Mr. TONKIN: Surely the Minister for Industrial Development will not give us that clap-trap. The House must at all times, as it will in this matter, decide the question. Do not let us forget that majorities do not prove things; they only decide them. They do not prove whether they are right or wrong. If the Minister wants to read some other interpretation into this let him do so if it suits his purpose. I want to interpret Standing Orders in the way they are meant to be interpreted in connection with the English used in them.

Why does it say the responsibility rests with the member who proposes to ask the question, if the full responsibility is with the Speaker; and he can decide whether or not one can ask a question? We are asked to believe that Standing Order 109 means a member may question another member regarding a Bill or a motion in which he may be concerned if the Speaker will let him. If that is so, the sooner the Standing Order is expunged from the book the better; because it is only a trap. If it is intended to be used, it should be used in accordance with the way it is set out; and in accordance with the rulings that have been given, I repeat, over hundreds of years, in connection with this very question.

Mr. Court: Do you accept this ruling given in 1903 and never challenged?

Mr. TONKIN: What ruling is that?

Mr. Court: The one I read out by the Speaker of the House of Commons which said the matter is not subject to question.

Mr. TONKIN: Which one?

Mr. Court: The question ruled out by the Table.

Mr. TONKIN: The Minister means not subject to debate; he said "not subject to question."

Mr. Court: I mean not subject to debate.

Mr. TONKIN: I am not debating it. I am debating the matter as to whether the Speaker in withholding from the notice paper questions which are in order is acting in excess of his authority. From my reading of Standing Orders, and from *May's Parliamentary Practice*, I say he is acting in excess of his authority if he withholds from the notice paper questions which are not out of order.

Apparently there are other people who believe that the Speaker should please himself whether he permits questions which are in order to be asked. So some day a member may be able to ask a question that is in order; and another day, according to state of the Speaker's liver, he may not. That seems to me to be a ridiculous situation. I think the rules are laid down; they are capable of proper interpretation; and there is no room for exercising one's desires or wishes in connection with the matter. The rulings given over many years prove that. It is desirable that the practice which has been followed so often should continue to be followed; that is, Standing Orders should be interpreted in the way they are written. If we do not like them we should send them back to the Standing Orders Committee to have them altered.

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

Ayes—24.

Mr. Bickerton	Mr. Jamieson
Mr. Brady	Mr. Kelly
Mr. Curran	Mr. D. G. May
Mr. Davies	Mr. Moir
Mr. Evans	Mr. Norton
Mr. Fletcher	Mr. Oldfield
Mr. Graham	Mr. Rhatigan
Mr. Hall	Mr. Rowberry
Mr. Hawke	Mr. Sewell
Mr. Heal	Mr. Toms
Mr. J. Hegney	Mr. Tonkin
Mr. W. Hegney	Mr. H. May

(Teller.)

Noes—24.

Mr. Bovell	Dr. Henn
Mr. Brand	Mr. Hutchinson
Mr. Burt	Mr. Lewis
Mr. Cornell	Mr. I. W. Manning
Mr. Court	Mr. W. A. Manning
Mr. Craig	Mr. Mitchell
Mr. Crommelin	Mr. Nalder
Mr. Dunn	Mr. Nimmo
Mr. Gayfer	Mr. O'Connor
Mr. Grayden	Mr. Runciman
Mr. Guthrie	Mr. Wild
Mr. Hart	Mr. O'Neil

(Teller.)

The SPEAKER (Mr. Hearman): The voting being equal, I give my casting vote with the Noes.

Question thus negatived.

House adjourned at 11.24 p.m.

Legislative Council

Thursday, the 23rd August, 1962

CONTENTS

The PRESIDENT (The Hon. L. C. Diver) took the Chair at 4 p.m., and read prayers.

QUESTION ON NOTICE

COUNTRY BUS AND RAIL SERVICES

Comparative Working Costs

The Hon. R. H. C. STUBBS asked the Minister for Mines:

What are the comparative working costs of—

(a) Kalgoorlie - Esperance Road Bus Service;

(b) Perth - Albany Scenicruiser Road Bus Service; and

(c) Perth - Narrembeen Scenicruiser Road Bus Service;

since their inception, and the passenger rail services which existed for the corresponding period last year?

The Hon. A. F. GRIFFITH replied:

Working costs of bus services from inception to the end of June, 1962, were:

(a) Kalgoorlie - Esperance from the 26th April, 1962, to the 30th June, 1962—£2,380. (Approx. £264 per week).

(b) Perth - Albany Scenicruiser from the 31st July, 1961, to the 30th June, 1962—£12,632. (Approx. £266 per week).

(c) Perth - Narembeen Scenicruiser from the 31st October, 1961, to the 30th June, 1962—£8,598. (Approx. £248 per week).

As explained in answer to questions in another place, working costs for individual rail passenger services are not available and it is therefore not possible to afford a comparison with the figures given above.

For internal check and supervision of operational performance, periodical extracts of statistical and other data are made and reviewed but their continuous use would, under present methods, be grossly uneconomic.

The commissioner (Mr. Wayne) has examined improved methods of recording railway operations whilst abroad and will review their possible local application on a basis which is practicable and economically desirable.

BILLS (2): THIRD READING

1. Evidence Act Amendment Bill.

Bill read a third time, on motion by The Hon. A. F. Griffith (Minister for Justice), and transmitted to the Assembly.

2. Coal Mines Regulation Act Amendment Bill.

Bill read a third time, on motion by The Hon. A. F. Griffith (Minister for Mines), and transmitted to the Assembly.

WAR SERVICE LAND SETTLEMENT SCHEME ACT AMENDMENT BILL

Second Reading

THE HON. L. A. LOGAN (Midland—Minister for Local Government) [4.6 p.m.]: I move—

That the Bill be now read a second time.

Section 6 of the War Service Land Settlement Scheme Act of 1954-1960 deals with the granting of tenures. The Governor is empowered, under that section, to make regulations necessary or convenient for the carrying out and giving effect to the scheme.

Regulation No. 17 (2) of 1954 provides that approval shall not be given to any contract of sale or transfer of any holding where the consideration is premium for the interest in holding, unless all amounts owed by the settler to the Minister or other Crown instrumentality, authority or agent, have first been paid.

Because of the restriction placed on the Minister under that regulation, some unnecessary hardship has been caused certain settlers who, in the course of negotiation for disposal of their properties, have been unable to obtain an offer of a sufficient deposit to meet such liabilities.

The increasing incidence of this disability has emphasised the desirability of introducing this amending legislation. Discussions have consequently taken place between the State and Commonwealth authorities in the matter. As a result of these discussions, agreement has been reached on the necessity to amend the War Service Land Settlement Scheme Act to enable the appropriate regulations to be made.

The concession provided for in this Bill covers the position, and the amendment in the form now submitted for consideration by members has been approved by both parties to the discussions. It is considered that the passing of this measure will facilitate the better carrying out of, and giving effect to, the scheme, and the Bill is commended to members.

Debate adjourned, on motion by The Hon. F. J. S. Wise (Leader of the Opposition).

FIREARMS AND GUNS ACT AMENDMENT BILL

Second Reading

THE HON. L. A. LOGAN (Midland—Minister for Local Government) [4.8 p.m.]: I move—

That the Bill be now read a second time.

The purpose of this brief measure is to add a new item—numbered 13A—to the principal Act. It will be noted that section 12 of the Act deals with offences, and paragraph 13 of these offences, which are tabulated, describes as an offence the using of a firearm on land belonging to another, without the consent of the owner or occupier of such land, the penalty for which is set at £10, with the overriding penalties provided under sections 16 and 17, which enable the forfeiture of the offending firearm, and the cancellation of the offender's licence.

There has been cause for quite a degree of concern in country centres, to the people living in our rural districts, and the members of local authorities, because of the prevalence of illegal spotlight shooting. In response to representations, the Commissioner of Police made an inspector available in order that he might attend and discuss the matter with the executive of the south-west conference.

It is generally agreed that the police are taking all possible steps to combat the menace, and there is no question that it has become a menace. It is because the provisions of the Act are not far-reaching enough to enable the problem to be satisfactorily resolved through appropriate police action, that this Bill is being introduced.

A reference was previously made to the offence under paragraph 13, with respect to using a firearm on private property. Spotlight shooting on such property may be dealt with under that offence, as listed, provided the shooting is done without the consent of the owner or occupier. Further, upon conviction, the £10 penalty may be imposed, together with the previously mentioned forfeiture of the weapon, and cancellation of the offender's firearms licence.

No such action is possible under the parent Act, however, when shooting occurs on a road. The only positive action available to the police in respect of that offence is that under regulation No. 309 of the traffic regulations. The penalty under that regulation is £20, but as the court has no power to require the forfeiture of the firearms or the cancellation of the firearms licence—which requirement the police consider to be the chief deterrent—it is proposed to now ensure through the passing of this measure, that such forfeiture and cancellation may be enforced in respect of that offence.

Debate adjourned, on motion by The Hon. N. E. Baxter.

BUSINESS NAMES BILL

Second Reading

THE HON. A. F. GRIFFITH (Suburban—Minister for Justice) [4.11 p.m.]: I move—

That the Bill be now read a second time.

This Bill emanates from the consulations which have been carried out between the State and Commonwealth Attorneys-General, and its provisions are substantially similar to those contained in the Business Names Act of 1942.

That fact is of particular interest because the Bill has been revised in the light of comments received on a draft Bill prepared under the direction of the Standing Committee of Attorneys-General and widely circulated to interested organisations throughout Australia. It is considered that such changes as the Bill proposes in the law will be readily adopted by the business community.

Acts containing provisions similar to those in this Bill have already been enacted by the Parliaments of New South Wales and Victoria, and it is likely that similar legislation will be introduced in the Parliaments of all other States. This Bill sets out the law as to names which may be registered in similar terms to that contained in the Companies Act of 1961.

It is considered essential that the law regulating the use of both business names and company names be kept closely in line because of the close relationship between the subject of business names and parts of the law relating to companies.

There is this important point that the law of business names affects the commercial community throughout the length and breadth of the continent, consequently there are many similar reasons which may be put forward for uniformity in this field, as has been achieved in company law.

There has been no far-reaching revision of the statutes dealing with business names in Western Australia for the past twenty years, nor does this Bill seek great changes in principles. It is very desirable, nevertheless, to make new provisions in respect of registered businesses of persons outside the State or of those who have no fixed address within the State. Such businesses are not at present required to maintain a resident agent.

Because there is nothing to prevent somebody from registering a business name in Western Australia and carrying on business under that name, yet maintaining

no resident agent, we find that a resident of the State seeking to claim against such business but finding all connected with it reside outside of the State, is deprived of any ready means of redress.

The Bill provides for the appointment of an agent who is resident within the State. The appointment of such an agent should facilitate the control of undesirable business practices. One of the disabilities previously referred to comes about through the operations of itinerant vendors in the country; and it is a little surprising that the need for such remedial legislation has not been acknowledged in the past, by the preparation of a suitable amending measure.

However, the Business Names Act has not been before Parliament for amendment since 1946, and opportunity is now being taken to rectify the matter by enabling the legal process to be served upon a resident agent.

This is one of several Bills which have been introduced into Parliament as a result of the co-ordinated interests of both the Commonwealth and State Attorneys-General; and the Bill is commended as one which should meet the needs of commerce in this State and provide further safeguards against what are considered marginal and, in some cases, dishonest trading practices. It is intended that the Act shall come into force by proclamation on the same date as the Companies Act of 1961 is proclaimed.

Debate adjourned, on motion by The Hon. W. F. Willesee.

COMPANIES ACT AMENDMENT BILL

Second Reading

THE HON. A. F. GRIFFITH (Suburban —Minister for Justice) [4.15 p.m.]: I move—

That the Bill be now read a second time.

This Bill is being introduced in conformity with an undertaking given last session that the Companies Act of 1961 would not be put into force until amended to conform with the uniform Bill in the form as ultimately agreed to by the Standing Committee of Attorneys-General.

That Bill has since been enacted in New South Wales, Victoria, Queensland, and the Australian Capital Territory. It follows that the passing of this measure will bring our new companies legislation broadly into line with similar laws now operating in those States.

Before dealing with these matters directed towards uniformity in legislation throughout Australia, it is intended to deal, firstly, with two parts of this Bill which it is necessary to introduce into our laws because of special provisions peculiar to Western Australia.

The first has reference to charges which are subsisting and registered under the Bills of Sale Act, and it is intended to bring these into the registration system under the Companies Act as at its commencement. It will follow that all such charges will, when being renewed, then have to be registered under the Companies Act. That is provided for in clause 13.

The other variation from the uniform standard has been designed to remove the necessity for the submission of two annual returns by any company in the year of commencement of the new Act. It will be noticed that under clause 2 of the Bill there is provision that these amendments shall come into operation on the day the principal Act comes into operation.

In clause 3 will be seen an intention which seeks to ameliorate the conditions under which an auditor of a company may be disqualified by reason of conditions existing prior to the commencement of the principal Act. The next clause has reference to "exempt proprietary companies" and its purpose is to extend a little the number of interrelated companies which may qualify as such.

There is further provision which allows the shares in the proprietary company to be held by a non-profit company, but not so that that fact would affect the status of the former as an exempt proprietary company. The clause also provides that shareholding will not of itself affect the proprietary company's status where redeemable preference shares in a proprietary company are held by a public company.

The next clause has been introduced to ensure that where a person is disqualified from acting as an auditor, he must knowingly so act to become liable to penalty. A discretion is aso conferred on the Companies Auditors Board to excuse a breach in a special case. There is a requirement for the inclusion of information in a return of lodgment of shares to the effect of making a disclosure of the full name of the allottee where he is, for example, an oriental and consequently may not have a surname as we understand the term. There is also power for the registrar to dispense with the production of a stamped original contract relating to the allotment of shares at the time of the filing of a certified copy of that contract.

A further amendment permits the use of the share premium reserve in the creation or building up of the statutory reserve required to be maintained by Commonwealth law in the case of a life insurance company. That is in clause 9. In clause 11 there are provisions which establish beyond doubt that section 68 dealing with options over unissued shares applies only to options to take up shares granted after the commencement of the Act.

Section 74 of the Act has reference to the position of companies as trustees for debenture holders. The amendment contained in this Bill is to permit a corporation to act as trustee for debenture holders where it might otherwise be disqualified by subsection (5) of section 74. The limits imposed in the amendment will ensure that the trustee corporation will be, for practical purposes, independent of the company issuing debentures to the public. There is an additional provision giving the registrar power to extend the time in which a company is obliged to furnish to any person a copy of the whole or any part of its register of members.

In the case of a foreign company opening a branch registered in this State, but not otherwise carrying on business here, registration will be provided at a concessional fee. That is in clause 20; and as to fees, there is a provision adjusting the scale of fees which, incidentally, reduces the capital fee of the registration of a foreign company to one half of the rate prescribed on the incorporation of a local company. There are some necessary amendments to tables A and B (which are normally referred to as statutory articles) in order to make them consistent with the body of the Act.

An additional amendment rewrites requirements concerning the contents of company accounts. This rewrite is the result of close analysis that has been made by the various institutes of accountancy after consultation with their executive bodies as part of the work of the Standing Committee of Attorneys-General.

It may be said, in conclusion, that though complete uniformity might not be a practicality, it is considered that the Attorneys-General have achieved uniformity in all matters of practical application throughout Australia. It had originally been intended to proclaim the uniform Companies Act on the 1st October. That now becomes contingent on the passage of this measure, and also on a review of the situation which has transpired in all States so as to ensure that this State's legislation achieves, as near as possible, effective uniform legislation.

Debate adjourned until Tuesday, the 4th September, on motion by The Hon. W. F. Willesee.

BP REFINERY (KWINANA) LIMITED BILL

In Committee

The Chairman of Committees (The Hon. W. R. Hall) in the Chair; The Hon. A. F. Griffith (Minister for Mines) in charge of the Bill.

Clauses 1 and 2 put and passed.

Clause 3: Power to company to be incorporated in Western Australia—

The Hon. W. F. WILLESEE: I move an amendment—

> Page 5, lines 14 to 18—Delete all words after the word "section" down to and including the word "Act" and substitute the following words:—"fees payable in accordance with the second schedule of the Companies Act, 1961, for the incorporation of the company."

I foreshadowed this amendment when speaking during the second reading and do not think it needs any great elucidation. I believe the incorporation fee should be in accordance with the Companies Act passed by Parliament last year and should be in conformity with that of any company that was registered in Western Australia at that particular time. This is a very successful company and its asset backing as against its particular nominal capital as prescribed under its memorandum of association today would be something in the vicinity of 8 or 10 to 1. Therefore, in essence, if a Western Australian company was forced to buy it out today on its present valuation, and had to register as a West Australian company, the fees would probably be 10 or 12 times higher than that proposed under my amendment.

In deference to the will of Parliament, it is reasonable to assume that this company with its very great benefits, whereby two Acts of Parliament are being enacted in different countries, should pay fees in accordance with our Act.

The Hon. A. F. GRIFFITH: I would like to make one or two comments about this proposal. In the first place the early negotiations which occurred between the company and the Government took place at a time when it was not known when the Companies Act of 1961 would, in fact, become effective.

I would point out to the honourable member that if this company had made a move some months ago to be registered here, it would have been registered for the sum of £50. It has already registered itself in Western Australia as a foreign company and has paid the sum of £25. The figure of £100 was at the time regarded as a reasonable sum upon which to reach agreement having in mind that the amount of £100 is double the fee which is required under the old Act. This figure, plus the £25 already paid, would make a total of £125.

The honourable member points out that the company has a nominal capital of £1,000,000 and suggests that as against that it has assets worth from £10,000,000 to £15,000,000. I would suggest that its assets may be worth even more; but, of course, what Mr. Willesee did not say was how much of those assets were, in fact,

free of liability; and I do not think it can be presupposed that whatever assets the company owns are free of liability.

The Hon. W. F. Willesee: They cannot be called up for more than a million pounds.

The Hon. A. F. GRIFFITH: That is right; but the situation that this company finds itself in in respect of its nominal capital and its assets is not a singular occurrence in Western Australia or other parts of Australia.

The Hon. W. F. Willesee: It is in a very favourable situation.

The Hon. A. F. GRIFFITH: It is; and I agree with the thought expressed by the honourable member yesterday and hope that this company continues to progress. The company at the moment is constructing a lubricating refinery at Kwinana which is to cost in the order of £9,000,000 to £10,000,000, I think. This company has been of great value to Western Australia.

The Hon. W. F. Willesee: And Western Australia has been pretty good to this company.

The Hon. A. F. GRIFFITH: I am not denying that, of course.

The Hon. W. F. Willesee: There are two sides to the issue.

The Hon. A. F. GRIFFITH: This company is good for Western Australia, and Western Australia is good for the company. What more can we want so far as the transacting of business is concerned?

I communicated with the company this morning; and, I repeat, this fee of £100 was agreed to at the time as being reasonable, taking into consideration that it is twice as much as the company would normally have been called upon to pay under the old Act. However, the company is agreeable that it should pay the fees that would be prescribed in the event of the Companies Act coming into force on the 1st October, 1962; and those fees amount to a figure, as the honourable member has said, in the vicinity of £500. I ran out figures from the Act, and the amount would be £440 plus some incidentals. So there is no objection to the amendment moved by Mr. Willesee; but I thought I should point out the approach to this matter. It was not a question of the Government letting the company off—a company that has been generous to Western Australia, and that Western Australia has been generous to. It was a matter of striking that fee. However, the company has no objection to the amendment, which I am pleased to support.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 4 and 5 put and passed.

Clause 6: Company to adopt new memorandum—

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

Page 7, line 20—Delete the passage "-five".

This is obviously a mistake in relating English currency to Australian currency. The amount of 25s. occurs in both places.

The Hon. J. G. HISLOP: This is a Bill that needs a great deal of looking into. I had hoped the debate would be prolonged a little more so that we could have gained a real insight into this measure, which could affect a large number of companies.

I did not speak yesterday because I was not certain about this clause; but last night I took it to a personal friend of mine who has a deep knowledge of finance, and I asked him just exactly why an English company should debase its capital in relation to Australian currency, and he said he would find out this morning what it meant. He later rang the appropriate department, which thanked him for what he did. I think this was probably just a typographical error. But it is of great significance to know that this can happen, and that the mistake could have been passed by. Had it been passed by, it could have been established as a precedent for all other companies of the same sort. Therefore I feel this measure is one that should be looked at very carefully in another place to see that we are not, in any part of it, establishing a principle that will involve a company that will start operations in Australia and then seek permission to do the same thing as BP Refinery (Kwinana) Limited has done; because this Bill will probably set a precedent for all such companies in the future; and the refinery will not be the only company.

The whole paragraph struck me as so extraordinary that I wondered about it; and it was a relief to learn that this was purely a typographical error.

Amendment put and passed.

Clause, as amended, put and passed.

Preamble—

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

Page 2, lines 2 and 3—Delete the words "eleventh day of June" and substitute the words "fourteenth day of May".

Amendment put and passed.

Preamble, as amended, put and passed.

Title put and passed.

Bill reported with amendments.

House adjourned at 4.41 p.m.