

It is very disheartening and dispiriting to departmental officers—forgetting the feelings of the Minister—and the people at Katanning were disgusted because they felt they had been treated with contempt. I think I am right in saying the local newspaper gave eight or 12 pages of pictures and feature articles to this development, which means so much to the town of Katanning and the hundreds of farmers who will find a new outlet for their stock. Something meaningful was achieved by a reversal of policy—something meaningful in the realm of decentralisation.

Without going any further, it can truly be said that this Government is encouraging activity in all types of development. On occasions, of course, we enter into negotiations and bring agreements to Parliament which perhaps do not come to fruition or which perhaps take longer to come to fruition than might have been expected, but this Government is on the ball. This Government has a strong record of establishing industries—I repeat, not fortuitously created because they are situated on a natural asset but created as a consequence of deliberate policy, with the Government going out of its way to encourage, induce, and grant concessions in order that something more than words might be achieved. This Government has nothing to apologise for in that respect.

Whilst no doubt some projects will not get off the ground, in the great majority of cases they will get off the ground, and it should be the hope of everybody—irrespective of where he sits in this Chamber—that an increasing percentage of the ventures which come to the Government will ultimately prove to be successful.

On these grounds and many more I could enumerate, I ask that the House roundly to condemn and defeat the motion now before it.

Debate adjourned, on motion by Mr. O'Connor.

*House adjourned at 10.52 p.m.*

## Legislative Council

Thursday, the 19th April, 1973

The DEPUTY PRESIDENT (The Hon. N. E. Baxter) took the Chair at 2.00 p.m., and read prayers.

### QUESTIONS (7): ON NOTICE

#### 1. TOWN PLANNING BOARD

##### Members

The Hon. F. R. WHITE, to the Leader of the House:

- (1) Who are the present members of the Town Planning Board, and what was the date of appointment in each case?

- (2) Where new members have been appointed since February 1971—
  - (a) what is the name of the retiring member;
  - (b) what was the date of appointment and retirement in each case?

The Hon. J. DOLAN replied:

- (1) Chairman—Dr. David Carr, appointed 13/12/1972.

Members—Mr. A. E. White, appointed 1/2/1966; Mr. J. B. Fitzhardinge, appointed 1/2/1966; Mr. J. F. Morgan, appointed 25/2/1972.

- (2) (a) Mr. V. L. Steffanoni  
First appointed—4/11/1935,  
Retired—31/1/1972.  
(b) Mr. J. E. Lloyd  
First appointed—17/8/59,  
Retired—27/10/72.

#### 2. ELECTRICITY SUPPLIES

##### Hopetoun Townsite

The Hon. R. J. L. Williams for The Hon. D. J. WORDSWORTH, to the Leader of the House:

- (1) Has the Government received requests from the Ravensthorpe Shire Council for an electricity supply for the Hopetoun townsite?
- (2) Under what conditions would the Government be prepared to make a supply available?
- (3) (a) Has the State Electricity Commission surplus plant which could be utilised for this town; and  
(b) what would be the approximate capital cost of building a plant house and installing such equipment in the town, excluding the cost of the actual power lines?

The Hon. J. DOLAN replied:

- (1) No.
- (2) Conditions could only be determined after an investigation carried out by the State Electricity Commission. This investigation cannot be made until after completion of the Country Towns' Assistance Scheme, probably late 1974.
- (3) (a) Not at present.  
(b) Probably in the range \$25,000 to \$40,000 subject to investigation as above.

#### 3. EAST VICTORIA PARK SCHOOL

##### Relocation

The Hon. CLIVE GRIFFITHS, to the Leader of the House:

- (1) Is the Government still considering the shifting of the East Victoria Park Primary School?

(2) If so—

- (a) what is the current stage of negotiations;
- (b) when is it anticipated that the change over will be completed?

The Hon. J. DOLAN replied:

- (1) The feasibility of re-locating the East Victoria Park Primary School is under investigation.
- (2) (a) Offers have been received from developers and are now being considered by the Public Works Department.
- (b) It is not possible at this stage to indicate any anticipated date of changeover as the possible re-location of the school is subject to the acceptance of a suitable offer.

(5) (a) 1970—\$38,000;

(b) 1971—\$40,000;

(c) 1972—\$42,000.

(6) \$65,000 (estimate).

(7) Expenditure of the Explosives Branch of the Mines Department far exceeded revenue and a review of similar license fees during 1972 showed that there had been appreciable increases in both South Australia and New South Wales. In view of this situation a new scale of fees was prepared which does not exceed those charged by other States, and in many of the smaller categories the fees in Western Australia are lower.

5 to 7. These questions were postponed.

#### 4. INFLAMMABLE LIQUIDS

##### *Storage License Fees*

The Hon. F. R. WHITE, to the Leader of the House:

- (1) At what date were license fees for the "Storing of Inflammable Liquids" increased?
- (2) What—
  - (a) was the scale of previous license fees;
  - (b) is the scale of existing fees?
- (3) At what date are these fees due for payment for the year 1973?
- (4) Were license holders advised of the increase prior to receiving their 1973 renewal notices?
- (5) What was the value of collections in license fees for the years—
  - (a) 1970;
  - (b) 1971; and
  - (c) 1972?
- (6) What is the anticipated amount of collection for 1973?
- (7) What are the reasons for the increase in license fees?

The Hon. J. DOLAN replied:

- (1) 1st January, 1973.
- (2) (a) the previous scale of fees was \$2, \$4 and \$10 for small storages rising to \$200 (maximum) for large oil installations;
- (b) existing fees are now \$3, \$6 and \$15 for small storages rising to \$800 (maximum) for largest oil installation.
- (3) The amended increased fees are due for payment on all new licenses issued after the 1st January, 1973 and on all previous licenses at the next date of renewal after the 1st January, 1973.
- (4) Notification was given in the *Government Gazette* of the 22nd December, 1972.

#### GOVERNMENT EMPLOYEES' HOUSING ACT AMENDMENT BILL

##### *Receipt and First Reading*

Bill received from the Assembly; and, on motion by The Hon. J. Dolan (Leader of the House), read a first time.

#### LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 2)

##### *Second Reading*

THE HON. R. H. C. STUBBS (South-East—Minister for Local Government) 12.18 p.m.: I move—

That the Bill be now read a second time.

This Bill contains only one effective clause which is to amend section 533 to provide under the Mining Act, a new basis of valuation for leases other than coalmining leases.

At present, goldmining leases under the Mining Act come within the scope of section 533 (3) (e) which provides that the valuation will be 20 times the annual rental value of the property. The recent increase to the lease rentals under the Mining Act has automatically resulted in a four-fold increase in the valuation and consequently a corresponding increase in the rates.

The Chamber of Mines claims that the future development of Western Australia is heavily dependent upon the discovery of new mines and it believes that the Government should do everything possible to ensure that exploration continues at a satisfactory rate.

The Chamber of Mines also claims that the rates collected from mining leases as a result of the increased valuations is out of all proportion to the value of services rendered by the shires to the holders of mineral leases.

The Bill contains a new paragraph under section 3, namely (eb), specifying a specific valuation per acre for leases rented under the Mining Act. The figure of \$10 per acre is that suggested by the Chamber of Mines and will bring the valuation to the same level that existed before the Mining Act rentals were increased.

The proposed amendment will have the effect of stabilising the valuation for rating purposes of mineral leases and they will not in future be subject to any variation because of changes in lease rental.

This is believed to be a most equitable basis of contribution to municipal funds and is more in keeping with the services provided by the shire councils.

Representations have also been made seeking a reduction of the rating impact on holders of leases under the Mining Act by the Country Shire Councils' Association. The association has suggested \$20 per acre, thereby halving the present rate burden.

The council of the Shire of Coolgardie has also expressed concern at the hardship caused in many instances by the increases which have occurred in the rate accounts of holders of mineral leases.

I have received a submission from the Kalgoorlie branch of the prospectors' association advising that at a meeting of the association, it was resolved to defer payment of rates until a more equitable basis of rating is provided. This association suggested that some form of levy on the value of the gold produced from the leases would be preferable. This, of course, would entail an entirely new approach to municipal finance.

The prospectors' association has emphasized that the municipal services provided in respect of mineral leases are insufficient to warrant the present rates levied, and that most prospectors pay rates on their homes and contribute to shire finances through vehicle registrations. Some feel that they will be forced to forfeit their leases and cease prospecting.

A similar submission has been made to me by the Coolgardie Branch of the Amalgamated Prospectors and Leaseholders Association and by individual prospectors.

One correspondent expressed the view that the goldmining industry is experiencing difficult times and the increases in municipal rates and lease rental could bring about the closure of State batteries, and the resulting unemployment could be detrimental to the economy.

In view of the support expressed by the Country Shire Councils' Association, the Chamber of Mines and the prospectors' association; I commend the Bill to the House because it will provide a means of giving relief to a deserving section of ratepayers.

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

## WESTERN AUSTRALIAN MARINE ACT AMENDMENT BILL

### Second Reading

Debate resumed from the 11th April.

**THE HON. D. K. DANS** (South Metropolitan) [2.23 p.m.]: I rise to support the Bill. I do not intend to dwell at great length on the speech made by Mr. Clive Griffiths because I was not present when he delivered it. However I have had an opportunity to read his speech fairly thoroughly. My comment, as a result of that reading, is that I have no intention of wandering into the realms of marine insurance whether it be bay, river, harbour, or open sea, because I have had some experience with a number of successful salvage claims. On those occasions a prominent Perth legal firm had to be employed on behalf of the people I represented, and an agent had to be engaged in London. I know what a complex situation this is.

If the Minister intends to dot every "i" and cross every "t" in this varied, wide, and wild field, I hope he will give me an opportunity to obtain a pair on that day.

The Hon. I. G. Medcalf: Did you say "wild"?

The Hon. D. K. DANS: I said, "wide, and wild". I am sure that Mr. Medcalf would agree with me that this is a maverick kind of business. Some comments in the speech made by Mr. Clive Griffiths interested me greatly, and I will refer briefly to some of them. He said—

I would like to know why it was considered unnecessary to consult any of the people concerned. It seems to me that the Government is making a practice of not consulting anybody when it undertakes to make wide and sweeping changes of existing circumstances.

I want members in this Chamber to remember that word "circumstances". The provisions of this Bill cover circumstances about which I was worried some years ago. Referring back to Mr. Clive Griffiths' remarks, The Hon. A. F. Griffith interjected and said—

Oh, I don't know—the T.L.C. and the Trades Hall get consulted often enough.

If one reads some of the comments of the trade union leaders one would find they were at variance; they considered they were not consulted often enough.

It seems to me that the Western Australian Marine Act is one to which people have not paid enough attention. If one reads the history of our Constitution—which, surprisingly enough, was copied from the American Constitution in the main—one will realise that the powers of the Commonwealth and the States, as they relate to vessels journeying interstate and

intrastate are divided. That division was caused by an accident of administration; it was never intended. I recently quoted from a booklet published by Mr. Percy Joske, a Judge of the Industrial Court, the Court of Australian Capital Territories, and various others. He was an expert in his field.

Be that as it may. The State has certain responsibilities and certain powers with respect to making laws for vessels travelling intrastate or within the confines of the State. It may be of interest to know that the Commonwealth Navigation Act exercises power over those vessels which travel beyond the borders of a State.

The nature of this sort of situation immediately comes to mind when one considers a paddle steamer travelling up the Murray River and going from South Australia into Victoria. Such a vessel would be subject to the Commonwealth Navigation Act because it crosses a State line. These are some of the things we have learnt to live with and we will probably live with them for a while in the future.

I will again refer to the point made by Mr. Clive Griffiths and, for the benefit of members, I will repeat his words which are—

It seems to me that the Government is making a practice of not consulting anybody when it undertakes to make wide and sweeping changes of existing circumstances.

The Hon. A. F. Griffith: You mean, always doing it?

The Hon. D. K. DANS: That is correct. I am qualifying my earlier remark when I said that we probably did not give enough attention to the Western Australian Marine Act.

It could be said that I have waited a number of years to say a few words about the changing situation of the conditions obtaining in the Western Australian Marine Act. The previous Government changed the circumstances of the operations of the Act by a simple amendment in 1965, when it included one regulation—regulation 102—and on that occasion the Government consulted no-one.

That change in circumstances with the promulgation of regulation 102 was condemned by all the maritime unions. In addition, the Worshipful Company of Master Mariners, search as it might within the length and breadth of Australia, could not find any Government or institution which by one stroke of the pen—to use a phrase that is often used—had made such a diabolical attack on the conditions for the safety of people operating in craft under the Western Australian Marine Act.

The Hon. Clive Griffiths: Do you remember what your leader said last night about adjustments?

The Hon. D. K. DANS: I used a phrase which is often used here.

The Hon. G. C. MacKinnon: You should watch your leader.

The Hon. D. K. DANS: We did not confine our search to the Commonwealth of Australia. We extended our investigations to other parts of the world. Some of the replies we received were staggering. Some of the people in Government agencies to which we wrote thought we were pulling their leg.

I am speaking about the comment of Mr. Clive Griffiths, that the Government to which I belong does not consult or tell anyone anything, nor does it make a practice of consulting anybody when it undertakes to make wide and sweeping changes in existing circumstances.

The Hon. Clive Griffiths: That is a perfectly correct statement.

The Hon. D. K. DANS: The English language is fairly descriptive and easily understood by people who have been brought up with it. At no stage did I argue with Mr. Clive Griffiths when he said it was a practice; and if it is a practice of the Government to which I belong not to tell anyone anything, it is perpetuating a very bad tradition.

Let me refresh the memory of members who were in this Chamber when regulation 102 was promulgated.

The Hon. G. C. MacKinnon: You have me confused.

The Hon. D. K. DANS: That is not hard to imagine. However, I was told the other day I have a big, loud voice and I do not stop for interjections.

The Hon. G. C. MacKinnon: Are you saying Mr. Clive Griffiths is right or wrong?

The Hon. D. K. DANS: I am saying I have not verified that as yet. I did not say he was right or wrong.

The Hon. G. C. MacKinnon: It has taken about 12½ minutes.

The Hon. D. K. DANS: If a practice has crept in and we are following it, it is about time we stopped doing so.

The Hon. G. C. MacKinnon: Then you say Mr. Clive Griffiths is right?

The Hon. D. K. DANS: Mr. MacKinnon will have to get up much earlier in the morning because the softest part of me is my teeth. That will not get him anywhere.

The Hon. G. C. MacKinnon: I am trying to find out something.

The Hon. D. K. DANS: If Mr. MacKinnon wants a private chat, I will arrange that.

The Hon. Clive Griffiths: In what year was this regulation promulgated?

The Hon. D. K. DANS: The Opposition is reverting to its standard procedure of assassination by flattery and confusion, with all these academic questions from the "Minister for Labor Ideology" on the Opposition beaches.

Let us look at regulation 102 and what it prescribes. I saw this regulation in operation quite by accident—I will come back to that. Prior to the promulgation of regulation 102, there were 101 regulations under the Western Australian Marine Act. Without anyone having been consulted, regulation 102 was promulgated and it provides—

102. (1) For the purpose of facilitating the carrying out of works, including dredging, in, or in connection with, a port or for works north of the twenty-sixth parallel of south latitude, the Department may, from time to time, by notice in writing, exempt a person or vessel or a class of person or class of vessel from compliance with the following provisions of the Act, namely,—

- (a) Subdivision (ii) of Division 1 of Part III;
- (b) Division 2 of Part IV; and
- (c) Part VII;

and from compliance with the regulations made under those provisions; either generally or in particular circumstances, localities or cases or for particular purposes, either unconditionally or subject to such conditions as the Department may impose.

(2) The Department may, by notice in writing, at any time, cancel an exemption given under subregulation (1), either wholly or in part and, from time to time, vary the conditions to which the exemption is subject.

The Hon. Clive Griffiths: I presume you are now going to tell us what this has to do with what I was talking about and what it has to do with the Bill. I cannot see it.

The Hon. D. K. DANS: Mr. Clive Griffiths was the person who raised the subject when he said there was a practice.

The Hon. Clive Griffiths: I was relating it to the Bill.

The Hon. D. K. DANS: He then used the word "circumstance" when condemning the Bill. I am demonstrating, in respect of the Bill under discussion, that this practice and this circumstance were in operation in 1965. As a House of review, perhaps we do not give enough attention to the operation of the Western Australian Marine Act. In Federal circles, the Commonwealth Navigation Act is very important. It is adhered to very strictly and its regulations are stringently enforced.

The regulation I have quoted simply says that where the Western Australian Marine Act provides that a person shall have certain qualifications as a master and

so on, the provision is waived. It also waives the provision in the Act which states that lifesaving equipment should be carried on certain vessels; and it further waives the section of the Act which stipulates that survey regulations shall be carried out.

I bring members back to the Bill and the comments of Mr. Clive Griffiths in which he used the words "practice" and "circumstance". It is in this situation that I refer to the Bill. Perhaps a bad practice has crept in with respect to this particular piece of legislation as it affects people in Western Australia.

I happened to be arriving in Port Hedland when a strike broke out. It was rather a unique experience for me because, instead of having a hand in staging a strike, I was an innocent bystander.

The Hon. F. D. Willmott: Innocent?

The Hon. D. K. DANS: Quite innocent. This can be verified by the Commonwealth and Conciliation Arbitration Commission and B.H.P. I arrived at Port Hedland and booked in at the Swan Motor Hotel, where I received a phone call from the Medina branch of B.H.P. to the effect that, "We cannot get up tonight. The Merchant Service Guild is going on strike and the *Iron Warrior* will be sailing." We did what we had to do.

However, the intriguing part of this is that it was the masters of the tugs who went on strike. Once again we had the experience of no-one being told; because the strike resulted from an intention to bring in Japanese labour without any tickets whatsoever to work these craft. I mention this with your indulgence, Mr. President.

The Hon. Clive Griffiths: Indulgence is right!

The Hon. D. K. DANS: The whole business blew up in the faces of the people concerned. I might point out to Mr. Clive Griffiths it seemed last night members were allowed to reminisce a little. I can recall I was desperately trying to return to Perth to meet two old friends of mine from San Francisco, Harry Bridges and Jim Herman, who were visiting Western Australia. When I eventually got back to Perth they did not want to speak to me because they said I had been engaged in a racist dispute. No matter how hard I tried to explain the situation to them they would have nothing to do with me. I might mention that the fact that Harry was married to a Japanese girl had nothing to do with it!

The point is that "practice" and "circumstance" were heavily dwelt upon by Mr. Clive Griffiths.

The Hon. Clive Griffiths: No they weren't.

The Hon. D. K. DANS: Would the honourable member like me to read his speech again? I do not think that would be very interesting.

The Hon. Clive Griffiths: I think it would.

The Hon. D. K. DANS: Well, it is a matter of opinion. I travelled on a launch carrying 45 people across the Port Hedland Harbour. Regulations were stuck on the bulkhead stating that the master shall be qualified and that the vessel should carry three deckhands. But the master was not qualified and there were no deckhands. As a matter of fact, the very next night the engine of the vessel stopped and the master sent out a Mayday call from the middle of the Port Hedland Harbour, which alerted ships right up to the China Sea and in all areas adjacent to Port Hedland.

I am making these observations because I feel the situation in 1965 just was not correct. I think that situation could have been overcome with a little consultation. I see nothing wrong with the propositions presented in the Bill before us.

It is generally considered overseas that a hovercraft is a water-borne vessel. I notice Mr. Withers is writing away over there; he must have had a flash of knowledge. Let us hope he has. To return to my point, it is generally considered that hovercraft are water vessels although they can travel over some parts of the land. I think it is important that provision should be made to cover these craft.

The Hon. Clive Griffiths: Didn't I say that?

The Hon. D. K. DANS: At no stage did I say the honourable member did not say that. I do not know what school he went to, but certainly it seems part of the large amount we spend on education is sadly wasted.

The Hon. Clive Griffiths: Mr. Dolan was one of my teachers.

The Hon. D. K. DANS: Well, I might speak to Mr. Dolan about that a little later. Of course, it is most difficult to impart knowledge to some people.

Perhaps some members will recall that in the not so distant past—I am sure Mr. Williams will remember this—a hovercraft arriving in Britain from a French port was caught by a gust of wind and capsized. This raised the question of insurance because a number of lives were lost and legal problems arose. I think the Bill is a sincere endeavour to ensure that kind of situation does not occur here.

In conclusion, I would hope that when we are dealing with a subject very dear to my heart—the safety of ships' crews and passengers—the Government of the day, whatever its political complexion, will have due regard for those who will be affected by any changes, and not merely drop a

regulation out of the sky. That is the way to spark off all kinds of disputes. I might add this is the only time I have had master mariners onside with me!

The Hon. G. C. MacKinnon: When will you stop these anecdotes and tell us something about the Bill?

The Hon. D. K. DANS: I probably know more about the Bill than Mr. MacKinnon does. It is a very simple amending Bill.

The Hon. G. C. MacKinnon: Well, tell us something about it.

The Hon. D. K. DANS: If Mr. MacKinnon continues in that vein we can stay here until 6.30 p.m. quite comfortably; do not worry about that. I have commented on the interjections of Mr. Arthur Griffith in respect of the Bill, and on the words "practice" and "circumstances" mentioned by Mr. Clive Griffiths.

The Hon. A. F. Griffith: If you threaten to keep us here until 6.30 you will get into trouble with your leader.

The Hon. J. Dolan: That's right.

The Hon. D. K. DANS: I heard that, Mr. Dolan, so I will wind up. I commend the amending Bill to the Chamber with the proviso that when we are tampering with things marine or otherwise it is a good idea to consult the people who will be affected.

The Hon. Clive Griffiths: That is precisely what I said.

**THE HON. W. R. WITHERS** (North) [2.46 p.m.]: Mr. Dans described himself in rather angelic terms, and also made reference to this Bill as it affects the people of Western Australia. He also said, in criticism of Mr. Clive Griffiths, that reference had been made to various authorities. I understand Mr. Clive Griffiths queried why an attempt was not made to contact the people involved in the various industries to which this Bill applies.

If what Mr. Dans said is correct, I would like him to look at proposed new section 188 (2), paragraphs (a) and (b). He will find no reference is made to the situation of a passenger boat working on inland waters in this State being beached on the shores of another State or territory, with damage to the vessel or injury to people. If the Government has consulted the people involved in this respect, why was not that mentioned?

The Hon. D. K. Dans: This is how people engaged in marine inquiries—and I am sure Mr. Medcalf would agree with me—have amassed a great amount of knowledge. The books on the subject would overflow this Chamber. You will recall I said that if the Minister wants to dot every "i" and cross every "t", I hope he gives me due notice so that I can obtain a pair and stay away when the debate is held.

The Hon. W. R. WITHERS: I thank the honourable member for his explanation, but I would say the Government is ignorant

of the fact that this Bill will not protect the people or the marine industry on the largest waterway in Western Australia.

The Hon. D. K. Dans: Would you like me to give you the answer? If that accident occurred the effect would be that the vessel landed in another State, and it would come under the requirements of the Commonwealth Navigation Act. You can check that with your legal experts and you will find it to be correct.

The Hon. W. R. WITHERS: I wonder what would be the situation if the craft were beached in some other part of Australia that is not a State, but a territory?

The Hon. D. K. Dans: The Commonwealth Navigation Act, as you well know, applies to all territories administered by the Commonwealth.

The Hon. W. R. WITHERS: Had the Government consulted the people involved in the industry to which the Bill applies, surely it would have made some comment regarding the situation I have described. Most of us know that the Ord River Dam, which is the largest waterway in Western Australia, extends into the Northern Territory. If members care to read the Press today they will find that work has been finished on rebuilding a boat at a cost of, from memory, \$35,000. The boat has been newly named and is going to the Ord Dam to be used for carrying passengers. Therefore, it will be involved in passenger transport in Western Australia; but in the event of a great storm it could wind up on the shores of the Northern Territory. So where is that situation covered?

The Hon. R. Thompson: Under the Commonwealth navigation legislation.

The Hon. W. R. WITHERS: Could not some reference be made to it in our Act?

The Hon. R. Thompson: We cannot make laws for the Northern Territory.

The Hon. W. R. WITHERS: Any person desiring to carry passengers on the Ord Dam and wanting to know what he must do to cover his passengers and stay within the laws of Western Australia would, I take it, consult the Act, and this Bill is designed to amend that Act.

The Hon. R. F. Claughton: You want to sail between Perth and Singapore.

The Hon. W. R. WITHERS: We are talking about Western Australia.

The Hon. R. F. Claughton: You are talking about the jurisdiction of Western Australia in foreign States.

The Hon. W. R. WITHERS: What I am saying is that a person wishing to operate on the largest inland water in Western Australia would not find the necessary information in our legislation.

The Hon. R. Thompson: What you are failing to understand is that the Commonwealth legislation where applicable overrides the State legislation.

The Hon. A. F. Griffith: I tell you what: The present Commonwealth Government is making jolly sure of that, too.

The Hon. W. R. WITHERS: I suggest that the way the Federal Government is going with this legislation we will not, unfortunately, have to worry much about State laws in the future.

I think I have made my point. I can see what the Bill is endeavouring to achieve in part. However, I do ask the Minister, in his summation, to tell us how a Western Australian person desirous of operating on the largest inland water of Western Australia would be able to ascertain his responsibilities from the amendment and the Act.

**THE HON. J. DOLAN** (South-East Metropolitan—Leader of the House) [2.52 p.m.]: I will commence by referring to the comments of Mr. Withers. I shall direct his query with regard to the Ord to the Manager of the Harbour and Light Department under whose responsibility the Act comes; and if he considers an amendment is necessary to include under the Act the stretch of water referred to, I will ascertain whether or not it is possible to introduce a suitable amendment before the end of the year. I think the point is well taken. It has probably just been overlooked seeing that every other stretch of inland water and harbour has been covered, including Yampi Sound as I will demonstrate as I proceed.

I want to reply to Mr. Clive Griffiths and I will give him a copy of the notes prepared by the department in connection with his series of questions.

The air-cushion vehicle code drawn up by the Australian Transport Advisory Council—the A.T.A.C.—is a 44-page document. If the Act is amended to exercise control over air-cushion vehicles it is intended that the provisions of the code will form the basis of the regulations which would follow, and those regulations would be subject to scrutiny by Parliament in the normal way. It is not usual to present to Parliament material that basically will comprise regulations, when no authority exists to make such regulations. This has been the procedure since I have been in Parliament and, probably, since the inception of our parliamentary system.

The Hon. R. F. Claughton: You do not know what to make the regulations about.

The Hon. J. DOLAN: That is right. What is the use of making regulations for certain things when the Bill might be amended to exclude those things? This

would be so much wasted effort. Consequently, it has never been customary to submit regulations until the legislation has been first passed through Parliament.

Incidentally, I do not intend to proceed with the Committee stage today as I want to give Mr. Clive Griffiths every opportunity to study the notes I have given him. This is a simple Bill introduced in the interests of those who, within a year or two, might introduce air-cushion vehicles into Western Australia. In those circumstances, if this Bill is passed, such vehicles would be legally covered. It is proposed that similar legislation will be introduced in all States and the A.T.A.C. code will be used as the basis for the regulations drawn up in each State under its Act. What the department is trying to do is perfectly normal and the same procedure would be adopted no matter which party was in power. The Government would expect the department to submit proposals in anticipation of the introduction of the air-cushion vehicles into our waterways.

I do not consider that the code should be tabled in Parliament at this stage. In fact, it would be a time-wasting exercise as it contains a tremendous amount of detail which is not relevant to the question of whether or not Parliament is to authorise the control of air-cushion vehicles.

In case anyone thinks there is something unusual about this, the code was drawn up and agreed to by A.T.A.C. in May, 1970. At that time only one State was a Labor State and all the other States and the Commonwealth were non-Labor. Consequently the representatives at the A.T.A.C. meeting which endorsed the code which will be the basis of the regulations if the Bill is passed were not all from the one party and it will be seen that there is nothing political whatever in the proposals.

At this stage the department has not drafted the proposed regulations. It is considered that it would be wrong in principle and a waste of time to draft regulations for which there is no legislative authority.

The departmental committee referred to in my notes consists of the Commissioner of Transport who is the Chairman; the Director-General of Transport; the Assistant Commissioner of Police—who is usually the person to attend the meetings of the A.T.A.C. committee associated with water safety and road safety and he is well qualified to sit on the committee to advise—and the Manager of the Harbour and Light Department who is responsible for policing the provisions of the Act.

The original recommendation that owners of all air-cushion vehicles should be made to take out third party insurance was made by the committee of representatives from all States and the Commonwealth

which drafted the model code that was adopted and approved by the Australian Transport Advisory Council. When considering this matter the abovementioned State departmental committee noted that there was no provision in existing legislation requiring owners of licensed passenger-carrying vessels to take out insurance cover of any sort to compensate passengers who may be injured or relatives of those killed while travelling on their vessels. Consequently that committee recommended that the Marine Act should be amended to make it compulsory for owners of licensed passenger-carrying vessels to take out insurance to protect their passengers in a way similar to that applying to passengers travelling in commercial aircraft and land vehicles.

The standing committee of advisers of the Australian Transport Advisory Council has had discussions with the Council of Fire and Accident Underwriters of Australia—and this is very important—concerning the proposed third party insurance requirements with respect to the operation of air-cushion vehicles.

Ferry operators were not consulted as the Government believes that any decision on such issues as safety and protection of the public is so important that it should not be biased by representation from the vested interests involved.

There are 57 vessels licensed to carry passengers on inland waters or within harbour limits that would be affected by this legislation. It is not known how many of them are not covered by some form of third party insurance.

The figures following do not include vessels owned and operated by Government departments and companies which use their boats to carry employees only. These vessels do not ply for hire or carry fare-paying passengers.

The vessels concerned operate from the following areas—

Fremantle and Swan River	....	40
Inland Rivers and Lakes	..	6
Geraldton	....	4
Esperance	....	2
Port Hedland	....	4
Yampi Sound	..	1

The vessels stationed at Geraldton and Esperance also operate outside the port limits; in other words, they go out into the open sea.

The legislation was confined to vessels operating within inland waters and harbours, and to include other vessels would impose sanctions on coastwise trade which would require Royal assent as provided for in section 736 of the United Kingdom Merchant Shipping Act.

Mr. Clive Griffiths dealt with the provisions of this Act in his speech and would probably be aware of the need to obtain Royal assent if vessels subject to that Act were in any way controlled by State legislation.



It is not impossible to obtain Royal assent but it does take considerable time and it was thought that it would unnecessarily delay introduction of a provision which would give protection to the public travelling in ferries which operate to Rottnest.

If Parliament is prepared to accept the principle of this legislation, the matter of similar provisions to cover coast trade passenger vessels can be considered as a separate issue.

Details of approved forms, amounts of insurance to be carried, etc., will be decided and prescribed in regulations which will have to be drafted after the principle has been established that owners of certain vessels will be obliged by law to take out insurance cover for the protection of passengers.

It is proposed that the owner's liability will be limited to an amount per passenger. In the case of passengers of air-cushion vehicles, the Australian Transport Advisory Council is considering the matter and will make a recommendation to the various State and Commonwealth authorities.

The approved form of insurance will be defined in the regulations which, as I have already explained, have not been drafted. Naturally there will be consultation with underwriters before the approved form is adopted as there would be no point in regulating for a form of insurance that is not acceptable to underwriters.

On the contrary, it is possible that proclamation of the provision in clause 5 may have to be deferred. I think the honourable member will appreciate why it is proposed to proclaim certain provisions of this legislation at one time and other provisions at a different time. As I was saying, it may have to be deferred until the Australian Transport Advisory Council has reached agreement and recommended standard conditions of insurance for all States in the Commonwealth. If there is any undue delay in this regard it may be necessary to proclaim the other provisions of the legislation to allow owners of air cushion vehicles to operate their craft under some degree of control.

The honourable member went to great lengths to explain the results of his investigation into the liability under existing Acts. He overlooked the point that the proposed legislation does not attempt to alter any liability; all it endeavours to do is to ensure that the owner of any air-cushion vehicle or a vessel used to carry fare-paying passengers insures against liability which may be incurred by him.

The Bill, as drafted, refers to any vessel used to carry any passenger for a fare. In other words, it is not anticipated that there will be an employee-employer relationship and, therefore, it is not expected that any person being a fare-paying passenger, and

thereby covered by this proposed legislation, would also be covered by workers' compensation. This refers to the situation which exists at Fremantle Harbour where boats sometimes carry to North Wharf both fare-paying passengers and waterside workers—apart from other workers on the wharves—to their employment.

The vessels used to transport wharf labour across Fremantle Harbour would only be required to cover fare-paying passengers. It is not known what proportion of the total passengers carried the fare-paying passengers would represent, but it would be a minimal percentage and it is not expected that it would involve the proprietors in any great outlay. Consequently, the fears of any of the people concerned are not warranted.

The United Kingdom Marine Act of 1894 does apply to Western Australia. This Bill has been drafted so that the Act does not have jurisdiction inasmuch as the vessels it seeks to control in respect of insurance are those which operate on inland waters and waters within any harbour. Crown Law advice is that such vessels would not be subject to the 1894 Act.

Question put and passed.

Bill read a second time.

#### ACTS AMENDMENT (ABOLITION OF THE PUNISHMENT OF DEATH AND WHIPPING) BILL

##### *Second Reading*

Debate resumed from the 17th April.

**THE HON. R. F. CLAUGHTON** (North Metropolitan) [3.06 p.m.]: It is well known that violence produces a violent reaction. As a corollary we can say that a peaceful action produces a peaceful reaction. To continue this line of argument, we can say that the abolition of cruel and forceful methods of punishment causes not a widening of violent reaction in the community but the exact opposite. The history of the abolition of capital punishment has shown that tendency.

Some reference has been made to the current moves throughout the world for the reintroduction of capital punishment. We know that the move was not successful in the United Kingdom. The Prime Minister of that country led the forces—for the retention of the current law—in the Chamber of the House of Commons and successfully defeated the move to reintroduce capital punishment.

The Leader of the Opposition quoted from a Press cutting relating to a move in California by Governor Reagan to reintroduce capital punishment and he made some brief comments on it. It is a pity the Leader of the Opposition did not continue to quote further from that article. I intend to fill in some of his omissions. The article appeared in *The West Australian* on the

8th November, 1972, at page 8, under the headline, "A vote for the gas chamber". It says—

Governor Reagan and his wife Nancy were among the first to support the drive to put Proposition 17, which calls for the restoration of all capital punishment statutes, on the ballot. Mr. Reagan's argument is the familiar one that the threat of the death penalty deters crime.

The opposition, represented by the Coalition to End the Death Penalty—which includes the American Civil Liberties Union and other organisations—is strong.

"Governor Reagan and all other self-proclaimed 'Friends of the Victim' (read 'Friends of the Gas Chamber') should look again at the facts," says a psychiatrist, Dr. Alan Kringel. "The F.B.I.'s statistics show that in 1969 the three States with the lowest homicide rates had all abolished the death penalty."

I am not surprised that people such as Governor Reagan and President Nixon are in the forefront of a move to reintroduce the death penalty. Such people see the cure for all ills as restrictive, harsh, punitive laws. They tend to ignore the lessons of history that such laws do not in fact achieve the end they seek.

We had a case in this State, reported in the *Daily News* of Wednesday, the 8th November, 1972, of a man charged with the killing of an elderly lady in South Perth. We would regard this particular person as having committed a most atrocious crime, but it was reported that he was found to be suffering from a brain disease. He could not, of course, be held responsible for his actions. Obviously this is a clear case where a person who has committed an act of violence should not receive the ultimate penalty. We need qualified people to make an assessment of each criminal, and with our increased knowledge such matters are becoming much easier to determine. When such conditions exist, a person may be exonerated from responsibility for a crime. Obviously such a course would not have been possible 100 or 200 years ago. This is not the only area in which we have made advances over the years, and I will speak more about this topic presently.

A number of speeches have been made in this Chamber in relation to capital punishment. Last year Mr. Williams made a very good speech in favour of retaining our present laws in relation to the death penalty and whipping. However, I believe Miss Elliott made an even better speech in support of the proposed legislation to repeal the punishment.

In listening to the speeches on this subject it appears to me that those in favour of retention of the penalty have

had recourse to, and relied on, emotional arguments rather than facts. We have heard a great deal about people who commit sex crimes, and a particular case in the Eastern States was referred to. I cannot remember the name of the criminal, but he was convicted of a sex crime and imprisoned. When he was released not only did he commit a further sex crime, but he also murdered his victim.

Obviously this case is not one to support an argument for the retention of our present laws. However, it does suggest that we should look more carefully at the treatment received by prisoners. Obviously after his first conviction the person in question was urgently in need of treatment. We do not suggest he should have been hanged for the first crime he committed; no-one has suggested that, although reference was made to a statement by the American evangelist, Billy Graham, who said that such people should be castrated—a statement which he subsequently recanted. However, it is quite clear that such criminals should not be simply incarcerated; they must be treated because I believe they are responsible for a great deal of the more serious crimes.

The Hon. W. R. Withers: Would you care to comment on the Hindley-Brady murders and the subsequent release of Moira Hindley?

The Hon. R. F. CLAUGHTON: I do not think the stand taken by the honourable member when he spoke on this matter last year was justified. In my opinion this case falls into the same category as that involving the person I referred to in the Eastern States. Obviously such persons have very distorted personalities and mentalities. Of course, from society's point of view, if they are hanged, the problem is certainly removed, but it does not mean that such drastic action is justified.

The Hon. W. R. Withers: You believe in retaining the problem for society, do you?

The Hon. R. F. CLAUGHTON: Society has all sorts of problems which some members seem quite happy to retain. Usually these criminals grow up in circumstances which produce this type of mentality. It is much more worth while to treat the cause of the problem within the community than to use such brutal methods to expunge the canker after it has been produced. The honourable member seems to me to be seeking the easy solution to the problem; to take action after it is established.

The Hon. L. A. Logan: Do you believe this, despite the fact it has been proved that all the treatment in the world will not solve the problem?

The Hon. R. F. CLAUGHTON: I do not know what the honourable member has read on the subject, but his comments certainly do not tie in with my reading.

I have already said we have heard many references to sex crimes, some of which of course do not end in murder. Members have spent a long time debating this type of crime as well as those relating to hijacking and air piracy. I do not know how members can say that the death penalty would be a deterrent to people who commit these crimes.

If we remember some of the instances where guerilla groups from Middle East countries have boarded planes and hijacked them, I am sure we will realise that the death penalty would not deter such people. As an example of this I refer to the German affair and the consequences which followed. Admittedly some of the hijackers were caught at the time, but their supporters in their own country took further action to ensure the release of the hijackers. Obviously had they been executed by the German authorities, there would have been some other form of retribution. The death penalty does not stop such terrorism. These people pursue a cause in a single-minded way.

The thought that some of their followers may be put to death is no deterrent to them at all. By putting them to death one would simply call up a further half dozen in support of the cause.

The Hon. I. G. Medcalf: These people are fanatics. How would you treat them?

The Hon. R. F. CLAUGHTON: I say that the death penalty will not solve the problem. Indeed, it may result in further hijacking. Whatever we may do, the death penalty is not the solution.

The Hon. I. G. Medcalf: What would you do?

The Hon. R. F. CLAUGHTON: I am not sure how much it takes to get through to the honourable member who is interjecting.

The Hon. I. G. Medcalf: It takes a lot to get through to you.

The Hon. R. F. CLAUGHTON: I take it that Mr. Medcalf feels the solution to the problem is to apply the death penalty.

The Hon. I. G. Medcalf: I never said that. I asked you what you would do.

The Hon. R. F. CLAUGHTON: Surely that is the point of having a provision in our legislation—to prevent such an action occurring in the future; that it will act as a deterrent to others who may wish to perform such acts.

The Hon. I. G. Medcalf: What would you do to them?

The Hon. R. F. CLAUGHTON: It seems very difficult to get through to Mr. Medcalf. It is obvious there are a number of methods that would have to be adopted. Let us for one moment consider the people who were involved in the hijacking of the West Berlin plane. I imagine the West German authorities, in order to prevent

further attacks against their airlines and their subjects, would have entered into negotiations with the people concerned. This may have been done secretly so that the public would not be aware of it. It would have been done by the West German authorities to ensure the safety of their subjects, but they did not apply the death penalty.

The Hon. Clive Griffiths: They might regret it.

The Hon. R. F. CLAUGHTON: Yes, we may regret the situation that exists in the Middle East. It seems to go on and on. The death penalty, however, is not the answer to the problem.

The Hon. I. G. Medcalf: You have not given an answer to it yourself.

The Hon. R. F. CLAUGHTON: The honourable member may have a more brilliant brain than mine. He suggests that the death penalty should be retained, and I say it is not the answer to this particular problem.

The Hon. I. G. Medcalf: What is?

The Hon. R. F. CLAUGHTON: Mr. Medcalf is dealing with the death penalty and that is not the answer to the problem.

The Hon. I. G. Medcalf: What is?

The Hon. R. F. CLAUGHTON: That has nothing to do with the legislation.

The Hon. W. R. Withers: If you propose to remove something you must replace it with something better.

The Hon. A. F. Griffith: Has it occurred to you that if the death penalty is removed something else must be done?

The Hon. R. F. CLAUGHTON: What would the Leader of the Opposition suggest?

The Hon. A. F. Griffith: I have posed the question to you. You do not answer it, because you do not know how to answer it.

The Hon. R. F. CLAUGHTON: There must be some solution. The action taken in connection with the Middle East problem and the activities associated with the guerillas has been taken by people who are far more experienced and intelligent than are the members of this Chamber. I would not like to say what is the solution to the problem, but I do say that the death penalty would not be the answer. If similar happenings occurred here and the people on the Australian airlines were attacked that would be a matter for the Federal Government to work out; just as the other matter was one for the West German Government to work out.

The Hon. I. G. Medcalf: If you suggest a solution we may agree with you.

The Hon. R. Thompson: The first person who is recorded as having committed a murder is Cain who killed Abel. He was not put to death. We have all descended from him.

The Hon. A. F. Griffith: Who do you think you are, Cain or Abel?

The Hon. R. Thompson: Abel.

The Hon. R. F. CLAUGHTON: If we apply this legislation it would result in greater dangers to the community. The death penalty is not the solution at all.

The Hon. I. G. Medcalf: What is the solution?

The Hon. W. R. Withers: What would you do with the man who impaled children on the railway spikes in London?

The Hon. R. F. CLAUGHTON: We could tell the honourable member what we would like to do, but that would not be the solution either.

The Hon. W. R. Withers: What is the solution?

The Hon. R. F. CLAUGHTON: We have read about young people in Queensland being assaulted; there seems to be a rash of that sort of thing taking place. Perhaps the honourable member's interjection suggests that whipping would be the remedy.

The Hon. I. G. Medcalf: Is that your solution?

The Hon. R. F. CLAUGHTON: I am suggesting that may be the honourable member's solution.

The Hon. I. G. Medcalf: I have not heard yours yet.

The Hon. F. D. Willmott: You are not likely to hear it, because he has no solution.

The Hon. R. F. CLAUGHTON: It appears to me that Mr. Medcalf is an expert on raising conundrums.

The Hon. I. G. Medcalf: You are the expert. I asked you a question and you have not answered it.

The Hon. R. F. CLAUGHTON: I will try to find what Mr. Medcalf said on this matter, if you will bear with me for a moment, Mr. Deputy President.

The Hon. A. F. Griffith: I must admit that this lapse of time is the nicest part of the speech!

The Hon. R. F. CLAUGHTON: Mr. Medcalf posed a question and asked, what of those who had not committed murder and who may have been deterred. What is that if it is not a conundrum? How will we know who those people are? Are we to go to certain people in the total community and ask them whether they are deterred from committing a murder because the death penalty is retained?

I suppose members would suggest that the best way is to ask everybody, "Will you tell me whether you would have committed murder if the death penalty had not existed?" I am sure we all know the type of answer we would get.

The Hon. I. G. Medcalf: You could not answer it.

The Hon. R. F. CLAUGHTON: Of course it cannot be answered. That is why the honourable member has asked the question in this House. To throw the debate into confusion.

The Hon. I. G. Medcalf: You are going to abolish the law; you must know the answer.

The Hon. R. F. CLAUGHTON: The honourable member seems to ignore the evidence I supplied at the beginning of my speech when I quoted and said that in the United States the F.B.I. statistics showed that in 1969 the three States with the lowest homicide rate had abolished the death penalty. That is the evidence the honourable member prefers to ignore. All Mr. Medcalf does is to raise this unanswerable conundrum which makes no contribution to the debate at all.

The Hon. R. J. L. Williams: The Royal Commission into hanging in Great Britain found there was evidence to support the fact that hanging was a deterrent.

The Hon. R. F. CLAUGHTON: It is interesting to know that the person who conducted that inquiry said that previously he had been one of those for the retention of the death penalty, but after taking part in the inquiry he had changed his mind and had moved across to the side of the abolitionists.

Despite what Mr. Williams said in his speech about abolitionists and those for the retention of capital punishment not changing their minds, this is one documented instance where such a change took place.

The Hon. I. G. Medcalf: You still have not told us how we should punish a murderer.

The Hon. R. F. CLAUGHTON: The honourable member tends to be boring with this repetition. From a person with his legal training I would expect something better than that. His is a very poor contribution to the debate.

The Hon. W. R. Withers: What do you suggest we replace this punishment with?

The Hon. R. F. CLAUGHTON: I suggest this sort of interjection is designed to cloud the debate.

The Hon. I. G. Medcalf: You would be more convincing if you gave an answer.

The Hon. R. F. CLAUGHTON: The honourable member would be more convincing if during his contribution he dealt with this aspect.

The Hon. I. G. Medcalf: I could not find an answer, and I cannot get one from you.

The Hon. R. F. CLAUGHTON: The honourable member chooses to ignore what has happened in other countries. It has

been shown clearly that there is no increase in the sort of crime under discussion with the abolition of the death penalty, and that very often the abolition of the death penalty is followed by a decline in the number of crimes. In dealing with humanity, this is the only sort of gauge we are able to use. People being what they are, it is not possible for us to conduct a laboratory type of experiment to give the precise level of truth which Mr. Medcalf is seeking.

The Hon. I. G. Medcalf: I want a straight answer from you to a straight question.

The Hon. R. F. CLAUGHTON: The honourable member does not want a straight answer. If he did he would have asked a very different sort of question.

The Hon. A. F. Griffith: I think it is a pity that in a debate of this nature, which concerns a matter of conscience, most of us should be treated by you in a nasty and sarcastic manner, at which you excel.

The Hon. R. F. CLAUGHTON: The honourable member should be the last person to say that.

The Hon. A. F. Griffith: Don't you scoff at me.

The DEPUTY PRESIDENT: Order! I suggest the honourable member disregard the interjections and proceed with the Bill. He should not be provoked.

The Hon. A. F. Griffith: Nor should he cast aspersions at other members.

The Hon. R. F. CLAUGHTON: I hope that the honourable member who has interjected will take notice of his own remarks, Mr. Deputy President. I support this legislation. Before the spate of interjections I was saying something about the effects of laws and the way in which people react. People like myself who have been teachers are well aware of the way in which young people react. If a teacher wants to mark his disapproval of a child, then the punishment must take place as close as possible to the misdemeanor that has been committed. This is based on sound, scientific examination. This and similar matters are dealt with in books such as *Crime and Personality*.

The Hon. F. R. White: I did not follow what you were trying to tell us. If a child thrashes another then you say the first should be thrashed.

The Hon. R. F. CLAUGHTON: I said the punishment should follow as close as possible to the commission of the misdemeanor.

The Hon. F. R. White: If the misdemeanor were thrashing some other child, then for the punishment to follow as close as possible the first child should be punished by a thrashing.

The Hon. R. F. CLAUGHTON: I did not say we should mete out punishment of the same nature as the crime.

The Hon. F. R. White: Will you give us some examples of what you are trying to point out?

The Hon. R. F. CLAUGHTON: If members listened to the contribution of Miss Elliott they would realise she discussed this particular aspect. She pointed out that when a person kills another, the correct punishment is not necessarily to kill the perpetrator of the crime. In this respect I gave the instance of a person who suffered from brain damage. In such a case one wonders whether any sort of punishment is required. I think that instead of punishment some sort of medical treatment should be given to such a person.

The examples given by Miss Elliott were quite valid. She pointed out that if a person committed arson the community did not burn that person's home. If a person took a transistor radio belonging to another person, we should not inflict punishment by depriving the first person of his transistor radio. That is not the way in which the law operates, or the way in which society attempts to admonish those who break the law.

There is a whole range of punishments, and I refer to one that is commonly used in schools. If a child at school creates a nuisance, often he is set the task of writing out so many lines, or he is sent out on playground duty to clean up litter. We should adjust the punishment to suit the particular offence committed by the child. However, that is just by the way.

I have said that for the punishment to be effective, it should follow as close as possible on the commission of the crime. If the time difference becomes too great then the punishment bears no relationship for the person who committed the crime. I suggest that quite often this is the reason that the punishment meted out by society does not deter the perpetrators of crimes or reform their behaviour.

I could say a lot more about this question. However, the debate has gone on for a considerable time, so I do not think it is necessary for me to dwell on it at length. If we are to reform people then the punishment should relate as close as possible in time to the commission of the crime; if it does not, then very often the punishment is not effective. We need to take this into consideration. Whipping to cure sex offenders is not necessary. In fact, I suggest that is not a cure at all.

Sex offenders, in the main, are people who have personality disorders. They commit their crimes in the same way as does a person who bashes a baby. It is an expression of need of that person. In some way the pattern of behaviour of such people has to be altered, and that pattern will not be altered by whipping.

I am in favour of the abolition of the punishment of whipping from the Criminal Code, and I am also in favour of the abolition of capital punishment. I support the Bill.

**THE HON. N. McNEILL** (Lower West) [3.41 p.m.]: In a few brief words I would like to make a number of observations in relation to this Bill and, more particularly, in relation to the argument put forward by Mr. Claughton in the speech he contributed in the last few minutes. In doing so, I want to make it clearly understood, that as members of the Liberal Party we are, in fact, exercising and expressing a point of view of conscience. It is not necessarily a point of view of policy.

I think we must give some thought to and consider the fundamental background which prompts the introduction of this legislation. As has been stated, it was introduced for the purpose of conforming to the established policy of the Labor Party. It has not really been emphasised that this Bill—to abolish the punishment of death and whipping—has been introduced as a matter of conscience.

**The Hon. R. Thompson:** We still have a right to exercise a conscience vote.

**The Hon. A. F. Griffith:** Really?

**The Hon. G. C. MacKinnon:** Have you?

**The Hon. N. McNEILL:** Nor has it been shown that by the introduction of this Bill to abolish these penalties there will, in fact, be an improvement in the criminal behaviour of society as a whole. We must come back to the hub of the whole question, which is the removal of these penalties from the Statutes.

I feel sure there is an abhorrence to killing in any circumstances; and I am certain this view is shared by most members in the Chamber. I am not aware that the Statute, as it stands at present, makes it absolutely mandatory that the death penalty shall be carried out for particular crimes. There is certainly an obligation on the judiciary, under certain circumstances, to impose the death penalty, but the law also allows discretion to the Executive so that the penalty may be commuted.

The law provides that in the terms of the circumstances, and as a result of an examination of those circumstances, there shall be discretionary power available in order to implement a certain penalty, whether it be in relation to whipping or to the ultimate imposition of the death penalty. I certainly would not be one to say it should be mandatory that, for any of the crimes mentioned during the course of this debate, a person must be hanged. In no circumstances would I subscribe to that.

However, I do not believe it will achieve any useful purpose at all if we remove those provisions from the Statute book

altogether, simply as a matter of policy, without—as has been emphasised—adequately replacing them with some treatment or penalty to cope with a crime for which at present the penalty is death by hanging.

I agree with Mr. Claughton that perhaps we do not know—certainly, we do not know—what the penalties should be. We certainly do not know the most desirable treatment to give persons who are responsible for this sort of crime, or other felonies of a particular nature. In fact, I think it has been acknowledged by the Leader of the House on more than one occasion that certain penalties which appear in our Statutes do not seem to bear any relation whatever to the felonies committed. The Statutes are littered with punishments which do not fit the crimes.

**The Hon. G. C. MacKinnon:** Is not the point the absolute protection of the community from a killer?

**The Hon. N. McNEILL:** There is a responsibility on the part of the Executive—meaning the responsible authority in Government—to protect society against those who are anti-social in their behaviour, whatever form it might take. While that responsibility quite rightly and properly belongs in the hands of the Executive it should have the power to impose the necessary penalties. However, we must bear in mind that once the punishment is removed from the Statutes it will be gone forever. The discretions which are available to the Executive at present will be completely removed from the Statutes.

I do not think this Bill will achieve its objective—which is to improve the law. While I do not think anything is gained, necessarily, by providing deterrents for such crimes, at the same time I am not prepared to subscribe to the argument put forward by Mr. Claughton who read from a newspaper report and stated that the three States in the United States of America which had the lowest rate of crime were those where the death penalty had been abolished.

**The Hon. R. F. Claughton:** If the honourable member were to read Miss Elliott's speech he would learn of many more instances.

**The Hon. N. McNEILL:** I firmly believe that to undertake a study of this nature it would be necessary to go into it at far greater depth than any one of us is capable of doing.

**The Hon. G. C. MacKinnon:** The study has been done and the results were completely inconclusive.

**The Hon. R. F. Claughton:** That is your opinion.

**The Hon. G. C. MacKinnon:** Mr. Claughton's statement would not hold water.

The Hon. N. McNEILL: I would be prepared to subscribe to the point of view that the results of the study were inconclusive. They would have been inconclusive simply because of the motive forces which operate in conjunction and make it difficult to reach a conclusion. It is obviously a situation where it is impossible to divorce rationality from emotion. It would be virtually impossible to divorce rationality from politics—and that is what we see here. The Bill is before us because of the policy of a political party which believes the death penalty and whipping should be abolished. Although that policy has been advanced as sufficient to warrant the introduction of this Bill, I do not believe it is sufficient reason.

While the Statute remains, under no circumstances is it mandatory that either of the penalties shall, in fact, at any time be carried out. It is certainly a rightful function of an elected Executive to be able to exercise discretion.

The Minister, by way of interjection, made a quick reference to the Old Testament, but the New Testament certainly contains justification for carrying out the death penalty. By the same token, I am prepared to accept that the New Testament may also be interpreted as saying there is no case for the principle of "an eye for an eye, a tooth for a tooth". One can use arguments to suit one's purpose, according to how one feels in regard to the matter under debate.

Although I share the view that all killing is abhorrent, that is not necessarily a justification or argument for repealing the Statute, unless a case is made out for a more satisfactory alternative penalty. It appears we have a long way to go before we will have sufficient knowledge of the human mind to understand the motivation for killing or committing any offence for which whipping happens to be the penalty at the present time. Until we have a better comprehension of motivation, we will continue to be on very tender and delicate ground in thinking we must rid ourselves of the blot on our Statute book which prescribes these barbarous penalties.

I agree the penalties appear to be barbarous, and I would certainly not like to be directly involved in imposing them. But I go so far as to say that under no circumstance whatever should anyone in a responsible position be denied the discretion to impose the penalties if, in the circumstances and in the view of the law, the people, and the Executive, they are warranted. This is the important point. It is not a matter of whether we believe in hanging or whipping people, which is the basis upon which the Bill has been brought before us.

It must be obvious that I am opposed to the Bill, but in opposing it I do not necessarily wish to be regarded as being in

favour of the death penalty. I just do not believe we yet have the answers. Mr. Cloughton seems to regard those answers as being unimportant. I think it might be more correct to say he does not know the answers. If he does not know the answers, I do not hold that against him. However, until we know the answers, I do not believe these provisions should be repealed.

The persons in whom is vested all the power to exercise this discretion may feel that even at this point in our history these penalties are justified, in certain circumstances—although I hope this does not arise. I am opposed to the repeal of the provisions relating to the penalties of death and whipping.

Debate adjourned, on motion by The Hon. R. Thompson (Minister for Community Welfare).

### ADJOURNMENT OF THE HOUSE: SPECIAL

**THE HON. R. THOMPSON** (South Metropolitan—Minister for Community Welfare) [3.55 p.m.]: I move—

That the House at its rising adjourn until Tuesday, the 1st May.

Question put and passed.

*House adjourned at 3.56 p.m.*

## Legislative Assembly

Thursday, the 19th April, 1973

The **SPEAKER** (Mr. Norton) took the Chair at 11.00 a.m., and read prayers.

### QUESTIONS ON NOTICE

#### *Closing Time*

**THE SPEAKER** (Mr. Norton): I would advise members that the closing time for questions for Tuesday, the 1st May, will be noon on Friday, the 27th April.

### GOVERNMENT EMPLOYEES' HOUSING ACT AMENDMENT BILL

#### *Third Reading*

Bill read a third time, on motion by Mr. J. T. Tonkin (Premier), and transmitted to the Council.

### PRE-SCHOOL EDUCATION BILL

#### *Second Reading*

**MR. T. D. EVANS** (Kalgoorlie—Minister for Education) [11.04 a.m.]: This Bill is for an Act to establish the pre-school education board of Western Australia, to provide for the dissolution of the Kindergarten Association of Western Australia, Incorporated, and for the discharge of the former functions of that association, to