The Minister implies he often enters into consultation with sections of the community. I do not, say, and never would say that a Government need necessarily comply with the wishes of a particular section of the community, but I should like the Minister to answer those queries, bearing in mind there was no move from this side to amend this section of the legislation.

Mr RUSHTON: This amendment was brought to the Chamber after extensive consultation with local government associations. Since it first appeared before this place, there have been a number of submissions, one of which was from the Institute of Engineers, and this amendment reflects those submissions. That is why I am at some loss to understand why it is still unhappy. I believe the MOA at one time expressed approval, but I understand it now would rather see this amendment not inserted. However, I have referred back to the Local Government Association, through its executive, and it wishes the matter to go forward. This amendment is a genuine attempt to meet the submissions which came forward relating to the restrictive provisions to be placed on officers in dual roles.

Mr TAYLOR: Just to add balance to the Minister's remarks—I am not able to say whether he is accurate in his comments—the president of the MOA contacted me last Monday and I spoke to him again yesterday. On both occasions, he indicated the MOA was most concerned about the situation, and that he looked to the Opposition or some other source to effect some amendments. This seems to conflict with the statements of the Minister, and I should like it placed on the record that there was a difference of opinion.

Question put and passed; the Council's amendment agreed to.

Mr RUSHTON: I move—

That amendment No. 4 made by the Council be agreed to.

This is a consequential amendment relating to the provision to overcome dangerous situations relating to swimming pools.

Mr TAYLOR: The Opposition has no objection to the remaining amendments. I merely comment that it is not bad for such a small Bill to have six amendments!

Question put and passed; the Council's amendment agreed to.

Mr RUSHTON: I move—

That amendment No. 5 made by the Council be agreed to.

Question put and passed; the Council's amendment agreed to.

Mr RUSHTON: I move—

That amendment No. 6 made by the Council be agreed to.

In a spirit of conciliation, this amendment has been introduced to meet the request that an authorised officer would be carrying out a decision within guidelines already made by council, and he could act to remove a dangerous situation. If not within the guidelines he would have to refer back to the council to receive further directions. I think the intention of this amendment is well understood.

Question put and passed; the Council's amendment agreed to.

Report

Resolutions reported, the report adopted, and a message accordingly returned to the Council.

House adjourned at 11.10 p.m.

Legislative Council

Thursday, the 4th November, 1976

The PRESIDENT (the Hon. A. F. Griffith) took the Chair at 2.30 p.m., and read prayers.

QUESTION ON NOTICE

1. MURUMBA OIL, REGENT NICKEL, AND BOUNTY OIL COMPANIES

Investigation: Tabling of Reports

The Hon. LYLA ELLIOTT, to the Minister for Justice:

(1) Has he this day received advice from Mr Frank Walker, the New South Wales Attorney-General, that Murumba Oil N.L., Regent Nickel Corporation N.L., and Bounty Oil Ltd., interim and final reports of inspectors were tabled in the New South Wales Parliament on the 15th September, 1976?

(2) If so, will he now table the interim report?

(3) If he will not table this report, why not?

(4) In respect of each of the reports, when were they first received by the Western Australian Government?

The Hon. G. C. MacKinnon, for the Hon. N. McNEILL replied:

(1) Yes.

(2) Yes.

(3) Not applicable.

(4) Interim report—3rd November, 1975;

Final report—21st January, 1976.

In accordance with the practice consistently adopted, reports of this nature are not tabled until they have been fully studied to determine whether prosecutions can be undertaken. In the event of there being prosecutions it

would be quite inappropriate to table reports until possible court actions have concluded.

In this case, the New South Wales Government appointed the inspectors, and their reports were submitted to that Government. The Western Australian Government co-operated with the New South Wales Government by investing those inspectors with powers to carry out their inquiries in W.A.

It would have been inappropriate to table the reports prior to their tabling in New South Wales, and before mutual decisions had been made in respect of possible prosecutions.

The report was tabled (see paper No. 459).

CENSORSHIP OF FILMS ACT AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by the Hon. G. C. MacKinnon (Minister for Education), read a first time.

Second Reading

THE HON G. C. MacKINNON (South-West—Minister for Education) [2.36 p.m.]: I move—

That the Bill be now read a second time.

The Censorship of Films Act, enacted in 1948, was designed to set up machinery for the censorship of films and to enable an agreement for that purpose to be entered into with the Commonwealth.

Under the Act, and the agreement contained therein, the Chief Commonwealth Censor and his staff censor films in this State on behalf of the Western Australian Government.

Approximately 1 000 films are viewed by the censor each year, of which about 4 per cent are rejected. Such rejected films cannot be shown, but an appeal to a films board of review, established under the statutory rules of the Customs (Cinematograph Films) Regulations, is permitted. In addition, the Commonwealth Attorney-General has the power to instruct the Chief Film Censor to either register or refuse registration of a film.

Instances have arisen whereby a particular film has been unanimously rejected by the Chief Film Censor and his board, and a subsequent appeal to the films board of review has been upheld.

In such a circumstance, the Government has no power under the present Act to stop the screening. This is considered somewhat anomalous, particularly where the film is to be screened only in Western Australia.

The purpose of this Bill is to provide the Minister charged with the administration of the Censorship of Films Act, 1948-1973, with the necessary authority to take action, in extreme circumstances, to prevent the exhibition, or to impose conditions on the exhibition of a film in this State.

Already two States, South Australia and Queensland, have legislation allowing them to alter film classifications, and to take action, by refusing to classify, to stop a film from being exhibited.

This Bill seeks to give similar power in this State as provided in the South Australian Act. Basically, it gives the Minister the power to prevent a film being exhibited, or impose conditions on the exhibition of a film.

This State has found by experience that the agreement in most instances does work in a satisfactory manner, and we are sure that the authority sought will in no way interfere with the agreement, but will strengthen it.

There is no intention of obtaining the authority in order to set up an additional form of censorship that can be used in a general manner.

It is inescapable, however, that the Minister will have to adopt, to a limited extent, the role of censor, but this role will only be similar to what the South Australian and Commonwealth Ministers adopt under their legislation. Statistics show that there have been few occasions when they have felt impelled to act. The Government anticipates that a similar situation will apply in this State.

Nevertheless, inasmuch as the State Minister has the responsibility for the administration of the Act, it is proper that he should have this power reserved to him. Particularly is this so where, as mentioned above, the film may be exhibited, or intended to be exhibited, only in Western Australia.

The Motion Picture Exhibitors executive has been consulted on the legislation, and the form of operation has been explained to it.

It is not the intention of the Government to use the authority to stop films that are already on exhibition, but to act following on expert advice against persons who are seeking to exhibit a form of undesirable film.

The Chief Film Censor has been brought into close consultation on this proposed legislation and, while indicating his approval, he expressed some surprise that such authority was not presently available.

The mechanics of the Bill are simple in that the action to prevent a showing, or to place a restriction on a showing, is done by withdrawing the classification placed on the film, and refusing to assign another,

and, in the case of the imposition of conditions, by simply altering the given classification or the writing in of certain restrictions as to the showing.

At the present time, obligations are placed upon exhibitors in regard to the policing of the requirements in respect of "R" certificate films particularly, and in certain circumstances exhibitors themselves have expressed concern at the difficulty in enforcing these requirements.

The power of the Minister to impose conditions could be of assistance to exhibitors in certain of these instances.

Following upon the publicly-stated intention of the Government, there have been many expressions of support from members of the community at large who obviously feel that there is a need for the State to have, and to exercise, such authority.

Also, it is to be admitted that there have been some representations to the Government expressing the need for caution in the exercise of such authority.

These views are respected, and it is emphasised that there is no power sought, nor intended, either to introduce new classifications, or to change the existing basis of classification.

Rather is it intended that the exercise of the power now sought will be, in general, to supplement the actions of the Chief Censor and his board.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. R. F. Claughton.

LOCAL GOVERNMENT ACT AMENDMENT BILL (No. 5)

Assembly's Message

Message from the Assembly received and read notifying that it had agreed to the amendments made by the Council.

ADMINISTRATION ACT AMENDMENT BILL

Third Reading

Bill read a third time, on motion by the Hon. I. G. Medcalf (Attorney-General), and transmitted to the Assembly.

NICKEL (AGNEW) AGREEMENT ACT AMENDMENT BILL

Second Reading

Debate resumed from the 2nd November.

THE HON. S. J. DELLAR (Lower North) [2.44 p.m.]: This is a very significant measure which proposes to amend the Nickel (Agnew) Agreement Act of 1974.

I would like to say something about the locality concerned in this agreement before I come to discuss the Bill. As members know, we had hoped for many years that massive deposits of some ores would become available for mining in this area of the State. Members know also that in 1974 the State signed an agreement with the joint venturers; that is, Western Selcast (Pty.) Limited and Mount Isa Mines Limited. These companies, with an interest of 60 per cent and 40 per cent respectively, formed a joint operating company which they named Agnew Mining Company Pty. Limited.

The nickel deposits are really located some 50 miles to the north-east of Agnew, and they are the most distant proven nickel ore bodies in the State. A considerable amount of money has been expended on the initial exploration of these deposits. The explorations commenced with the boom we experienced a few years ago in the nickel industry when everyone was anxious to get into the business of the development of nickel deposits. Eventually it was discovered that the deposits at Agnew were quite substantial.

The finding of this deposit raised the hopes of many people, including the State Government and the companies. Everyone thought that Agnew Mining Company Pty. Limited would become one of the major producers in this field. As we all know, the trend in the industry at that time slowed down production and changed the whole atmosphere.

I think it was back in 1971 that the joint venturers—whom I will now call the company—first encountered an ore body which had the capability of producing approximately 45 million tonnes of nickel ore a year with an approximate content of 4.2 per cent. Towards the end of 1972, the company thought it was in a position to continue with the development of its prospect, and at that time it was envisaged the company could produce approximately 30 000 tonnes of matte a year, and of course further development continued. It was not until 1974 that the company joined with the State in an agreement to develop the Agnew nickel deposits.

Following the signing of the agreement, further development was carried out. The original agreement specified that the company would start operations on an open-cut basis in order to ensure a ready cash flow to proceed with further development. The original agreement included also the provision of a concentrator near the site. The company proposed to use an electric smelter instead of a flash smelter, and this also was located near the site. The idea was to cart the concentrate of these plants by rail from that area. A new town was to be built with an expected population of about 3 000 people.

About that time the world demand for nickel slowed down, and there were a few changes in our economic situation particularly in regard to Australia's trading with other countries. In about June, 1975, the company made an announcement that in view of the inflationary effect on capital, the decrease in the world demand for nickel and the subsequent lack of markets,

the financial viability of the project was suspect and at that stage the company decided not to proceed.

I think it was in about October, 1975 that the company sought from the State Government an extension of time of 12 months so that it could further consider its operations. As a result, the Bill before the House does not make a lot of major changes, although I suppose they are major in terms of the original agreement.

Where in the original agreement the company was considering transporting south from the Agnew area some 30 000 tonnes of concentrate, under the agreement included in this Bill we are looking at a figure of about 10 000 tonnes of nickel matte. The agreement has been changed to allow the company to defer establishing a concentrator at Agnew, and the matte and concentrates will be transported to a locality at Kalgoorlie for treatment.

I do not think we should overlook the fact that to date the company has spent something like $12 million in developing this project and, by the time it goes into production which, according to the Minister, hopefully will be by the end of 1978, it will have outlayed some $55 million. Of course, when the expansion of the project is implemented, another $30 million will be spent. Therefore, it is not a small project; it is one which will bring a great deal of development to an area of our State which needs it the most.

I was a little disappointed at the following statement made by the Minister in his second reading speech—

> The project will be producing concentrate by 1978 and will employ between 350 and 400 people.
>
> This is a significant level of new employment for the goldfields and will, in a single project, substantially offset the labour situation caused through the enforced closure of the Mt. Charlotte Goldmine in Kalgoorlie.

I do not believe the project at Agnew in one single stroke will offset the unemployment situation caused by the closure of that mine. The people in Kalgoorlie now are receiving dismissal notices. We read in the Press recently that the operations at Mt. Charlotte will continue for another month; perhaps the company has found it can economically produce some of its higher grade ore. I should like to see the mine stay open forever.

As the Minister said, the amending agreement has been prepared with a view to altering as little as possible the terms of the original agreement, with the exception of the proposals contained in this Bill.

The original agreement contained a requirement that the company would rail its production from Malcolm to Kalgoorlie, and would contribute to the upkeep of the Kalgoorlie-Leonora railway, which now is completed. I note that under the amending agreement the Government has waived the requirement for the company to contribute towards the cost of providing a road either from Malcolm or Leonora, whichever is appropriate, to a point near Yakabindie to connect with the company operations. From my reading of the agreement the State will effect the necessary road improvements.

Forgetting about the unemployment situation and the conditions of isolation of the people living in the outback, the need for such development is significant. If the Minister had travelled with me last week on the road from Agnew to Leonora he would have appreciated the need for the upgrading of this road. It is obvious to me that if the nickel matte or concentrates produced at Agnew are to be carried by our transport systems by road to the rail head at Malcolm there will not be a great deal of production accomplished.

Naturally, I do not oppose the Bill; I support it wholeheartedly. As I have said before in this House, in the future we will see a railway system throughout the State which will link up to the massive iron ore deposits in the north. Although the agreement provides for a reduced obligation on the part of the companies concerned, this development will be the catalyst in the eventual development of certain isolated areas of our State.

I do not think the Government itself can take all the credit, and I am sure it will not, because I am aware that the company has been very anxious since it first entered into agreement with the State Government to develop this project and commence nickel production. As I have said before, and as has been pointed out by other members, the original agreement was entered into at a time when the company thought it could develop a far larger project than that envisaged here; however, world demand for nickel dropped, inflationary pressures caught up with us and the company was forced to lie low for a little while.

But now we see it has come out of the woods and entered into another agreement with the State. The benefits, not only to the area immediately surrounding Agnew but also to Wiluna, Meekatharra, Leonora and other areas will be enormous.

I am not sure of the actual capacity of the smelter at Kalgoorlie, but I am sure it was designed to cope with a far larger tonnage than it is handling at the moment. The transporting of the nickel matte to Kalgoorlie may or may not increase employment. However, it represents a significant step forward in the development of this area; it is an area of the State which has been looking forward to something for many years, and it needs this type of development.

I had intended to say a lot more about the Bill, but I believe the mere fact we have an agreement before us at least will create the situation which may enable this company to get off the ground and commence production. As a matter of fact, I was invited to view the development of the operations this Friday, but I could not attend due to a prior commitment. The company is most anxious to commence production.

I commend the company for its persistence and wish it and the project every success. I know it will contribute to an area of the State which urgently needs such development, and it will do nothing but contribute to the future economic stability of our State.

THE HON. G. W. BERRY (Lower North) [3.00 p.m.]: I rise to support the measure and to congratulate the company for the move it is making to get this project under way. In different circumstances it probably would have been well under way and producing nickel by now, because the deposit in the area is of some great significance. I understand it is one of the largest sulphide deposits to be found in the southern hemisphere and compares favourably with any similar deposits in the world—certainly in the free world.

In view of the trials and tribulations suffered by the company it certainly deserves the congratulations of the people of this State for the effort it is making in trying to get the mine into production.

The Hon. Clive Griffiths: It did not get much encouragement from the Whitlam Government.

The Hon. S. J. Dellar: There was a world trend of demand for nickel at the same time.

The Hon. G. W. BERRY: In effect the original agreement has been reduced by about two-thirds and that in itself is a rather sad state of affairs.

The Hon. R. F. Claughton: You seem to be critical of the company.

The Hon. G. W. BERRY: The company originally envisaged spending $200 million and we find that this amount has been cut to perhaps $55 million. However, the fact is that the production is getting under way, and with the other activity that is taking place in the area there is great hope that the development will reach fruition as originally intended. In this respect provision has been made in the amended agreement to help the company reach its original target.

As Mr Dellar has said, this is rather a remote area of the State with a harsh environment and, having a mining operation established in the area, will give heart to the people in the Murchison-Eyre, particularly when they know that the development is to proceed.

The ensuing development will, of course, bring with it the upgrading of the road from Leonora through to the Yakabindie turnoff which is something that is sorely needed in the area in question. A good road will be a great help. It takes development like this to bring about these facilities in such sparsely developed areas where the distances between waterholes is fairly great. Even though this is only a beginning the development there will be of some considerable importance and one to which we can look forward in the future. Furthermore, I hope it will spark off other projects and help them get under way in the not too distant future.

It was a great moment when the sulphide deposit was discovered in that area some years ago. At the time of the discovery it was envisaged that development would take place very rapidly but this, of course, was not to be.

The concentrate will be produced at the mine site and the nickel will be smelted, I understand, at the Western Mining smelter and under the agreement will be transported from the smelter to wherever the material has to go—whether it be for the purpose of refining or for shipment overseas, depending on what the company has in mind.

There is little doubt that the production that is to take place in the area will add a little more to the work force in Kalgoorlie where the smelter is situated. The concentrate to be hauled would, I imagine, be in the vicinity of 80 000 tonnes and this, in turn, will mean more rolling stock for the railways. When the company gets to its eventual production and sees fit to extend the line to the mine site, we hope this will serve other developments that will eventually take place and I trust we will see the area opened up to take advantage of the great potential there is in the mining sphere.

The company has shown great initiative in getting this mining operation off the ground, because I have no doubt that the return on capital investment under present conditions will not be very high, and it requires a good deal of courage to take the necessary risk.

We all hope the future holds bright prospects for our mineral areas and with the move being made by the company at the moment there seems little doubt that this will be achieved.

I wish the company well and I hope its plans come to full fruition in due course. I support the Bill.

THE HON. G. C. MacKINNON (South-West—Minister for Education) [3.07 p.m.]: I only wish to express my gratitude to the two members for the area for their comments and their good wishes to the company and the Government. I thank them for the detailed examination they have made of 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.

Third Reading

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

LIQUOR ACT AMENDMENT BILL

Third Reading

Bill read a third time, on motion by the Hon. G. C. MacKinnon (Minister for Education), and returned to the Assembly with amendments.

JUSTICES ACT AMENDMENT BILL (No. 2)

Second Reading

Order of the Day read for the resumption of the debate from the 2nd November.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (the Hon. Lyla Elliott) in the Chair; the Hon. I. G. Medcalf (Attorney-General) in charge of the Bill.

Clauses 1 to 3 put and passed.

Clause 4: Section 189 amended—

The Hon. R. F. CLAUGHTON: I must confess that the jumping around on the notice paper is causing a considerable amount of bother to those on this side of the Chamber.

The Hon. N. E. Baxter: If you were here all the time it would not worry you.

The Hon. R. F. CLAUGHTON: That is not so simple. If the Government were following the notice paper we would know where we were.

The Hon. G. C. MacKinnon: That is quite right; carry on regardless.

The Hon. R. F. CLAUGHTON: It is very difficult to carry on regardless when the Government is altering the order of the business on the notice paper.

The Opposition supports the Bill and if I had spoken on the second reading debate that is what I would have said.

Clause put and passed.

Clauses 5 to 13 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by the Hon. I. G. Medcalf (Attorney-General), and transmitted to the Assembly.

CRIMINAL CODE AMENDMENT BILL (No. 3)

Second Reading

Debate resumed from the 3rd November.

THE HON. LYLA ELLIOTT (North-East Metropolitan) [3.18 p.m.]: I would like to commend the Government on the efforts it has made in various directions to ease the suffering and distress of victims of rape. As members would be aware, I have been concerned about this subject for some time and have asked questions about it in the House and have mentioned it in various speeches. Therefore it will be realised why it means a great deal to me that the legislation has been introduced.

I would also like to pay a tribute to the WEL and particularly Mrs June Rankine-Wilson and the feminist movement generally. It is really because of their determination and persistence in respect of women's rights and drawing attention to the plight of rape victims, and their endeavours to have the situation improved, that discussions have taken place throughout Australia and legislation has been studied in an attempt to improve the position of rape victims, not only in the handling of cases by the police and at hospitals, but also in the courts.

In our contemporary society the system and court procedure have for too long tended to favour the rapist rather than the victim, and I am pleased that steps are being taken to remedy this.

The seriousnesss of the act of rape has been viewed differently down through the centuries. When we look at the history of English law we find the Romans punished rapists by death and also confiscation of property; but I might point out it was not so much because rape was an act of violence against the woman but because it was looked upon as an offence against the husband or father of the woman. The Saxons continued the policy of punishing rapists by death. The Normans changed the punishment to castration and gouging out of the offender's eyes. In 1275 a Westminster Statute changed the offence to the status of trespass and reduced the penalty to two years' imprisonment and a fine, so it was not regarded very seriously in those days. However, within 10 years the incidence of the offence had increased so much that it was necessary to change the law again and rape was made a felony. In 1841 the offender faced transportation. Twenty years later, in 1861, the Offences Against the Person Act made rape punishable by imprisonment, which varied from a very short term to life imprisonment depending on the circumstances of the case.

Our Criminal Code, which we are endeavouring to amend by this Bill, had its genesis in the nineteenth century and I believe it still reflects nineteenth century thinking. Although a heavy penalty is

included in the Criminal Code for the offence of rape, there is a strong implication in the wording of section 325 that it is still considered when a woman marries she becomes the sexual property of her husband and forfeits her rights as an individual human being. I am referring of course to the wording of the provision which in effect states it is an offence of rape if it is not committed upon a woman who is the wife of the man, which seems to imply that if she is his wife it is not so serious or cannot be proved.

A conference of the Australian Institute of Criminology was held in Canberra last year and dealt with women as victims of crime. A paper was presented to that conference which included a section on domestic violence, and the person who presented the paper stated that most offences against women are offences of violence by husbands against their wives, including bashing and rape. He pointed out that although these crimes were not condoned by official policy or by society, generally, the indifference shown through lack of sufficient legislation to protect the victim and provisions to cater for the needs of the victim reflected the acceptance by society.

Earlier this year I spoke about the lack of sufficient shelter for women and children in distress and I appealed to the Government to do something about it. I referred to the case of a woman and her children whom I tried to get into the shelters run by the voluntary agencies, which it was impossible to do. I said at the time there must be many cases where women are abused and physically assaulted by their husbands but find it difficult to leave the family home because they have no funds and cannot go to a hotel or a place where they have to pay for their board and lodging. I therefore think it is important that adequate shelter should be available for women in this position.

Coming back to the Bill, I think it goes part of the way towards changing the Criminal Code but it does not go far enough. As Mrs Vaughan has already indicated, we believe the words "not his wife" should be deleted altogether, without qualifying them, so that any woman can lay a charge of rape against any person, whether or not he is her husband, as she can in any other form of crime. South Australia and Sweden have changed their laws to cover this point. Perhaps there have been legislative changes in other places but I cannot quote them at the moment.

I was not impressed by the quotation in the Minister's second reading speech from the report of the South Australian Criminal Law and Penal Methods Reform Committee, which was—

> To allow a prosecution for rape by a husband upon his wife with whom he is cohabitating might put a dangerous weapon into the hands of the vindictive wife . . .

They are not the words of the Attorney-General but I think the inclusion of them in his speech perhaps indicates that he supports that line of thinking. I would like to ask him why he did not use some adjectives about the cruel and heartless husband who might physically abuse his wife.

I realise that under the existing law it is very difficult to prove a case of rape even if the person is not the victim's husband, and it would be more difficult for a wife to prove a charge against her husband if that were provided for. However, I do not think that is sufficient justification for not making such a provision. Mrs Vaughan has indicated that she proposes to move an amendment. I hope the Chamber will agree to the amendment and that members will indicate their concern for the rights of all women, whether they be married or single.

THE HON. I. G. MEDCALF (Metropolitan—Attorney-General) [3.28 p.m.]: I have listened with interest to the comments made on this Bill by the Hon. Grace Vaughan and the Hon. Lyla Elliott. I notice that in her comments the Hon. Grace Vaughan referred to the prospect or possibility, or made the suggestion, that provisions might be made for the case of rape of men by women. At any rate, I read it in this morning's newspaper and I think she must have said it last night.

The Hon. G. E. Masters: It was mentioned on the radio, too

The Hon. I. G. MEDCALF: I did not hear her particularly closely in the House, but no doubt that was due to the fact that, sitting over here, one cannot always clearly hear what is said by people in the back row.

The Hon. S. J. Dellar: That applies on both sides.

The Hon. I. G. MEDCALF: This morning's newspaper quoted her as saying it and I assume she did say it, so I hope I am not doing her an injustice in saying she said it.

The Hon. Grace Vaughan: It is not an injustice.

The Hon. I. G. MEDCALF: In that case, if the Hon. Grace Vaughan was seriously suggesting we should amend the law to provide for rape of men by women, I think we would have to amend a lot of other things as well, which will be beyond our ability. We might have to think of setting up a rape referral centre for men.

The Hon. S. J. Dellar: Where will it be?

The Hon. I. G. MEDCALF: I would like to have some statistics on the number of men who have complained of this offence. I am not aware that the police have ever received any complaint from men alleging that they have been raped by women. Perhaps the honourable member has more

knowledge of this than I have as a result of her work in the social welfare field. If she does know of some instances of this, I would be glad if she would bring them forward. Certainly I have not heard of any such official complaint being made.

For that reason, I think we must focus on the more important aspect on which we have endeavoured to concentrate; that is, to give women some protection in this area, rather than give protection to men. The Government has gone out of its way to look into this matter most carefully in an endeavour to ensure that women are given the protection of law, because it is women who are normally the victims of rape, and they are the ones in our view who need special protection because of their physical makeup and the fact that over a long period they have been prey to the mischievous activities of some men who have taken advantage of them.

For those reasons I feel no apology is needed for not giving protection in this area to men being raped by women; nor do I give any such apology. I unhesitatingly say the Government believes it has done the right thing, and it has attempted in this Bill to provide some protection for married women as distinct from single women. This Bill deals only with the situation of married women; that is, women who are married and not yet freed by divorce from their husbands.

I am well aware of the work done in this area by women's groups, as I indicated on the last Bill. I think I said that we did give full credit to the debate which had been raised by various women's groups within the last few years. Miss Elliott mentioned one such group, and there are a number of others. We give them full credit for taking up the cudgels on behalf of all women who have been victimised, and we would propose to give them the credit for persuading the Parliaments of Australia to put forward legislation.

Indeed, this seems to be a national move. I think Western Australia was the first State to bring forward legislation, but South Australia beat us by a short head in actually getting the legislation through. That is no fault of mine; had we been able to get it through earlier, I would have been happy to do so. However, we had problems in respect of other activities, such as the Constitutional Convention and other things.

The Hon. S. J. Dellar: Isn't South Australia involved in that convention?

The Hon. I. G. MEDCALF: Yes, but we had problems in respect of that and other things, and we could not bring forward the legislation immediately after the convention as South Australia apparently could. We were beaten by a short head.

The Hon. S. J. Dellar: That is time lag.

The Hon. G. C. MacKinnon: They are 1½ hours ahead of us.

The Hon. I. G. MEDCALF: Generally speaking, I appreciate that whilst members opposite who have spoken on the Bill have reservations on one matter, they have supported the Bill, and I thank them for that support.

Question put and passed.

Bill read a second time.

In Committee

The Chairman of Committees (the Hon. J. Heitman) in the Chair; the Hon. I. G. Medcalf (Attorney-General) in charge of the Bill.

Clause 1 put and passed.

Clause 2: Section 325 amended—

The Hon. GRACE VAUGHAN: My amendment is a simple one semantically, but not in principle. The Opposition realises it is a great forward step in acknowledging the rights of persons to decide whether or not they shall have intercourse. The Minister, when replying to my second reading speech made quite a deal of the matter of the rape of men. My intention when speaking in that debate was concerning the concept of sexual intercourse as a relationship which must be satisfying to both people. If we were sufficiently enlightened—and sometime in the future we may be—we would be able to define "rape" in terms of a person having carnal knowledge of another person, rather than referring to a woman or girl. That would allow for all sorts of sexual preferences and arrangements whether within or without marriage.

We are approaching the time when we should be contemplating such legislation and accepting it. That is why I put forward some reasons that this move may have to be effected one day, because if women do become equal in all ways—and they are rapidly becoming physically as strong as men—it may well be the case that women may force men to have intercourse against their will.

The Hon. G. E. Masters: I am intrigued.

The Hon. GRACE VAUGHAN: Certainly in the last few weeks there has been a case in Australia of three women who menaced a man.

The Hon. S. J. Dellar: Lucky man!

The Hon. GRACE VAUGHAN: It is not funny; it is a serious example, but some people are giggling.

The Hon. G. C. MacKinnon: No they are not; everyone is taking it seriously.

The Hon. GRACE VAUGHAN: I am sure the Minister is.

The Hon. G. C. MacKinnon: I am not giggling.

The Hon. GRACE VAUGHAN: I did not say the Minister was giggling; I meant I am sure he is taking it seriously.

The Hon. G. C. MacKinnon: Why put that into *Hansard* where people can read it?

The Hon. GRACE VAUGHAN: I am sure the Minister for Education, who is awfully defensive, will be recorded in *Hansard* as having been perfectly serious.

The Hon. G. C. MacKinnon: You are trying that nasty trick which you try repeatedly.

The Hon. GRACE VAUGHAN: The Minister is very defensive, but that has nothing to do with what I am speaking about.

The intention of my amendment is to remove the reference to "wife" and leave only the references to "woman" and "girl" in the definition of "rape". This would give a wife who has a marriage contract with a partner the protection that is afforded other females in the community; that is, those who are having a casual relationship with a man or who have a *de facto* relationship, or who are living apart from their husbands. However, it would not preclude people living in the same house who have a marriage contract.

The Opposition realises this is a radical move. As Miss Elliott mentioned, it has been effected in South Australia within the last few days, and it has been law for quite some time in several Scandinavian countries.

The argument for this amendment must take into account the philosophic background of the liberation of people—not women in particular, but all people—in that the understanding of coitus must be wider than the Muggeridge definition that it is purely for procreation purposes; rather coitus must be regarded as one of the factors which contribute to lasting arrangements between husbands and wives.

That has been necessary in the human family because our children are delicate and unable to protect themselves for many years after birth. One of the reasons marriage or mating arrangements have become such a lasting institution through the centuries in all types of society, from the tribal to the space age society, is that nature needs some way of keeping together people who have procreated so that the child can be protected. If coitus were simply for procreation we would be like the animals and would mate only at certain times and under certain conditions. But human beings can mate at any time, except when it is uncomfortable, to reinforce their affection for one another. It is part of the relationship and part of the cementing of the love of people who stay together so that they will create a family situation in which they can care for children who are helpless for a relatively long period compared with any other type of animal.

If honourable members were to agree to this amendment I think they would need to have behind their thinking the knowledge that the sexual relationship in a marriage or a mating arrangement, whether *de facto* or sealed by contract, should be revered as something which is beautiful and binding. Rape is a violation of that understanding and that feeling of binding to one another because sex is a part of the relationship and not the whole relationship.

When a relationship is falling down and the affection, trust, and respect are gone and there is nothing left but a sexual relationship, that is a very threatening thing to a person who does not wish to be involved any further in it. Quite often the act of sexual intercourse can be used as a weapon of torture against one of the partners. Because the particular section of the Criminal Code refers to females, I am referring specifically to females. But certainly we have reached the stage where we no longer regard intercourse as a favour to be given by the woman for the man to satisfy his appetite. Surely we have reached the stage where we regard sexual intercourse as part of the makeup of man, part of his physiological functioning and part of the release of tension of one of his drives.

I doubt whether members in this Chamber are in sympathy with a woman who finds herself in this situation not because they have any malice towards women generally or because they are uncaring, but because they have not come across these sorts of situations. Often they have happy relationships in their own homes. It may be that they are living with a woman who was their first girl friend and they have never known of the traumatic experiences that other people have in trying to find a satisfying sex life with their partner.

So this is a matter of attempting to account for individual differences among people in our society and trying to put oneself in their place to understand the trap that women particularly find themselves in when they have forfeited their chance to be financially independent by entering into a marriage contract and having a number of children, which, although joyful, is a burden and gives them a responsibility.

It is not as simple as the Minister said in his second reading speech for a woman to get out of this situation, despite the supporting mother's benefit and the more compassionate outlook of the Family Law Court. While on this subject, the Family Law Court recognises a situation in which a husband and wife are separated but living under the same roof. I feel the Attorney-General could recognise this situation. Even before the provision for 12 months' separation was introduced courts would consider the matter of separation when the parties were living under one roof. Certainly now, under those provisions, the courts recognise that people

cannot always be in a position to set up another household to prove that they no longer wish to continue a relationship. Certainly today some people could be caught in the trap of a perpetual marriage if the courts did not recognise that situation. So surely in regard to this very important matter of rape within marriage we could also dispense with the qualification that there should be separate residences.

I move an amendment—

Page 2, lines 1 to 4—Delete all words after the word "by" down to and including the word "her" and substitute the following passage—

deleting the words "not his wife,".

Sitting suspended from 3.47 to 4.05 p.m.

The Hon. I. G. MEDCALF: The Bill provides that a husband can be found guilty of rape if he attacks his wife sexually when they are living apart, and not under the same roof.

The effect of the amendment is that the fact they are married should have no bearing on the matter, and a husband should be indicted for rape if his wife makes a complaint and the alleged offence occurs while they are living together in a state of matrimony under the same roof. That is, even under normal married circumstances where a husband and wife are living together in the house with their family, the wife can make a complaint of rape against her husband.

The Government has gone a long way and further than it originally intended. Originally it was thought that we should allow for the crime of rape where the parties were legally separated. However, acting on good advice we have decided that as cases of legal separation are not as many as cases of *de facto* separation, we should include *de facto* separation where, in fact, the husband and wife are living apart, separated not under a legal separation sanctioned by the court but where the wife has left her husband because she does not wish to live with him any longer.

In those circumstances if the wife is assaulted, the provision in the Bill gives her the right to bring rape proceedings against her husband. We believe that is as far as we can go while still acting in a practical manner.

It is very easy to suggest that the crime of rape should be extended to embrace normal married people living together. We do not believe in practice that would achieve anything, and there are some good reasons for saying that.

Before giving the reasons I want to refer to one or two recent illustrations of this problem. I quote from the judgment in the case of Roger Philip Caldwell and the Queen, which was heard by the Court of Criminal Appeal of Western Australia on the 16th September, 1975. The court consisted of the Chief Justice (Sir Lawrence Jackson), Mr Justice Burt, and Mr Justice Jones. This was an appeal by Caldwell against the Crown, and the judgment of the court was delivered by Mr Justice Burt. I shall quote some of that judgment so that members will be aware of the facts.

The judgment reads as follows—

> This appeal was argued before this Court on the 16th September and it was then dismissed the Court indicating that its reasons would be published later.
>
> The appellant was tried and convicted by a jury in the District Court upon each of three counts charging him with having on 25th February 1975 unlawfully and indecently assaulted his wife—s.328 of the Criminal Code—and upon one count of having on the same day unlawfully detained her in a flat against her will—s.333 of the Criminal Code.
>
> At the time mentioned in the indictment the appellant was living apart from his wife. The marriage had broken down. Divorce proceedings were in contemplation but no petition had been issued.
>
> The wife had obtained an order under the Married Persons and Children (Summary Relief) Act against the appellant but that order did not contain "a provision that the complainant be no longer bound to cohabit with the defendant"—s.11(1)(a) of the Act.

That means no legal separation order was in existence. To continue with the judgment—

> Of the facts it is enough to say that two of the charges of indecent assault appear to have been based upon acts done by the appellant to his wife which directly culminated in his having sexual intercourse with her on two occasions, and for the purposes of this appeal it can be assumed although the evidence upon which the assumption is made was not adverted to, that the acts as found sustaining the other two convictions were also done by the appellant so that he could have sexual intercourse with his wife.
>
> At his trial the appellant's defence to the indecent assault counts was that his wife consented to all the acts done by him and he denied that he had detained her in the flat against her will. By the verdict the jury clearly found that the wife did not consent and that she was detained against her will, and the appellant does not now challenge those findings.
>
> The appellant in substance challenges his conviction upon four grounds, three of which can be dealt with together as they are all based upon a single proposition, it being that

a wife by her marriage vows consents to sexual intercourse with her husband, presumably upon demand, and that the consent so given cannot be revoked while the marriage relationship exists. That as a proposition is based upon, and entirely based upon, a statement in Hale's Pleas of the Crown, Vol. 1 p. 692; "... a husband cannot be guilty of a rape ... upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract". From that it was said in logic to follow that a husband is entitled to and that it is lawful for him to use such force upon his wife as might be necessary to overcome her resistance to intercourse. The use by him of force upon her if used for that purpose is not and cannot be an assault because the wife has "given herself up in this kind unto her husband". She has consented both to intercourse and to the use of such force upon her as might be necessary for the husband to use to accomplish it. And further the appellant contends and for the same reason that it was lawful for him to imprison his wife for so long as might be necessary to achieve that purpose.

Happily, counsel was unable to cite any authority for such an outrageous proposition. The statement in Hale's Pleas of the Crown stands on its own. It is not for this Court which is not concerned with the common law of crime to say whether in the unqualified way in which it is expressed it is a correct statement of that law or not. Certainly it has never been held to sustain the conclusion that at common law a husband can attack his wife as he likes and lock her up as and for so long as he likes so as to enforce his marital rights, so called. All the authorities are the other way.

The judgment then sets out a number of cases and authorities. To continue—

There is nothing to be found in the Criminal Code which gives any support to the submissions made to us. The common law definition of the crime of rape, leaving the mental element unexpressed, is simply sexual intercourse by a man with a woman without her consent. The relationship of husband and wife if it exists operates on the element of consent and, it appears, notwithstanding the statement in Hale's Pleas of the Crown, it is not in all circumstances decisive. See R. v. O'Brien (1974) 3 All E.R. 663. Under the Code however the crime is defined—by s. 325—sufficiently for present purposes as being carnal knowledge by a man of a woman, not his wife, without her consent. This formulation seems to me to recognise that the wife may not consent. Yet it is not rape. Not because she is unable to revoke the consent said to have been given at marriage but simply because she is the man's wife. Hence the motion on an irrevocable consent spoken by Hale has no part to play in the offence by the Code called rape, and hence under the Code the section by which that offence is defined provides no reason for importing what was said to be the logical extension of that notion into either section 328 or 333. Nor could counsel suggest how that could be done or what it was that it would be necessary to do to make good the grounds of appeal now under consideration.

In other words, it is not permissible for a husband to use force upon his wife in order to make her give her consent. I think that point ought to be firmly established because it may be thought by some people that a wife must give her consent under all circumstances. If she is forced to give her consent she can take proceedings against her husband now, not for rape but for a whole range of offences. If a husband uses force, or even threatens to use force, there is sufficient safeguard under section 222 of the Criminal Code.

There are various other avenues available such as a charge for indecent assault. Some charges are triable summarily by a justice, and some are triable on indictment. The latter is more complicated, the same as in a rape proceeding.

I would like to quote again more fully from the report of the Criminal Law and Penal Methods Reform Committee of South Australia to which the Hon. Lyla Elliott referred during her second reading speech. Before I do so I want to correct the impression that I think all women might be vindictive. That expression was used in the report from which I intend to quote. The reference, of course, was to a particular kind of woman in a particular kind of situation. Men can be just as vindictive. There is no sexual discrimination in the use of the word in that context. If it might be thought that I subscribe to that view, I want to make it clear I do not.

The members of the committee were very distinguished. The first was the Honourable Justice Roma Flinders Mitchell, BEC, LLB, (Adel.), Justice of the Supreme Court of South Australia. I may be wrong, but I think she was the first woman judge in Australia to achieve that status. She is a very distinguished representative of her sex, and a very distinguished judge in her own right. I have heard her lecture on aspects of criminal law, and I have listened, as I will listen on any future occasion, with the keenest interest.

The Hon. Lyla Elliott: Was it a unanimous report or a majority report?

The Hon. I. G. MEDCALF: I will read out the names of the other members of the committee.

The Hon. Lyla Elliott: You do not know for a fact?

The Hon. I. G. MEDCALF: I did not say it was a minority report. If there had been any strong views against the report they would have been indicated. There is no reference to a minority report.

The Hon. Lyla Elliott: The report does not claim to be unanimous?

The Hon. I. G. MEDCALF: It does not say it is not unanimous. If one member of the committee did not wish to put forward the report I suggest the report would have stated that fact. The second member of the committee was Professor Colin Howard, LLB, LLM, (Lond.), Ph.D. (Adel.), LLD (Melb.), Hearn, Professor of Law, University of Melbourne. We have heard a great deal about him in recent times because he came into prominence over the Senate affair. The third member of the committee was Mr David Biles, BA, B.Ed (Melb.), M.A. (La Trobe), Assistant Director (Research), Australian Institute of Criminology, Canberra. The report was addressed to the Hon. P. Duncan, Attorney-General in South Australia. It was dated March of this year, and read—

> Dear Mr Attorney,
>
> On the 2nd December, 1975 you requested us to report by way of special report upon the law relating to rape and other sexual offences.
>
> We now have the honour to submit to you our report.
>
> Yours sincerely,
>
> ROMA MITCHELL, Chairman
> COLIN HOWARD, Member
> DAVID BILES, Member

I think we can take it that the report must have been a unanimous view. To quote from page 14—

> The view that the consent to sexual intercourse given upon marriage cannot be revoked during the subsistence of the marriage is not in accord with modern thinking. In this community today it is anachronistic to suggest that a wife is bound to submit to intercourse with her husband whenever he wishes it irrespective of her own wishes. Nevertheless it is only in exceptional circumstances that the criminal law should invade the bedroom. To allow a prosecution for rape by a husband upon his wife with whom he is cohabiting might put a dangerous weapon into the hands of the vindictive wife and an additional strain upon the matrimonial relationship. The wife who is subjected to force in the husband's pursuit of sexual intercourse needs, in the first instance, the protection of the family law to enable her to leave her husband and live in peace apart from him, and not the protection of the criminal law. If she has already left him and is living apart from him and not under the same roof when he forces her to have sexual intercourse with him without her consent, then we can see no reason why he should not be liable to prosecution for rape. *A fortiori* if she has lived apart from him for 12 months and has instituted proceedings for divorce. If a husband breaks into the house in which his wife is living apart from him, overpowers her, and has sexual relations with her in circumstances in which he does not believe that she is consenting to intercourse, he should be liable to prosecution for rape. It should not be difficult to distinguish the circumstances in which a prosecution for rape is justified from those in which it is unjustified because the husband believes that the wife is consenting to sexual intercourse. The fact that the absence of a belief in consent may in many cases be difficult to establish, does not mean that the act should not amount to rape where absence of belief in consent is able to be proved. The committee recommends therefore an amendment to the law so that a husband may be convicted of rape of his wife where the parties are living apart and not under the same roof at the time that the act giving rise to the allegation of rape occurred.

The recommendation of the committee follows. We have adopted that recommendation of that distinguished committee. We appreciate, from reading a report in the *Daily News* yesterday, that the South Australian Parliament—by a narrow margin—has elected to do what the honourable member opposite is proposing. However, we still believe we are doing the right thing in this difficult area.

If we were to agree to the proposal put forward by the honourable member, we would introduce some practical problems. In a rape case it is very necessary, from a practical point of view, to have corroboration. There is nothing in the law which requires corroboration, but in a practical sense there must be some corroboration of the act of rape. I am sure the honourable member who moved the amendment will be aware of that difficulty, from her own knowledge of the subject. How do we get corroboration of the facts of rape in a situation between a husband and wife in their bedroom? Presumably, they would put out the cat! It is quite impossible in practice to get corroboration; it is really not possible in a normal situation in the case of rape as between wife and husband living under the same roof.

A child of tender years cannot be used as a witness, because corroboration has to be obtained of evidence given by a child of tender years. The next matter to consider is: What is the penalty for rape? Suppose a wife were given this right in all situations; what is the penalty? The honourable member opposite could tell me, from her knowledge of this subject, what the penalty is for rape. She knows very well that the maximum penalty is life imprisonment. The penalty for assault is much less, and ranges from one year to seven or eight depending on whether the charge is indecent assault, common assault, or aggravated assault, etc. The penalty depends upon the actual offence.

Let us take the situation where a woman is compelled to live with her husband for financial reasons. What does she do; put her husband in gaol on a rape charge for the maximum period of life? What is the good of that to her? She would be dependent on the husband for financial reasons. Would that woman not be better advised to bring a criminal charge of assault, where the penalty is much less and in which case the husband will know he has been punished once the gaol door closes?

We are trying to do all that is possible for a woman, but does the member opposite want to submit a wife to the trials and ordeals of having to go through the proceedings of a trial for rape? Would she not be better off, from a practical point of view, to bring one of the lesser charges against her husband, and then take advantage of the Family Court and get out from under and leave her husband? She can then get a settlement in relation to the family home, and have it allotted to her. That can be done through the Family Court, under the Family Law Act. The provisions of the Family Law Act allow a woman to have the family home allotted to her, for herself and her children.

I think we have to go along with the suggestion of the South Australian Law Reform Committee that from a practical point of view it is family law, and not criminal law that should apply; certainly not the law of rape.

Lest anyone should think this proposition has been overlooked, I want to say it was put to us and we have examined it. From a practical point of view, we could not find one good reason to support the proposal and that is the reason I ask the Committee to reject the amendment.

The Hon. LYLA ELLIOTT: I do not think I have ever heard Mr Medcalf in a more patronising mood. He has talked to us as though we are imbecilies and cannot understand the position. He is adopting the attitude of deciding what is right, and saying that what he determines will be right for women. He will make up their minds for them.

The Minister has said that the amendment will bring about a situation which will place women in a terrible position where they will have to go through the ordeal of charging a husband. Of course, it is an ordeal for any woman placed in the position of having to charge her husband. However, that does not justify the Minister saying that a wife should not have the right to take that action.

The Hon. I. G. Medcalf: How will she prove it?

The Hon. LYLA ELLIOTT: How does any women prove rape in the present situation? This is one of the complaints of the women's movement. Because there is a need for corroboration, or some evidence, it is very difficult to prove a case. That is the reason so many rapists are getting off. However, that is no reason to say we should not extend the right to a wife to bring a charge against her husband. I will refer to a case in Britain.

I would like to refer the Attorney-General to the case of the Public Prosecutor versus Morgan and Others, 1975. This case was ventilated in the Press and it concerned a member of the RAF who brought home three of his mates and told them that his wife enjoyed being pack raped. The men assaulted the woman, and subsequently a charge was brought against the husband and the three men he had taken home. This is an obvious case of a man involved with the rape of his wife and there was evidence to that effect. Is Mr Medcalf saying that in such a case the woman should have no right to charge her husband? I would like to hear him answer that.

The Hon. I. G. MEDCALF: Others were involved in that case as well as the husband and it turned on a quite different point.

The Hon. Lyla Elliott: The husband raped his wife on that occasion—are you saying she should not be able to charge him?

The Hon. I. G. MEDCALF: Three other people were involved. They escaped on the ground that they thought the woman had consented because the husband had told them that she was of a peculiar disposition and would scream and object to the intercourse. That example is not particularly relevant to the point we are discussing here which is a situation between a husband and wife only.

The Hon. Lyla Elliott: You are saying it would be very hard to prove and I am saying that here is a case where there was corroborative evidence to show that a husband raped his wife.

The Hon. I. G. MEDCALF: I agree that corroborative evidence was available in that case, but it was not a husband-wife rape case. In that case a charge could have been brought against the other people.

The Hon. Lyla Elliott: Let us forget about the other people.

The Hon. I. G. MEDCALF: We cannot forget about them because the corroboration was given by them. The honourable member's contention depends upon the other people being able to provide corroboration.

The Hon. Lyla Elliott: Yes, but we are talking about whether or not a husband should be charged with rape and you are saying we would never be able to obtain evidence.

The Hon. I. G. MEDCALF: The honourable member is talking about a case where a husband commits this offence with another person looking on.

The Hon. Lyla Elliott: I was giving that as an example.

The Hon. I. G. MEDCALF: In that case the other people could have been charged with rape.

The Hon. Lyla Elliott: But not the husband.

The Hon. I. G. MEDCALF: The husband would have received a greater punishment because the others were all acquitted. He could have been charged with indecent assault.

The Hon. Lyla Elliott: That charge is not as serious as the charge of rape, and the penalty is not as severe.

The Hon. I. G. MEDCALF: The honourable member said earlier that the maximum sentence is never given for rape—I am quoting her own words.

The Hon. Lyla Elliott: That is no answer.

The Hon. I. G. MEDCALF: I do not think I can satisfy the honourable member on this point. I do not think it is proper that she should refer to the case of the Public Prosecutor versus Morgan and Others and say, "What about that?" We have given a reasonable explanation of just how difficult it is to prove such a case. The proposition before us would extend the principle into any normal married situation. To allow a wife to bring proceedings against her husband for rape is certainly using a sledge hammer to crack a nut—and not very much of a nut at that.

How many women living in the same house as their husbands would want to bring criminal proceedings against him? A woman may not wish to charge her husband with rape because they are living together and it may prejudice their future relations. Will she wish to bring an assault charge against him? Of course she will not; she will not use the criminal law at all. She may choose to leave him to seek a divorce.

The Hon. Lyla Elliott: You are taking a very paternalistic attitude, and deciding in your own mind what a woman would do in a given situation.

The Hon. I. G. MEDCALF: I am following through on the argument put forward by the Hon. Grace Vaughan. Such a woman is in a very difficult position; she may be dependent on her husband for financial or other reasons. I agree that there are many women in this situation. The Hon. Grace Vaughan suggests we should extend the laws so that a wife can bring a rape charge against a husband, and I have said that a wife can already bring an assault charge against her husband. If she chooses to prejudice herself by bringing a rape charge against him, she could just as easily bring an assault charge against him.

I think it is most regrettable that some women are overborne by their husbands but their remedy is in the family law and not in the criminal law. A wife should seek the protection of the Family Court and of counsellors or guidance officers. If a husband has committed an offence for which he ought to be put in gaol, and if the wife wants to see him put in gaol, she can achieve that end now. A husband who demands sexual intercourse and threatens force commits an assault. Therefore, I cannot see the need for this amendment.

The Hon. GRACE VAUGHAN: The Minister says he has given us a reasonable explanation, but I consider his explanation is both unreasonable and illogical. He told us that section 222 of the Criminal Code covers force or threat by force, but quite often a husband gains sexual intercourse which his wife is unwilling to submit to by a threat of force. Section 325 covers other methods of intimidation. The husband may say to his wife, "This is the last time I will make this requirement of you." Does the woman have to have signs of the assault? Does there have to be evidence?

The Hon. I. G. Medcalf: You have to convince a court; you have to have some evidence.

The Hon. GRACE VAUGHAN: That is what I am saying, and I refer the Attorney-General to section 325. There is not always evidence of bodily injury because if a woman is so psychologically affected by what she imagines may happen to her, she may submit to her husband. There will then be no sign of violence at all, and yet her body has been assaulted.

The Hon. I. G. Medcalf: She does not have to be injured.

The Hon. GRACE VAUGHAN: She has to be injured under section 328.

The Hon. I. G. Medcalf: She does not under section 222.

The Hon. GRACE VAUGHAN: But section 222 does not include the things that section 325 includes.

The Hon. I. G. Medcalf: I did not say it does.

The Hon. GRACE VAUGHAN: I am trying to make the point that sections 328 and 222 do not include the words "not his wife", and that is why I would like the amendment passed.

I would like to make the point that surely laws are not made so that we can be vindictive and punish other people in the community. Laws should be in existence to dissuade people from anti-social behaviour. Women are not waiting for this legislation to be passed so that they can haul their husbands up before the court. If a husband knows that rape can be classed as an offence within marriage, it will be some sort of a deterrent. This would be a safeguard for women. All we are asking is to delete the words "not his wife" from the Act. Of course, a court would take into consideration the situation where a couple had been living in a happy matrimonial situation and the wife had become vindictive perhaps because of a neurosis. In fact, if a woman made a charge that appeared to be trivial, it would not ever come before the court.

If it is possible, women will take a more logical action to remedy the situation. As the Attorney-General said, they would use the provisions of the Family Court, the supporting mothers' benefits, or any other benefit available. I am simply saying that if this provision is in the Criminal Code it may act as a deterrent in some circumstances. These things are happening now, and the Attorney-General must recognise that, otherwise he would not have brought the Bill before us.

It seems to me that what the Minister is saying is a matter of pragmatism and not practice. He said, "How are we to prove it?" We are talking about a discrimination which exists.

The Hon. T. Knight: The Attorney-General is claiming that there is a way out of it.

The Hon. GRACE VAUGHAN: We heard the pragmatism but not the principle. The Attorney-General said, "How can we do it in practice?" If we accept that principle, then the crime of rape ought to be wiped off the Statute book as a criminal offence. We ought to say, "It is impossible to prove, so let us forget about it." We are sticking to a matter of principle, and by bringing the Bill here the Attorney-General recognises that principle. However, at the moment he is seeing the practical situation more clearly than the principle. It is laudable that he has brought the Bill here and that he recognises there is discrimination against certain sections of the community because of their marital situation.

A woman who is living with a man can bring a charge of rape against him without having to show signs of being injured. Because a woman has given consent at a marriage ritual does not mean the consent is irrevocable throughout married life. The Attorney-General is seeking to compromise; he has referred to other sections of the Act and to other courts which can deal with this matter rather than sticking to the principle. If we are to observe the principle of doing away with discrimination against certain sections of the community—namely, against women who are married—we ought to delete these three words.

The Hon. I. G. MEDCALF: I appreciate the essential honesty of the honourable member's remarks. I endeavour to be as practical a person as possible, and I would not really be a party to conferring an illusory benefit on women. I would not want to say we were doing something for women which would have no practical benefit whatever. It is quite illusory to do what she has suggested. It gives the woman nothing she does not already have.

The honourable member spoke from a point of view of principle, but her amendment would not confer any benefit on a married woman that she does not already have or which we are not giving her by this legislation. It is all very well to speak in terms of principle, but women themselves are practical creatures and, quite frankly, I do not think the average woman would subscribe to the views the Hon. Grace Vaughan has expressed. I think the average woman would be quite content and satisfied with the protection now afforded her by criminal law. She has the ability now to approach the police in regard to her husband, but how many do? It happens only very occasionally. In the very case to which I referred, the husband was charged with indecent assault. That was one occasion where a woman, living apart from her husband, went to the police. There was no legal separation in her case, but the law provided an obvious and proper remedy, and that was the remedy she used. But would she have accused her husband of indecent assault if they were living together under the same roof. How many women would do that or would want to do that? A woman can do that now; she can do it tomorrow. The mere threat of force by her husband is sufficient to enable the police to bring proceedings for assault.

This business of women being forced to live in subjection to their husbands forever and a day is a myth. In this situation, we must be practical. I am prepared to concede the honourabe member is speaking from a point of principle, as indeed did her colleague. I appreciate what they have said. But I also ask them to appreciate that the Government is trying to be practical in the cause of women. We feel this legislation will be helpful to women, but to simply put in something which might sound all right in theory but will provide no practical benefit is an illusory thing and something for which we see no rhyme nor reason.

The Hon. GRACE VAUGHAN: What the Minister has just said, of course, confirms the reason we are seeking the deletion of words as a matter of principle. Of course the forces in society preclude the woman from taking this action which the law allows her to take. There is a need to compensate women in the gaining of equal rights, and legislators, particularly male legislators, should be seen to be moving in that direction. If it is an illusion and cannot be used in the same way as other sections of the law, is it not similar to those other provisions which provide an illusory bulwark against the irascible, cruel or demanding husband? Those provisions are still in the Criminal Code and the other pieces of legislation which go to make up our laws. Merely because it is unlikely women will use them is no argument to remove such provisions

The Hon. V. J. Ferry: It is an empty gesture, is it?

The Hon. GRACE VAUGHAN: No, it is not. It is a case of the law being a little ahead instead of trailing behind as it usually is, by saying, "We will make provision to protect you if you want to take this action. We know the pressures of society are going to militate against the possibility of your doing this, but we recognise you have the same right as other women in the community to say yes or no." I feel the Minister's explanation has been far from satisfactory. The Government should approve an amendment which will remove descrimination in this area against a married woman living under the same roof as her husband. In urging the Committee to vote for this amendment, I can say only that I believe we will earn the gratitude of women and the admiration of other States and, perhaps, countries.

The Hon. I. G. MEDCALF: I believe almost everything that can be said on this subject has been said, and I will be brief. I believe the criminal law should not invade the bedroom in the relations between husband and wife, and that is really the thesis on which I ask the House to reject this amendment.

Amendment put and negatived.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

THE HON. I. G. MEDCALF (Metropolitan—Attorney General) [4.52 p.m.]: I move—

> That the Bill be now read a third time.

THE HON. GRACE VAUGHAN (South-East Metropolitan) [4.53 p.m.]: As the Committee did not see fit to accept my amendment, I do have something to say about the wording of the Bill.

The PRESIDENT: Order! The Bill has gone through the Committee stage. What is the point the honourable member wishes to make?

The Hon. GRACE VAUGHAN: The point is that there is some bad grammar in the Bill.

The PRESIDENT: The place to point that out is in Committee; it is too late to alter the wording of the Bill now, unless the Bill is recommitted.

The Hon. GRACE VAUGHAN: Mr President, I was trying to alter the Bill altogether. I did not see how I could have criticised the wording of the Minister's Bill when I was moving an amendment to it.

The PRESIDENT: I am sorry; I must point out to the honourable member that this is not the time to move an amendment to the Bill. The only way in which the Bill can be amended is by moving for its recommittal. It is not too late to do that, if the honourable member so desires.

The Hon. GRACE VAUGHAN: Shall I do that now?

The PRESIDENT: Do not ask me.

THE HON. R. F. CLAUGHTON (North Metropolitan) [4.54 p.m.]: Mr President, I can see no good reason that the honourable member should not have been allowed to draw to the attention of the Government the matters about which she wished to speak.

The PRESIDENT: Order! The honourable member indicated to the Chair that she wished to move an amendment to the wording of the Bill. Members would know that is not possible at this stage; it is possible only when the Bill is in Committee.

The Hon. R. F. CLAUGHTON: That is a question of how the words she used were understood, Mr President. It was my understanding that she wished to draw to the notice of the Minister some drafting expression in the Bill, and it would then be up to the Minister to decide whether he wished to do something about it at this time, or bring it forward on some future occasion.

The PRESIDENT: I must be mistaken; I thought the honourable member wished to move an amendment to the Bill.

The Hon. R. F. CLAUGHTON: That was not my understanding of her remarks. If the Hon. Grace Vaughan cares to pass her copy of the Bill across to me, I will point out to the Minister the relevant passage It would appear the Hon. Grace Vaughan disagrees with the use of the word "her" at the end of clause 2. She believes it should be "she".

The PRESIDENT: Order! It is obvious that Mr Claughton cannot do the work of the Hon. Grace Vaughan. In the circumstances, as it appears that I have misunderstood the honourable member's intention, I propose that the Hon. Grace

Vaughan be given the opportunity to make a personal explanation to point out to the Minister where the grammar is incorrect.

Personal Explanations

The Hon. GRACE VAUGHAN: Thank you, Mr President. I am a bit of a stickler for the English language, and I thought the incorrect grammar might escape the Minister's attention. As I am sure the Minister for Education and other members would realise, the use of the word "her" at the end of clause 2 is incorrect; it should be "she" or "hers".

The Hon. I. G. MEDCALF: I do not wish to enter into a debate with the honourable member on the question of grammar; if the word is ungrammatical, it can be attended to by the Clerk.

The PRESIDENT: Order! The advice I have received is advice which should be taken; namely, that unless the Clerk is given a specific instruction by the House to alter the wording of the Bill, the Bill should be sent to the Legislative Assembly in this form and amended in that place. However, I still come back to my original statement that the place to alter the wording of the Bill is during the Committee stage. If the Council wishes the Clerk to be instructed to alter the wording of the Bill, it should so instruct him.

The Hon. I. G. MEDCALF: Could I do that?

The PRESIDENT: Confusion reigns supreme! I do not think the Attorney-General may rise again; he has already spoken to the third reading stage. Perhaps it would be better to leave it to the Assembly, where the Minister's counterpart could effect the necessary alteration.

Question put and passed.

Bill read a third time and transmitted to the Assembly.

HEALTH ACT AMENDMENT BILL

Second Reading

Debate resumed from the 3rd November.

THE HON. R. F. CLAUGHTON (North Metropolitan) [5.00 p.m.]: This Bill deals with a number of matters but I would like to make a few remarks particularly in reference to the proposals to improve the control of venereal diseases. Earlier this year I made a statement to the Press suggesting that the Government should introduce automatic condom vending machines, and this appeared in the *Daily News* of the 24th March. Expanding on that statement I claimed the measures presently adopted by the Public Health Department were largely proving ineffective in controlling the increase in venereal diseases. This is in fact borne out by the statistics in the report of the Commissioner of Public Health for the year ended 1974, which appears to be the latest publication available. On page 56 of that report there is a histograph which shows quite a dramatic increase over the last decade.

There are a number of peaks in the prevalence of the disease which occurred chiefly during the period of the first world war, again during the depression, and in the period of the second world war, peaking in the year 1945; and subsequent to that year there is a sharp decline to the year 1960 where it reached the lowest historical level.

From that point to 1975 it again increased at a dramatic rate, and in the period 1973-74 there was a 28 per cent increase; a very serious level that should cause a good deal of concern to all of us and make us question just why it is and how we are lacking in our control of these diseases.

The peaks of the disease prior to 1960 occurred at times of great social disturbance; that is the wartime periods and the years of the depression. The wartime periods, of course, were ones where there was a great deal of mobility of population—particularly of young men travelling around the world—and with greater contacts with women who were likely to pass the disease on.

Again, when the war period ended and society settled down there was a very sharp decline. Several things happened in the post-war years, one of which was the development of antibiotics during the war which in fact provided the health authorities an extremely useful weapon to control the disease. I think we could attribute the decline of the disease largely to that reason, as well as the fact that society itself had become more settled.

Round about the year 1960 was the time when the contraceptive pill was introduced, and it was a time when the younger members of society were also becoming far more mobile; they were being better paid and having access to motor vehicles which made them more mobile within the community. So there is a large degree of contact between the groups across the community.

In the years before 1960 there was much less interchange between community groups because of the smaller degree of mobility. So I think we can attribute the change to some of these factors.

I suggest to the Government that what it is proposing is more of the same medicine that has been provided in the years up to this period; but we have seen this very sharp increase, and the Minister is being foolish if he does not look beyond what is being done in these programmes.

In reply to my article which appeared in the *Daily News* of the 24th March the Minister was reported as having said in *The West Australian* of the following day that he did not believe that the public condom vending machine would be the answer to the problem. I do not

suggest it would be the answer; as in many things there is no single answer, but it should be an essential element in a programme designed to cut back this disease.

I would urge the Minister to give very serious consideration to allowing the introduction of condom vending machines and I also ask him to consider a programme to encourage greater sales of condoms through the normal retail outlets, which are mainly the local chemist shops.

It is not an easy thing to find a chemist who has these goods displayed at all; there seems to be a marked reluctance for this to be done and there are various reasons for this. Perhaps it would be as well if I read some of the remarks of the chemists in the United States which are reported in the *American Druggist* of January, 1976.

A survey was carried out of chemists across the States and their replies show that there were those who were very much against the open display of these items but it also indicates that others were for it. I will quote some of the replies of those who were in favour of the open display of the packaged article and how they saw their role. On page 36 of the publication I have mentioned we have the extreme view such as the one who said—

> We do not believe in their use and therefore do not sell them.

I would say a remark like that is quite socially irresponsible and it is an attitude that is not unknown in this State.

It is very serious for some country towns where there is no other supplier not just for the condom and other similar aids but also for the pill. However, this is what some of the others had to say—

> "I first started displaying prophylactics in 1973 and the initial response was one of surprise and distinct approval. "I did not do this to increase my sales (although they have increased) but as part of a community effort to help control venereal disease and educate the public concerning this very real problem. I sincerely believe that those who do not openly display these items are damaging the professional image of pharmacy by hiding their heads in the ground."

A little further we have the following—

> "When anyone complained, it gave us a chance to talk about the V.D. epidemic, and explain why condoms are so important to prevent V.D. Usually their opinion changed when they learned the facts."

A further opinion states—

> "With V.D. reaching epidemic stages, we should try to educate people about prevention. No matter what our personal feelings are on the morality of the subject, we know that the disease is being spread wider and wider among the young people of our communities.

I thought I had the floor, Mr President.

The Hon. I. G. Masters: You have; you are the only member of your party in his place.

The Hon. Lyla Elliott: That was a very nasty remark, Mr Masters.

The Hon. A. A. Lewis: It was quite true, until you raced back to your seat.

The Hon. R. F. CLAUGHTON: I continue to quote—

> We can spread pamphlets around and have lectures and TV shows as much as we want, but if the disease prevention materials—specifically, the condoms—are not readily available to the young people, the efforts are lost. Most of the young people, and even some of the old married people, are still apprehensive about going to a pharmacy and asking the pharmacist or the clerk for condoms. Open display eliminates the apprehension."

I could read much more in the same vein but that would only reiterate all those comments I have quoted.

The point is that there are chemists who adopt a responsible social approach to their profession elsewhere in the world which, in the main, seems to be lacking in this State. I believe a good deal could be done by the Public Health Department to actively promote through the chemists the sale of these items, and to encourage the chemists to display them in a position where people can see them; and those who may want to purchase them may be able to do so without embarrassment.

That appears to be one of the greatest problems involved, because there are chemists who are very strongly against the use of any sort of contraceptive for that matter; but even those who are mildly disapproving make embarrassing the job of the persons wishing to purchase these contraceptives for their own good reasons, and in that way they are contributing to the spread of venereal diseases.

It is not the role of the chemists to adopt moral attitudes towards their customers. They have a very important function in the community and it is their task to carry it out. Chemists are an essential part of any health programme and I would hope the Government recognises this more positively. I do not say the Government is not recognising it but I hope it sees it in a positive sort of way because I feel this aspect should be promoted and encouraged and the chemists fill their health role more actively.

Australia rates very low in comparison with the rest of the world in regard to the sale of condoms, and this is even more true of Western Australia.

The Hon. A. A. Lewis: How do we rate with the pill?

The Hon. R. F. CLAUGHTON: I will come to those aspects. Because of the lack of time between the introduction of the Bill and the resumption of the debate I was not able to gather all the information I required. However, one manufacturer selling condoms in Western Australia states that its sales are only 6.9 per cent of the national total whereas on a *per capita* basis the figure for Western Australia should be 7.8 per cent. Of all Australians who practise some form of contraception 9 per cent use the condom. In the United States the figure is 14 per cent; in the United Kingdom, 37 per cent; in Sweden, 38 per cent; and in Japan 68 per cent. The condom is, in fact, one of the most used forms of contraception in the world.

The Hon. N. E. Baxter: You are talking on the contraceptives legislation, not the health Bill.

The Hon. R. F. CLAUGHTON: These figures are related to what the Minister is attempting to do. I am trying to indicate that Western Australia rates very low in its use of this form of contraception which is the most effective prophylactic against VD. The figures indicate that this particular form of contraception is not being used as effectively as it could be in the control and elimination of the disease. That is the essential point I am trying to make.

I would have liked to match those figures I just quoted with figures relating to the incidence of VD in those same countries, but unfortunately I have not had enough time in which to collect them. They are not readily available. The Parliamentary Library contacted the Public Health Department as being a possible source of the information, but even it was not able to supply the figures. This may throw some doubt on the worth of advice the Minister may be receiving from his department concerning the usefulness of this form of prophylactic. If the department cannot supply these kinds of figures it is not in a position to judge whether or not the condom is the most effective method of prophylactic. That is a point well worth considering.

Even when the information is available from other countries it is not always possible to assess the true situation because many factors are involved. In some countries bans or restrictions have been placed on their use, such as those which applied in this country and which still apply in Western Australia, and they have discouraged their use. Those restrictions have been lifted in some of the countries.

For instance, as is revealed at page 149 in the September issue of *Cleo*, Sweden in 1972 held what was called a national condom week during which those responsible attempted to promote the use of the condom as part of a programme undertaken to control VD. That is a country which had a serious problem in this respect, but it realised it was no good only establishing clinics and undertaking educational programmes. There must be a total approach to the subject and such an approach should necessarily include the promotion of the condom.

As I just revealed, 38 per cent of the people in Sweden who use some form of contraception have adopted the condom, so obviously the campaign was effective. However, I would have liked to give information concerning the incidence of the disease in that country. The best I can do is to give some figures for the years 1973 and 1974, but because only two sets of figures are available it is difficult to establish whether those figures indicate a definite trend.

In 1973 the reported cases numbered 26 490, while in 1974 the number was 23 507, so the reduction in the second year was 3 000 which is a fairly significant number when we bear in mind that the campaign began in only 1972. Although I have figures for other countries for the most recent years, I do not have any supporting information for the previous years.

New South Wales is a State which has a serious problem and in 1973 it allowed the use of automatic vending machines for condoms and now that State has about 3 500 such machines mainly situated in hotels and toilets. I am not sure that those are the most desirable places in which to place the machines, but that is the position. It is also interesting to note that the introduction of the automatic vending machine resulted in only a slight increase in sales. I would have liked to be able to say that there was a significant increase in sales accompanied by a tremendous downturn in the incidence of VD. Unfortunately I cannot provide such evidence.

The Hon. N. E. Baxter: I do not think there would be a very significant increase in sales.

The Hon. R. F. CLAUGHTON: That is a fact, according to the information I have been given. There was no marked increase.

There has been a slight increase in the incidence of VD in New South Wales, but again I do not have any figures to provide because the information was impossible to obtain. Even if I had been able to obtain the figures, together with comparative figures, they would still have had to be related to other factors involved. Most States have the clinic system now and are pushing it with varying degrees of purposefulness. However, I think we can say that the introduction of the automatic condom vending machine in NSW has not created any vast outcry by the public. Those people who wish to do so can obtain the condoms from hotels and

toilets without any embarrassment, which is a situation different from that obtaining in Perth.

Our own sales proportion *per capita* is lower than that of the other States, as I mentioned earlier. It could be that while there may be only a marginal difference between what it is and what it should be, those people who feel embarrassment would make up that difference. If the condoms were more easily available in places where the buyers were not confronted with any embarrassment more might be purchased.

The second point I wish to make is the large difference between the percentage in Australia as a whole and the percentage in some of the other countries. As I said, in Sweden, the figure is 38 per cent and in Japan it is 68 per cent. The situation in Sweden indicates that an educational programme can greatly increase the sales of these devices. Therefore, as well as the steps he is taking under the Bill, the Minister, I believe, should undertake a more active advertising and educational programme. In many countries these days active family planning programmes are in operation and they use the established retail outlets. There is often a stall set up in the market place where the advertising is open and the public are encouraged to obtain information and purchase the condoms. This situation is no longer dealt with in an underhand or furtive way as it is here.

The problem of venereal disease is far too serious for us to treat it in this way. When we look at the total figures in this State we find the incidence of venereal diseases among males and females has risen from 462 in 1965 to 2 501 in 1974. That is a very substantial increase. In 1973-74 the actual increase was 28 per cent, so the rate of increase may be rising. However, we must consider other factors which affect the statistics. These are figures only of cases which are reported, and as the methods of obtaining statistics improve the figures will increase but will not indicate changes in the incidence in the population.

The Hon N. E. Baxter: That is what we are hoping the legislation will do.

The Hon. R. F. CLAUGHTON: But with the legislation more contact will be made and the statistics will be improved without making an impression on the disease itself. We will never have 100 per cent reporting and I believe we would be doing extremely well if we had 50 per cent. I am of the opinion that contact is being made with only between 20 and 25 per cent of cases at the present time, so there is a large number of affected people with whom no contact is being made, and the prospect for making contact is extremely poor.

To return to the Family Planning Association, we have the same kinds of problems in reaching our target. We can reach the knowledgeable and informed people relatively easily because they read and take an intelligent interest in what is going on and they will come along of their own volition; but it is those who are less motivated, less interested, and who do not take much notice of what is happening about them who neglect these matters and are the more difficult to reach.

When we come to venereal diseases, those who are illiterate and poorly educated and whose means of communication are limited are the main persons concerned and the difficulties in reaching them are so much greater.

When we look at the distribution of the disease among the various age groups we find it has not varied a great deal in the period reported in the Public Health Department's report for 1974 The report covers the period 1965 to 1974. The percentage remains fairly steady in all the age groups except the younger group. In 1965 the percentage for the 15-19 year-old group was 23, and in 1974 it had reached nearly 26; so there has been an increase of 3 per cent in that group.

It is also true that people are becoming affected at a younger age. That is a phenomenon in all sexual problems. Because people are maturing at a younger age they become sexually active earlier and are thus more susceptible to contact with these diseases.

The Hon. N. E. Baxter: You would not put it down to more promiscuity than previously?

The Hon. R. F. CLAUGHTON: We must be very careful of our definitions. A promiscuous person is one who is promiscuous regardless of the social climate; that is the way such people are. Today more people than previously are prepared to have a greater number of sexual partners. Instead of being monogamous they might have two or three partners. That is not promiscuity where it is a matter of indifference with whom one has sex. People may be prepared to have sex with a number of partners without being promiscuous.

The Hon. N. E. Baxter: They shop around more.

The Hon. R. F. CLAUGHTON: My experience is limited and my information is secondhand. I can only speak of experiences which other people relate to me, not of my own actual experience. From the studies which have been made, those are the general results.

In the United States a programme has been undertaken over a number of years and it is reported upon in a publication entitled "Today's VD control problem 1975", which is an official Government document published by the American Social Health Association. It examines and outlines the Government's programme. The US authorities have taken action

similar to that contemplated in the Bill before us. Whether it involved the specific matters of requiring laboratories to report when the disease was detected and so on is not stated, but they set up a greatly increased educative programme. They attempted to improve notification from health personnel and they undertook an advertising programme entitled "VD is for Everybody", which was nationally broadcast and produced quite obvious results.

It was a matter of having increased funds available, bringing in a greater number of health personnel, community educators, and so on to promote the programme; but its effectiveness was either increased or limited by the funds available. I suggest that is the problem the Minister will have.

The Hon. N. E. Baxter: It is the only problem I have.

The Hon. R. F. CLAUGHTON: On page 59 of the Public Health Department's report for 1974 this comment is made about it—

> It is obvious that the effect of health education could be more effective in the venereal disease field if more money and hence, more staff could be apportioned to it.

We cannot have health educators in the field if we have not the money to pay them, and without the personnel the programme will be limited. It does not matter how good the Bill and its provisions are, without the funds to carry it out it might just as well never have existed.

In the United States a very extensive programme has been undertaken and studies have achieved very good results. Page 8 of the report to which I referred earlier states—

> Venereal disease control at this time has both favorable and unfavorable aspects.
>
> Favorable aspects include incidence data for both reported gonorrhea and primary and secondary syphilis cases in FY 1974. Reported gonorrhea cases continued to increase in FY 1974 but the rate of increase (8%) was less than in the two previous fiscal years (12.7% in FY 1973 and 15.1% in FY 1972). Reported primary and secondary syphilis cases actually declined by 1.4% in FY 1974 in contrast to the 4.5% increase in FY 1973 and the increases observed during the three previous years.

The curve of the increased incidence of gonorrhoea can be seen on the chart I now show to members. It is equally dramatic as that for Western Australia—perhaps a little more so.

So despite all the efforts made by the US authorities, the best that can be said is they have slowed the rate of increase and perhaps stabilised it, but they are far from being in a position to say they are on the way to controlling it. I repeat that the figure for the use of the condom in the United States is not much better than our own—14 per cent compared with 9 per cent here.

Another requirement in the United States, under the Food and Drug Administration, is that oral contraceptive packages must contain the caution, "Oral contraceptives are of no value in the treatment of venereal disease". That might seem to be a strange warning but when we remember that the contraceptive pill is the most common form of contraception we will realise it is important that people be made aware of that fact.

People obtain all sorts of misinformed information, and they do funny things like saving up antibiotic pills and swallowing one after intercourse in the belief that it will prevent them contracting venereal disease. That is another thing that could be done in this country; warnings could be provided to draw the attention of people to the fact that if they are using the pill and having casual sex they face the risk of contracting venereal diseases. Of course, it would not be possible to do that on a State basis; something would be necessary at the Federal level.

Something which is not generally known is that a condom is a highly effective contraceptive. In the *Cleo* article which I quoted earlier, it is stated that when used with a spermicide a condom is 98 per cent safe, and that is about as safe as the pill is. The condom is just as effective for those people who find it difficult to obtain a prescription for the pill or who suffer serious or discomforting side effects from it. For those people the condom is a worth-while alternative, as are also the loop and the IUD. The condom has a great advantage from the point of view of the matter we are discussing, because it is a most effective form of prophylactic. Malcolm Muggeridge might say the best form of prophylactic is abstention, but to say that is to ignore what people actually do. In respect of this disease we are dealing with the real world and with what people actually do, and the promotion of the condom should be one aspect of a programme aimed at lowering the incidence of venereal diseases, something which requires a great deal more attention.

In clause 9 (b) proposed new subsection (2a) refers to a fee to be paid to the laboratory. Although I can deal with this further in the Committee stage. I would like the Minister to tell me whether there is a possibility of a laboratory being paid by the Public Health Department and also by the doctor who sent in the sample. Can it receive a double payment?

The Hon. N. E. Baxter: No payment is made to the doctor, but only to the private analyst.

The Hon. R. F. CLAUGHTON: Perhaps it would be better to discuss this in Committee rather than now.

I wish to refer to another matter concerning proposed part XIIA, which deals with community health centres. I know of at least one specific instance in which a private doctor who was leasing premises in a publicly provided community health centre refused to treat a patient unless he joined a private medical fund. In other words, he refused to treat patients under Medibank. That is a most irresponsible action in a country centre, and it is an unethical step to take. The Government should give consideration to writing into the lease a condition that such a practice should not occur, under pain of losing the lease.

The Hon. N. E. Baxter: In cases such as that, if they are reported, we take them up very seriously.

The Hon. R. F. CLAUGHTON: I do not know whether this instance was reported. I think most people in country towns when confronted with something like this realise they have to live in the town and deal with the people in it, and so they take the line of least resistance and in this case would probably join the private fund. That could place financial strain upon them. In any case, it just should not happen.

The step the Government is taking in respect of venereal diseases is something that must happen; however, it ignores an area in which there is scope for improvement of control. Figures are available from elsewhere to support what I have said, and I regret I have been unable to quote them with more precision. For example, in Japan the rate of usage of the condom is about 70 per cent, and that is the result of a deliberate Government programme. The figures for that country show the rate of venereal disease has declined since about 1970. So where figures are available there is ample demonstration of the effectiveness of this contraceptive and its desirability as a prophylactic. The two things go together.

From the family planning point of view, we would like the ease with which condoms are distributed to be much improved. With those remarks I support the Bill.

THE HON. R. J. L. WILLIAMS (Metropolitan) [5.55 p.m.]: I wish to be very brief, because I desire only to make an appeal to the Minister. I think perhaps not all members of the House would realise how explosive are the figures in respect of venereal disease in Western Australia today. In 1975 there were 2 648 reported cases, and that represents anything between 10 and 20 per cent of the actual cases; in other words, we could have well over 10 000 people infected in this State.

The Hon. Clive Griffiths: What are reported cases?

The Hon. R. J. L. WILLIAMS: They are cases reported by doctors at the VD clinic where these statistics are kept and compounded. The most alarming figure in those statistics is that 657 of those cases were syphilis. Bear in mind that venereal diseases include more than just gonorrhea and syphilis; everyone knows the two common ones.

However, the most dangerous disease is syphilis, and when we realise in this State in 1966 only 20 cases of this disease were reported, we appreciate there has been a dramatic upturn. However, do not let that fool people into thinking the case was not so before; it is just that the venereologist of Perth and his staff have done a magnificent job and are seeking by this Bill assistance to enable them to go further in identifying the disease and getting people to come to the clinic for treatment.

My request to the Minister is this: I hope he will convey to Dr Newnham and his staff the thanks of this House for the tremendous amount of work they have done in a field in which not many doctors care to practise; and in respect of the methods by which they are attempting to bring venereal disease under some form of control. Of course, it will never be completely controlled.

People seem to think venereal disease concerns only the genitalia, but that is not the case. There are cases today, and there have been since 1946, of syphilis and gonorrhea of the throat, which are sometimes diagnosed as cancers until the appropriate tests are made.

My second request to the Minister is that he, in co-operation with you, Mr President, at some convenient time invite the venereologist for Perth and his staff to show the members of this place a film or to talk to us on the work they are doing, and thus dissipate some of the myth associated with these diseases. Then we as members may be better informed of how the diseases can be identified and cured; and they can be cured if caught in time.

I have made a social visit—if one can make a social visit to a clinic—to Dr Newnham's clinic to look around and to talk to him and his staff, and I was most impressed with what I saw. I would say that with Dr Newnham's return from the United Kingdom, where he studied venereal disease in hospitals, we are indeed fortunate in this State to have the service he provides to our community.

I certainly support the Bill to the hilt.

THE HON. N. E. BAXTER (Central—Minister for Health) [5.59 p.m.]: I thank the Hon. Grace Vaughan, the Hon. Roy Claughton, and the Hon. John Williams

for their contributions to the debate. Mrs Vaughan referred to the Pesticides Advisory Committee which is to be reconstituted under this Bill, and said no provision has been made for a quorum.

Under the provisions of the principal Act the Pesticides Advisory Committee has a right to co-opt other members, but by this amendment deputies for members are to be appointed. The committee will meet only when arrangements are made, the secretary of the committee will be a member of the committee, and there are only four members on the committee. Therefore, it will be easy to arrange a meeting. So it is not necessary to set out in the Bill that there should be a quorum.

The honourable member also referred to what she called a "waffly" statement in the Bill concerning a person acting in good faith and without malice. If a person acts without good faith and with malice towards somebody else by reporting that he or she has contracted venereal disease from that person, the one who has been maligned may take a case to court on that basis. If this provision were not contained in the Bill a maligned person would have no protection. It works both ways: a person would have to prove that any statement made was not in good faith and was made with malice and could sue the person who made it. It is not a waffly situation at all. If we were to remove those words the situation would be left as it is today and would be wide open for the creation of problems.

The honourable member said we ought to be investigating ways and means of controlling the disease; and the Hon. Roy Claughton made certain suggestions. I assure the House that we have been looking at ways and means. Prior to my taking office as Minister for Health I do not think more consideration was given to the worrying situation regarding venereal disease. When I first met Dr Newnham in my office it was one of the subjects I raised immediately with him. I expressed my concern at the increasing incidence of VD and his words to me were, "Thank you very much, it is very heartening to know that somebody will take an interest and give assistance to overcome the disease."

I have endeavoured since then to discuss with my officers ways and means of dealing with it. During the past few years we have waged an advertising campaign in the newspapers telling people the telephone number and address of the clinic so that advice may be obtained. We have increased the number of personnel at the clinic in Moore Street and made officers available to increase the information given to doctors concerning the treatment of venereal disease. We have opened a clinic at Kalgoorlie. As money becomes available during this financial year it is our intention to open clinics in other large country towns. This year, through the Health Education Council, funds are available to engage four more officers with a view to using them in a campaign against venereal disease.

We have been held up in the establishment of a theatrette in the old tramways building in Hay Street. There we are going to set up cells to give information to people. They will be notified about what information is contained in each cell so that they can make up their minds whether they wish to enter that cell and see what is exhibited or go to another cell. At the back of the theatrette film apparatus will be available to set out information with regard not only to venereal disease but also health education generally. The idea is to encourage people into the building at lunch time to get the story over to them. These are the sorts of things we are doing. We are not sitting down; we are taking action.

The Hon. Mr Claughton referred to condoms and vending machines. I think the information he conveyed to the House came from New South Wales. He said that sales of condoms in New South Wales are minimal. It has always been my opinion that the Australian is not very conducive to the use of condoms. Condoms are not difficult to obtain; when I was a young fellow every young chap knew that they could be bought in any chemist shop. Members cannot tell me that the young fellow of today is not as alert to that sort of thing.

The Hon. R. F. Claughton: The figures for Australia do not back up what you are saying.

The Hon. N. E. BAXTER: I do not know what the statistics show, but the Hon. Mr Claughton said that vending machines do not have much result in New South Wales and also referred to statistics about the increase of venereal disease. It is not right to use statistics about the availability of condoms without using statistics to show that condoms are not in use because it cannot be denied people do not like to use them.

The Hon. R. F. Claughton: I would have hoped the Minister listened a little more closely to what I said. He has interpreted what I said in line with his own attitude.

The Hon. N. E. BAXTER: The honourable member went into great detail about about condoms and their availability throughout the world from vending machines and other sources. I do not intend to deal with that matter at any length; I shall place his speech before officers of my department so that they may look at his suggestions, particularly the one with regard to warnings on packets of oral contraceptives. I think that is a worth-while suggestion. I thank the member for his thoughts and the presentation of the information he gave. I think it can all be used.

We must work together on this sort of thing and use any ideas that will pay off to wage the war against venereal disease. I can assure the House we are doing our best.

The Hon. John Williams referred to the number of reported cases. The figures in front of me show an upsurge in the number of reported cases since 1966. Mr Claughton said that up till 1960 there was a reduction in the number of cases. It is a coincidence that in the period from 1953 to 1959 the Roe Street brothels were being phased out. It is remarkable that during that period the incidence of venereal disease was very low and remained low. As soon as the brothels disappeared the number of cases started to rise considerably. I do not know why this was so but it is a fact that when they were phased out the number of cases started to increase phenomenally.

The figures I have show that in 1966 there were 710 reported cases, rising in 1975 to 2 648 cases. Up to the 30th October, 1976, 2 056 cases were reported, so it looks as though this year the number will be up again.

Nowadays more doctors are interested in the problem because of the campaign we are waging with regard to the reporting of cases. It is very hard to say, "Let us wait until the end of the year to see where the reported cases come from and what is happening", because it depends on the doctor whether he reports cases. Doctors in some areas report cases and doctors in other areas do not report cases. This fact makes a big difference to our figures and it is very hard to prove what they are. Mr Williams would be fairly accurate when he said that there are possibly 10 000 cases of venereal disease in Western Australia.

I shall take up the suggestion of the Hon. Mr Williams to invite Dr Newnham and his staff to the House to give us an address on venereal didsease. I think that would give members a run-through of what is happening at present and would show us what plans Dr Newnham and his staff have and what they are actually doing in an attempt to decrease the incidence of venereal disease.

I thank honourable members once again for their comments. This Bill deals in the main with reports by laboratories, which is a new concept, and the protection of a person who reports another person from whom he or she contracted venereal disease.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (the Hon. Clive Griffiths) in the Chair; the Hon. N. E. Baxter (Minister for Health) in charge of the Bill.

Clauses 1 to 8 put and passed.

Clause 9: Section 300 amended—

The Hon. R. F. CLAUGHTON: As I raised this clause in my speech at the second reading stage I should have liked to spend a little time on some of its provisions.

The Hon. N. E. Baxter: Relating to the charge?

The Hon. R. F. CLAUGHTON: Yes. I should have liked to add to some of my comments in the light of the Minister's reply at the second reading stage. I would appreciate it if the Minister would report progress and seek leave to sit again.

Progress

Progress reported and leave given to sit again, on motion by the Hon. N. E. Baxter (Minister for Health).

House adjourned at 6.13 p.m.

Legislative Assembly

Thursday, the 4th November, 1976

The SPEAKER (Mr Hutchinson) took the Chair at 2.15 p.m., and read prayers.

QUESTIONS ON NOTICE

Postponement and Closing Time

THE SPEAKER (Mr Hutchinson): I advise members that questions will be taken at a later stage of the sitting; and I further advise that when the House sits at 2.15 p.m., as it may do, on Wednesdays and Thursdays in the next several weeks, the closing time for questions will be 4.00 p.m.

STATE FORESTS

Revocation of Dedication: Motion

MR RIDGE (Kimberley—Minister for Forests) [2.18 p.m.]: I move—

> That the proposal for the partial revocation of State Forests Nos. 4, 28, 43, 58 and 63 laid on the Table of the Legislative Assembly by command of His Excellency the Governor on 2nd November, 1976, be carried out.

I do not believe it is necessary for me to make any lengthy comments in support of the motion. Members will be aware that a similar motion is moved in the House traditionally at about this time each year; and no doubt they will be aware that as a result of having tabled papers in connection with this proposal yesterday, there are five items for consideration.

The proposed excisions of State forests amount to 86 hectares, and the gain to State forests through exchanges contingent upon this proposal amounts to 49 hectares. This results in a net loss to the State forests of 37 hectares, which is attributable mainly to adjustments on surveys of the locations associated with them.