Legislative Council

Tuesday, the 22nd September, 1970

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

QUESTION ON NOTICE

CROWN LAW

Scale of Fees

The Hon. W. F. WILLESEE, to the Minister for Justice:

(1) Is there a scale of witness fees payable in—
  (a) Courts of Petty Session; and
  (b) The Summary Relief Court?

(2) If the answer to either 1 (a) or (b) or both is "Yes" where can such scale or scales be found?

(3) If the answer to either 1(a) or (b) or both is "No" upon what bases do Magistrates award witness fees in these jurisdictions?

(4) If such a scale exists, when was it last amended?

The Hon. A. F. GRIFFITH replied:

(1) (a) Yes.
  (b) Yes.

(2) The scales are published in the *Government Gazette*.

(3) Answered by (1).

(4) The 22nd November, 1965.

WORKERS' COMPENSATION ACT AMENDMENT BILL (No. 2)

Third Reading

Bill read a third time, on motion by The Hon. G. C. MacKinnon (Minister for Health), and passed.

PREVENTION OF CRUELTY TO ANIMALS ACT AMENDMENT BILL

Report

Report of Committee adopted.

HONEY POOL ACT AMENDMENT BILL

Second Reading

Debate resumed from the 16th September.

THE HON. J. DOLAN (South-East Metropolitan) [4.37 p.m.]: We support this simple Bill and approve of the clause which the Government wishes to become operative.

I thought I would take advantage of this opportunity to speak briefly about the legislation, because it is 15 years since it was enacted. It has had only one slight amendment in that time. I would be delighted if all Bills were as simple as this present one, and if all legislation were assented to and proclaimed so soon after passing. The Act was assented to on the 1st November, 1955, and it was proclaimed on the 1st December, 1955.

The only slight amendment found necessary since then was the substitution of the word "annually" in the definition of "marketable quality" for the words "from time to time." The amendment was thought desirable because it was felt that instead of alterations having to be made every year, the alterations should be made only when necessary.

The story of this Act goes back to the beginning of the 1920s when the beekeepers in Western Australia were having difficulty in blending and marketing their honey. Eventually, Westralian Farmers Co-operative Limited offered to establish a voluntary pool. That company also financed the pool when it commenced its operations in 1926. The pool proved to be a boon to the beekeepers because the honey could be sent to a central depot and blended. The operations of the pool meant that the honey was sold in various parts of the world and this meant a period of prosperity for the honey producers.

The original founders of the pool were Messrs. Arnott, Cook, Rees, and Skipper. Mr. Arnott—a well-known person—was the Assistant Manager of Westralian Farmers Co-operative Limited, and he became the first chairman of the pool.

Originally the organisation was not a corporate body. In the course of time land was required on which to establish a headquarters, but it was found that the organisation had no legal right to purchase such land. As a consequence, we now have the Honey Pool Act, which was brought forward to allow the organisation the privilege of purchasing land.

I would like to quote a few figures relating to the progress of the industry under the pool system. For the five-year period from 1945 to 1949, inclusive, 7,769,790 lb. of honey was produced, with a total value, then, of £232,949. I quote these figures to show the wonderful improvement the honey pool made to the industry. In the five years from 1950 to 1954 inclusive the production was 12,369,113 lb. of honey, to the value of £638,018. The latest figures available show that, to a certain extent, the industry has declined since that time and beekeepers are at present having a rather hard time.

One point members might find interesting is that in 1955, when this Act was first enacted, West Germany was one of our greatest customers, buying between 4,000 and 5,000 tons of honey a year, for which it exchanged Volkswagen cars and other goods in order to effect the payments.

The amendment proposed by the Minister is an excellent one. It will simplify the operations of the pool, and I hope the pool continues to be of advantage to beekeepers for a long time. I support the Bill.

Question put and passed.

Bill read a second time.

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

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

Second Reading

Debate resumed from the 16th September.

THE HON. W. F. WILLESEE (North-East Metropolitan—Leader of the Opposition) [4.43 p.m.]: This item and the next item on the notice paper are closely interrelated. The pattern of the legislation before us follows very closely that which was enacted in this House in 1968, when the same principle was applied to allow local authorities to spend money from their loan expenditure on sewerage works. In this legislation that principle is extended to water supplies and services, and the development from the 1968 legislation is quite simple.

When the 1968 legislation was before the House, Mr. Clive Griffiths said he thought the Bill was not very earth-shattering. We find that only one local authority has taken advantage of the legislation put forward at that time. I cannot see that there would be any great advantage in a large number of local authorities availing themselves of this legislation. I regard the purpose of the legislation as being to enable local authorities to use loan moneys that are available to them to bridge the gap, if they are in areas where the Metropolitan Water Supply, Sewerage and Drainage Board cannot finance them.

One of the terms used in the Bill is "unused loan moneys." I disagree with that term. I think the Government, through its Minister, has the intention of ensuring that loan moneys are used to capacity. I like to regard loan moneys as something of a reserve, a percentage of which is held to meet difficult times which cannot be envisaged by a local authority in a one, two, three, or five-year period. However, that is an aside to the comment of the Minister when he introduced the Bill. I would not like it to be thought that the intention of this legislation was that local authorities having the capacity to provide their own water supplies were morally obliged to use funds that were available from their loan moneys. The moral obligation lies with the Government instrumentality, the Metropolitan Water Supply, Sewerage and Drainage Board.

In simple terms, this Bill will allow loca authorities to use loan moneys on wate works and services, and at a later poin of time the Metropolitan Water Supply Sewerage and Drainage Board will tak over those operations. The complemen tary measure simply allows the local auth ority, in turn, to sell to the board.

The clause of the Bill that allows by laws to be made to amend plumbing re quirements possibly has greater ramifica tions. In this regard the Minister gav explanations which, in my view, have to b accepted in the light of the fact that th provision tends to streamline this type c service, and inspectors will be appointe to facilitate the work of the departmen I therefore have no objection to the legis lation.

My only comment is that if local auth orities do have occasion to use this metho of finance they should have a complet assurance—which I think is written int the legislation—that in a reasonable tim such works will be purchased and they wi be relieved of an obligation, which is nc necessarily theirs.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committe (The Hon. F. D. Willmott) in the Chai The Hon. L. A. Logan (Minister for Loc Government) in charge of the Bill.

Clause 1 put and passed.

Clause 2: Amendment to section 69A-

The Hon. L. A. LOGAN: I think I ca give Mr. Willesee the assurance he require In any case, I am sure it will be four that the department will be paying th repayments on the loan as it goes throug which in itself is an assurance that th repayment will be made and local author ties will not be left without loan funds.

Clause put and passed.

Clause 3 put and passed.

Title put and passed.

Report

Bill reported, without amendment, a the report adopted.

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 2)

Second Reading

Order of the day read for the resumptio of the debate from the 16th September.

Question put and passed.

Bill read a second time.

In Committee, etc.

Bill passed through Committee witho debate, reported without amendment, a the report adopted.

AERIAL SPRAYING CONTROL ACT AMENDMENT BILL

In Committee

Resumed from the 16th September. The Deputy Chairman of Committees (The Hon. J. M. Thomson) in the Chair; The Hon. L. A. Logan (Minister for Local Government) in charge of the Bill.

Clause 3: Section 10 repealed and re-enacted—

The DEPUTY CHAIRMAN: Progress was reported after the clause had been partly considered.

The Hon. J. DOLAN: When the Minister for Mines reported progress on this clause the other evening I indicated I was unhappy about only one point. I assure the Minister that we have no objection to this Bill except in regard to insurance and it is on this matter that we want some clarification. In 1966, when the original legislation was introduced, coverage of $30,000 had been offered by Stenhouse (W.A.) Limited, but that was not acceptable. According to the statement read by the Minister for Mines the other evening, there is now an underwriting pool consisting of 22 insurance companies, each of which is accepting part of the liability ranging from 8 per cent. to 2 per cent. I think that is a sound move, especially as it has taken a long while for this legislation to get off the ground probably because of the doubt in regard to insurance.

Because of the provisions of this Bill the insurance companies are now prepared to join the party. Therefore, if something goes wrong and the liability is to be spread over 22 companies, the loss can be more easily borne.

I would also like to know what premiums are to be paid for each aircraft per annum or what terms are available, and whether we could have some assurance from the Minister that these terms will continue to be accepted. Knowing some of these insurance companies, I realise that they drive a hard bargain and if, after a period of 12 months, they find that the present position is unsatisfactory they are likely to withdraw from this insurance field or raise the premiums to such an extent that the aircraft operators will not play. Therefore, in 12 months' time we may find we are back to where we started in 1966. If the Minister can advise the Committee what premiums will be payable for this insurance cover of $30,000, it will solve some of our problems.

The Hon. L. A. LOGAN: I am sorry I missed the debate and was unable to give the full details the other evening. In effect, there are two insurance premiums. One is for the aircraft and the other is to cover the chemical risk. Currently the whole insurance coverage for aerial spraying operators is based on 11 per cent. to .4 per cent. of the insured value of the aircraft—according to the risk and based on an average value of $10,000. For the aircraft itself, the premium would be $1,100 to $1,400. The chemical risk is based on a fixed rate per aircraft to cover $30,000 as required under this legislation, and the premium is $450 per annum.

It can be assumed that agreement has been reached between the members of this group of insurance companies which calls itself the Australian Aviation Underwriting Pool Pty. Ltd. This pool consists of 22 companies, as mentioned by Mr. Dolan. One of the reasons the Act has not been proclaimed was that discussions had taken place and it was thought agreement had been reached, but before the legislation came off the line it was found that agreement had not been reached and the discussions that had been held had not brought about any finality. I am now told that agreement has been reached and the companies are prepared to accept the conditions. I cannot tell the Committee any more than that they are prepared to accept these conditions and the premiums I have mentioned are the ones that have been fixed.

The Hon. J. DOLAN: I accept what the Minister has said, of course, and only hope that everything will be all right.

The Hon. I. G. MEDCALF: I listened with interest to the Minister's explanation and I am quite satisfied with it. However, I would like to know whether it is proposed that the Act shall be proclaimed as soon as is reasonably possible, because it does contain some very important provisions. Perhaps the Minister could give an assurance in regard to that.

The Hon. L. A. LOGAN: The Act was not proclaimed before because of the disagreement I mentioned. However, I am now assured that agreement has been reached and the Act will be proclaimed as soon as possible.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

LOTTERIES (CONTROL) ACT AMENDMENT BILL

Second Reading

Debate resumed from the 15th September.

THE HON. L. A. LOGAN (Upper West—Minister for Local Government) [5.00 p.m.]: Mr. Willesee referred to the fact that the Lotteries Commission had carried on certain activities, despite the advice given by the Auditor-General that this was acting contrary to the provisions of the Act; but that is not quite the position.

I think the honourable member mentioned that the commission was operating through two different finance companies—one being Capel Court Securities Limited. These transactions attracted ruling interest rates in the unofficial market and were secured by the Reserve Bank of Australia Safe Custody Certificates against Commonwealth Treasury Bonds. The second company was Martin Discounts Limited. In this case security was by way of marked transfers over State Electricity Commission of W.A. Inscribed Stock. It was the latter type of transactions to which the Auditor-General took exception. We should bear in mind that he was not the legal officer concerned with these transactions.

The Crown Law officers had another look at the matter, and the advice was that they were not too sure whether this type of transaction was legal or not, but they felt the matter should be cleared up. That is why the amending Bill is before us.

THE HON. W. F. WILLESEE (North-East Metropolitan—Leader of the Opposition) [5.01 p.m.]: In accepting the Minister's explanation in respect of the first type of transaction, I am still not sure what the amending Bill intends to achieve.

The PRESIDENT: Order! The Leader of the Opposition has already spoken in the second reading debate.

Question put and passed.

Bill read a second time.

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

PETROLEUM (SUBMERGED LANDS) ACT AMENDMENT BILL

Second Reading

Debate resumed from the 16th September.

THE HON. W. F. WILLESEE (North-East Metropolitan—Leader of the Opposition) [5.04 p.m.]: This Bill must be taken essentially on trust, in view of the remarks made by the Minister when he introduced the second reading. He indicated that this was an Australia-wide matter; that the amendments being submitted would be brought into effect in all States, and would be included in Commonwealth legislation. In essence, the amendments in the Bill are additions to the Act of 1967, but clause 3 seeks to repeal and re-enact section 14. It confers wider power on the people who are employed in the industry, and also wider power on the legislation of a particular State. This is to be applied to any condition or incident that might arise in the operation of the Act.

I find one provision in existing section 14 and also in the proposed re-enactment of that section to be surprising. I refer to what appears on page 2 of the Bill—

> 14. (1) Subject to this Act, the provisions of the laws whether written or unwritten, as in force in the State for the time being, and the provisions of any instrument having effect under any of those laws, apply, as provided by this section, in the adjacent area and so apply as if that area were part of the State and of the Commonwealth

I wonder how we can make provision for a law which is unwritten. Is there such a thing as an unwritten law? If so, how can it be applied to legislation which is not a yet three years old?

The Hon. L. A. Logan: We often talk about the unwritten law.

The Hon. W. F. WILLESEE: Yes, I have heard that said; and it is a term which has popular use on television. I hesitate to deal with the details of this matter because I think Mr. Medcalf can help us out. It would be preferable for him to explain the position than for me to attempt to do so.

If it is possible for us to write into our future legislation the unwritten laws of the future, then I suggest there is neither need for us to remain in the Legislative Council nor for other members to remain in the Legislative Assembly, because all future legislation could be taken care of. So we should provide a safeguard, that when a new proposal relating to any legislation comes forward it must be written clearly and be acceptable.

I am conscious of the fact that the original legislation went through in its present form, and I am as culpable as any other member for having permitted it to be passed without raising the points I am now raising. This is a matter of some importance; and if the provision has no valid meaning it should be taken out of the Bill and the Act. If some meaning is to be given to the provision then it should be written clearly into the legislation. I can not see any definition in the legislation which relates to the provision in section 14, but I would hesitate to oppose the Bill because of this factor. Therefore I would appreciate other points of view on the matter, so that before the legislation is passed should there be any doubts on the issue I have raised the provision will be deleted from both the Bill and the Act.

THE HON. I. G. MEDCALF (Metropolitan) [5.09 p.m.]: This is a very interesting Bill in that it represents an attempt to make even more co-operative the co-operative effort which was made by the Commonwealth and the States in 1967, when the Petroleum (Submerged Lands) Act was passed by the State Parliaments and by the Commonwealth Parliament separately. That was, indeed, a co-operative effort

because the States and the Commonwealth have certain overlapping powers, and there is a great amount of legal and constitutional doubt as to the exact limits of those powers as between the States and the Commonwealth.

This Bill seeks to clarify a section of the Act which provided in part II for the application of State laws to the continental shelf and the area immediately below it on which oil exploration was to be carried on. As the Minister has said, certain doubts were cast on the legislation by, I think, the Victorian Solicitor-General; and whilst the other Attorneys-General did not admit that such doubts were real, nevertheless, as a matter of caution they thought it desirable to have an amending Bill introduced; and the Bill before us is the consequence of that decision.

I support the Bill, and in doing so I would like to say that, perhaps, it is necessary in an area where there is so much doubt to be as cautious as possible. The main problem hinges around the doctrine of extra territoriality, or the ability of governments to make laws beyond their boundaries. In the past, traditionally, the power to make extra territorial laws had to be conferred on the Commonwealth by the Imperial Parliament, and it was only in 1942, when the Commonwealth Government adopted the Statute of Westminster, that the Commonwealth was specifically given the power to make extra territorial laws.

Prior to that the Commonwealth had made extra territorial laws, but each time it did that the move was fraught with doubt as to whether the law would succeed in its purpose. For example, if the Commonwealth passed laws in relation to customs, doubts may have existed as to whether or not customs officers could perform certain duties on the high seas. It was held that the Commonwealth did have the power even beyond the three-mile limit to enforce its legislation in respect of customs, because this was necessary and incidental to the exercise of the customs power.

However, this did not apply to all other subjects. When the Commonwealth passed the Statute of Westminster, one of the sections in it gave to the Commonwealth specific authority to pass extra territorial legislation. By that I am referring to legislation which applies beyond what we might term for convenience the three-mile limit—not within the three-mile limit because this is within the boundaries of the Commonwealth.

The Hon. A. F. Griffith: You are referring to the territorial sea.

The Hon. I. G. MEDCALF: That is right. It is sometimes called the territorial sea within the three-mile limit. One might say that the Commonwealth was therefore given this extra territorial power. There are still doubts about this, even though it appears in the Statute of Westminster. These doubts are held by constitutional lawyers who consider that the Commonwealth does not have the power to legislate extra territorially on all subjects.

Clearly, the Commonwealth can legislate on matters affecting the customs and the Navy so that it can send its naval ships to where it wants, and also on other subjects. However, doubts exist in constitutional circles, partly by reason of the position of the States. Of course, the State has certain rights over the area adjacent to the State boundaries. Some people refer to this as the three-mile limit, although personally I doubt whether that is a correct description of the State boundaries. I believe that the State boundaries may well embrace an area greater than the three-mile limit, and it may be the larger area which was conferred on the State by Act of the Imperial Parliament. Hence, doubts exist as to exactly where the State boundary ends and the Commonwealth power ends, and as to where this extra territorial application takes effect.

Consequently, in the presence of these very real doubts it is desirable that the matter should be clarified. Hence, if ever there was a fitting subject for co-operation it is a case where the Commonwealth and the State legislation overlap in an area such as this. Therefore, it is a very good thing that the Commonwealth and the States were able to co-operate to the degree that they did when they passed the parent legislation; and that they have now decided to pass further legislation, amending the original legislation, to clear up doubts which are thought to exist.

In addition, there are doubts in relation to the application of the civil and criminal laws to this area, partly for the reasons I have given, and partly because of the limits of the Commonwealth Constitution. The Constitution gave the Commonwealth certain powers and reserved certain powers to the States. For example, criminal law remains a matter for the States and the Commonwealth has no general criminal jurisdiction. Hence, it is thoroughly desirable that here again there should be co-operation between the Commonwealth and the States; and if the Commonwealth asks the States, or combines with the States to take over an area for oil exploration, it is only right that the Commonwealth should seek to have State law operate in that area. Also, it would not be desirable for the Commonwealth to pass criminal laws which were different from State laws in an area which is adjacent to State boundaries. Clearly, it would be ridiculous.

The same situation, of course, could arise with the offshore mineral legislation, and I hope that the difficulties in this connection will be resolved in the same co-operative spirit as the States and the Commonwealth agreed to the Petroleum (Submerged Lands) Act.

For those reasons, therefore, it is essential to have a Bill such as this. If we look at clause 3 of the measure we see that it amends section 14 of the Act. The clause states that the provisions of the laws in force in the State shall apply to the areas of the continental shelf. It then goes on to state—

> The provisions referred to in subsection (1) of this section apply to and in relation to all acts, omissions, matters, circumstances and things touching, concerning, arising out of or connected with the exploration of the sea-bed or subsoil of the adjacent area for petroleum and the exploitation of the natural resources, being petroleum, of that sea-bed or subsoil.

The clause then goes on to refer to acts or omissions, matters, circumstances or things, occurring on a vessel, aircraft, structure, or installation, touching, concerning, or arising out of or connected with the exploration of the sea-bed, and states that provisions of the law shall be applied to them.

Of course, the legislation is limited to exploration of the sea-bed, and this is most necessary because of the convention which the Commonwealth signed in 1958, which convention says that the signatory States exercise over the continental shelf sovereign rights for the purpose of exploring the continental shelf and exploiting its natural resources. Therefore, the Act generally is limited to the exploration of the continental shelf, or the sea-bed adjacent to it, and the exploitation of the natural resources. As a result, in framing this Bill the draftsman has wisely and necessarily limited the State laws which apply to matters which have some connection, one way or another, with exploration of the continental shelf for petroleum. It is cast in as wide a form as possible, and this is right and proper.

When reading the legislation carefully one notices that the draftsman has attempted to bring in everything remotely related to the exploration of the sea-bed and the exploitation of the natural resources, and he had to keep within the ambit of the convention. Therefore, as well as he could, he has tried to bring in as much of the State law as might be applicable. I believe this is the explanation which perhaps Mr. Willesee was seeking in regard to the meaning of the term "unwritten law." I think the draftsman has decided he will bring in all the provisions of the law, whether written or unwritten, and the provision of every instrument having effect under those laws.

When the draftsman refers to unwritten law, I believe that is an attempt to bring in laws which may not be in statutory form, and laws which may not yet be committed to writing in the sense that a decision may not yet have been given by a court on those laws.

Mr. Willesee raised an interesting point that Parliament might as well not continue to sit; because in the future there are other laws, as yet unwritten, which will be written by somebody else, and those now unwritten laws will come into effect. However, the laws under which we operate are not only the laws of Parliament but also laws which are handed down from time to time by the courts—sometimes called common law—and the courts do not always have a written precedent to go on. Sometimes they might have a pointer, or a case which involved similar facts; but occasionally the courts do break new ground.

It has happened in the United Kingdom, and it happens here sometimes, that the court will follow the precedent of a court from another part of the world; and it could well be that our courts may decide to make a decision on facts that were somewhat similar to a case which had been decided elsewhere but as yet has not become part of our law. Once a court makes a decision it does, in effect, become part of our law, although it is not law as written by Parliament. Nevertheless, it does have effect.

The Hon. W. F. Willesee: Could not the words "common law" have been used? They are accepted in all Statutes.

The Hon. I. G. MEDCALF: I think probably the words "common law" could have been used, but I might not have exhausted the sources of unwritten law; and I believe this is a case where the draftsman is being extra careful because of the difficult constitutional situation in which we find ourselves in regard to this matter.

The Hon. A. F. Griffith: On the application of the law in areas adjacent to the State, this would apply to the Petroleum (Submerged Lands) Act, 1967; but if a company were searching for diamonds on the sea-bed there would not be the same application of the law.

The Hon. I. G. MEDCALF: I quite agree. This legislation is clearly limited to exploration for petroleum.

The Hon. A. F. Griffith: That is so.

The Hon. I. G. MEDCALF: However, I think it is a pointer to the situation and the Commonwealth would do well to realise that, in regard to other mining legislation, it would be a good thing to cooperate with the States in the same way as it did with this legislation.

The Hon. A. F. Griffith: We have been trying very hard to get them to do that.

The Hon. W. F. Willesee: If diamonds were found on the sea-bed, wouldn't they be a natural resource?

The Hon. I. G. MEDCALF: They could be, but this legislation purports to deal with petroleum.

The Hon. W. F. Willesee: I agree.

The Hon. I. G. MEDCALF: The convention, of course, dealt with "natural resources" and so does clause 3. However, it is interesting to think of the sort of laws that might apply in this type of situation.

I am merely giving my own opinion when I say that I doubt whether all the criminal laws of the State would apply. Take the situation of an industrial award or dispute. An award might well come under the heading of "any instrument having effect under the laws of the State." It would seem to me that provided a dispute arose out of the search for petroleum, or the exploitation of the natural resources, the laws of Western Australia in relation to the industrial dispute would clearly apply.

The Hon. A. F. Griffith: I think one of the laws which would be most applicable would be the Workers' Compensation Act of this State.

The Hon. I. G. MEDCALF: Yes, and another area which might be of interest might be receipt stamp duty if the Stamp Act applies. If moneys were paid to a person on a drilling rig, for instance, would receipt duty have to be paid?

The Hon. A. F. Griffith: The best thing would be to pay them on shore.

The Hon. I. G. MEDCALF: Of course, but that does not have to be done. There might be a canteen on the drilling rig in which case the Stamp Act would probably apply. What would be the position if there were a personal grudge between two people on a drilling rig and an assault resulted? One could well concede that there may be a situation where the criminal laws of the State had no connection whatever with the search for petroleum. I cannot see how it could happen, but what would be the position if a person on a drilling rig committed bigamy? There would be no females on the rig, of course, but it would be interesting to see what laws did and what laws did not apply.

I think it emphasises the desirability of this Parliament concurring with the proposal put before us, and that we should approve of this legislation. There would be a most significant gap if we did not pass this legislation and thus allowed people to go out on drilling rigs and ships and be at the mercy of who knows what law, or even of the "unwritten law."

I would like to mention one other aspect of this Bill, and this has reference to the regulations which may be drawn up. In his second reading speech the Minister said that there should be a provision to enable laws to be modified or adapted, where necessary, by regulation, to fit them to the special circumstances of offshore operations. With this I agree because I cannot see how at this stage we could possibly conceive all the situations that may arise. There might be any number of dangerous or emergency situations arising in relation to drilling rigs, pipelines, tugs, or safety areas, and, consequently, it is fitting that the two laws be modified, where necessary, by regulation. Whether or not the regulations do what is intended I am not sure.

I draw attention to subsection (7) of new section 14, which appears on page 4 of the Bill. It states—

> (7) The regulations may provide that such of the provisions referred to in subsection (1) of this section as are specified in the regulations do not apply by reason of this section or so apply with such modifications as are specified in the regulations.

In other words, the provisions of the law of the State may be modified or cancelled by regulation. That is quite reasonable in the circumstances. New subsection (8) goes on to state—

> (8) For the purposes of subsection (7) of this section, "modification" includes the omission or addition of a provision or the substitution of a provision for another provision.

I could well understand that a provision may be omitted, or one provision could be substituted for another. However, if we add a provision then we are, in effect, adding to the laws of the State; and while there could be good reason for doing this, I think it is really a far more important way of modifying the powers of Parliament than by talking about the unwritten law. I say this because if we can add a provision by regulation then we can add almost anything; because the provision refers to the laws of the State.

What I am really saying is that while I believe regulations should allow flexibility, I wonder whether in fact they achieve this. I wonder whether new subsection (8) is not limited by new subsection (7). Can we add a provision if it is not already part of the law of the State? I doubt it.

In view of the fact that this is uniform legislation, I am not suggesting the Minister should concern himself a great deal with my doubts at this stage. I merely make an observation on a point which occurred to me when I read the Bill.

The Hon. A. F. Griffith: I think it is fairly obvious that proposed subsection (7) is limited by the application of proposed subsection (8). It tames it down, does it not?

The Hon. W. F. Willesee: My observation is that it wants a controlling factor.

The Hon. I. G. MEDCALF: Proposed subsection (9) goes on to say that the regulations that may be made for the purposes of subsection (7) include regulations having the effect that provisions as modified make provision for and in relation to

removing or modifying a jurisdiction, power, or function of or conferring a jurisdiction, power, or function on a court, board, tribunal, or authority

As I understand it, this would mean that a regulation may be made which may take away jurisdiction from or confer jurisdiction upon a court, board, tribunal, or authority. I believe that may well be necessary in these circumstances, although I would not subscribe to it as a general principle. In the situation which may obtain in connection with offshore exploration, I believe this may well be required. Clause 5 seems to confirm this point of view, because that clause proposes a modification to section 15 of the Act. If the clause is passed, section 15 will mean that subject to the power in the regulations to take away the jurisdiction of a court, tribunal, or authority, the several courts of the State are invested with jurisdiction.

In other words, under this regulation, the authority of a court may be taken away. I merely draw attention to this. As I say, I believe there may be emergencies which make this necessary but, nevertheless, I hope the power will be exercised with great care and discretion, as I am sure it will be.

Finally, I draw attention to clause 4, which I should have mentioned earlier. I have already said that the effect of the measure will be that the law of the State will operate on the continental shelf. This means that the law of the State of Western Australia will operate on the continental shelf by virtue of the joint legislative enactments of the Commonwealth and the States.

The Hon. A. F. Griffith: And in the territorial sea if there is any legal doubt.

The Hon. I. G. MEDCALF: By virtue of the joint enactment, the law of Western Australia will operate on the continental shelf. This, of course, brings in all the law of Western Australia which may be applicable to exploitation of the natural resources. This brings me to Mr. Willesee's other point; namely, it could bring in the mining law of Western Australia. Clause 4 of the Bill says—

> Parts III and IV of this Act have effect—

Those are the parts which deal with exploration. To continue—

> —notwithstanding anything in this Part of this Act or in any other law.

In other words, this clause will give priority to the Petroleum (Submerged Lands) Act, which will overrule the State law on the same, or similar, subjects. The clause is very necessary; otherwise, other laws of the State which may conflict with this legislation could be made applicable.

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Mines) [5.35 p.m.]: I might have been tempted when I moved the second reading not to stick strictly to explaining the purposes of the Bill, but I refrained from making any comment on matters other than offshore petroleum so far as the relationships between the Commonwealth and the States are concerned.

Members will recollect that I introduced the parent measure in 1967. Actually I felt quite proud of the fact that I was a representative of one of the six States of the Commonwealth which had joined together to come to a mutually satisfactory conclusion that petroleum, as a mineral, should be explored and exploited; and that came about as a result of an arrangement between the Commonwealth and the States. It was agreed that the States would be the administrators of the legislation and the Commonwealth would have certain of its external powers in addition, of course, to the other powers which the Commonwealth has as of right. The objective was that the hydrocarbons of the sea-bed would, in fact, be explored and exploited under the joint arrangement.

To the best of my knowledge, Australia is the only nation in the world that has ever achieved this kind of arrangement. In other parts of the world litigation continues over the rights of the federal government of some country as distinct from the rights of a state government of the same country.

As both Mr. Willesee and Mr. Medcalf have said, there was some doubt in relation to the 1967 legislation that the application of section 14 of the Act was as clear as it was intended to be. The whole purpose of the Bill before us is to rewrite section 14 to make certain that it is clearer in terms and that the State laws will apply so far as the application of the criminal law or other laws of the State are concerned when it is a question of the search, offshore, for petroleum. This is why I interjected on Mr. Medcalf and said that the provision was limited to petroleum.

I share his views and, if it were not outside the scope of the Bill before us, I could be tempted to say many strong things about my own feelings in relation to what else should be achieved between the Commonwealth and the States so far as the search for other minerals offshore is concerned. Members will have read in the papers how the Commonwealth regards this matter. It intends to assert control over other minerals on the sea-bed and leave it to the States to prove in the High Court that the Commonwealth does not, in fact, have this power.

The Hon. G. C. MacKinnon: And its effect on fishing.

The Hon. A. F. GRIFFITH: The effect of such a move is not limited to minerals of the sea-bed. By stretching the imagination, this effect could be carried a long

way. It would be possible to talk for some time about the various problems which can exist in this field.

The Commonwealth is saying, "We must assert control over these minerals so that we can prove from an international point of view what the situation is once and for all." I believe that the phrase, "Once and for all" is the favourite expression. At conferences I have attended, the States have contended, and will continue to contend, that the matter will not be concluded once and for all, by a long way. All sorts of litigation could arise from various causes. For example, my colleague who sits beside me has mentioned the very important matter of fisheries. Nevertheless, that is another matter.

The Hon. F. J. S. Wise: It is a constitutional challenge.

The Hon. A. F. GRIFFITH: Yes, it is a constitutional challenge. I have been asked to chair meetings held by the States, because I am the Minister for Mines who has had the longest experience of this matter. The States cannot see why the type of arrangement which is embodied in the principal Act, including the improvement which will be brought about as a result of the passing of this measure, could not carry forward and apply to everything from the low-water mark to the edge of the continental shelf. I still hope the States will succeed in coming to an arrangement with the Commonwealth along similar lines to this measure in relation to all other matters which pertain to the sea-bed.

The Hon. I. G. Medcalf: The Commonwealth must have the co-operation of the States.

The Hon. A. F. GRIFFITH: The Commonwealth can do as it may. It can assert control over these minerals. It can obtain as many High Court decisions in its favour as possible, if it is sufficiently fortunate. However, I agree that the success of administration over all the seas surrounding Australia can be achieved satisfactorily only with the co-operation of the States, because the Commonwealth would have to ask the States to administer the law for it.

I think Mr. Medcalf has adequately explained the words questioned by Mr. Willesee; namely, "unwritten law." Parliament concerns itself with the making of Statute law. This is quite distinct from the body of common law. The law is a living entity which is built up and changed in its application by the decisions of courts. This is the unwritten law. In other words, decisions of courts can change the application of the law. This is the purpose, and there is certainly no ulterior motive in writing those words into a Bill of this nature.

The Hon. F. J. S. Wise: It would be very difficult to express unwritten law in words.

The Hon. A. F. GRIFFITH: As I say, unwritten law is the change in the application of a law, which might be brought about by some court decision.

The Hon. W. F. Willesee: I think it is unfortunate to drop the term "common law" because this term has been accepted over hundreds of years.

The Hon. A. F. GRIFFITH: If we simply use the words "common law" there may be some other law which comes outside that expression.

The Hon. I. G. Medcalf: Customary law.

The Hon. A. F. GRIFFITH: Yes, and there may be others. Perhaps testamentary law would be applicable. Any one of these might fall outside the term "common law." I believe that the expression used in the measure is the safer one.

The whole purpose is to ensure that the laws of the State will apply in the adjacent area. The adjacent area so far as Western Australia is concerned is described in the second schedule to the principal Act, on page 146, under the heading of, "Area adjacent to the State of Western Australia." This describes the area of the sea for which the State is responsible in relation to the agreement between the Commonwealth and the States. This position was arrived at after amicable discussion and negotiations. Admittedly, there were a few arguments as to where lines should be drawn.

The Hon. R. Thompson: Particularly between Victoria and South Australia.

The Hon. A. F. GRIFFITH: That was not the only one. The important thing is that agreement was reached. Each State in Australia, including the Northern Territory, knows its adjacent area.

I am glad of the debate that has ensued. The subject of ownership and the rights of the States, as distinct from the rights of the Commonwealth, is a very interesting matter indeed. Deliberations are before the High Court at the present time and the reserved decisions will bring forth certain results in relation to the law applying off the coast of the States of Australia. Members know that I watch these matters with great interest.

I conclude on this note: I think the only satisfactory method of solving these problems is for the States and the Commonwealth to work together in exactly the same way as has been done with this legislation. If a challenge of an international nature takes place, then the Commonwealth and the States will be together and not at arm's length. At least we will be together on the Petroleum (Submerged Lands) Act; and I do not wish to see the States and the Commonwealth at arm's length in regard to any other matter.

Question put and passed.

Bill read a second time.

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

FACTORIES AND SHOPS ACT AMENDMENT BILL (No. 2)

Second Reading

Debate resumed from the 16th September.

THE HON. R. THOMPSON (South Metropolitan) [5.47 p.m.]: In the main, I support the provisions of this Bill. I feel that this is one instance where attempts have been made over the years to keep the Act up to date with the times. I would not say that I agree with the principal Act in its entirety; but, generally speaking, most of its provisions have been upgraded to suit the times in which we live. Since the principal legislation was first introduced into Parliament in 1920, we find that on 16 occasions the whole Act has been repealed and re-enacted, the last time being in 1963. The current Act came into operation in 1964, and we can see that it has attempted to perform the job required of it by the Department of Labour.

However, in the main I think the principal point in this Bill, which was taken up by the Press, concerns the extension of hours and the prohibition of after-hours trading in relation to used-car dealers. Members will have noticed the amendment standing in my name on the addendum to the notice paper. I feel that amendment is necessary if we are to tighten up the Act as it should be tightened up.

We are in a peculiar position—and this is where I am critical of certain legislation —because the factories and shops inspectors are responsible for the policing of this Act; yet when we look at the Used Car Dealers Act of 1964 we find that the police are responsible for the policing of that Act. Some of the provisions relating to motor-car dealings in the Used Car Dealers Act could well be incorporated in the Factories and Shops Act. However, in all probability the Minister will tell me at a later stage that those provisions are included in the Used Car Dealers Act, but that is an Act over which the factories and shops inspectors have no control.

Turning to the Bill before us, the Minister pointed out firstly the new system of registration which allows for registrations to be staggered over a 12-month period in the same way as motor vehicle registrations. I think this will add to the efficiency of the department. Reminders will be sent to the firms concerned and it will be their responsibility to renew their licenses in the same way as it is the responsibility of a person to renew his vehicle or driver's license. I support that provision in the Bill.

The second point mentioned by the Minister was in regard to strengthening the Act in respect of trading hours. I feel this provision is most important and necessary because there is no doubt that used-car dealers have been absolutely flouting the law. I took some brief cuttings from *The West Australian* and *The Sunday Times* to illustrate my point. I have here a full-page advertisement which appeared in *The West Australian* of Saturday, the 19th September, 1970, and at the bottom it states, "For demonstrations & enquiries phone the branch direct . . . ALL WEEK-END."

I think some dealers amalgamate or are possibly under one ownership because the after-hours numbers are the same. Another advertisement by a small dealer says, "Inspect Today." An advertisement which appeared in *The Sunday Times* of the 20th September urged people to "Phone . . . Today any time." Another states, "In attendance all day today at Perth yard." Yet another advertisement in the same newspaper states, "Open all day today—call for a demo!" It gives two telephone numbers and goes on to say, "We're waiting for your call and we'll beat any trade-in." So they go on: "Telephone . . . for a demo today!—we'll bring a car right to your door." I could go on for a considerable time in this fashion.

All those advertisements are contrary to the Used Car Dealers Act, yet not one prosecution has been made under the appropriate section of the Act because, as I said previously, the factories and shops inspectors have no say; the matter is one for the police. I feel that the tightening up of the provisions concerning used-car dealers will have a most beneficial effect on the industry, generally. Since I took the adjournment of this debate a considerable number of reputable dealers, managers, and people who work in used-car yards have contacted me saying that the Act should be tightened up to protect the legitimate dealer who wishes to abide by the law.

At the present time there is a group of people who are outside the law and are prepared to create their own little racket in order to make the greatest number of car sales in Western Australia. This action is forcing a condition upon the industry that is unacceptable; it is not ethical in any way, and I feel it should be resisted. I commend the Minister for attempting to do something about it, but according to advice I have received he has not gone far enough. Therefore, I hope my amendment will be accepted when we are in Committee because it is an effort to overcome that position.

The proposed increase in penalties has been the subject of some criticism, possibly from those people who want to keep on breaking the law. The proposed penalty for a first offence is $200, for a second

offence $300, and for a third offence $500. Here again, I would like to see the registration of these people cancelled. If we do not provide for a cancellation of registration they will go on their merry way. All they will need to do is change their method of advertising, which they will be able to do under the amended Act, so that the advertisements state, "call such-and-such number after hours." The whole business will continue as it did previously.

Since my amendment was drafted I have received expert advice from people of high legal standing who claim that such advertising will continue because the amended Act will do nothing to prevent it. So I would like Mr. Medcalf, in particular, to look at section 93 of the Act to see whether we will tighten the law satisfactorily and whether we will give protection to those who work in the industry.

One dealer told me that 432 car salesmen have resigned from his employment in the past three years. The main reason for those people leaving the industry is that they will not work on Saturday mornings. They do not want to work on Saturdays; they want to enjoy life like anyone else. Employees will receive no extra remuneration for working on Wednesday nights because most of them are paid a retainer plus commission. I think Wednesday night trading will be a flop in two respects. Dealers may receive some inquiries for cars, but anybody who takes out a used car, particularly, for a demonstration run at night should go to a psychiatrist and not a used-car dealer. It is difficult enough in daylight to pick out the faults in the cars that some dealers attempt to sell without trying to do so at night.

I feel we will not do any good at all to the trade if we extend the trading hours into the night. The general consensus of opinion of people who want to see the industry controlled and who have a name to protect—those are the people who contacted me, and I received numerous communications—is that normal shop trading hours should apply. Those people do not want to trade after hours. They said that people who wanted to purchase motor vehicles cannot really window shop at night because very few used motor vehicles have a price displayed on their windscreens. Instead, something like "Save $150" is painted on the windscreen. So we will not do anybody any good whatsoever by providing for Wednesday night trading because the purchaser needs to have the car demonstrated to him in the daylight hours. Also, the matter of arranging credit or hire purchase must be taken into consideration. If the amendment is passed the hire-purchase companies, too, will probably have to open on Wednesday evenings—but I doubt whether they will—to suit the requirements of the used-car trade that might or might not do business.

There are too many "ifs" about this legislation and I am not at all sure whether it will work; I do not think it will work. I am particularly opposed to the provision which seeks to extend the hours of trading to 10 p.m. on Wednesdays. I have already dealt with the provision which clarifies the position of shops which have uncontrolled trading hours. I do not think the legislation will affect many people in business apart from those dealing in used cars.

While I support the Bill as a whole, I do oppose the provision which seeks to extend the hours of trading on Wednesday nights and I trust the House will accept the amendments I propose to move when the Bill reaches the Committee stage.

THE HON. G. C. MacKINNON (Lower West—Minister for Health) [6.01 p.m.]: I thank Mr. Ron Thompson for his support of the Bill. The matters the honourable member wishes to raise and discuss could better be taken at the Committee stage of the Bill.

Question put and passed.

Bill read a second time.

In Committee

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

Clauses 1 to 5 put and passed.

Clause 6: Addition of section 91A—

The Hon. R. THOMPSON: I move an amendment—

> Page 3, lines 7 and 8—Delete the passage "Subject to subsection (2) of this section".

I hope the Committee will delete all reference to subsection (2) of proposed new section 91A. It is necessary for me to move this amendment in order that I might move other amendments at a later stage.

The Hon. G. C. MacKINNON: I hope the Committee will not agree to this. The public must be given some consideration. The purchase of a motorcar is a matter of some importance to all sections of the community, particularly to those whom we are in the habit of calling the working class. These days, in most cases, both the husband and the wife drive a car.

The Hon. A. F. Griffith: The wife is often an owner of a car.

The Hon. G. C. MacKINNON: That is so. There are also parents who are in the fortunate position of being able to assist their children to buy motorcars. Quite often we find that both the husband and the wife work and it is difficult for them to view together the vehicle they wish to purchase. Some people set a great deal of store by the colour of the upholstery, or the colour of the car itself, and naturally they wish to have a look at these things together before making a decision.

The industry itself is reasonably content to provide after-hour trading facilities on Wednesday nights. If we are to tighten up the type of after-hour trading referred to by Mr. Ron Thompson it is fair that we should give something in lieu.

Mr. Ron Thompson said the industry as a whole has had forced upon it the need to trade on Saturdays and Sundays.

The Hon. R. Thompson: I did not say it was forced upon them; I said that the hungry ones forced it on the other people.

The Hon. G. C. MacKINNON: The honourable member implied that this was forced upon the industry as a whole by certain sections of the industry and that in sheer self-defence others felt the need to stay open on Saturdays and Sundays.

The type of advertising read out by Mr. Ron Thompson would cost a fair amount of money so it would seem it must be meeting a need. I believe it is reasonable that there should be some extension of trading so that the vehicle in question can be viewed by the family as a unit—either by the husband and wife together, or by the father and daughter together, or by the father and son together, and so on. I oppose the amendment.

The Hon. R. THOMPSON: I am sure the Minister is convinced of the truth of his assertions. While I have not spoken to those dealers who have advertised in the manner I have mentioned, others tell me that when people want to buy a motorcar they make arrangements to do so in the daytime. They arrange to leave work for the purpose. Quite often they have the car in question brought to them for their inspection. In my opinion anyone who buys a used car at night—particularly those which are sold by some dealers—is certainly not right in the head. To know the true position one has only to read some of the letters written to the Ombudsman.

The Hon. A. F. Griffith: Written to whom did you say?

The Hon. R. THOMPSON: Written to the *Daily News* Ombudsman. There is no Government ombudsman yet; though there will be one next year.

The Hon. A. F. Griffith: I am sure you have even worked out your own portfolio.

The Hon. R. THOMPSON: No, but I think a number of Government members have tried to do that. It is common practice for used-car dealers to be asked to demonstrate cars during the lunch hour or at 5 o'clock in the evening, when the husband and wife can see the vehicle together. The choice is usually left to the husband, because he is supposed to have the mechanical knowledge.

I am not concerned about the staff angle; I have had no requests from staff in this matter. This is a freelance type of work and I know some teachers who have left that profession to take up work in the used-car business. They feel they can make more money by working late hours. I do not think an extension of the hours of trading will do anything for the industry. I am not sure whether more contracts will be signed or whether more finance will be arranged except by the companies which control their own finance. There is also the question of insurance to be considered.

Has there been any demand from the public for extended hours of trading? There might appear to be such a demand, because of what appears in the news media, but I have had no complaints from the public about the present situation. I have not had one request for extended hours of trading.

The law definitely needs tightening, but I do not think the hours should be extended at the moment. If there is a need for after-hour trading then let the industry tell us so—and I am now talking about the people who operate legitimately; not those who put out all sorts of gimmicks in the hope of selling a car.

While most used-car dealers are ethical in their transactions, the type of advertisement to which I have referred does nothing to enhance the good name of the industry. Whether we like it or not, in a few years' time there will be no Saturday trading at all throughout Australia.

A few weeks ago I was talking to the manager of a large chain of grocery stores in Western Australia. He said that although his firm pays the maximum male wage it is impossible for it to get staff to work on Saturdays. Serious consideration is being given by the industry in conjunction with the unions to Saturday night trading because it is uneconomical, in view of the staff shortage and the untrained staff available—particularly in the Eastern States—for shops to open on Saturday mornings.

It would be a retrograde step to have an extension of trading hours. At the moment a 44-hour week is being worked in the retail trade.

The Hon. A. F. Griffith: When would the hundreds of thousands of people who shop on Saturday mornings do their shopping?

The Hon. R. THOMPSON: I merely quoted the opinion of the manager of one of the largest stores in Western Australia who said he would be forced to close on Saturday mornings because of the staff shortage. If these people cannot get staff naturally they must close.

Sitting suspended from 6.15 to 7.30 p.m.

The Hon. R. THOMPSON: During the tea suspension it was brought to my notice that when speaking about the businessman who advised me about what was taking place in the Eastern States concerning staff, I said that the shops would have to be open on Saturday nights. I meant Friday nights. When this comes about

naturally the motor vehicle dealers will be allowed to open for late shopping. However, until that time comes, I do not believe we are warranted in treating one section of the community differently from another section.

Not one of those who have been established in the business for many years has said he wants to be able to open on a Wednesday night. These people all want to run an organised business, and yet we are forcing them to open when they do not want to do so.

The Hon. G. C. MacKINNON: I think I have said everything I can say on this subject. The fact remains that the industry itself has been taking advantage of some degree of laxity, if we like to call it that, and has in fact been offering to sell vehicles virtually day and night, according to the advertisements quoted by Mr. Ron Thompson. The firms have asked that the provisions be policed more rigidly and this legislation is more or less a *quid pro quo;* it allows them to open on Wednesday nights.

We could spend hours on a philosophical discussion with regard to our future shopping hours. Recently I shopped in Edinburgh on a Saturday afternoon. The shop seemed to be very busy with many family groups doing their shopping. Adequate staff seemed to be available, but of course they had Sundays and Mondays off in return. Everyone seemed to be reasonably happy with the situation.

However, what will occur here in the future in regard to hours, I do not know, but this amendment will allow mum and dad to have a look for a motorcar on a Wednesday night.

The Hon. J. DOLAN: I just want to buy in on one particular point. When speaking in another place—and this was referred to as one of the strongest arguments in favour of the legislation—the Minister said that the Tasmanian Government had lifted the control from everything except liquor trading, and this was accepted by the people. I want to draw attention to the fact that in Adelaide last Saturday a referendum was held regarding the extension of trading hours to Friday nights, and the referendum was lost. The majority of people in Adelaide did not want an extension.

I feel that this legislation is the thin end of the wedge. Anyone who wants to buy a motorcar can phone a firm during the day and express his interest in a certain vehicle. Arrangements can then be made to suit his convenience. There is absolutely no need for the sales yards to be open after hours. As it is, all the advertisements invite the public to contact the firms concerned by phone in which case a vehicle will be delivered for inspection. I will not go along with this legislation because it is the thin end of the wedge. Next we will be asked to legislate for trading on Saturday afternoons, and then Sundays.

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

Ayes—7

Hon. R. F. Claughton	Hon. W. F. Willesee
Hon. J. Dolan	Hon. F. J. S. Wise
Hon. J. J. Garrigan	Hon. R. H. C. Stubbs
Hon. R. Thompson	*(Teller)*

Noes—15

Hon. C. R. Abbey	Hon. G. C. MacKinnon
Hon. N. E. Baxter	Hon. N. McNeill
Hon. G. W. Berry	Hon. I. G. Medcalf
Hon. G. E. D. Brand	Hon. S. T. J. Thompson
Hon. V. J. Ferry	Hon. J. M. Thomson
Hon. A. F. Griffith	Hon. F. R. White
Hon. E. C. House	Hon. J. Heitman
Hon. L. A. Logan	*(Teller)*

Pairs

Ayes	Noes
Hon. F. R. H. Lavery	Hon. J. G. Hislop
Hon. R. F. Hutchison	Hon. Clive Griffiths
Hon. H. C. Strickland	Hon. T. O. Perry

Amendment thus negatived.

Clause put and passed.

Clause 7 put and passed.

Clause 8: Amendment to section 93—

The Hon. R. THOMPSON: The word "goods" appears twice in line 6. To which one does the clause refer?

The Hon. G. C. MacKINNON: The first one.

The Hon. R. Thompson: The word "goods" is being deleted, and is then being reinserted. It seems silly.

The Hon. G. C. MacKINNON: It has the same effect as if we leave it in.

The Hon. R. Thompson: I suggest the Minister disregards the clause as it stands and just moves to delete all words after the word "goods" as it first appears in line 6.

The Hon. G. C. MacKINNON: It has that effect. It is merely a matter of drafting. It really depends on what is meant by "passage." This amendment includes the comma, which is not being reinserted.

Clause put and passed.

Clause 9: Addition of sections 93A, 93B, 93C—

The Hon. R. THOMPSON: I move an amendment—

> Page 4, line 23—Insert after the word "offence" the words "and suspension of registration for a period of three months".

The situation regarding this industry is confusing, to say the least, because it is covered by two different Acts.

Under the principal Act the chief inspector can, in effect, cancel registrations under certain circumstances. I consider that the Act has loopholes which need to be closed and there is sufficient precedence for making the penalties heavier. The Liquor Act provides that a hotel licensee

is subject to deregistration. Also, a fisherman, if convicted, can lose his license without appearing in court. I might add I do not disagree with those provisions. If a person is charged with drunken driving, it is mandatory that he lose his license.

In view of the experience we have had with some car dealers in Western Australia we cannot afford not to tighten the Act to the maximum so that if a dealer breaks the law on more than two occasions he will lose his registration for a period of three months.

The Hon. G. C. MacKINNON: Again, I sincerely hope the Committee will not agree with the amendment. We believe that the penalty should be imposed on the person who commits the offence; that is, the proprietor. What Mr. Ron Thompson is proposing would penalise employees for an offence committed by their masters. To my mind this a bad principle. If a dealer is so bad there are provisions in the Act whereby registration can be refused at the appropriate time. Alternatively, registration of the premises can be refused.

We have more than doubled the penalties. I must admit that the amendment proposed by Mr. Ron Thompson has surprised me a little. I understand that the Bill has the blessing and the goodwill of the associations connected with the selling of motorcars. and we believe the measure should be given a fair trial.

If we find there are individual dealers who will flagrantly break the law then, certainly, something will have to be done. I do not think dealers will break the law. From what the Minister responsible for the Act has told me there seems to be anxiety among dealers to get a square deal for everyone concerned, and eliminate the pressure on certain people to stay open. I think the penalties are sufficient and I request the Committee to refuse to agree to the amendment.

The Hon. R. THOMPSON: I was surprised to hear the Minister speak as he did. For a number of years Parliament, and the department concerned, have tried to regulate some breakaway chemists. The move has been unsuccessful because insufficient penalties were imposed. We now have the situation where the Minister tells us that we have to consider the whole of the industry, and not penalise the employees.

This suggestion tempts me to consider amending the Fisheries Act, because when a fisherman's license is cancelled, particularly if he has a freezer boat or a catcher boat, the owner is usually not on board. So the crew of the boat and those working in the processing works are affected.

I consider there is a loophole. The honest operator would have nothing whatever to fear; it is only the unscrupulous operator who will have something to fear.

The Hon. G. C. MacKINNON: I feel I must say a few words regarding the analogies mentioned by Mr. Ron Thompson, because they are just not reasonable.

The Hon. A. F. Griffith: He was only fishing.

The Hon. G. C. MacKINNON: There are obvious reasons for the difficulties associated with the pharmacy legislation. It is necessary that provision be made for chemists to be able to open, virtually at any time, so that a person can secure a legitimate product to relieve suffering and pain. This puts the matter in a different category.

The Fisheries Act is different again. The Fisheries Act is not designed to stop the wrongdoing of an individual because it is wrongdoing just in itself; it is designed to stop the wrongdoing of an individual which threatens a creature. The wrongdoing threatens the continued existence of natural resources, whether they be crayfish, or prawns. So, again the situation is entirely different.

If you will permit me, Mr. Deputy Chairman (The Hon. F. D. Willmott), to speak in another capacity, people complain that the conservation law does not reflect justice. However, a conservation law is a conservation law whether it is brought down by a communist country, by a fascist country, by a nazi country, or a completely democratic country, because the law is based on the biology of a creature, and not on the law of the nation.

The present Bill deals with a different subject—the selling of motor vehicles. We have the problem of the unscrupulous dealer who can advertise in all sorts of ways—Mr. Ron Thompson read out some advertisements. Such a dealer can force another dealer, in the same area, to stay open. The present amendment to the Act will make it less profitable and less attractive for a dealer to stay open after hours.

We have heard about the difficulties associated with technical breaches, but taking all things into consideration I believe the increased penalties which we propose are sufficient. I respectfully request the Committee to oppose the amendment.

The Hon. CLIVE GRIFFITHS: I intend to oppose the amendment although, for a long time, I have been advocating that the Government should do something about increasing penalties associated with after-hours trading in the used-car industry. I am pleased to see that the Government is, indeed, taking action by the introduction of increased penalties. However, I feel that if the proposed additions are incorporated in the Bill the penalty imposed would be too harsh.

Provided the provisions of the Act are policed, I am sure that if somebody is fined $500 on a couple of occasions he will give consideration to not continuing that particular practice.

The Hon. R. Thompson: That did not stop the s.p. bookmakers.

The Hon. CLIVE GRIFFITHS: If the increased penalties do not solve the problem we would have another look at the Act and increase the penalties still further. On this occasion I am inclined to agree with the Minister that a great number of people in the industry can be affected by an unscrupulous dealer who is prepared to continue to trade after hours.

Provided that the penalties are imposed I feel that anyone who is inclined to trade after hours will learn his lesson very quickly. I am under the impression that some used-car dealers are making a fortune but I am not sure that they are making $500 on each sale. However, I feel that the penalties will be sufficient, if they are invoked.

Amendment put and negatived.

The Hon. J. DOLAN: I was somewhat impressed when the Minister said that the fellow who committed the offence was the fellow he wanted to get at, and that was the purpose of the fine. However, when a license is cancelled all the employees of the holder of the license are affected as a consequence. I do not think the penalty is sufficient. I move an amendment—

Page 4, line 22—Delete the words "five hundred" and substitute the words "one thousand".

The DEPUTY CHAIRMAN (The Hon. F. D. Willmott): I cannot accept that amendment. We cannot go back. We have already dealt with an amendment to line 23.

The Hon. R. THOMPSON: I move an amendment—

Page 4, line 33—Delete the word "or".

The Hon. G. C. MacKINNON: After I have given my explanation, I think Mr. Ron Thompson will agree not to pursue this amendment. I again ask the Committee not to agree, for the reason that what Mr. Ron Thompson proposes would amount to saying that it is illegal to sell goods at a place at which it is illegal to sell goods.

The Hon. R. Thompson: No. You are missing the point.

The Hon. G. C. MacKINNON: It is illegal to sell goods at unregistered premises at which it is illegal to sell goods because the premises are not registered under the principal Act. It is begging the question to insert an amendment to the effect that one is not allowed to sell goods at any other place. The proposed insertion is—

(iii) any goods will be sold at a place other than the registered premises of the shop; or

If the premises are not registered, it is not legal to sell goods there. I suggest that we do not pursue this amendment.

The Hon. R. THOMPSON: The Minister is completely off the track in this respect. The proposed new section 93C reads—

93C. (1) A person shall not publish, or cause to be published, any statement which implies or suggests—

(a) that at a time when the shop is required by this Act to be closed—

(i) the shop will be open to the admission of the public for any purpose of trade or inspection;

I have tested what is happening at the present time. I made approximately 20 telephone calls on after-hours numbers. The advertisements would appear to the average member of the public to be advertising the private sale of a vehicle. One telephone number that comes readily to mind is 71-2021, which appeared in *The Sunday Times* in about 15 places. I rang the number and it was the home number of a dealer, who had various cars in his yard which he would pick up and take out for demonstration.

The deletion and insertion I have proposed would strengthen the Act, in that it means that a person shall not publish or cause to be published any statement which would suggest that at a time when the shop is required by the Act to be closed goods would be sold at a place other than the registered premises.

Paragraph (b) of subsection (1) of section 7 of the Used Car Dealers Act reads—

(b) while being the holder of a valid licence, engages in dealing at premises other than the premises in respect of which the licence was issued,

commits an offence.

That would be all right if it was in the Factories and Shops Act; but the Used Car Dealers Act is administered by the Commissioner of Police and the Factories and Shops Act is administered by the Secretary for Labour. Therefore, a factories and shops inspector cannot enforce the provision I have quoted from the Used Car Dealers Act. I seek to incorporate a provision of that Act into the Factories and Shops Act.

The Minister should welcome this amendment because it is only common sense to stop these people from purporting, in their advertising, to be private people selling cars. At the moment they are virtually conducting their businesses from their homes, and this will continue unless the amendment I propose is inserted in the Act. I do not care how the Minister reads it. I have had this amendment thoroughly checked out since it was drafted and I am told that it fits the situation.

The Hon. G. C. MacKINNON: The definition of "shop" in the Factories and Shops Act reads—

> "shop" means a building, room, stall, tent, vehicle, boat or other vessel, or place of whatsoever kind in, on or from which—
>
> (a) goods are offered or exposed for sale by retail to the public;

I, too, have had the amendment thoroughly checked and reported upon, and I am advised that what I have already explained is what the amendment proposes to do. It purports to extend the closing provisions in the Act to premises which do not come within the scope of the Act. I therefore suggest that the amendment should be defeated.

The Hon. R. THOMPSON: I do not want to reflect on the person who checked this proposed amendment, but the Minister does not seem to be able to grasp the fact that this refers to publishing, and nothing else but publishing. If this amendment is not accepted, in a couple of years' time I will be able to stand up and say, "I told you so." A factories and shops inspector will be needed for every used-car salesman; that is what will happen.

The Minister is attempting to do something but he is not achieving much. The Minister will be foolish to let this opportunity pass. I think the Minister should report progress, then have the Parliamentary Draftsman check the amendment. I want the Act to be tightened up because I do not want to deal with this legislation again next year, whether I am over there or over here. This amendment deals with publishing, not with selling.

The Hon. G. C. MacKINNON: The definition of "shop" contains the words "from which goods are offered or exposed." A publication is, of course, an offer.

I will be reporting progress on the Bill. In order to be fair to the honourable member, I will do as suggested, and if on further consideration the Parliamentary Draftsman thinks there is some point in this amendment, I will recommit the Bill before the third reading. However, the information I have is definite, clear, and unequivocal, and I again request the Committee to defeat the amendment.

The Hon. R. THOMPSON: I suggest that in all fairness the Committee should accept this amendment, and if the Minister intends to report progress at a later stage he can recommit this clause. If the Minister can point out where I am wrong, I will be the first person to stand up and support him. I ask the Committee to support me on this because the Minister will have an opportunity to recommit this clause tomorrow.

The Hon. G. C. MacKINNON: I would like to clarify what I meant, regardless of what I said. I suggest that we let the Bill go through and I ask that the report be accepted. Before the third reading I will refer the amendment back to the Parliamentary Draftsman, and if there is any question about it I will recommit the Bill at that stage. My advice is quite unequivocal. The explanation I have given to the Chamber is, I believe, satisfactory. If members of the Committee accept that, we can put the Bill through, but we have a breathing space in which I can refer the comments of Mr. Ron Thompson to the Parliamentary Draftsman and have him recheck what he has already checked.

The Hon. N. E. BAXTER: In considering this clause, I think Mr. Ron Thompson has made a point. If agreed to, the amendment will close a loophole. It will prevent any advertisement from being published, or caused to be published, which implies that goods will be sold at a place other than the registered premises when they are required to be closed in accordance with the Act. There will be some dealers who are not prepared to play the game and will seek to circumvent the provisions of the Bill by trading outside their registered premises, and this amendment would probably prevent that. I think the amendment should be decided by the Committee tonight and if the Minister wishes to recommit the Bill later to remove the amendment that is sought, he can do so. If the draftsman does not view the amendment in the way it is intended and as to what it will achieve, his advice could still be wrong. I believe the amendment should go to the vote and later, if it is agreed to and the Minister believes it is wrong, he can recommit the Bill to have it taken out.

The Hon. R. F. CLAUGHTON: I feel that Mr. Ron Thompson has made a valid point in that proposed new section 93C (1) deals with trading at the shop itself. Mr. Thompson has cited a case of goods taken from a shop in response to a telephone call made by dialling the number that was advertised. Like Mr. Baxter, I support Mr. Ron Thompson in his appeal to the Minister to accept the amendment and later, if it is found that what has been put forward is not correct, the Bill can be recommitted and the situation rectified. The Committee should satisfy itself that the point the honourable member has made is a valid one, and that the amendment should be included in the Bill to close a loophole that appears to exist.

Progress

Progress reported and leave given to sit again, on motion by The Hon. G. C. MacKinnon (Minister for Health).

House adjourned at 8.18 p.m.