Legislative Council

Thursday, 26th September, 1957.

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The PRESIDENT took the Chair at 2.15 p.m., and read prayers.

QUESTIONS.

BELMONT HIGH SCHOOL.

Attendances and Accommodation.

Hon. A. F. GRIFFITH asked the Minister for Railways:

Concerning the questions that I asked in the House last week in respect to accommodation at the Belmont High School, will the Minister please advise what is the consideration being given, in accordance with the answer to question No. (3)?

The MINISTER replied:

Until the buildings are completed during the early months of 1958, it is possible that some temporary arrangements will have to be made to accommodate a few of the Belmont classes elsewhere.

RAILWAY WAGON COUPLINGS.

Type in Use.

Hon. L. A. LOGAN (for Hon. A. R. Jones) asked the Minister for Railways:

(1) Is there a railway wagon coupling in use at present which does away with the use of the old type safety chains between wagons?

(2) If the answer to No. (1) is "Yes"—

(a) have reports been made that these new couplings have been responsible for accidents, and/or derailments;

(b) if such reports have been made, what action has been taken?

The MINISTER replied:

(1) Yes.

(2) There have been incidents of parting of trains. This defect has now been remedied by simple adjustment.

CITY AND SUBURBAN THEATRES.

Fire Protection.

Hon. L. A. LOGAN (for Hon. A. R. Jones) asked the Minister for Railways:

(1) Is it a fact that city picture theatres are not manned by a recognised skilled person to safeguard the public in the event of fire, and to see that apparatus in the theatres is in good working order?

(2) Is it a fact that similar theatres in suburbs and country areas, where volunteer fire brigades are in control, are manned and that the personnel manning them are unpaid?

The MINISTER replied:

(1) The Public Health Department has information that certain city theatres are not providing a fireman as required by the regulations. Legal action is being considered.

(2) The payment of volunteer firemen is dealt with by the fire brigades regulations. It is understood that cinema managements are taking advantage of deficiencies in these regulations which were revealed in a recent court decision. The Fire Brigades Board is dealing with this question.

BILL—JETTIES ACT AMENDMENT.

Introduced by the Minister for Railways and read a first time.

BILL—LEGAL PRACTITIONERS ACT AMENDMENT (No. 2).

Third Reading—Defeated.

HON. J. D. TEAHAN (North-East) [2.20]: I move—

That the Bill be now read a third time.

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

Ayes	12
Noes	12
A Tie	0

Ayes.

Hon. G. Bennetts	Hon. F. R. H. Lavery
Hon. E. M. Davies	Hon. L. A. Logan
Hon. L. C. Diver	Hon. H. C. Strickland
Hon. E. M. Heenan	Hon. W. F. Willesee
Hon. R. F. Hutchison	Hon. F. J. S. Wise
Hon. G. E. Jeffery	Hon. J. D. Teahan (*Teller.*)

Noes.

Hon. J. Cunningham	Hon. J. Murray
Hon. J. G. Hislop	Hon. C. H. Simpson
Hon. A. R. Jones	Hon. J. M. Thomson
Hon. Sir Chas. Latham	Hon. H. K. Watson
Hon. G. C. MacKinnon	Hon. F. D. Willmott
Hon. R. C. Mattiske	Hon. A. F. Griffith (*Teller.*)

Pair.

Aye.	No.
Hon. G. Fraser	Hon. H. L. Roche

The PRESIDENT: To maintain the status quo, I give my vote with the noes.

Question thus negatived.

Bill defeated.

BILL—FREMANTLE HARBOUR TRUST ACT AMENDMENT.

Second Reading.

THE MINISTER FOR SUPPLY AND SHIPPING (Hon. H. C. Strickland—North) [2.22] in moving the second reading said: This Bill proposes to amend the Fremantle Harbour Trust Act, 1902-1954, for the purposes of providing payment of attendance money for certain casual workers employed in and around the port of Fremantle. It is submitted by the Government following due consideration of a unanimous decision of the State Arbitration Court. In the first instance the benefit to be provided will apply to members coming within the constitution of the Federated Ship Painters and Dockers' Union of Australia, Western Australian Branch, as registered under the provisions of the Industrial Arbitration Act, 1912.

The work performed by these workers covers a very wide field and embraces all types of work on ships in the maritime industry at the port of Fremantle. It includes all types of work encountered in the ship-repair industry; and in the ranks of these workers are skilled men such as riggers, winchmen, hatchmen and many others who can perform the work necessary on the fitting out of ships—men experienced in boiler-scaling and ship painting, and the dockers, who require a high degree of skill when docking a vessel and performing such work as the preparation of ships for the carriage of bulk grain cargoes—even down to the ordinary cleaning work necessary in preparation for repairs to ships' engines, and so on. That often involves unpleasant work, in which is included the cleaning of the bilges; the cleaning of oil and filth from and around the engine and boilers; and the cleaning of oil tanks, water tanks, etc.

Hon. C. H. Simpson: Would that be highly skilled work?

The MINISTER FOR SUPPLY AND SHIPPING: There is some highly skilled work included in it. Rigging a ship is not unskilled work and the splicing of rope is highly skilled work.

Hon. A. R. Jones: What do you mean by "rigging a ship"?

The MINISTER FOR SUPPLY AND SHIPPING: There is a ship at Fremantle at present which members might care to see and from which the rigging has to be removed for alterations. The rigging will then have to be replaced. The work includes rigging of all types and scaffolding and the placing of ladders over the ship's side and many other avenues of work requiring experience and skill.

Hon. Sir Charles Latham: But the shipwrights will do that.

The MINISTER FOR SUPPLY AND SHIPPING: They have nothing to do with the dockers' work.

Hon. Sir Charles Latham: But they do the rigging.

The MINISTER FOR SUPPLY AND SHIPPING: Not when the ship is docked. Shipwrights have nothing to do with that work or the preparation for it. That is the work of these men.

Hon. Sir Charles Latham: But all the alterations are made by the shipwrights.

The MINISTER FOR SUPPLY AND SHIPPING: The shipwrights are now confined to the small ships and do not work on the large vessels. Their days are almost numbered. The type of work which these men follow entails a considerable amount of skill in some of its aspects.

Hon. A. R. Jones: Why not take a day off and go down and see that ship?

The MINISTER FOR SUPPLY AND SHIPPING: These men can be seen at work at any time, and I would advise members to talk to the steamship-owners as well as the contractors who engage these men to repair the ships. By talking to the owners of vessels it will be found that these men do a very good job, and that they are essential to the shipping industry generally.

It is essential to have around a major port a number of experienced men who can perform work of this nature. If the "Koolinda", for instance, could not be serviced in some respects with the rigging or the cleaning out after cattle had been carried because no dockers were available for one day that would cost the vessel £600, although it is only a small vessel. What must delays cost the overseas ships in similar circumstances?

It must be remembered that the crew have to be paid and fed whether the vessel moves or not, and passengers who may be on board must be fed, and the cost of fuel, wear and tear, depreciation, maintenance, and so on all continue.

To quote the smallest type of vessel, the "Koolinda" costs in the vicinity of £600 per day while it is afloat. The "Kabbarli" and "Koojarra" cost each about £300 per day; but they are very small and have less crew. That will give members an idea of the value to the shipping industry generally of having on call a gang of men and an organisation able and competent to tackle any type of work required, including labouring and semi-skilled or skilled work in conjunction with repairs or alterations to vessels.

There are many vessels, such as wheat vessels, that come here. They may come in ballast, or fully loaded with another type of cargo, perhaps general cargo. In that case the hatches must be cleaned and walled up so that the wheat will not

roll to one side and thus sink the vessel. All that work must be done. On the slipway, in the dock itself, at Fremantle, if there happens to be a vessel these men can be seen perhaps scaling a ship, or painting it, or they may be down in some fuel or water tank where it is dark and the air at times is foul.

It is necessary for them to get into all manner of positions to be able to do the work required of them. It is essential work because it concerns tanks and perhaps engine rooms which are required by the underwriters to be attended to before the vessel can sail. If this work were not done a vessel would become uninsured, and might not be able to leave port in certain circumstances.

The cost per day of holding up a vessel must be tremendous, particularly for the modern P & O. liners. Accordingly the value of having work on hand is recognised by the shipping industry; and to my knowledge the shipowners have never offered any great protest to the proposed legislation—there was not any great opposition to it when it was discussed by the Arbitration Court on two occasions in this State.

Hon. Sir Charles Latham: These men have been employed for years in this job, haven't they?

The MINISTER FOR SUPPLY AND SHIPPING: They became an organised body of men during the war years when their work was very important indeed for the turn-round of ships. There were more men employed down there at that time than there are now. The port is not quite so busy at the moment but it has adjusted itself to the regular shipping traffic passing through, and the number of men required has become stable. The total number is 129.

Hon. L. C. Diver: They are assistants to the shipwrights?

The MINISTER FOR SUPPLY AND SHIPPING: Some are and others are not. There are various types of work such as skilled work and unskilled work. These men do splicing and rigging and that sort of thing. They take the rigging down and so on, but they do not interfere with the work of the plumbers or the carpenters. They prepare the ships and clear the way. Their work varies; and as I have said, they work in all types of positions, and not without a large element of danger. When they are working in the bilges of the ships they are required to clean the drainage pipes of vessels and do jobs like that. One can readily imagine the types of jobs they have to perform. The port of Fremantle would lose quite a lot of shipping if we did not have this organised body of men to call on at all times to meet the shipping requirements.

Hon. L. C. Diver: They are essential?

The MINISTER FOR SUPPLY AND SHIPPING: Yes; they are just as essential as the waterside workers, and I have pointed out why. The reason is the economy to the industry in the work they do. Somebody must do that work; and if there were insufficient work offering for the men to keep themselves available when the shipping industry required them, they would not hang around all day; the numbers would dwindle; and, consequently, we would have an insufficient work force. It is possible that the standard of the force available would deteriorate unless there were sufficient inducement, because as they found other regular employment, they would drift away.

Hon. C. H. Simpson: Would not this kind of work be necessary at the smaller ports as well?

The MINISTER FOR SUPPLY AND SHIPPING: There is very little of this type of work at the smaller ports. In fact the shipowners concentrate on the ports where the labour is available and where the work can be done. It is a benefit to the shipping industry to have a competent work force at hand. Members need have no fear that this body of men is not essential. In other ports of Australia there are also similar bodies of men; but their employment is on a permanent basis, and they are paid a regular wage whether they work or not.

The idea was implemented in Fremantle on an experimental basis. It was thought that the construction of the No. 10 berth could be used as a basis for trying out the experiment. So they were employed on that job each morning; and when a shipowner or somebody else wanted 10 or a dozen men they were taken off the construction job and put on to the casual work, after which they were again placed on the construction job. However, that was not economic; too much time was wasted; nobody knew what the position was; and it was terribly expensive. Accordingly the idea was quickly dropped by the Fremantle Harbour Trust.

Hon. J. G. Hislop: Have you any idea of the weekly earnings over the last 12 months?

The MINISTER FOR SUPPLY AND SHIPPING: The average weekly earnings have not been very much above the basic wage. They have been in the vicinity of £15 or £16 per week. The previous 12 months was rather a lean year on the wharves and the average earnings were approximately the same as the basic wage. If the earnings of these men are spread over a year, it can certainly be said that they do not make high money.

If they work all night, Christmas day or on a Sunday in order to get a vessel through the port, their wages are governed by a State award. On these occasions they would earn quite a considerable

amount because of the high penalty rates, just as would be the case in any other industry which is under an award. However, the average weekly wage over the year is approximately the same as the basic wage. Last year their wages were a little higher, and the previous year they were round about the basic wage.

During last winter not many of these men were picked up over quite a long spell. When we realise that some of them are only employed for one day or one and a half days in a week—luckier ones three or four days—during the three or four months' lean period, it can be seen just how difficult the conditions are for these men as compared with those on a regular wage. The principle of attendance money is to ensure that an adequate force of experienced men will be on call. The payment of attendance money is not new. It was introduced on the waterfront—

Hon. Sir Charles Latham: That was the only time it was ever introduced.

The MINISTER FOR SUPPLY AND SHIPPING: We could say so.

Hon. Sir Charles Latham: I think it was.

The MINISTER FOR SUPPLY AND SHIPPING: There are many other industries where little is done, but the employees are paid from week to week and year to year. Take the fire brigade.

Hon. Sir Charles Latham: I agree; but they live in.

The MINISTER FOR SUPPLY AND SHIPPING: They do not have a fire every day, but they get paid every Friday.

Hon. J. M. A. Cunningham: They are a little group, and they give good service.

The MINISTER FOR SUPPLY AND SHIPPING: So do these men give good service. Members should investigate this industry for themselves.

Hon. J. M. A. Cunningham: It is an education to watch them.

The MINISTER FOR SUPPLY AND SHIPPING: The hon. member should not form an opinion on what he might hear.

Hon. J. M. A. Cunningham: It is worth going down to see them.

The MINISTER FOR SUPPLY AND SHIPPING: It is worth examining. Do not think that the payment of attendance money is new. It is certainly not new in other parts of the world.

Hon. C. H. Simpson: It is not paid to these men in any other port in Australia.

The MINISTER FOR SUPPLY AND SHIPPING: It is not paid to these particular men, but it is paid to waterside workers.

Hon. C. H. Simpson: They are a different body of men.

The MINISTER FOR SUPPLY AND SHIPPING: I said it was not paid to these men. However, the principle is applied to all waterside workers.

Hon. C. H. Simpson: Under a Federal award.

The MINISTER FOR SUPPLY AND SHIPPING: Yes, the Waterside Workers Federation. And it has proved to be highly successful. They are only paid in the major ports. Not anybody can go along and attend a pick-up, be turned away, and then claim attendance money. It is only those workers who are registered to work in the ports which are governed by an organisation, apart from the union. In the case of the Waterside Workers' Federation, they are governed by the Stevedoring Industries Board.

Hon. J. McI. Thomson: Have you any idea of the total sum of pick-up money paid in the last 12 months?

The MINISTER FOR SUPPLY AND SHIPPING: The cost to the shipping industry?

Hon. J. McI. Thomson: Yes.

The MINISTER FOR SUPPLY AND SHIPPING: Based on figures over the past two years, the cost would be a little in excess of £6,000, and would be a fraction of a penny per ton. I have heard it quoted as being something in the vicinity of one-eighth of a penny per ton.

Hon. C. H. Simpson: Many ships get no service at all, do they?

The MINISTER FOR SUPPLY AND SHIPPING: That is so. It is very similar to insurance companies which sell life assurance. Very few people die young.

Hon. Sir Charles Latham: Not much of a simile there.

The MINISTER FOR SUPPLY AND SHIPPING: It is a form of assurance to shipping lines which have an organisation of men on call at any time in order to help them in connection with any accidents the ships might have.

Hon. C. H. Simpson: As Minister for Supply and Shipping, would you know that half the service is referred to the State Shipping Service?

The MINISTER FOR SUPPLY AND SHIPPING: The State Shipping Service has supplied quite a lot of labour, particularly over the last two years, because we have had a vessel for most of the time during that period undergoing extensive alterations and modernisation. The "Dorrigo" and the "Dulverton" have been fitted out.

Hon. Sir Charles Latham: Do these men do the fitting out of ships?

The MINISTER FOR SUPPLY AND SHIPPING: All except the highly skilled work, such as plumbing.

Hon. Sir Charles Latham: Carpentry?

The MINISTER FOR SUPPLY AND SHIPPING: Yes. When this work is going on, up to as many as 30 at a time are employed. The "Dellamere" is on the slipway at present and will provide work for approximately 20 per day until about Christmas time. However, if we take these three ships away, and disregard the accident to the "Dulverton" when it went aground two years ago, causing it to be on the slipway for a long time; and take away the regular slipping of each ship once a year, in conformity with the demands of the underwriters, there would be 50 per cent. less work done for the State Shipping Service.

However, the docking must be done, and every ship must go on the slipway at least once a year to comply with the terms of insurance and Lloyds Underwriters. If the slipway was available, and it was possible to spare the time, the State Shipping Service would prefer to see the ships on the slipway twice a year; once for a couple of days in order to give the ships a haircut and shave, take off the weed and paint them. In these circumstances the economy would be great, as it improves the speed of the ships. The work done for the State Shipping Service has been more than normal, because of the alterations to vessels in the last two years, and accidents to some of the ships.

However, many other vessels—overseas and interstate ships—come into the port at different times requiring attention. When the Alfred Holt vessels carry cattle, they use these men to clean out the ships after the cattle have been unloaded at Robb's Jetty; and to take down the cattle races, and so on, in order that the ships may be made ready to carry the general cargo that they will take to Singapore, etc.

In all, a body of men numbering 129 is involved. This number varies according to the requirement of the port. There is always a normal wastage in any body of men; and there is an authority which governs the number of men to be admitted to this organisation, according to the requirements of the port.

Hon. Sir Charles Latham: Would you call them casual workers or permanent workers?

The MINISTER FOR SUPPLY AND SHIPPING: They are casual workers now. At times they are all picked up; and at other times there may be no work for 10 or 12 of them. They go down to the pick-up, and they are rostered for work and are on call; but if they are not picked up for work they lose a day at least, because it would not pay them to go looking for work elsewhere. That is the real basis of attendance money. It is to ensure that the employers will always have that pool of men on call or available.

Hon. J. G. Hislop: On your figures it amounts to less than £1 per head per week. Is that what you understood this attendance money would mean to the men?

The MINISTER FOR SUPPLY AND SHIPPING: That is what it amounts to based on their hours of work and earnings during the last two years. These figures have been taken out and checked by the union, and I understand they are authentic. It means very little to the shipping industry.

Hon. C. H. Simpson: There is a lost time allowance component in their award, is there not?

The MINISTER FOR SUPPLY AND SHIPPING: That is so. At the present time there is a component in their wage which makes allowance for the casual nature of their work. When the union applied for attendance money last year the president of the State Arbitration Court, in his judgment, drew attention to that fact, and also to the fact that legislation such as we are trying to enact now was required before the court would be empowered to award attendance money. He said the court had no authority to say who would pay the attendance money, and he could not award it against anybody.

Although the president strongly supported the claim of the union, he said in his judgment that he thought there was no authority—in fact, the court said this—to award it; and he advised the union to seek the necessary authority, pointing out that should attendance money be granted at some time, the component in the existing wage would need to be reviewed. He made special mention of that in his judgment.

Hon. C. H. Simpson: They are not going to be much better off then.

The MINISTER FOR SUPPLY AND SHIPPING: Yes, they will be, because they will be assured of receiving some payment each pay day; whereas, as I have already pointed out, there have been long periods when some of them have had no pay days. That occurred last winter—not the existing one—particularly.

I think all members know that men working on such wages do not accumulate big bank balances, and they get into difficulties when a pay day produces a light pay envelope or none at all. It is most desirable, the Government thinks, that these men should be given the benefit of attendance money. I have covered the main or basic principle in the Bill, which is to provide an assured payment and to ensure that a competent work force will be available at all times at Fremantle.

For the benefit of members I would explain that in 1951 this union made an application to the State Arbitration Court for attendance money. At that time the

president of the Court, and his two associates, said that the Industrial Arbitration Act provided nothing under which the court could award attendance money, and the union was advised to seek legislation to make it compulsory for the shipping industry to pay attendance money. In 1956—last year—a further application was made to the court and the three members again agreed on the principle of attendance money—

Hon. C. H. Simpson: I think that is wrong.

The MINISTER FOR SUPPLY AND SHIPPING: No, I will read the decision.

Hon. C. H. Simpson: Is this from the actual judgment?

The MINISTER FOR SUPPLY AND SHIPPING: I will read the reserved decision between the Coastal Dock, Rivers and Harbour Works Union of Workers and McIlwraith McEachern Ltd., the Adelaide Steamship Co., the State Shipping Service, the Minister for Works and others. This is dated Thursday, the 3rd April, 1951.

Hon. Sir Charles Latham: That is very old.

The MINISTER FOR SUPPLY AND SHIPPING: Yes. The President ruled, when he gave that decision, that there was no provision for him to award attendance money and he advised the union to seek it compulsorily. Mr. McKenna said, "I agree;" and Mr. Davies said, "I agree with the decision as announced by His Honour."

Hon. C. H. Simpson: His decision was that he had no jurisdiction and could give no verdict.

The MINISTER FOR SUPPLY AND SHIPPING: Well, there is the decision.

Hon. C. H. Simpson: There was not necessarily agreement with the president's comments.

The MINISTER FOR SUPPLY AND SHIPPING: I do not know why it is referred to as such. The most recent decision of the State court is that dated Monday, the 29th October, 1956. This decision was given in a case taken by the Federated Ship Painters & Dockers' Union of Australia, West Australian Branch, Union of Workers, against the Minister for Works and others. The President had this to say—

> As originally filed the reference related to the wages and working conditions of both permanent and casual employees in this industry, but at the hearing the reference was amended to delete the claims in relation to the permanent employees. The Union claimed that the Award when issued, should provide for Annual Leave, and Public Holidays, Sick Leave, and Long Service Leave for casual employees, and further claimed that registered casual workers who attend the recognised pickup centre and thus made themselves available for employment, if not engaged for work on the day of such attendance, should be paid an amount equal to four hours pay at ordinary rates for such attendance.
>
> Registered waterside workers enjoy similar privileges under the provisions of the Stevedoring Industry Commission Act (Commonwealth) and the claims in this case were drafted on the model of similar claims which the High Court of Australia recently decided a Conciliation Commissioner would have jurisdiction to grant under the Commonwealth Conciliation and Arbitration Act if he thought it just and expedient to do.
>
> I have no doubt therefore that this court would have jurisdiction to grant the claims in one of two forms in one of which the liability would be thrown on the employer by whom a worker was last engaged preceding the holiday, sickness or attendance in question, and in the other such liability would be borne by the next succeeding employer. It is obvious that either form would have an entirely arbitrary and often unjust result as between different employers and as the Court has no jurisdiction to introduce an equitable and practical scheme these claims must in my opinion be refused. It seems to me, however, that some such scheme is eminently desirable. The decasualisation of work on the waterfront has to a large extent been achieved in recent years both in Great Britain and, so far as waterside workers are concerned in Australia; the same considerations that led the British Parliament to decasualise dockers' employment and also led the Commonwealth Parliament to set up the decasualisation of the labour of waterside workers, apply to the casual workers in this industry. The industry requires a pool of labour which cannot be entirely utilised every day and although the roster system of engagement instituted by this Court, and certain allowances made in the prescribed margins to some extent lessen the evils of the casual labour inseparable from the industry, some of the evils resulting from irregularity of employment inevitably remain.
>
> Any practical scheme must, however, depend on action by Parliament and it is for this reason that the Court has taken the somewhat unusual course of issuing this interim decision, so that Parliament may have the opportunity of considering in this present session, should it deem it advisable to do so, whether legislative action should be taken in relation to all or any of the claims I have mentioned.

The president was referring to the session last year.

> Consideration might also be given as to whether certain other matters which have hitherto been regulated by awards of the Court or agreement between the parties would not be more appropriately administered by a statutory authority. I refer to the method of the engagement and transfer of labour and the roster system and possibly also the place and time of payment of wages.
>
> I should, I think, say in conclusion that if Parliament does take some action in this matter any privileges granted will almost necessarily have some effect on the margins prescribed by the Court, and a provision for liberty to apply to these provisions will therefore be reserved in any award which we issue.
>
> The Court has not yet had the opportunity fully to consider the other matters in dispute between the parties and we will therefore consider the matter further before issuing the minutes of the award.

Mr. Davies, the workers' representative on the Arbitration Court, said—

> I agree with the decision as announced by His Honour the President.

Mr. Christian, the employers' representative, said—

> I also agree.

Following that the President said—

> The matter will therefore be further adjourned.

And the case was adjourned sine die.

Hon. C. H. Simpson: Was that circularised by the union or is it an actual court document?

The MINISTER FOR SUPPLY AND SHIPPING: It is a copy of the president's actual words.

Hon. C. H. Simpson: I realise that. But is it not different from the original?

The MINISTER FOR SUPPLY AND SHIPPING: This is a copy of the reserved decision and the heading reads "In the Court of Arbitration of Western Australia—copy." It is a copy of the president's final remarks on the application.

Hon. Sir Charles Latham: Would you have any objection to tabling it? It is pretty difficult to follow from a reading of it.

The MINISTER FOR SUPPLY AND SHIPPING: I have no objection at all to tabling it; in fact, I will send it around to the hon. member and he can study it, although I think all members might have received similar if not identical documents.

It will be seen, therefore, that on two occasions—in 1951 and again in 1956—the court did not express any opposition to this application for attendance money. On each occasion it merely pointed out that it had no jurisdiction in such a matter, and that it was advisable for the union to seek an Act of Parliament to cover the situation. That is how the Bill and the whole question comes to be brought before Parliament.

I think in my earlier remarks, and in reply to questions, I covered the main points in the Bill. After other speakers have expressed their opinions, and no doubt during the debate, many other aspects will be brought up and will require answering. I could stay here for an hour talking on this Bill, and still not touch on some aspects that members have in mind. So I invite those who desire to speak on the question to put forward any queries they may have, so that I will be able to find the answers to them, or endeavour to make a satisfactory explanation.

I appeal to members to give the question their earnest and serious consideration, and not to let their judgment be—I shall not say warped—blinded to some extent by criticisms and reports in connection with the industry on the Fremantle waterfront. As I have explained, it is an essential part of the workings of the port. These men are absolutely essential to the economic turn-round of ships, and the request has not met with any real or serious objection from the shipowners. I do know that the Chamber of Commerce raised the point that it would be a further cost on our exports. But the cost would be so small that if it interfered with the sale of our goods they would need to be increased only very slightly in the actual wholesale price.

Hon. J. M. A. Cunningham: Wasn't this very strongly opposed by the employers when it was first mooted?

The MINISTER FOR SUPPLY AND SHIPPING: No; it was not strongly opposed. The employers' association, as an association, may have raised an objection; but I am not aware of its being a strong one; and no criticism has been made of the move subsequent to the introduction of this measure. I move—

> That the Bill be now read a second time.

On motion by Hon. C. H. Simpson, debate adjourned.

BILLS (2)—FIRST READING.

1, University of Western Australia Act Amendment.

2, Factories and Shops Act Amendment.

Received from the Assembly.

BILL—OPTOMETRISTS ACT AMENDMENT.

Second Reading.

HON. SIR CHARLES LATHAM (Central) [3.12] in moving the second reading said: The parent Act was passed in 1940; and since that date it has been amended on two or three occasions. The first amendment was in 1944; and there was also one in 1951, both amendments being on lines similar to the one incorporated in this Bill, which provides for the same conditions as were provided for in the parent Act.

At that time the Act brought under control all those who had been practising as opticians—they were not called optometrists in those days. They were men who more or less made spectacles, and I presume they had some method of testing eyes. But in those days doctors used to provide a prescription for these people to make glasses after they had taken the necessary measurements and decided upon the eye adjustments required.

However, since 1940, optometrists have tested eyes and prescribed the necessary glasses. In many cases people still go to qualified eye specialists for prescriptions, but there is a large number of people who patronise optometrists.

The legislation provides that a person who has been five years in Australia, at least two of which must have been in Western Australia; who has at some stage or other practised for five years; and who makes an application and appears before the board and satisfies it that he has the knowledge required, shall be registered. At present any person who desires to qualify must have spent two years at the university and three years doing practical work with some optician.

This Bill avoids that. I know of two persons who are registered under the Act, and who have been qualified and are now practising. I am not sure about a third. Men who are advanced in years find great difficulty in passing examinations. Younger persons would not experience that difficulty. This Bill will enable people who during their business lives have earned a living in this calling to be registered. The person to whom I am referring came to Western Australia five or six years ago. He is of stateless nationality. He had no homeland or domicile. That often happens when a State goes out of existence, as frequently occurs in Europe.

Hon. J. G. Hislop: Has this man come in since the last Bill was passed?

Hon. Sir CHARLES LATHAM: He came in during the last war.

Hon. J. G. Hislop: A Bill has been passed since that date.

Hon. Sir CHARLES LATHAM: That had a limitation of only six months, but the present Bill will limit the operation of this provision to the 30th June, 1958.

Hon. J. G. Hislop: This is another one-man Bill.

Hon. Sir CHARLES LATHAM: Yes.

Hon. G. Bennetts: Is there any woman practising in this occupation?

Hon. Sir CHARLES LATHAM: I do not think so. There may be some women who are doing this work. I know of one person who desires to become registered. Three Bills have been passed in this Parliament since the original Act. The person to whom I am referring has now become a naturalised British subject. He is middle-aged; and that being the case, he does not have the capacity for retention of learning.

Hon. J. G. Hislop: What qualifications does he hold?

Hon. Sir CHARLES LATHAM: He has had five years' experience in this work abroad and he has the necessary papers.

Hon. J. G. Hislop: Where from?

Hon. Sir CHARLES LATHAM: From Europe he went to Cairo and Alexandria where he practised. The Bill before us has been drafted almost word for word with the legislation that was passed in 1940. The Bill provides in respect of an applicant for registration that if:—

> (a) he is over the age of twenty-one years and is of good character; and
>
> (b) being a natural born, or a naturalised, British subject, he has resided continuously in the Commonwealth of Australia for not less than five years during which period he has resided in Western Australia for at least two years; and
>
> (c) he had, for not less than five years immediately prior to his coming to the Commonwealth of Australia, been continuously and bona fide engaged in the practice of optometry, either as an optometrist or optician; and
>
> (d) he has passed a reasonable test in the work of an optometrist prescribed by the Board,
>
> he shall, if he meets those requirements—
>
> be entitled on payment of the prescribed registration fee and the prescribed certificate fee to be registered as an optometrist under this Act, and shall be so registered by the Board.

This person has satisfied the residential qualifications of five years.

It sometimes occurs that highly qualified and educated persons are found among the migrants who come to this country; and if they were able to make a living in the occupation in which they had been qualified in other countries, it would be to our advantage. There is also the danger that if such people are not allowed to be registered and to practise legally, then they will practise illegally until they are caught up with.

I was a member in this House when the late Mr. Panton first introduced the Bill. Even at that time the medical fraternity opposed it; since then the Act has been found to work very satisfactorily. I suppose that today some doctors, and the board itself, will also object to this Bill; but the board is given the opportunity to satisfy itself that applicants are qualified or have the necessary five years' experience. This person has had five years' experience in another country, and he is of good character. It would be unfair to compel such a man, who is qualified, to work outside of the Act.

Hon. J. G. Hislop: In what year was the board appointed:

Hon. Sir CHARLES LATHAM: In 1940. I think amendments to the Act were passed in 1944, and again in 1951. We should do all we can to assist a citizen who has brought his family from another country to settle in Australia. No doubt such people will make good citizens, as has been the experience in years gone by. This man should be assisted, because he cannot now undergo training to become a bricklayer or a blacksmith.

Hon. F. J. S. Wise: Do you support the principle of one-man Bills as a rule?

Hon. Sir CHARLES LATHAM: I do not as a rule; but there are instances when that is desirable. I did not oppose the 1940 or the 1951 legislation because I believed it was far better to have these persons practising under the control of the board than to practise without control. I hope the House will agree to this Bill.

Hon. J. G. Hislop: I hope it will not!

Hon. Sir CHARLES LATHAM: Doctors have always objected to this legislation. They objected in 1940; and I shall be able to refer to Hansard to show some of the objections advanced by the medical profession when amendments to this legislation were introduced. Since I have been a member of Parliament, not only optometrists but also other professional men have met serious obstacles in trying to obtain registration.

We have tried to improve the status in all professions by providing that young men shall qualify by undergoing training at the university or other institutions to fit themselves better to follow their respective cocupations. In this case it is hoped to give an opportunity to a middle-aged man who is already qualified to become registered. If he is compelled to undergo further studies for two years at the university, he might not be able to support his family in the meantime. I commend the measure to the House and move—

That the Bill be now read a second time.

On motion by Hon. J. G. Hislop, debate adjourned.

BEE INDUSTRY COMPENSATION ACT AMENDMENT.

Second Reading.

THE MINISTER FOR RAILWAYS (Hon. H. C. Strickland—North) [3.26] in moving the second reading said: As members may be aware the principal Act was passed in 1953 with the object of creating a compensation fund to assist beekeepers compelled to destroy their equipment because of disease. The scheme is controlled by a committee comprising an officer of the Department of Agriculture, who is chairman, and two representatives of the beekeepers. The scheme is a compulsory one and is financed by contributions from beekeepers based on so much per hive.

In order to obtain the nucleus of a fund, the first year's levy was at the maximum allowable, viz. 6d. per hive. In the second year it was found necessary to levy only 1d. per hive, but this year's levy had to be increased to 3d. per hive. The fund is controlled by the beekeepers and is operating most successfully. The principal Act provides for the payment of compensation at the rate of no more than two-thirds of the value of the property at the time it is destroyed. Property includes bees, combs, honey, hives and all other types of equipment used in the industry.

The fund committee has recommended that the Act be amended to permit refund of a portion of the expenses incurred by a beekeeper who chooses to have his equipment sterilised instead of destroyed. There are now large autoclaves available in which 20 lbs. of steam pressure is applied for 20 minutes and which can sterilise large quantities of beekeepers' equipment in a most efficient manner.

If the Bill is agreed to, beekeepers on whose property disease is found can be given the choice of three alternatives. The first will be complete destruction; the second, the destruction of combs, lids and bottom boards and sterilisation by fire of all boxes; the third, sterilisation in sealed autoclaves. Autoclaves are available, I understand, at Northam and in the metropolitan area; and, in some cases, beekeepers who choose the alternative of sterilisation may incur considerable expense in transporting their equipment to and from the autoclaves.

The object of the Bill, therefore, is to enable payment of compensation to beekeepers whose equipment has been sterilised at the rate of either two-thirds of the expenses incurred or two-thirds of the value of the property at the time of sterilisation whichever is the lesser sum.

The object is that two-thirds of the expense incurred might be more than the actual value of the property sterilised in a case where the beekeeper had travelled a long distance to the autoclave. It is therefore considered necessary that some restriction of compensation should be imposed.

For the information of members, I would advise that in 1955, the first year of operation, the levy was £620 7s. 1d.; in 1956, the levy of 1d. resulted in a collection of £263 9s. 5d.; and up to 20th August last, the collection this year at the rate of 3d. was £419 13s. 2d. Compensation payments have been:—

1955—Nil.
1956—£253 19s. 8d.
1957 to the 20th August—£281 11s. 8d.
—a total of £535 11s. 4d.

The credit balance in the fund as the 30th June, 1957, was £767 18s. 4d. I would point out that the levy is based on the year January to December, but compensation figures are shown as for the financial year. I move—

That the Bill be now read a second time.

On motion by Hon. Sir Charles Latham, debate adjourned.

BILL—TRAFFIC ACT AMENDMENT (No. 2).

Second Reading.

Debate resumed from the 19th September.

HON. G. BENNETTS (South-East) [3.33]: I support the Bill. In my opinion the previous system of issuing drivers' licences was 100 per cent. better than the existing one. A person had to take his licence to the Police Department and pay his fee of 10s. While the officer was writing out the small page to stick to the person's licensing book, he gave him the once-over. At present licences are sent to the police station in an envelope.

At Kalgoorlie the situation is causing a good deal of dissatisfaction. Formerly one was able to go to the police court, take one's book along, pay 10s. and receive the licence. The system now is that one either sends a postal note to the Perth Traffic Branch, which involves expense and inconvenience; or go to the office of the clerk of courts, which involves climbing to some height.

Generally there is a good deal of business being transacted and a young lady—quite a teenager—accepts the money for the licence. No matter what type of person one happened to be, he would be able to secure a licence—although he might not be fit to have one—because there is no authority to refuse it. The office hours are from 10 a.m. to 3 p.m., which means that those who work on the mines after 4 or 5 o'clock have to get another member of the family to go to the office and obtain the licence.

Before the present system was introduced, I knew a big businessman in Perth who went to the Police Department to renew his licence. But he went a month too early, and he was told he would have to return at a later date. However, he was informed that in view of the fact that he was wearing glasses, he would need to have his eyes examined and produce a certificate when subsequently applying for a renewal of his licence.

He told me that he knew he would not be able to obtain that licence under those conditions, and that his only chance was to go to Kalgoorlie for a trip and get one there. Under the present system, all he would have to do would be to enclose his licence in an envelope and obtain a renewal by post. That man would be a danger on the road. The Bill will greatly assist to overcome that position because it will give the police an opportunity to view the persons who are to be issued with licences.

I consider that the police are the proper ones to issue such licences and that they should be issued under the old book system which gave an indication of a driver's previous convictions. At present, all that one has is a piece of paper that could easily be lost or destroyed. The sooner the old system is reverted to, the better it will be. I hope that Mr. Diver will see his way clear to move an amendment to provide for a restoration of the earlier practice.

On motion by Hon. E. M. Davies, debate adjourned.

BILL—JURIES.

In Committee.

Resumed from the previous day. Hon. W. R. Hall in the Chair; Hon. E. M. Heenan in charge of the Bill.

The CHAIRMAN: Progress was reported after Clause 5 had been agreed to.

Clause 6—Exemptions:

Hon. A. F. GRIFFITH: I move an amendment—

That after the word "Act" in line 29, page 7, the following words be inserted:—

and persons to whom the Sheriff has issued a certificate of permanent exemption pursuant to subsection (10) of section fourteen of this Act.

Members will see that that section deals with permanent exemption from jury service, and to bring the Bill into conformity I move this amendment.

Hon. E. M. HEENAN: It appears to me that the proposed amendment is redundant; but if the hon. member insists in pursuing it, I do not think it matters a great deal.

Hon. A. F. GRIFFITH: Clause 6 deals with exemptions, and I do not think the amendment is unnecessary. It makes it perfectly clear that persons who come under the Second Schedule, and those who have a permanent certificate of exemption, are exempt from jury service.

Amendment put and passed.

Hon. A. F. GRIFFITH: I move an amendment—

> That Subclause (3) in lines 5 and 6, page 8, be struck out.

I would like Mr. Heenan to explain the meaning of these words—"a proclamation made under this section has effect according to its tenor."

Hon. E. M. HEENAN: I have a note here which says "Clause 6 (3)—refer to draftsman"! All I can say is that the words mean what they say. I would interpret them as meaning that what it says, shall be carried into effect. For "tenor" one might substitute "context." Undoubtedly the proclamation would relate to exemptions; and I suppose that various persons would be mentioned in the proclamation, and they would be the ones who would be exempt, wholly or partly as the case might be.

Sitting suspended from 3.45 to 4.3 p.m.

Hon. A. F. GRIFFITH: It is surprising that the only one who can tell me what this means is the draftsman.

Hon. E. M. Heenan: I can explain it to you.

Hon. A. F. GRIFFITH: In that case I will sit down.

Hon. E. M. HEENAN: I would refer members to Clause 6, particularly to Subclause (3).

Hon. Sir Charles Latham: That is very unlimited.

Hon. J. Murray: It is as clear as mud.

Hon. E. M. HEENAN: Certain highly placed civil servants are not exempted at present, but the Governor may by proclamation exempt them for the time being.

Hon. G. C. MacKinnon: Wouldn't the same thing apply to the State manager of a large concern?

Hon. E. M. HEENAN: I suppose it would. He would not come under this legislation, but he could of course apply. It is possible that the Under Secretary of the Child Welfare Department is not exempt.

Hon. Sir Charles Latham: There is a terrific list of exemptions at present.

Hon. E. M. HEENAN: If he is not exempt, then the Governor may by proclamation exempt any such person where the interruption of his duties would result in serious inconvenience to the public. When the proclamation is issued, it has the effect set out in the Bill. Mr. Griffith should not proceed with his amendment.

Hon. C. H. SIMPSON: The meaning of the word "tenor" in the Concise Oxford Dictionary is as follows:—

> Settled or prevailing course or direction; general purport, drift, (of speech, writing, etc.); (Law) true intent, (also) exact copy.

I take it, as Mr. Heenan has explained, the meaning is to confine the nature of that proclamation within the intent of the clause.

Hon. A. F. GRIFFITH: As I said yesterday, I received some advice from a number of members of the legal fraternity, one of whom is regarded as a good draftsman. He gave me a note which said, "Mere words; most unnecessary. It would be an extremely strange proclamation if it did not have an effect according to its tenor." How could it have any other effect? It would not be a lawful proclamation if it said one thing and applied something else. The proclamation must contain what it says it contains. For instance, we could not have a proclamation issued by the Governor saying that a building lot shall contain at least 6,000 sq. ft. if it were not intended that it should contain that number of square feet. I propose to persist with my amendment.

Hon. E. M. HEENAN: I would like to give the meaning of the word "tenor" as contained in this Concise Legal Dictionary I have with me. It is as follows:—

> The general import of a document or its exact wording.

Hon. Sir Charles Latham: So those words are unnecessary.

Hon. E. M. HEENAN: They appear to be redundant; but nothing will be achieved by their removal. The person who has drafted this Bill has had far more experience than either Mr. Griffith or I. It must have been put there for a reason, and we should allow it to remain. I oppose the amendment.

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

Ayes	12
Noes	10
Majority for	2

Ayes.

Hon. N. E. Baxter	Hon. G. C. MacKinnon
Hon. L. C. Diver	Hon. R. C. Mattiske
Hon. A. F. Griffith	Hon. J. Murray
Hon. A. R. Jones	Hon. J. M. Thomson
Hon. Sir Chas. Latham	Hon. H. K. Watson
Hon. L. A. Logan	Hon. F. D. Willmott *(Teller.)*

Noes.

Hon. E. M. Davies	Hon. C. H. Simpson
Hon. E. M. Heenan	Hon. H. C. Strickland
Hon. R. F. Hutchison	Hon. J. D. Teahan
Hon. G. E. Jeffery	Hon. W. F. Willesee
Hon. F. R. H. Lavery	Hon. F. J. S. Wise *(Teller.)*

Pairs.

Ayes.	Noes.
Hon. H. L. Roche	Hon. G. Fraser
Hon. J. G. Hislop	Hon. J. J. Garrigan
Hon. J. Cunningham	Hon. G. Bennetts

Amendment thus passed; the clause, as amended, agreed to.

Clauses 7 to 13—agreed to.

Clause 14—Chief Electoral Officer to prepare draft jury rolls:

Hon. A. F. GRIFFITH: I move an amendment—

> That all words after the word "jurors" in line 10, page 11, down to and including the word "women" in line 15, be struck out.

We should make up our minds whether we are quite sincere about amending the Jury Act or not. If we are to set up an effective jury system, we are still going to refer to males and females as persons, and not as men and women. We must accept this as some form of lottery in the first place.

If we refer to Clause 23, the same thing is there in the jury precept; and I cannot see why it is necessary in this clause, except that this clause provides for the compiling of the jury roll; and we are trying to get a balance of half women and half men. We are trying to preserve the equality of sexes, when it is unnecessary to do so. We must think of them as persons.

Hon. E. M. HEENAN: I am not going to oppose this amendment very strongly, although I think the clause is all right as it is. I cannot share Mr. Griffith's abhorrence in regard to reference to "men" and "women."

Hon. A. F. Griffith: Not an abhorrence.

Hon. E. M. HEENAN: I presume counsel will address the jury as "ladies and gentlemen" instead of "gentlemen."

Hon. Sir Charles Latham: Persons!

Hon. E. M. HEENAN: I do not think we need be frightened of the mere mention of "women." In a sense of appeasement I will not protest any further.

Hon. J. D. TEAHAN: I prefer the use of the word "persons" because all witnesses before the select committee stressed the word "persons."

Hon. E. M. Heenan: Surely they will be addressed as "ladies and gentlemen."

Hon. Sir Charles Latham: Persons!

Hon. J. D. TEAHAN: I do not think there is any need for a balance. We are satisfied that they are equals in intellect.

Hon. A. F. GRIFFITH: I want to make it perfectly clear that there is no abhorrence so far as I am concerned to the use of the expression "men" and "women."

Hon. E. M. Heenan: I always thought you were favourable towards women.

Hon. A. F. GRIFFITH: You might say I am favourable towards most of them. There is a principle behind this, as Mr. Teahan says. A man on trial has to be tried by a jury. In the law journal which Mr. Heenan had yesterday there are references to trial by jury, and I read an interesting account written by Dr. Evatt. While I do not share his political views, I recognise this as something which he has done well. It is a most interesting account of the jury system in Australia, and it was heralded by a lot of legal men. Whilst at that stage it was not contemplated to have women on juries in Australia, Dr. Evatt referred to the jury system and told us how far back it went in the history of the world.

The main principle is that this has to become a lottery at some stage. There are a certain number of people put on the jury rolls; and whether they are men or women is not of material consequence. They are persons, because a male and a female are to have equal qualification. I think that we will do better by making this a lottery in the first instance. If there is a jury of men and women, it will be the result of the lottery.

Amendment put and passed.

Hon. L. A. LOGAN: During this debate I gave members the number of people liable for jury service. In the metropolitan area there are something like 175,000; but after the lottery has taken place there are only 1,000 names, because that number is all that is necessary for 12 months.

The present jury list is different from the one we will have in the future. The jury list today is almost a permanent one, because we only get additions to and subtractions from it; but the Bill proposes there shall be a new jury list each 12 months, and that the draft jury list shall be placed in the police stations, the courthouses and municipal offices.

Of the 175,000 people liable, only 1,000 will be needed for the draft jury list. As the Bill stands, the 175,000 will need to trapes through these different offices to find out whether they are on the draft list. It would be simpler and better for the 1,000 people whose names appear on the draft jury list to be notified that they were included. This is particularly so as a new list has to be made up each year.

In my opinion it is necessary to notify these people that they are on the draft jury list and to let them know of the procedure by which an exemption may be claimed. I move an amendment—

That all words after the word "notice" in line 1, page 12, down to and including the word "inspected" in line 4, be struck out and the following inserted in lieu:—

to be served on the person informing such person that their name has been recorded on the draft jury roll.

Hon. A. R. JONES: This is a commonsense proposal because it would be inconvenient for a great number of people to check whether they were on the jury list.

Hon. E. M. HEENAN: I agree that there is some merit in the proposal, and I shall not oppose it. Mr. Logan says that the notice is to be "served." How is it to be served? Perhaps the amendment could be amended by inserting after the word "served" the words "by posting it as a letter addressed to him at his place of abode as appearing on the list."

Hon. L. A. LOGAN: I am quite in accord with what Mr. Heenan suggests, but I framed the amendment this way because I was frightened that if I suggested service by registered letter, I would be causing a charge to be made upon the Crown. Even an ordinary letter requires a fourpenny stamp. I refer the Committee, in connection with the word "served", to Section 31 of the Interpretation Act.

Amendment put and passed.

Hon. L. A. LOGAN: I move an amendment—

That all words after the word "obtained" in line 6, page 12, down to and including the word "secretary" in line 19, be struck out.

Amendment put and passed.

Hon. A. F. GRIFFITH: The inconsistency which I referred to earlier occurs again in Subclause (10) where the words "his or her" appear in the first line. I move an amendment—

That the words "his or her" in line 1, page 13, be struck out and the word "a" inserted in lieu.

Amendment put and passed.

Hon. A. F. GRIFFITH: In lines 3 and 4 of the same subclause the expression "a physical infirmity or disability" appears. I contend that the expression "an infirmity" has more general application, whereas the expression in the Bill would preclude a person with a mental disability. Any infirmity can be mental or physical, and therefore I move an amendment—

That the words "a physical" in line 3, page 13, be struck out and the word "an" inserted in lieu.

Hon. E. M. HEENAN: I do not think this amounts to much. I would have thought that the words that would worry Mr. Griffith in his present frame of mind would be the words "he or she." They seem to offend him. He objects to the words "his or her" but apparently the words "he or she" are all right.

Hon. A. F. Griffith: You frame it grammatically.

Hon. R. F. HUTCHISON: Will there be any difference, if the amendment is passed, between an infirmity and a disability? An infirmity is something permanent and could refer to age or something like that; but a disability could be something temporary. If the question is qualified, I have no objection to it.

Amendment put and passed.

Hon. A. F. GRIFFITH: I move an amendment—

That the words "or disability" in line 4, page 13, be struck out.

Amendment put and passed.

Hon. A. F. GRIFFITH: I move an amendment—

That the word "may" in line 8, page 13, be struck out and the word "shall" inserted in lieu.

I think it is obvious that the sheriff will have to issue a certificate of permanent exemption in that case, and so the word "shall" should have been used.

Amendment put and passed.

Hon. A. F. GRIFFITH: I move an amendment—

That the words "and a certificate so issued has effect according to its tenor" in lines 9 and 10, page 13, be struck out.

I do not think we need go over this question again.

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

Clause 15—agreed to.

Clause 16—Sheriff to provide boxes for jurors' tickets:

Hon. A. F. GRIFFITH: This clause pertains to the question of the use of boxes for jurors in use and jurors in reserve. The Bill tries to maintain once again this distinction between men and women; and since we have taken out the other parts, I have become a little confused. I do not want to do the wrong thing, and I think perhaps it might be best to leave the clause as it is in that regard.

I contended that there was a necessity to create separate jury boxes for men and women so that we would not have people picking out men's names when they were trying to get women's names. However, I do not think there is any necessity for me to proceed with the amendments I have

on the notice paper, in reference to boxes for jurors in use and boxes for jurors in reserve. Nevertheless, I think that Subclause (5) could be struck out and I move an amendment—

That Subclause (5) in lines 10 to 15, page 15, be struck out.

This subclause will not now apply.

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

Clauses 17 to 22—agreed to.

Clause 23—Number of jurors to be summoned:

Hon. G. C. MacKINNON: I should like to ask Mr. Griffith, through you, Mr. Chairman, whether the select committee gave any consideration to the practice used in England for the summoning of jurors—that is, by registered post. Apparently it is quite successful there, and I would like to know whether the committee decided against it for some reason.

Hon. A. F. GRIFFITH: The select committee gave consideration to an abundance of evidence, most of which comprised claims by women for service on an equal basis with men. As regards the way that jurors should be summoned, and the preparation of the Bill, we left that to the Government.

Hon. G. C. MacKINNON: Then can I ask Mr. Heenan whether the Government gave any consideration to the matter?

Hon. E. M. HEENAN: Whenever it is important to have a summons served, the most effective way to do it is by a personal service. Registered post and ordinary post are all right; but sometimes a person is away for a day or two, and difficulties arise. I think it is important that a juror should get a summons.

Hon. G. C. MacKinnon: It is no less important in England.

Hon. E. M. HEENAN: I do not know how it works out there; but I should say that the best way is to have a summons served personally.

Hon. J. D. Teahan: It has been successful so far and has never been questioned.

Hon. E. M. HEENAN: Yes; and if a man does not get a summons, he cannot be blamed for not attending.

Hon. Sir CHARLES LATHAM: On one occasion the select committee summoned a man from Bridgetown or Manjimup to appear before it. We waited for him to appear but he did not turn up; and when we asked the police to make inquiries, we found that he was away on his honeymoon and had not received the summons, although it had been issued 10 days before. It would be very awkward if they had to depend on someone like that to appear.

Hon. A. F. GRIFFITH: I move an amendment—

That all words after the word "jurors" in line 11, page 17, be struck out.

This is necessary because of the Committee's decision in respect of the other clauses.

Hon. E. M. HEENAN: It is a consequential amendment and the Committee could agree to it.

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

Clauses 24 and 25—agreed to.

Clause 26—Procedure for choosing jurors for criminal trials:

Hon. A. F. GRIFFITH: I do not now need to proceed with the amendments in my name because of the decisions which have been reached.

Clause put and passed.

Clause 27—Summoning officer may omit name from panel and excuse juror from attendance:

Hon. L. A. LOGAN: I move an amendment—

That the word "criminal" in line 25, page 20, be struck out.

Under this clause a judge may excuse from attendance as juror at a criminal trial any person who has been summoned. I cannot see why the exemption cannot be applied to other trials. The same circumstances would apply to women summoned for jury service in a criminal trial or a civil trial. Women jurors would be affected to the same extent in both types of trials.

Hon. R. F. HUTCHISON: I support the amendment. The word "criminal" was included in the provision because of the debate that had ensued previously. Much play was made about the sordid evidence in criminal trials to which women jurors would have to listen. It was on account of that fact that this word has been included in the clause.

Hon. E. M. HEENAN: I oppose the amendment. I am advised that this amendment should be rejected. Jury proceedings in civil trials are very different from those in criminal trials, and a separate set of provisions governing civil trials is contained in Part VII of the Bill. There is a special portion devoted to proceedings in civil trials.

Clause 27 should be confined to criminal trials, and the word "criminal" should be retained. The jury for a civil trial normally consists of six jurors and only that number is summoned. Clause 47 provides for the discharge of sufficient cause of a juror in a civil trial, and Clause 49 provides for the continuance of a trial in

the event of death, incapacity or absence of any juror; but in no case can a trial continue with fewer than four jurors.

Hon. A. F. GRIFFITH: I support the amendment. I disagree with the comments of Mr. Heenan, and would draw attention to Part VII, which deals only with deposit of expenses of a civil jury. There are three subclauses in Clause 44 relative to that matter. Clause 47 similarly is relative to expenses. In neither of those clauses is there any specific provision dealing with exemption of jurors in civil trials.

Hon. L. A. LOGAN: The difficulty might be overcome by leaving the word "criminal" in, and by inserting the words "in any trial" after the word "or" in line 29. Under the first portion of the clause a woman summoned for jury service could then apply for exemption because of the nature of the evidence, and in the latter part she could apply to be exempted from jury service in any type of trial on the other grounds referred to. In Clause 27 a woman juror could be exempted before she was sworn-in; but under Part VII she would have to be sworn-in and then apply to be exempted.

Hon. E. M. HEENAN: Under Part VII, in a civil trial a woman juror cannot be released on account of illness or sufficient cause. I would refer to the wording of Clause 46 which refers to discharge of jurors. Clause 48 contains a provision for challenges. A woman who is ill or has a reasonable excuse for not wanting to sit on a civil jury should not be forced to do so. To make it abundantly clear, Mr. Logan's proposal is acceptable to me.

Hon. A. F. GRIFFITH: I hope Mr. Logan will not do as he suggests but will adhere to his intention to move for the deletion of the word "criminal." This subclause deals with women who want to be exempt because of the type of evidence that is likely to be produced at the trial, and on medical grounds.

Hon. E. M. Heenan: That would rarely, if ever, happen in a civil action.

Hon. A. F. GRIFFITH: Wait a minute! This deals with a woman before she is sworn-in.

Hon. E. M. Heenan: That is so.

Hon. A. F. GRIFFITH: But Clause 46 applies after the jury is sworn-in. When there is a jury of six sworn-in in connection with a civil case—say, an assessment of damages—and one of the jurors is not required to act and is dismissed by the judge, it is provided that the assessment of the damages can continue with only five jurors. That is an entirely different case. Under Clause 27 (2) if a woman says that because of the evidence which is likely to be submitted she requires exemption, somebody else will be sworn-in in her place, and there will still be a jury of 12, if it is a criminal trial. But the other case is completely different.

Amendment put and passed.

Hon. A. F. GRIFFITH: Because of the Committee's decision not to accept a previous amendment which I submitted last night in conformity with the recommendations of the select committee pertaining to a woman who has a child under the age of 14 in her care—an action which I contend destroys the whole purport of the Bill—it is useless for me to proceed with the amendment to this clause which I have on the notice paper.

Clause, as amended, put and passed.

Clause 28—Summoning officer may omit name from panel and excuse juror from attendance:

Hon. A. F. GRIFFITH: The amendments I have on the notice paper in relation to this clause are consequential; and, because of previous decisions of the Committee, I do not intend to proceed with them.

Clause put and passed.

Clause 29—Ticket of juror not attending to be returned to the box:

Hon. A. F. GRIFFITH: The same applies in connection with the amendments to this clause which are on the notice paper, and I do not intend to move them.

Clause put and passed.

Clauses 30 to 32—agreed to.

Clause 33—Power of court to excuse jurors:

Hon. A. F. GRIFFITH: Here again, the amendment on the notice paper in my name has reference to a woman having the care of a child under the age of 14, and I do not propose to proceed with it.

Clause put and passed.

Clauses 34 to 36—agreed to.

Clause 37—Mode of empanelling jury for a criminal trial:

Hon. A. F. GRIFFITH: I want to ask Mr. Heenan for an explanation in regard to Subclause (2). The marginal note of this subclause is: "Standing aside of jurors." In conversation I have had with many members of the legal fraternity, the suggestion has arisen that it is about time that the Crown's power to stand aside, as distinct from the right of counsel for the defence to challenge should be put on a more equitable basis.

When a jury is empanelled, the accused—either personally, if he is undefended; or through his counsel, if he is

defended—has the right to six peremptory challenges without cause. The challenges must be made as the jurors' names are called, and before they step into the jury box. I have been to the criminal court to watch juries being empanelled, and I have seen a number of criminals in the box during the empanelling process. I have looked at the type of individuals charged and at the persons being challenged. I will not make any comment on my thoughts on the matter, beyond saying that it appeared to me that the accused seemed to try to get into the box the sort of people they thought would be most favourably disposed to them.

Hon. Sir Charles Latham: Isn't that natural?

Hon. A. F. GRIFFITH: Very natural. But I can well imagine that if a man were charged with a sex offence he might have mixed feelings about whom he should challenge in the event of the possibility of women being on the jury. He might or might not do his level best to get rid of women. On the other hand, the Crown Prosecutor, because he has the power to stand aside, can virtually empanel a jury to his liking.

I hasten to say that I am not casting any reflection on the character of any Crown Prosecutor. But it could be that, where 40 people were available for empanelling, because of the way the Bill is written at present eight of those chosen could be women and 32 could be men; or the position could be reversed. And whereas the accused would have the right to challenge peremptorily and without cause only six of the 40, the Crown, with the right to stand aside, could empanel a jury very much in favour of the Crown.

The point of view of some members of the legal fraternity is that the scales of justice should weigh evenly and that the accused should be on the same level as the prosecution, and should have the same opportunity to restrict the jury or to stand aside as is possessed by the Crown. I know that this practice has probably been in vogue for quite a long time. I understand the explanation is that somebody goes to the sheriff and says, "I have a business and I am the only one in it. I have to go to the court next week and would like to be let off." Out of the kindness of his heart the Crown Prosecutor stands that man aside without challenging him. I would like to hear Mr. Heenan's viewpoint on the matter.

Hon. E. M. HEENAN: I hope the Committee will not tamper with this provision, because it has operated for a long time and very fairly to all concerned. I do not think that anyone will claim that under our jury system an accused person gets anything but a fair trial. The merit of the jury system might lie in the fact that the scales are tipped in favour of the accused. I have here something that was written a long time ago by a man called Forsyth, a jurist, who—

> admitted the accusation that juries sometimes acquit when they should condemn, owing to feelings of compassion for the person or to repugnance for the law and so wrongly usurped the prerogative of mercy.
>
> But he rejected the harsh judgment that this must be entirely condemned. On the contrary, he thought it was "an error at which humanity need not blush; it springs from one of the purest instincts of our nature."—

and so on. My note is that the right of the Crown to stand by is rooted in antiquity. The Crown has always had the right to object to jurymen. The whole object of trial by jury is that 12 men may be obtained from those who have been called together to act as jurors to decide on questions of fact; 12 indifferent men free from bias or prejudice.

The trial of an accused person is not the same as a trial in a civil action, and the Crown should be in no better position in this regard than applies in the case of a private person being sued by another person. In a Crown case the Crown must convince the whole 12—or 10 out of 12, if the proposal in this Bill is agreed to—of the guilt of the accused; and the accused has only to find one, or three, as the case may be, in his favour, for there to be a disagreement and the jury to be discharged.

In the selection of a jury the Crown is not concerned with getting a jury friendly to the Crown; and it is difficult to see how a normal juryman could be predisposed, prior to the trial, to favour the possibility of a conviction. It is a matter of importance to the community and not merely to the Crown that juries adjudicating on criminal offences should be unprejudiced and unbiassed.

It is not a matter of selecting a jury friendly towards the Crown—if that can ever be the case—but of excluding from the jury any juryman who might favour a particular accused, whether on the grounds of friendship or the ties of blood, or a juryman who has previously committed a serious offence or who has anti-law or anti-police leanings.

The stand-by is used by the Crown to ensure honest administration of the law and the freedom of juries from the taint of prejudice or bias, either in favour of a particular accused or against the administration of the criminal law generally. It would not be well for the community if accused persons were acquitted not on the merits of the case but because of personal bias by a juror in favour of a particular accused or generally against those who administer the criminal law.

The Crown strictly has no right of stand-by and the application by the Crown Prosecutor to the judge to order a juryman to stand by is at the discretion of the court, and the judge would exercise that discretion and refuse the application if he considered it would be unfair or an abuse of privilege. The Crown's right to ask for an order of stand-by is retained in the jury system of all the other States and judges in this State have recommended the retention of the practice.

Hon. A. F. GRIFFITH: Subclause (2) of Clause 36 deals with the power of the Crown to stand by, and I realise that the order is by the court; but in the cases I have observed, it seems that the stand-by application is always accepted. I would like to know whether that is always so. I know there are deeper reasons than can be expressed here for the power of stand-by; and of course a man does not reach the Criminal Court until he has been committed by a lower court in investigating proceedings.

On a later clause we may have an interesting debate on such proceedings. I think it is true that the Crown proceeds with a case in the criminal court only where it has a good chance of a conviction; and I believe most Crown prosecutors enter a nolle prosequi where they do not think they will succeed. It might be interesting to examine the records and see how many cases have been committed for trial by the lower courts and then withdrawn from the Criminal Court.

Hon. E. M. HEENAN: The Crown does not set out to obtain a conviction. The evidence in the lower court must make out a prima facie case for committal; and then the accused is committed and the indictment filed. When the accused comes before the Criminal Court, it is the responsibility of the Crown only to place the facts fairly before the court and not to endeavour to convict, as the decision on the facts is the duty of the judge and jury. A nolle prosequi is entered in cases where it is obvious to the Minister for Justice and his officers that the evidence does not warrant putting the man to trial.

Clause put and passed.

Clause 37—agreed to.

Clause 38—Right of peremptory challenge:

Hon. A. F. GRIFFITH: Section 629 of the Criminal Code conflicts with Section 21 of the Act. Subclause (3) of Clause 38 seeks to alter the present procedure. At present the right to challenge a juror can be maintained right up to the time when the whole jury is in the box; but under this provision, once the juror stepped into the jury box he could not be challenged. Section 21 has operated successfully for 60 years, and I am advised that the legal fraternity want it retained as it is.

Hon. E. M. HEENAN: I have always felt that the amendment contained in this clause was necessary. In the past jurymen have sat in the back of the court and their names have been called out of the box by the clerk. The practice has been for them to walk through the body of the court and get into the jury stand. Normally, having had the jury list for some time and knowing who one wanted to challenge, the practice has been to challenge the juror as he walked to his seat. That is reasonable.

What happens is that after the jury have taken their seats and they are about to be sworn, counsel—even at that late stage—can still challenge; and the unfortunate man who may be sitting in the middle has to get up and shuffle out, looking most embarrassed. That is quite unnecessary. Counsel has had ample time to challenge before this late stage.

If the provisions in the Bill are accepted this will no longer happen. I am in favour of giving counsel for the accused every opportunity, and he will have it. The jury list is supplied a few days before the trial and there is plenty of time to discuss it with the accused. This does not happen very often; but when it does, the man concerned has to walk out of the court like a criminal.

A note from the Crown Prosecutor indicates that this was suggested by His Honour, the Chief Justice, and also that it was the opinion of the previous Chief Justice that a challenge should be made before the jurymen took their seats. I oppose the amendment.

Hon. A. F. GRIFFITH: Their Honours also said that they thought a jury would be better if it were selected from the age groups of 30 to 65 years, but we did not accept that advice. I am amused to hear Mr. Heenan talk about the juror being embarrassed at having to walk out.

Hon. F. R. H. Lavery: You want to try it and feel it.

Hon. A. F. GRIFFITH: I am amused when I think of what happens in the case of the Crown Prosecutor; when a man comes up he says, "Stand by." The rest of the people listening to the challenge of "Stand by" feel that the Crown must have something on this fellow; but actually it is to save the man embarrassment, so that they will not have to challenge him.

My only sympathy lies in the fact that the Criminal Code is not so framed as to avoid the man having to shuffle out; that is the extent to which it goes. Surely if it is right for the Crown to stand by, it should be right for the accused to challenge at the last minute!

Hon. E. M. Heenan: They both have to do it before they take their seats.

Hon. A. F. GRIFFITH: But the scales are not evenly balanced. The accused has six peremptory challenges, and the Crown can go through the whole 40 of them and stand them by if the Crown Prosecutor desires. Section 629 of the Criminal Code says that objection to a juror even by way of peremptory challenge or by way of challenge for cause may be made at the time before the officer has begun to recite the words of the oath to the juror, but not afterwards. We now want to write into the Jury Act something quite the contrary to that. What would then be the position?

Hon. Sir Charles Latham: The last one passed would prevail.

Hon. A. F. GRIFFITH: But there will be an inconsistency, and we will probably have to amend the Criminal Code to bring it into line with the Jury Act. The accused should be given the opportunity to exercise his right of challenge as it has been operating for 60-odd years.

Clause 30 makes available the names of the jury panel for inspection by the parties at least four days clear of the trial. In a criminal trial I should think the defending counsel would make it his duty to find out all he could about the jury; and that is why the list is made available to him. He may exercise four or five challenges; and, not having the same right as the Crown to stand by, he may want to save one and he may save it up to the time the officer begins to recite the oath. When the officer begins to recite the oath he can no longer challenge. A man's life is at stake; and he is innocent until he is proven guilty. This practice has been operating satisfactorily for 60 years.

Hon. G. C. MacKinnon: In England and in every other State of Australia—in fact, wherever the jury system applies.

Hon. A. F. GRIFFITH: Let us keep to that practice. If a change is made I will recommit the Bill in order to take out the Crown's right of challenge.

The Minister for Railways: You must not threaten us.

Hon. A. F. GRIFFITH: I move an amendment—

> That Subclause (3) in lines 11 to 13, page 28, be struck out.

Hon. E. M. HEENAN: The rights of the accused and his counsel will not be taken away by the proposal in the Bill. It is in rare instances that counsel challenges a man after he has taken his seat among the jury. But it is unnecessary, and it does cause the man who is challenged considerable embarrassment. I oppose the amendment.

Amendment put and a division called for.

The CHAIRMAN: Before the tellers are appointed, I give my vote with the noes.

Division taken with the following result:—

Ayes	11
Noes	12
Majority against	1

Ayes.

Hon. N. E. Baxter	Hon. J. Murray
Hon. L. C. Diver	Hon. J. M. Thomson
Hon. A. F. Griffith	Hon. H. K. Watson
Hon. L. A. Logan	Hon. F. D. Willmott
Hon. G. C. MacKinnon	Hon. C. H. Simpson
Hon. R. C. Mattiske	*(Teller.)*

Noes.

Hon. E. M. Davies	Hon. Sir Chas. Latham
Hon. W. R. Hall	Hon. H. C. Strickland
Hon. E. M. Heenan	Hon. J. D. Teahan
Hon. R. F. Hutchison	Hon. W. F. Willesee
Hon. G. E. Jeffery	Hon. F. J. S. Wise
Hon. A. R. Jones	Hon. F. R. H. Lavery
	(Teller.)

Pairs.

Ayes.	Noes.
Hon. H. L. Roche	Hon. G. Fraser
Hon. J. G. Hislop	Hon. J. J. Garrigan
Hon. J. Cunningham	Hon. G. Bennetts

Amendment thus negatived.

Hon. E. M. HEENAN: Mr. Chairman—

Point of Order.

Hon. A. F. Griffith: On a point of order, Mr. Chairman, you have not concluded this clause.

The Chairman: I gave Mr. Heenan the call.

Hon. A. F. Griffith: We are half way through this clause, and I want to move another amendment. I presume I shall be able to do so?

The Chairman: Yes.

Committee Resumed.

Progress reported.

ADJOURNMENT—SPECIAL.

THE MINISTER FOR RAILWAYS (Hon. H. C. Strickland—North) I move—

> That the House at its rising adjourn till Tuesday, the 8th October.

Question put and passed.

House adjourned at 6.3 p.m.