

Hon. J. B. Sleeman: Then you explain it to us.

The MINISTER FOR EDUCATION: I shall do my best. When the question was discussed earlier in the week a number of difficulties were raised by members which,

in some cases, were the reverse of the difficulties raised by other members. For instance, it was alleged that the subclause which now stands as Subclause (2) in the Bill would, on the one hand, undo all the provisions relating to minimum penalties which occurred earlier in the measure and would therefore be undesirable from that point of view; while, on the other hand the magistrate, by giving any reason that he thought fit, could make nonsense of the legislature's desire to see that reasonably heavy penalties were imposed in serious cases.

Objections were also raised that the person guilty of an offence which involved only 5s. worth of cement would be faced with a minimum fine of £100. That appeared to the Minister to be a valid objection, so he sought ways and means to provide that the minimum penalty should be no more than equivalent to the value of the offence. Therefore, if it were established in evidence to the magistrate that the cost of the quantity of goods unlawfully used was only 5s., then the minimum penalty would be 5s.; but if it were established that the work done was of considerable value, say £500, then the minimum penalty would be that amount.

The idea was based on the same principle as this Committee adopted in the rent legislation dealt with last week—namely that the defendant, by the minimum penalty, should be prevented from making any profit out of his offence. Members will recall that it was suggested and passed in that particular enactment that if the offender had made, say, £250, out of his breach of that legislation then he should be fined at least that sum. It could hardly be made applicable in exactly the same terms in this legislation because in the other instance there was a distinct profit that could be cancelled out by a fine, but in this measure there would only be an expenditure for which the person had already received the benefit and for which he could be punished only by a fine. If the fine is at least the equivalent of the offence then that, in the case of a small offence, would be a small penalty and, in the case of a big offence, a big penalty.

Hon. J. B. Sleeman: Is that the full penalty?

THE MINISTER FOR EDUCATION: The full value, in the opinion of the court, after hearing all the evidence, of the work done or the materials unlawfully used would be the minimum penalty.

Mr. Rodoreda: That could be bigger than the maximum penalty.

THE MINISTER FOR EDUCATION: That might easily be if the job were a substantial one. The hon. member must not lose sight of the fact that in addition the clause provides that the magistrate still has discretion to impose a fine,

as he does now. It was pointed out the other night, as it has been pointed out almost ad nauseum, that in some cases magistrates have imposed very small penalties, notwithstanding the fact that the maximum penalty stated in the Act has been many times greater than the penalties that they have imposed. That is where the discretion of the magistrate comes in. It has often been used to impose a fine of a few pounds in respect of the use of a great amount of materials or money.

The amendment about which I have been talking, on the principle of a minimum penalty equal to the value of the work done, ensures that the offender shall at least pay that sum and any other penalty at the discretion of the magistrate. As that discretion has been used in the past, it is not going to be used to impose a fine of £1,000, in addition to the 5s., on the man who has only used 5s. worth of material; it is going to be used to impose a fine of £1, perhaps. But it might be employed, in respect of a man who has used materials to a value of £2,000, to impose a fine of £500 or even £1,000. The magistrate will take into consideration all the surrounding circumstances of the case. Where there are extenuating reasons he can impose a minimum penalty and so on.

The magistrate has to look into those things, and rarely do cases come before courts where circumstances are precisely similar to previous cases. So this legislation has two reasons for its proposals; we want to have a minimum penalty which coincides exactly with the value of the work done or the goods unlawfully used, and any penalty beyond that is entirely at the discretion of the magistrate or judge.

Those penalties can be small or large depending on whether the magistrate or judge considers the circumstances surrounding the case are such as warrant mercy or not. I am not prepared to depart entirely from the discretion of the magistrate because I think, generally speaking, and particularly in the superior courts, that discretion is admirably used. So I suggest that the draftsman in dealing with this legislation has endeavoured to meet two very conflicting schools of thought and in the circumstances I think he has succeeded extremely well. The member for Pilbara drew attention to the fact that Subsection (2) as printed in the Bill, is to be deleted. Subsection (2) is to be replaced by Subsection (3) as printed in the Bill.

Mr. Rodoreda: Will the Minister explain the inclusion of the words "subject to the provisions of the next succeeding subsection"?

THE MINISTER FOR EDUCATION: That is quite all right. Subsection (2) comes out and Subsection (3) takes its place. It merely gives the court power to order the forfeiture of any money or goods that have accrued to the convicted person and are involved in the commission of offence, and the revocation of any permit will follow.

Mr. Rodoreda: That applies only in a case where the man has been found guilty and the work has been done.

THE MINISTER FOR EDUCATION: I should say so. I think there is every need for the inclusion of the words the hon. member has referred to.

Mr. Rodoreda: But there is no connection between Subsection (1) and Subsection (3).

The Attorney General: But it means that the magistrate may impose an additional penalty.

THE MINISTER FOR EDUCATION: I think the reference should have been included before. As a matter of fact, I expressed the opinion to the draftsman that they should appear. I do not profess to be able to direct him in any part of his occupation, because he knows more about it than I do. Obviously after consideration he has accepted that point of view. There seems to be no difficulty about it at all. Two principles are firmly established, and the draftsman has tried to compose vastly different points of view, one of which says that the minimum penalty is ferocious and the other that if no minimum penalty is provided the legislation will fall down. No penalty imposed will be ferocious unless the crime is serious enough to warrant it.

Mr. Rodoreda: If a magistrate fines and imprisons a man, can he then impose an additional penalty by way of forfeiture and so on?

THE MINISTER FOR EDUCATION: It provides that in addition to any other punishment the court may on conviction order the forfeiture of money or goods, and the revocation of any consent or cancellation of any license as mentioned in Subsection (3).

Mr. Rodoreda: Why did not the subsection start off with the words "subject to the provisions, etc."?

THE MINISTER FOR EDUCATION: I cannot claim to be a mind reader and therefore cannot answer the hon. member.

Hon. J. B. SLEEMAN: The Minister has not explained what I wanted to know. In a case of an indictable offence, can a man be fined more than £1,000?

The Minister for Education: The court could fine a man such portion of the £1,000 as he thinks fit, plus the value of the goods unlawfully used or some part of it.

Hon. J. B. SLEEMAN: Then if a magistrate found a person guilty, what could the total amount of the fine be, if goods valued at £1,500 had been unlawfully used?

The Minister for Education: I do not know but I should say a man could be fined as much as £2,500.

Hon. J. B. SLEEMAN: I do not think that is right. However, I have moved my amendment.

Hon. A. R. G. HAWKE: As I understand the amendment, the object is to give the magistrate or judge the right to impose a penalty alternative to a fine or imprisonment, or both. I cannot see why the insertion of the words "not less than the cost of the unlawful transaction" would represent the minimum, because the cost of a transaction might exceed the maximum fine provided for in the clause.

Hon. J. B. Sleeman: That is what I have been telling the Minister.

Hon. A. R. G. HAWKE: In my opinion, it would provide an alternative method available to a magistrate or judge where he does not feel inclined either to fine or imprison an accused person. Such an amendment seems to me very desirable because in a transaction involving a small amount the magistrate or judge could, as an alternative to fining or imprisoning a person, call upon him to pay the cost of the transaction.

Mr. Griffith: He would still be indicted as a criminal if found guilty.

Hon. A. R. G. HAWKE: We have to rely upon the good sense and experience of the Crown Law officers and of the Attorney General. However, we are not arguing that point. If the cost of the transaction in connection with which the prosecution had been launched happened to be £5,000, it appears to me that if the judge or magistrate felt the accused person was deserving of very heavy punishment by way of a monetary imposition he could, instead of fining him the maximum of £1,000 or imprisoning him—

The Attorney General: Or both.

Hon. A. R. G. HAWKE: Yes, or both, the magistrate or judge could inflict a penalty representing the cost of the transaction, namely, £5,000.

The Attorney General: Without a gaol sentence?

Hon. A. R. G. HAWKE: Certainly. A magistrate cannot fine or imprison or both, and then impose a penalty representing the cost of the unlawful construction. In my judgment, the amendment represents an alternative. Therefore it appears to me that the amendment should be accepted by the Committee.

Hon. J. T. TONKIN: I regret that I cannot view the matter in the same way as the Leader of the Opposition does. I have

endeavoured to follow his line of reasoning but I cannot see that what is proposed is an alternative at all. It seems to me that the penalty provided sets out what is the maximum and what is the minimum. It seems to me that the original provision in the amending Bill was for a minimum fine plus something else, which could be the forfeiture of money or goods. Originally the maximum would be a fine of £1,000 and imprisonment but the magistrate was not given authority to go beyond that. But the proposal is that the magistrate may be able to fine a man not less than £200 plus what was provided in the succeeding paragraph. Thus it seems to me that it is not a matter of an alternative but of a minimum and maximum fine. With the Minister's amendment the minimum is not to be a fine of £200 plus, but not be less than the cost of the transaction plus.

Mr. Rodoreda: No.

Hon. J. T. TONKIN: We then reach the position that if the cost of the transaction exceeds the amount provided as a maximum fine, there is a conflict between the minimum and the maximum penalty. I do not know where we get to in those circumstances. I think the Attorney General will agree that, with reference to penalties, it is usual to state the maximum and not always the minimum. That has been done but, in order to prevent a magistrate from imposing a very small fine, an attempt has been made to fix a minimum. The minimum originally was to be a fine of not less than £200, plus certain other things.

For example, if the magistrate recorded his reasons, he could go below the stipulated minimum and fine the person less. But, in addition to the minimum penalty, he could order forfeiture of any money or goods involved in the commission of the offence and the revocation of any consent or cancellation of any license. That was in addition to the minimum amount mentioned in the clause. The alteration I see is that we take out the words "two hundred" and put in their place "the cost of the transaction."

Then we get into the difficult position that should the cost of the transaction be an amount which exceeds that mentioned in the clause as being the maximum, we have a conflict. If my reasoning is right, I would like to know what happens if there is a conflict between the minimum and the maximum penalties, for there is no doubt that this amending Bill originally set out to provide a minimum, because it is mentioned that the magistrate, on recording his reasons for doing so, "may deal with the case as if this section did not provide for a minimum penalty."

The ATTORNEY GENERAL: There is something in the argument submitted by the hon. member. The Act provides for

a penalty "not exceeding £200 or imprisonment for a term not exceeding six months, or both, but, subject to the proviso hereto, not less than a fine of £50." The word "but" has been used, but is not in the alternative. In the Bill, the draftsman has altered "but" to "or"; this makes it an alternative, which I believe he intended. I think that what causes confusion is the use of the words "not exceeding." If they had been omitted the intention would have been effected, because then the fine would have been the sum of £500, with or without imprisonment.

Hon. J. T. Tonkin: Are you arguing that there is no minimum set?

The ATTORNEY GENERAL: There is no minimum set.

Hon. J. T. Tonkin: So the fine could be 1s.

The ATTORNEY GENERAL: As the Act stands now. I do not think that was the intention. There is room for confusion, because the measure stipulates, by way of an alternative, that there may be a fine not exceeding £500, so I suppose a magistrate could impose a fine of 1s. The words used are that in the case of a simple offence there shall be a fine not exceeding five hundred pounds, so I presume that the fine could be one shilling.

Hon. J. T. Tonkin: That makes the clause absurd.

The ATTORNEY GENERAL: I agree. I think the intention of the Committee is quite clear, and I suggest to the Minister that the Bill be referred back to the draftsman so that, before the report is adopted, the measure can be recommitted for final decision.

Hon. A. R. G. HAWKE: The wording of this paragraph and the amendment moved will require some alteration. In connection with the cost of the unlawful transaction, I suggest the Government would have to add some words after "transaction" providing that any penalty imposed in connection with the cost of an unlawful transaction shall not exceed, say, £900.

Attorney General: That would limit the penalty.

Hon. A. R. G. HAWKE: That would limit the cost of transaction penalty to lower than the maximum fine which anyone could impose. That would make the proposed alternative much more practicable.

The Minister for Education: If it is in the alternative, as you suggest, it would be far better to ensure that it was not in the alternative and have the fine, plus the cost of the unlawful transaction, which I contend applies now.

Hon. A. R. G. HAWKE: As the paragraph is now worded, plus the amendment, I am positive the proposed amendment

would be an alternative. This appears to me to require close consideration. If it is to be an alternative in the true sense of the term, the Government must decide, and later the Committee will have to decide whether that alternative is to allow the imposition of a monetary penalty greater than the maximum fine already contained in the Bill. There will also be the necessity, as the member for Melville suggested, that in addition the Government should insert in the Bill something about a minimum monetary fine.

Progress reported.

BILL—PIG INDUSTRY COMPENSATION ACT AMENDMENT.

Second Reading.

Debate resumed from the 18th September.

MR. HOAR (Warren) [5.54]: I do not look upon this Bill as very contentious. Experience of the Act since 1942 has made it necessary. It is rather interesting to note that we can at this stage contemplate some amendment of the Pig Industry Compensation Act without offending the producers of pigs. This was not always so. I remember—in about 1939, some two or three years before the acceptance by this House of the parent Act—an attempt was made to introduce legislation to provide compensation for the death of pigs from certain diseases, but the primary producers then were most hostile to the measure, and as a result nothing was done. Later, in 1942, when there was a tremendous and devastating outbreak of swine fever the Government was able to introduce what is now known as the parent Act. Protection and compensation then became necessary to the producer. I do not think that as the years have gone by he has had reason to regret that decision.

I felt that the Minister, when he was introducing and explaining the Bill, would have informed the House as to the operations of the fund that has been in existence since 1942; that is, concerning the demands made on it, whether contributions have been necessary from Consolidated Revenue to bolster it at any particular time, or whether it has been used to counter any effects resulting from disease. I know that early in the history of the Act it was necessary to contribute substantially to the fund from the Treasury, because the fund was non-existent, or without money, and the pig producers were faced with the loss of many thousands of pigs, representing a considerable sum. I would like to know whether anything has occurred in recent years to cause further contributions to be made.

The Minister for Lands: I do not think so. The fund is quite financial now, and it is not intended to increase the levy. I take it, therefore, that the fund is in good order.

Mr HOAR: The first proposal, to place pigs that have died from erysipelas or para-typhoid on equal terms with those that have died from swine fever, corrects, to my way of thinking, a technical fault in the parent Act. This should have been done previously, but for some reason or other it was overlooked. It is now apparently felt by the Department of Agriculture and the Minister, that it is necessary. Compensation is now paid for death from swine fever without any prior inspection being required. All the producer of pigs has to do is to prove that swine fever was, indeed, the cause of the death of the animal, and compensation is automatically paid; but in regard to the other diseases that can attack the pig industry and inflict a serious blow, prior knowledge is deemed to be necessary. In regard to erysipelas and para-typhoid it is now thought essential, according to the Act, that there must have been some prior knowledge or suspicion of the disease existing in order that a report might be made to an officer of the department so that an inspection could be made. If that is not done, compensation is not paid. Because of the difficulty of having inspections made at any time, the proposed amendment is just and desirable.

The Minister for Lands: Previously, regarding these two diseases, the farmer had to order the slaughter of the pigs before he could get compensation.

Mr. HOAR: That is so, and that placed the farmer in a difficult position. The question of inspections could be facilitated in country areas if an effort were made to secure the co-operation of the health authorities, as the Minister himself suggested. It seems to me that not much attempt has been made in the past to obtain this measure of support. I feel that the health officers in the country areas would be quite willing to co-operate with the department in this manner, and so safeguard not only the interests of the producers, but the provisions of the Act.

The Bill next proposes that the market value of a pig, now stated to be £10 in the Act, shall be increased to £15. This is necessary because of our inflated economy generally. It will place the amount of compensation on a basis more comparable with other forms of activity affected by the increase in prices today. I am not so happy about the last amendment which deals with the payment of stamp duty from which the compensation fund derives its revenue. The parent Act provides that for every £1 or part of a £1 exceeding 10s., stamp duty, not exceeding 3d. shall be paid. Actually, 1d. is the amount deemed necessary by the department as being sufficient to meet all reasonable claims on the fund.

The total amount payable in respect to any one pig, shall not, according to the Act, exceed 2s. 6d. The Minister pro-

poses, by the Bill, to increase the maximum amount to 3s. 9d., which will give it relationship to the proposed increase in the market value of a pig, from £10 to £15. I cannot see any necessity for the suggested increase.

The Minister for Lands: It is there only to make provision for a bad outbreak such as you have mentioned.

Mr. HOAR: The position is adequately covered today. The sum of 2s. 6d. allowed in the parent Act as the total stamp duty payable on any one carcase, is worked out by multiplying 3d., which is the maximum amount of stamp duty per £1, by 10, because £10 was the accepted value of a carcase back in 1942. I would say that an increase of 50 per cent. was desirable and necessary if we were charging the maximum amount of 3d. stamp duty, but we are not; we are getting only one-third of it. If we reduce the 2s. 6d., the maximum amount of stamp duty on a carcase, to pence, we find that it consists of 30 pennies, which represent £30 in value. Everyone knows that pigs do not average that much, but only reach such a figure in exceptional circumstances. Reasonably good sows can be bought for £20 to £25, and the accepted average today is between £15 and £17.

There should be no necessity for the Minister to consider increasing the amount of stamp duty, or rather the maximum. In like manner, the suggestion he made when introducing the Bill, that perhaps later in the year, when this had been tried out, he might have to increase the contribution of 1d. in the £1 to 1½d., will probably not be necessary because, as the price of pigs has been going up for years, it simply means that instead of a farmer paying 10d. per pig stamp duty, which he has been doing on the basis of 1942 values, he is contributing anything up to 16d. or 17d. today for the same type of pig. Consequently the fund, without any increase in the rate at all, must have increased by at least 50 per cent. as a result of the greater prices ruling during the nine years since the Act has been in operation. I do not see any necessity to consider a further increase in that direction.

Although I have no objection to the Bill I hope the Minister will give consideration to getting in touch with country health authorities in an endeavour to secure greater co-operation between the department and the farmers, through liaison officers in the shape of local health inspectors. If that is done, it will be possible to police the Act properly, the farmer will be adequately protected, and the Minister will find that the relationship between the farmer and the department will improve, because the hostility shown by farmers in the past towards any form of

contribution such as this will be permanently and effectively dissipated. I support the second reading.

Question put and passed.

Bill read a second time.

In Committee.

Mr. Perkins on the Chair; the Minister for Lands in charge of the Bill.

Clauses 1 and 2—agreed to.

Clause 3—Amendment of ss. 6 (c), 7 (2), 8 (2) and (3), 9 (2) and (3):

Mr. J. HEGNEY: When the fund was first established there was some doubt as to whether it would be solvent. Has the department any experience of swine erysipelas and para-typhoid in the pig industry, and how will those diseases affect the compensation fund, which was first established for the purpose of dealing with swine fever? Many of the producers who originally favoured the fund were later not in favour of its being carried on.

The MINISTER FOR LANDS: Both erysipelas and para-typhoid are brought within the provisions for compensation by means of this Bill. Until now, it has been necessary for the disease to be reported and for the animal to be slaughtered before compensation could be paid. That necessitated an inspection by the veterinary officer, and unless he ordered the animal to be destroyed no compensation was payable. This amendment makes compensation payable after the death of the animal in cases where the producer may not have been able to have the animal inspected prior to death. The fund is at present in a sound financial position, and the increase of stamp duty to 1½d. is provided only to meet any severe outbreak that may take place. That is the reason for these amendments.

Clause put and passed.

Clauses 4 to 7, Title—agreed to.

Bill reported without amendment and the report adopted.

BILLS (2)—FIRST READING.

1, Poultry Industry (Trust Fund) Act Amendment.

2, Marketing of Eggs Act Amendment.
Received from the Council.

House adjourned at 6.12 p.m.