LEGISLATIVE COUNCIL.

Tuesday, September 22, 1953.

The PRESIDENT (Hon. Sir Walter Duncan) took the Chair at 2 p.m. and read prayers.

ASSENT TO ACTS.

His Excellency the Governor intimated, by message, his assent to the Public Purposes Loan and Pastoral Act Amendment Acts.

QUESTIONS.

PROPOSED WHEAT POOL.

The Hon. F. J. CONDON—With reference to the proposed establishment of a three-State wheat pool, will the Government consider, if and when it introduces legislation, the fixing of a price of 12s. 6d. for wheat in order that South Australian millers will be able to compete with the Victorian millers?

The Hon. A. L. McEWIN—The question will not arise until the Government has to consider legislation. At present negotiations are taking place and the effect upon the milling trade if three States agree to something which the others do not is one of the difficulties associated with the matter. The Minister of Agriculture is in communication with the other States and the Commonwealth seeking some clarification of the position as all that the Government has before it are conflicting reports.

PROCEDURE ON AMENDMENTS.

The Hon. F. J. CONDON—Have you, Mr. President, had an opportunity to peruse the schedule of amendments which I handed you this morning and which I desire to move in the Licensing Act Amendment Bill when it reaches Committee? If so, can you indicate under what conditions it would be competent for me to move them?

The PRESIDENT—Having studied the amendments submitted to me by the honourable member, I find they come under three headings:—

(1) Several could be moved in the ordinary way in Committee;
(2) Several cannot be moved without an instruction; and
(3) Most of them, not being relevant to the subject matter of the Bill, cannot be moved at all.

I think the present time is opportune to draw members' attention to the use, and nearly abuse, of the Standing Orders dealing with instructions. Under Standing Order No. 429, the scope of an instruction is limited to matters which are relevant and not contradictory to the order of reference. This is summed up by "May" as follows:—

"The object of an instruction is, therefore, to endow a Committee with power whereby the Committee can perfect and complete the legislation defined by the contents of the Bill, or extend the provisions of a Bill to cognate objects; and an attempt to engraft novel principles into a Bill, which would be irrelevant foreign or contradictory to the decision of the House taken on the introduction and second reading of the Bill, is not within the due province of an instruction. Accordingly, an instruction can be moved that authorizes the introduction of amendments into a Bill which extends its provisions to objects not contained therein if those objects are relevant to the subject matter thereof, or which would augment the legislative machinery whereby the Bill is to be put into force."

In my opinion, the Standing Orders were never intended to be used in the broad manner which is now suggested but only as "May" puts it to "perfect and complete the legislation defined by the contents of the Bill." I therefore intend ruling that, unless the amendments are relevant to the subject matter of the Bill, *i.e.*, hours or local option polls, they are out of order and cannot be moved even with an instruction.

In my opinion, the only way is for some member to introduce a new Bill dealing with the new matters referred to in the proposed amendments. I may add that certain amendments proposed by Mr. Jude come under the same heading. Two of the amendments on which he wants instructions I propose to rule out of order and the third requires no instruction, but can be moved if and when the Bill reaches the Committee stage.

SERGEANT-AT-ARMS: ALTERATION OF TITLE.

The PRESIDENT laid on the table a report of the Standing Orders Committee relating to an alteration in the title of office of Sergeant-at-Arms.

Received and read.

The Hon. A. L. McEWIN (Chief Secretary)—I move—

That the report of the Committee be adopted.

This is one of the recommendations made primarily to avoid confusion at the Royal Opening of Parliament next year, and at the same time to secure a measure of uniformity with respect to the titles of office in several Parliaments of the Empire. The office of Black Rod is derived from the practice of the House of Lords where it is the counterpart of the office

of Sergeant-at-Arms in the House of Commons. In all the second Chambers in Australia except South Australia—that is, in the Senate of the Commonwealth and in the Legislative Councils of New South Wales, Victoria, Tasmania and Western Australia—the office of Black Rod is found. It is also in use in the Upper Houses of Canada and South Africa, and was formerly in use in the Legislative Councils of Queensland and New Zealand until the abolition of their respective Councils.

The office of Sergeant-at-Arms in the Legislative Council of South Australia would seem to be a survival from the period prior to 1857 when a unicameral system operated in this State. The one Chamber legislature was known as the Legislative Council but its presiding officer was called the Speaker and a Sergeant-at-Arms was appointed during this period. On the establishment of the bicameral system in 1857 the title of the presiding officer of the Council was changed to that of President, and the Speaker became the presiding officer of the Assembly. At the same time a Sergeant-at-Arms was appointed in both Houses.

When New South Wales adopted the bicameral system in 1856, the title of the presiding officer of the Council was changed from Speaker to President similarly as in South Australia; but simultaneously, the title of the Sergeant-at-Arms in the Council was changed to that of Black Rod. Western Australia also changed to the new titles on its adoption of the bicameral system in 1890, but Queensland used the title of President and Black Rod from the formation of the State in 1860. On the establishment of responsible government in Victoria, the title of Sergeant-at-Arms in the Council was changed to that of Usher of the Legislative Council, but only two years ago, in 1951, the title of the office was brought into line with general parliamentary practice and changed to that of Black Rod.

The Hon. E. ANTHONEY (Central No. 2)—I was interested to hear the history of the office of Black Rod. I can realize that there is something in a name after all and although the title Black Rod is to be conferred upon the Sergeant-at-Arms it will not make any difference so far as I can see. It is a distinction without a difference but brings the office into conformity with the practice in other places. I have never been able to understand why this Parliament, as distinct from other Parliaments, has no mace. I do not know whether we have ever had a mace but it has never been on the table. I am sure there is some legal association about a mace. I do not know whether we can meet constitutionally without it.

The Hon. A. L. McEwin—We can meet without it.

The Hon. E. ANTHONEY—We always have. It is a symbol of power and is placed on the table in the House of Lords and the House of Commons and in all Parliaments I have visited. It is an insignia of Parliamentary Office.

Motion carried.

The Hon. A. L. McEWIN moved—

That the report be printed and that the amended Standing Orders be presented to the Governor by the President for his approval pursuant to section 55 of the Constitution Act.

Motion carried.

WILD DOGS ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from September 1. Page 559.)

The Hon. F. J. CONDON (Leader of the Opposition)—This appears to be a very innocent Bill but already notice has been given of an instruction to introduce something foreign into it. The latest figures for the year ended December 31, 1951, show that the subsidy from the State Government was £4,000, rates and penalties were £4,700 and rent on property £10. The total receipts for that year were £8,710. General expenses were £530, and payments for wild dogs scalps £8,332. It will be noted that during that period a large number of wild dogs were destroyed. The deficit for the year amounted to £152, which it is necessary to meet. Fixed assets today stand at £991. Current assets consist of sundry debtors £88, and funds held by the State Treasurer £1,501, a total of £1,589. The object of the Bill is merely to meet a deficit. I therefore support the second reading.

The Hon. E. H. EDMONDS (Northern)—The Bill provides for increases in the rate to be levied on the land of the people concerned and an increase in the Government contribution. The reason for that is that the funds which have been available from these sources in the past has not proved sufficient to meet claims. As one who has been associated with the pastoral country I was hopeful that the efforts made recently would have resulted in a diminution of the claims made upon this fund by reason of the fact that the inducement offered might be regarded as such that people would renew their efforts to destroy this pest. That has not resulted, however, and perhaps it it because the remuneration offered to people

for other forms of employment today is so attractive that there is not sufficient incentive to people who engage in this work. As a result of this pastoralists and leaseholders have found it necessary to offer substantial bonuses in addition to the reward for scalp money. Even then there has been an increase in the demand upon the funds and in consequence these amendments are necessary. I will be very interested to hear what the Minister has to say about aerial baiting because there are rather conflicting reports as to what it has achieved. While some people have agreed that it has been very successful, others have taken the opposite view. It seems that we must go on offering every inducement to people to exterminate wild dogs and I support the second reading.

The Hon. R. R. WILSON (Northern)—The Wild Dog Act appears before Parliament practically every session and all members realize its importance. Wild dogs in the pastoral country are a very great menace as they are in other States also. When visiting our pastoral areas it is alarming to hear of the tremendous losses of sheep and calves caused through the presence of wild dogs commonly called dingoes. In a report in the *Stock and Station Journal* of Queensland recently one of the Ministers of the Crown stated that he estimated the loss in Queensland for one year to be 300,000 sheep. The cost of combating the menace by employing doggers, erecting fences, paying scalp bonuses, and aerial baiting has amounted to millions of pounds. Expert knowledge is required to enable scientists to deal with this pest. I have before me a questionnaire which is being sent out to 60 pastoralists in the north. It is an appeal for first-hand information necessary to obtain that knowledge and is sent out by Dr. McIntosh, a reader in anatomy at the Sydney University, who has for four years studied the anatomy and biology of the dingo. He has found it necessary to obtain more information from those with an intimate knowledge of the question, which is the reason for the questionnaire, which contains 174 questions. We have had an example of the effect of myxomatosis on rabbits and it is possible that something of that kind can be brought about to control wild dogs. I was very interested in a statement by the Minister of Lands who said that he became extremely interested in aerial baiting, but that when he ascertained from Captain Buckley that it was done at a height of only about 20ft. he decided that "it was a job for a pilot and not a Minister of the Crown." Some pastoralists claim that aerial baiting is having a serious effect upon bird life, but I think this is more than offset by the control of the wild dog menace. The amount paid for scalps and tails from the fund is increasing, and in 1951-52 alone the number of scalps and tails reached 6,717 more than the previous year. It is therefore necessary to provide for an increase in the rate from 1s. to 1s. 6d. a square mile; every 3d. represents £2,000. The Stockowners' Association strongly favours this measure and I have pleasure in supporting the second reading.

The Hon. L. H. DENSLEY secured the adjournment of the debate.

AUCTIONEERS ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from September 1. Page 561.)

The Hon. S. C. BEVAN (Central No. 1)—The principal Act was passed in 1862. It was amended in 1920, consolidated in 1934 and has not been reviewed since. Clause 3 amends section 3 of the principal Act and provides for the licensing of auctioneers and auctioneers' clerks in two categories, namely, town licences and country licences. The fee for a town auctioneer's licence will be £25 and for his clerk £10, and the fee for a country auctioneer's licence will be £10 and he is prohibited from acting in the city unless he also holds a town licence; this applies also to the country auctioneer's clerk. Clause 4 provides that the court shall satisfy itself that the manager or principal officer of a company seeking a licence is of good character before issuing the licences, and this is a wise safeguard. Clause 7 enables refund of fees in the event of a licensed auctioneer dying or ceasing to carry on business during the currency of the licence. Such refund shall be calculated at the rate of one-quarter of the fee for each complete period of three months of the balance of the unexpired term, and I think this is fair and reasonable. Clause 11 provides for penalties for breaches of the Act and repeals the existing provision which prescribes a fine not exceeding £100 and imprisonment for a term not exceeding three months. I take this provision to be mandatory, giving no discretion to the court, and therefore very harsh. The Bill provides for penalties not exceeding £25, but does not provide any alternative. What would happen if an unauthorized person was fined and did not pay the fine? Would the court be restricted from inflicting any alternative penalty? However, I should like the Chief

Secretary to inform us whether my interpretation of this clause is correct. Generally, the Bill improves a statute which has become outmoded and I have pleasure in supporting the second reading.

The Hon. Sir WALLACE SANDFORD (Central No. 2)—This is a simple Bill and the Chief Secretary set out the position quite clearly in his explanation. The main difference is that there are to be town and country licences and some relief will be given to auctioneer firms, although I do not imagine this charge would be a very heavy one even where a firm employed a number of auctioneers. The only reason which prompts me to rise is that I can scarcely agree with Mr. Bevan that a fine of £100 and perhaps three months imprisonment is harsh, for auctioneers are frequently called upon to handle transactions involving very valuable assets and large sums of money. I do not know the law as it relates to the validity of a transaction entered into by an unlicensed person. By the time an unlicensed person is caught the ownership of the property or asset he disposed of may have been divided and serious loss could result to some individual or individuals. While I do not support extremes in fines I believe that in this instance a fine of £100 is a light penalty even though the offender might also be imprisoned for a short term. As those directly interested in this legislation view it with no serious concern, I support the second reading.

Bill read a second time and taken through Committee without amendment.

Committee's report adopted.

VERMIN ACT AMENDMENT BILL.

Adjourned debate on second reading.

(Continued from September 1. Page 562).

The Hon. E. H. EDMONDS (Northern).—This is a short Bill to provide for the administration of affairs relating to the destruction of vermin. Throughout the State, districts are established for the control and destruction of vermin and boards may be elected. In many cases they consist of council districts and usually one council area constitutes a board area. However, in at least one case it was found desirable that the board should consist of more than one council area. Whilst the Act provides that one member shall be appointed to the board from each council it has been found that it is not always possible for that representative to be present at the meetings and the area affected may not be represented when matters of vital importance are discussed. The Government has been asked to overcome that difficulty by permitting the appointment of two representatives from each council. That is the gist of the amendment and I see no objection to it. The proposal has much to commend it and I support the second reading.

The Hon. J. L. COWAN (Southern)—As short and simple as this Bill is, it deals with a matter of vital importance to primary production throughout the State—the control of vermin. Vermin is controlled mainly by district councils, but there is provision for the establishment of vermin boards by two or more contiguous district councils. So far only one such board has been established and it consists of four district councils. Mr. Leith Royal, who is Chairman of the Advisory Board of Agriculture, is a practical man and is chairman of that board. He assured me, as a result of his experiences during the first 12 months of that board's existence, that it would be an improvement to permit councils to be represented by two members instead of one. He hopes that it will lead to the establishment of many more such boards throughout the State. Although this board has only been in existence for 12 months there has been a marked improvement in the control of vermin in its area and it is noticeable that the people there are paying much more attention to the destruction of rabbits than previously when the situation was controlled by district councils. To give an indication of the great importance the control of vermin is to primary production I quote from a statement recently appearing in the *Quarterly Review of the Bureau of Agricultural Economics,* which reads:—

> The depletion of the rabbit population of Australia by myxomatosis is estimated to have resulted in the production of an additional 70,000,000 lb. of wool worth £24,000,000, plus a further £10,000,000 representing additional sheep and lambs slaughtered or added to graziers' flocks. Myxomatosis must be given credit for at least .4 lb. of the increased cut a head from 126,000,000 sheep and lambs. It must also be given credit for some of the increase of about 4,000,000 in the number of sheep and lambs shorn in 1952-53. It has been estimated that myxomatosis has been worth at least £50,000,000 to all primary producers in Australia.

Myxomatosis has done much in the eradication of rabbits, but it is acknowledged that it will not completely destroy them. It is essential that other means should be taken to deal with the few remaining rabbits in order to overcome the possibility of a population of myxomatosis-immune rabbits being bred. The establishment

of these boards will be a step in the right direction and I have no doubt that in a short time there will be more than one board. I support the second reading.

Bill read a second time and taken through Committee without amendment. Committee's report adopted.

POLICE OFFENCES BILL.

Adjourned debate on second reading.

(Continued from September 1. Page 562.)

The Hon. C. R. CUDMORE (Central No. 2) —This Bill is particularly interesting because of the method of its introduction. Generally speaking, when a committee is appointed by the Government to investigate the question of amending legislation it makes a report which is placed before Parliament. The report sets out the reasons for any suggested alterations to the law, the recommendations are considered, and a Bill is drafted to carry out certain, if not all, of them. In this instance the procedure is new to me. This committee, comprising the Parliamentary Draftsman, Mr. Johnston, S.M., Police Inspector T. O'Sullivan and Mr. J. L. Travers (now M.P., Q.C.), has prepared a Bill instead of presenting a report. This Bill makes many alterations in the penalties for police offences. The Minister has provided us with a copy setting out the alterations made but not the reasons why they were made in particular cases. When I first looked at the Bill I was attracted by clause 5 which is very important and which appears at first blush to be quite new. The Minister referred to section 56 of the Justices Act which contains a similar provision, but this has not been held to apply in every case. This clause appears to put the onus on the defendant, which is not a principle of British justice. It reads:—

> Where this Act declares that any act done without lawful authority or without reasonable cause or without reasonable excuse or without lawful excuse or without consent shall be an offence, the prosecution need not prove the absence of such lawful authority, reasonable cause, reasonable excuse, lawful excuse or consent, and the onus shall be upon the defendant to prove any such authority, cause, excuse or consent upon which he relies.

This seems a reversal of all our ideas of British justice but when carefully considered there is hardly any alteration, if any, in the law.

The Hon. F. J. Condon—What is the need of it?

The Hon. C. R. CUDMORE—In the past in cases in which it has been necessary for the onus to be on the defendant it has been provided for by placing it in the section dealing with the particular offence. At first, I wondered whether it applied but then saw in clause 15 "any person who without lawful excuse." That is one of the things clause 5 governs "carries any offensive weapon, or has in his custody or possession any implement of housebreaking or carries any deleterious drug or article of disguise shall be guilty of an offence." He is charged with doing these these things without lawful excuse and the onus is on him to show that he had some lawful excuse. The comparable section in the present Police Act provides "who has on or about his person, without lawful excuse (the proof of which excuse shall be on him), any deleterious drug, or any article of disguise." We are now putting this provision in one big clause and saying "Anyone who does these things without lawful authority or without lawful excuse," although in the past it has been the practice to put it into the particular clause. The Minister referred to a section in the Justices Act which is extremely difficult to understand. Section 56 of that Act provides:—

> (1) No exception, exemption, proviso, excuse or qualification (whether it does or does not accompany in the same section the description of the offence in the special Act or other document creating the offence) need be specified or negatived in the complaint.
>
> (2) Any such exception, exemption, proviso, excuse, or qualification as aforesaid may be proved by the defendant, but, whether it is or is not specified or negatived in the complaint, no proof in relation to it shall be required on the part of the complainant.

Here, clearly, the onus is on the defendant. It has been decided in the courts that there is some doubt as to how far that goes and this provision is to clear it up. The proviso exempts only one thing. It reads:—

> Provided that the foregoing provision shall not apply to the offence of being in or about any premises or part of premises without lawful excuse.

The reason for the inclusion of that proviso is a decision in 1940 by the Full Court of the State in Wilkins v Condell in which case the present Chief Justice held quite definitely that in a charge of being on premises without lawful excuse the onus was on the complainant to prove that the person was there without lawful excuse. This is entirely a Committee Bill and the only question is that of this omnibus clause 5 which places the onus on the defendant to prove that he has a lawful excuse or a real reason, for instance, for carrying a jemmy about with him. This clause appeared

to be a revolutionary alteration in the law, but after considering it I am satisfied it is not so. I support the second reading.

The Hon. E. ANTHONEY (Central No. 2)—This is an important and interesting Bill and I congratulate the Minister on his very clear explanation. Perhaps other members have also found difficulty in appreciating what the alterations will mean, but from the Minister's explanation, I understand that the object is to clear up archaic language which has been imported into our Acts from old English Acts. To keep in our law archaic words and very often archaic penalties and interpretations seem to be quite out of place and this will make the legislation clear. A committee inquired into this matter and heard experts so it should be a perfect piece of legislation.

The Hon. F. J. Condon—Does not the honourable member consider it is work that Parliament should do? We are not figureheads.

The Hon. E. ANTHONEY—No, we are not. All Bills set out what the penalties should be and if the honourable member thinks that is making us figureheads I do not agree. I have read the report of the Commissioner of Police and, although not in connection with this Bill altogether, it is very illuminating document. I regard the present Commissioner as a first-class officer, and consider he should be sent overseas. The Government has sent other officers abroad and they have returned more enlightened and experienced. The Commissioner has done a great deal to improve road courtesy by the introduction of patrol officers. If the Commissioner saw the conditions of traffic overseas and how it is regulated and gave us the benefit of his acquired knowledge it would be a good thing for the State. The lot of a police constable is a hazardous one; in many cases he takes his life in his hands. Many of our police officers have been awarded distinctions for acts of bravery or exemplary duty, and this is a good thing as it encourages officers to do their best and thereby better serve the citizens of the State. The report reveals that serious crime has increased very much in the last two or three years; the increase for the year 1951-52 was 19 per cent, due largely to burglary, housebreaking and larceny. Motor cars stolen numbered 284 and motor cycles 575 and it is very much to the credit of the police force that all with the exception of four of those vehicles were restored to their owners. There has been a tremendous amount of cargo pillaging. This took place on 78 of the 125 interstate vessels that came into Port Adelaide last year.

The Hon. F. J. Condon—Does it say that the pillaging was done at Port Adelaide?

The Hon. E. ANTHONEY—I do not know.

The Hon. F. J. Condon—Then you should not make a charge like that.

The Hon. E. ANTHONEY—I am simply repeating what the Police Commissioner says.

The Hon. F. J. Condon—It might have been in Melbourne or Sydney or in transit.

The Hon. E. ANTHONEY—I do not know that. Over half a million pounds worth of property was stolen last year and I am pleased that, by this legislation, the Government is taking some steps to return to people property stolen from them. Juvenile offences were very prominent. There were over 232 cases of larceny and 165 of housebreaking by juvenile offenders. Traffic offences are increasing. For the year 1951-52 172 people were killed and 2,497 injured in traffic accidents.

The Hon. Sir Wallace Sandford—I thought the honourable member said road courtesy was improving.

The Hon. E. ANTHONEY—I did, but this refers to accidents and it must be remembered that our population is increasing and the number of cars on the road is growing larger. There were 8,373 accidents last year, an increase of 2,048 over the previous year. Far too many people are meeting their deaths on the roads as a result of carelessness and bad driving, and an increasing number due to drunkenness. It is interesting to note that the highest death toll occurred between the hours of 6 p.m. and 8 p.m., when there were 64 fatal accidents. Motor cyclists between the ages of 21 and 30 were responsible for more deaths than any other group of road users, causing 46 fatal accidents and 517 injuries, which may suggest that the minimum age limit for holding a licence should be increased. Assaults on police officers are not very frequent in this State, but they do occur; on one occasion while an officer was being attacked the crowd stood by and the only one who went to his assistance was a New Australian. That is greatly to his credit and to the discredit of our own people.

I feel sure that the department is efficiently administered, but I do hope that the Government will consider my suggestion to send the Commissioner abroad for experience. The Bill makes little alteration of existing laws, but effects some improvements and clarifications. The penalties proposed should deter and not encourage crime and I have pleasure in supporting the second reading.

The Hon. C. D. ROWE (Midland)—I propose to deal mainly with the question of penalties proposed in this Bill because some members have expressed surprise at the apparent increase in the severity of fines. Members would be well advised to keep in mind the powers which justices have under the Justices Act in dealing with offences set out in this Bill. I draw attention particularly to section 74 of the Justices Act which provides:—

In any case where the special Act authorizes the imposition of a fine of uncertain amount—that is to say, a fine of not less than, or not exceeding, some certain amount or amounts in that behalf specified—the amount of every such fine, within the limits so prescribed, shall be in the discretion of the court.

That is to say, where the Act says that a particular offence shall be punishable by a fine of, for example not less than £20 or not more than £50, the court has complete discretion within those limits to make the fine what it thinks fit in the circumstances. In addition, section 75 of the Justices Act gives further power in the interests of the defendant if the court thinks fit to use them. Section 75 is as follows:—

(1) Upon the hearing of any complaint under this or any Act, whether past or future, and notwithstanding the provisions of any other enactment to the contrary, a court of summary jurisdiction shall have the powers conferred by this section: Provided that nothing herein contained—

1. shall authorize any court to reduce below the prescribed minimum the amount of any fine imposed under any Act passed for carrying into effect any treaty, convention, or agreement made with the Imperial Government of Great Britain, or with any British possession or with any foreign State, where such treaty, convention, or agreement stipulates for a fine of such minimum amount . . .

(2) If the court thinks that the charge is proved, but that the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment, or to inflict any other than a nominal punishment, the court may—

(*a*) without proceeding to conviction dismiss the complaint, and, if the court thinks fit, order the defendant to pay such damages, not exceeding forty shillings, and such costs of the proceedings, or either of them, as the court thinks reasonable:

(*b*) upon convicting the defendant discharge him, either unconditionally, or conditionally upon giving security, with or without sureties, to appear for sentence when called upon, or to be of good behaviour, and either without payment of damages and costs, or subject to the payment of such damages and costs, or either of them, as the court thinks reasonable.

That is to say, although the court feels that there may have been a technical breach of the law but in the circumstances it is only of a trivial nature it can dismiss the complaint without proceeding to conviction notwithstanding anything that may be said about penalties elsewhere.

Section 75 (5) says:—

Subject to the provisions of the Special Act the court may, in inflicting a fine, if it is imposed in respect of a first offence, reduce the prescribed amount thereof.

Notwithstanding that the particular Act prescribes a minimum fine the court still has power to reduce it to below the minimum if it feels that circumstances justify it. Section 75 (7) says:—

Where the court has authority to impose imprisonment and has no authority to impose a fine for the particular offence, it may, nevertheless, if it thinks that the justice of the case will be better met by a fine than by imprisonment, impose a fine not exceeding one hundred pounds and not being of such an amount as will subject the offender under the provisions of this Act, in default of payment of the fine, to any greater term of imprisonment than that to which he is liable under the Act authorizing the imprisonment.

Even though we may prescribe imprisonment for a particular offence the court still has power, if it feels that justice will be better met thereby, to impose a fine instead of imprisonment. Therefore, the amendments proposed in the Bill before us need to be considered in relation to the powers which the justices have under their own Act, particularly under sections 74 and 75, and when they are so considered I feel that it will be agreed that most of the penalties proposed are reasonable. I therefore have pleasure in supporting the second reading.

The Hon. R. J. RUDALL (Attorney-General)—I am grateful to members who have spoken on this Bill because it is of considerable importance although really a Committee measure. In view of some of the remarks made during debate there are certain observations I should make. Except in few respects, which I have pointed out, this is a consolidating Act rather than a new one. The new provisions are small and the object of the framers of the Bill has been to consolidate and amend the existing law in certain respects. If members refer to the schedule on their files they will realize what little has been done by

way of amendment. In many cases the amendments are in favour of rather than against the defendant. Undoubtedly, the main alteration relates to penalties. There is no fixed rule regarding penalties. It is a matter which must be fixed in accordance with the opinion of members and there is no fixed standard by which one can relate any particular matter and, therefore, it is a subject always open to debate. That was one of my reasons for preparing the schedule.

The penalties in the Bill are maximum penalties and no minimum penalty is provided. In prescribing these penalties Parliament is not saying what the penalty for any individual offender will be. We are merely fixing the limits of the discretion of the court. The maximum penalty must be adequate for the worst example of the class of offence and before we amend any proposed penalty in this Bill we must consider that point of view and not any trifling offence that may occur or any trifling circumstances. Some members sometimes suggest that if Parliament fixes a high maximum it means that the courts are required to fix high penalties in the general run of cases before them.

The Hon. F. J. Condon—That is a fact.

The Hon. R. J. RUDALL—I suggest that it is not a fact and I do not believe it to be true.

The Hon. F. J. Condon—Frequently magistrates and judges refer to Parliament's intention in prescribing heavy penalties.

The Hon. R. J. RUDALL—That may be so with severe cases, but let me provide some illustrations. The maximum penalty for manslaughter is imprisonment for life and there is only one more severe penalty in our law. It has happened frequently, and will happen again, that persons found guilty of manslaughter have been fined or, in some instances, released on bond. That has happened because the court has considered, as it should, the individual circumstances of the cases. Each case must be decided on its merits. When a charge of simple larceny is dealt with in the Supreme Court the maximum penalty is five years' imprisonment but when it is dealt with in a police court it is two years' imprisonment. Almost daily one reads of cases where defendants found guilty of larceny are punished by small fines or released on bonds to be of good behaviour. The fact that the maximum penalty is either five years or two years, in accordance with the court hearing the charge, does not prevent the court, in practice, from imposing a lower penalty if the justice of the case warrants it. I stress that because several instances have been given suggesting that maximum penalties might be imposed in cases not meriting them.

Sir Wallace Sandford referred to a man committing a nuisance in a public place. He said that in the suburbs there are very few public conveniences to which people can go for the purposes of relieving themselves. He suggested that a man who relieved himself in a public place as secretly as possible would be liable to a fine of £25. That is an instance where all the circumstances would be considered by the court and if it was satisfied that that was the true position the charge would either be dismissed as trivial or a small fine imposed. I doubt whether, in the first place, the police would even lay a charge and there would certainly be no question of a £25 fine. However, if Sir Wallace and a companion attended a picture show and went out at half time, as so many do, to have a breath of fresh air, and there saw in front of everybody a man deliberately relieving himself in the gutter his reaction would be "the man deserves to be whipped." It is that class of case we are dealing with in providing maximum penalties. Do not think I am inventing these facts—they are from an actual case. It is not the slightest use prescribing a maximum penalty too small to control these offences. Where circumstances are such that a heavy penalty should be imposed, unless there is a maximum penalty which imposes pain or trouble on the offender it will be no deterrent.

All these matters are governed by the Justices Act and if members examine section 75 of that Act they will realize the tremendous powers given to a court and used by it every day in mitigating a penalty. It is the background on which the law operates in considering the maximum penalty. I do not want to reiterate what Mr. Rowe has said, but any practising lawyer can tell members how frequently that section is put into operation. The court has full powers to do what it thinks just to meet the circumstances of a case. I beg members not to be led aside by thinking of the maximum penalty in connection with minor offences. Bear in mind that the police are acting in these matters and that we are passing this legislation for the protection of society.

The Hon. F. J. Condon—Would you like the Bill passed without any comment?

The Hon. R. J. RUDALL—I tried to make it clear that it is the duty of every honourable

member to consider penalties of this description and I hope I have not suggested anything to the contrary. I would never do that. In matters of this kind it has to be remembered that there are in our society a certain number of people without any respect for the law. They are not the ordinary type we come in contact with and they must be kept under control. The only way to do that is by having maximum penalties. If we do not do that it is merely playing with the position.

Bill read a second time.

In Committee.

Clauses 1 to 4 passed.

Clause 5—''Proof of lawful authority and other matters.''

The Hon. F. J. CONDON—There seems to be a tendency on the part of some members to say, ''Here is a Bill; we must not debate it, but we must pass it.'' I attack this Bill because I have just as much responsibility on this matter as the Attorney-General. I agree with a number of penalties, but there appears to me to be an attempt right through to be as harsh with minor offences as with serious offences. For years I have read press reports of remarks made by the Chief Justice and other justices of the Supreme Court, special magistrates and justices of the peace to the effect that Parliament has looked upon certain offences as serious because the penalty provided is very high, and therefore it is the responsibility of every hoonurable member to give this matter serious consideration. Nobody in this House has a higher opinion of the Commissioner of Police and his officers than I, and they are entitled to receive every consideration from Parliament. There is another side to this, however, and although I support increased penalties I do not support the proposed increases. Last year 241 extra justices were appointed in this State and they as well as the thousands of existing justices will be called upon from time to time to administer the law, and they will consider what the Minister has said. The onus should not always be on the defendant so why should the Act be altered; if the power is there and it is not intended to alter it why is this provision introduced? Giving the Commissioner of Police power to issue a warrant without applying to a justice is an alteration of the law. The clause places on the defendant the onus of proving lawful authority, reasonable cause, reasonable excuse, etc., in cases where it is an offence to do an act without lawful authority, reasonable cause, or reasonable excuse. Section 56 of the Justices Act contains a similar provision. The clause removes doubts about the application of section 56 to offenders under this Bill. It provides that in charges for being on premises without lawful excuse the onus of proving absence of lawful excuse will remain on the prosecutor (as has previously been decided by the Supreme Court). But in other cases, it will be on the defendant to prove his excuse. There is sufficient power under the present law and therefore no need for the clause.

The Hon. R. J. RUDALL (Attorney-General)—Mr. Cudmore set out very clearly the reason for the clause—that it did not alter the law but made an omnibus clause, instead of having to refer to the different things in the sections, and the old sections will be repealed. Where the onus is still on the defendant in these cases it is not an unreasonable onus and Mr. Cudmore would be the first man to object if it were unreasonable.

Clause passed.

Clause 6—''Assaulting and hindering police.''

The Hon. F. J. CONDON—I agree that Parliament should take every opportunity to protect the police, but increasing the penalty for assaulting or resisting the police from £20 or six months to £100 or 12 months, or both, is unreasonable. One would have thought that the gentleman who recommended the fines would have considered whether heavy fines were necessary.

The Hon. F. T. Perry—Surely the honourable member does not call these offences minor breaches?

The Hon. F. J. CONDON—No, but the increase is substantial, and it is not reasonable to increase a fine five times. I want to reduce the penalty by half and the sentence by half, and I therefore move in the third line—

To delete ''one hundred'' with a view to inserting ''fifty.''

The Hon. E. ANTHONEY—I do not support the amendment for the very fact that during the last year there were 140 cases of assault upon policemen. This is an indication that the present fine is not a deterrent. The only way to stop this practice is to make the penalty such that people will not assault the police in the execution of their duty. Although the honourable member says that is not a matter of money it is, nevertheless, largely a matter of values, for £20 today is not the same

as it was 20 years ago, and I have no doubt that that aspect was considered in drafting the Bill.

The Hon. C. R. CUDMORE—I am surprised that the honourable member should have moved this amendment. When I looked through the Bill this was the one penalty that did not seem to me to be heavy enough. There is no such bad crime as that of assaulting the police. How are we to carry on as a civilized community if we condone these assaults? I should like to have seen some corporal punishment provided for this offence—a few rounds of the stick. That is the only way to stop it, and is what should be done. I think such offenders are extraordinarily lucky that this penalty is not more severe and I am entirely opposed to the amendment.

The Committee divided on the amendment—

Ayes (4).—The Hons. K. E. J. Bardolph, S. C. Bevan, F. J. Condon (teller), and A. A. Hoare.

Noes (15).—The Hons. E. Anthoney, J. L. S. Bice, J. L. Cowan, C. R. Cudmore, L. H. Densley, E. H. Edmonds, N. L. Jude, A. L. McEwin, A. J. Melrose, F. T. Perry, W. W. Robinson, C. D. Rowe, R. J. Rudall (teller), Sir Wallace Sandford, and R. R. Wilson.

Majority of 11 for the Noes.

Amendment thus negatived.

The Hon. F. J. CONDON—I move in the third line—

To delete "twelve" with a view to inserting "six."

I resent very much the insinuation that I condone this crime. I am quite sincere in my motive and do not want such insinuations made against me. I feel that 12 months' imprisonment is too severe for this type of crime. If my amendment is carried it will mean that a person assaulting the police can be fined £100 and given six months' imprisonment. That is a very severe penalty and I ask members to support me.

The Committee divided on the amendment—

Ayes (4).—The Hons. K. E. J. Bardolph, S. C. Bevan, F. J. Condon, and A. A. Hoare.

Noes (14).—The Hons. E. Anthoney, J. L. S. Bice, J. L. Cowan, C. R. Cudmore, L. H. Densley, E. H. Edmonds, N. L. Jude, A. J. Melrose, F. T. Perry, W. W. Robinson, C. D. Rowe, R. J. Rudall, Sir Wallace Sandford, and R. R. Wilson.

Majority of 10 for the Noes.

Amendment thus negatived.

The Hon. F. T. PERRY—Although there is difference in money values in present day circumstances I think Mr. Condon has something in the matter of time, for that is the same now as it was 10 years ago, and I should like the Attorney-General to explain the reason for increasing the time factor.

The Hon. R. J. RUDALL—Increased imprisonment follows on the increased fine and in any case I feel that, as a maximum penalty, the period of six months for hindering or resisting the police is not enough in certain circumstances. I do not think I can carry it much further than that. We should have regard to serious cases rather than light ones.

The Hon. K. E. J. BARDOLPH—I support the Leader of the Opposition and thoroughly agree that the police should be protected. In major issues affecting the community Parliament often sets up a Select Committee to inquire into the facts. This Bill amends existing legislation and provides for higher penalties. Under our Parliamentary set-up various committees are established to investigate these matters.

The Hon. E. Anthoney—There was a committee in this instance.

The Hon. K. E. J. BARDOLPH—Yes, and I do not suggest it had any ulterior motive in introducing these proposals because its personnel was above reproach, but no report has been submitted to Parliament. The Attorney-General has prepared an analysis of the amendments in order to present members with a true picture of the contents of the Bill. Had the committee submitted a report members could have reviewed it and understood the committee's reasons for the amendments. Select committees have been appointed on other occasions and it would have been the correct thing to do in this case.

The Hon. E. ANTHONEY—I agree that Parliament should be given all possible information before making a decision, but a committee was appointed and took 2½ years to reach a decision. I wonder how much more Parliament could have added to its suggestions.

The PRESIDENT—Order! I cannot allow a second reading debate on this clause.

The Hon. N. L. JUDE—The provision of a penalty of £50 fine or imprisonment for six months or both for hindering a police officer seems rather heavy when compared with a fine of £100 or imprisonment for 12 months or both for assaulting a police officer. Under subclause (5) "hinder" includes "disturb." I accept the Attorney-General's explanation

that there may be a considerable degree of hindrance or disturbance, but subclause (6) reads:—

Where in the hearing of a member of the police force engaged in the execution of his duty a person uses offensive or abusive language to or concerning such member, he shall be deemed to have hindered such member in the execution of his duty.

That brings an offender within the provisions of subclause (2), relating to any person who hinders a member of the police force. A fine of £50 or imprisonment for six months, or both, even as a maximum, for a person under the influence of alcohol or who loses his temper and swears at a police officer is too high. I believe subclause (6) should be reworded.

The Hon. R. J. RUDALL—The reason for "'hindering' including 'disturbing'" in subclause (5) is that in certain cases it is somewhat difficult to distinguish between conduct that may be classed as either a hindrance or a disturbance, and in order to make it quite clear this subclause has been included to give the court power to act irrespective of whether it is hindrance or disturbance. Subclause (7) refers to offences in a public place or in a police station, but police officers, in the execution of their duty, must enter private houses and other places which cannot be described as public and the language used towards them on occasions in those places is of the nature one could not credit a person would use. Why should police officers have to tolerate that conduct when they are doing their duty? They should not be subject to a violent stream of abuse and subclause (6) is designed to meet those circumstances.

Clause passed.

Clause 7 passed.

Clause 8—"Challenges to fight, and prize fights."

The Hon. F. J. CONDON—This is substantially the same as section 84 of the Police Act, but there a fight or challenge to fight in accordance with commonly accepted rules of boxing is not declared to be an offence. The fine is increased from £20 to £50. If I were to challenge Mr. Cudmore to a fight I could be fined £50. I realize it is useless my moving amendments to reduce these penalties, but I draw members' attention to the ridiculousness of some of them.

Clause passed.

Clauses 9 to 21 passed.

Clause 22—"Indecent language."

The Hon. F. J. CONDON—The penalty for indecent language is increased from £5 to £50, but the maximum penalty of two months' imprisonment is not altered. That is an inconsistency, of which there are many in the Bill.

Clause passed.

Clause 24—"Urinating, etc., in a public place."

The Hon. A. J. MELROSE—I opposed this clause on the second reading but am now satisfied with the explanation given by the Attorney-General. There appears to be a neglect on the part of local government bodies in providing conveniences for men and particularly women. Although it is an offence to commit these minor indecencies, no provision is made, except by shops or hotels, for women, and very little is made for men.

The Hon. Sir WALLACE SANDFORD—I dealt with this matter in my second reading speech, but I now withdraw my opposition because of the Minister's satisfactory and convincing explanation. I wonder whether such conveniences as we apparently boast about exist, because I found on personal inspection at a number of hotels their conveniences were locked up, and I presume this takes place at bar closing time. Steps should be taken, if not in this legislation, then in some other, to see that accessible conveniences are provided by the authorities.

Clause passed.

Clauses 25 to 32 passed.

Clause 33—"Publication of indecent matter."

The Hon. F. J. CONDON—The penalty provided is not sufficient. There have been numerous complaints about the publication of comics which are not in the best interests of children. Certain public bodies have endeavoured to do something in this matter. However, it seems to be a matter of passing the buck—the Commonwealth passing it to the States and the States passing it back to the Commonwealth. The latest information is that the Commonwealth Government says that if the States ask them to take uniform action probably something can be done. It is the duty of Parliament to protect children and to see that publications are fit for reading, so I stand solidly behind the Government in making this penalty as heavy as possible.

The Hon. E. ANTHONEY—The clause will be difficult to police if it is interpreted literally. For example, what might be an

indecent painting or statue to one person might not be considered to be such by another. A nude figure is considered indecent by some but not by others.

The Hon. F. J. Condon—Is not the honourable member dealing with the court's power?

The Hon. E. ANTHONEY—Yes, but I am talking about the court's power with regard to indecent literature, of which there is a lot in circulation. Probably these books are not read carefully before distribution and when they get into the hands of the public they are found to be full of sex. Who is going to decide whether they are indecent? Will it be the task of a police officer?

The Hon. F. J. Condon—The courts will decide that.

The Hon. E. ANTHONEY—The Government should set up a committee to deal with this type of literature. Perhaps the Minister can enlighten us as to how this clause is likely to be interpreted?

The Hon. R. J. RUDALL—This clause is a combination of sections 86 (1) (*f*) and 108 of the Police Act. Action was taken in connection with one book and it was quite effective. The question raised by the Leader of the Opposition is an exceedingly difficult one but we have attempted to meet that by subclause (3) which is a new provision. This is an important contribution to the problem because previously the court could decide only on the effect on the community as a whole, and it is obvious that certain publications which might not be indecent for adults are most certainly indecent for children. The comics mentioned are distributed for children and this clause will enable them to be dealt with in a way that was not possible under the old section.

Clause passed.

Clauses 34 to 43 passed.

Clause 44—"Use of land for training horses."

The Hon. F. J. CONDON—This is a new clause inserted at the suggestion of public authorities holding land for public purposes and I take it that it means that anyone who exercises a horse on parklands will be liable to a fine of £25.

Clause passed.

Clauses 45 to 47 passed.

Clause 48—"Posting bills and writing on walls, etc."

The Hon. F. J. CONDON—In this case the penalty is increased from £2 to £25 and once again I draw attention to this heavy increase.

The Hon. E. ANTHONEY—I support this clause wholeheartedly and commend the Government on introducing it. During the course of the last elections bills were deliberately pasted on pathways in front of houses, on lamp posts and on property of the Postmaster-General and the remnants of some of them remain to this day.

Clause passed.

Clause 49—"Extinguishing street lamps."

The Hon. F. J. CONDON—Again I draw attention to the alteration of penalty in order to show the inconsistency I have already mentioned. I do not intend to move an amendment for I know I will not get sufficient support.

Clause passed.

Clause 50—"Unlawfully ringing house bells."

The Hon. F. J. CONDON—I suppose every member of this Chamber, when a boy, could have been charged with ringing door bells.

The Hon. R. J. Rudall—This does not apply only to children.

The Hon. F. J. CONDON—But children are not exempt, so it will fall back on their parents.

The Hon. S. C. BEVAN—No adult person of ordinary intelligence is likely to go around ringing door bells merely for the sake of doing so. I imagine that the culprits will be children who are unaware of the laws of the country, but imbued with the spirit of adventure and fun. I admit doing some door knocking as a child, and I often got a good clip under the ear when the householder followed the cotton and caught me. Now it is proposed to inflict a fine of £10 upon the parent—

The Hon. R. J. Rudall—No, that is the maximum penalty.

The Hon. S. C. BEVAN—The parent could be fined £10 and I think there is no doubt about that. I must protest against the heavy increase in the penalty, for I feel sure that the people who will suffer will be the innocent parents.

The Hon. C. D. ROWE—We are rather losing our sense of responsibility in talking of all these penalties as being too severe. We are all justices of the peace and therefore we should keep in mind what I tried to emphasize earlier, namely, the powers of justices under the Justices Act. In view of the statements that this would normally be an offence by children, we should consider section 75 (3) of the

Justices Act, which gives complete discretion to the court. If a bell were rung under trivial circumstances no doubt the court would invoke that provision and there would be no question of any fine. This clause provides a maximum fine for the worst cases that could occur.

Clause passed.

Clauses 51 to 53 passed.

Clause 54—"Street musicians."

The Hon. F. J. CONDON—Here again the penalty is raised from £2 to £5. It was absurd for Mr. Rowe to speak in the strain that he did, for we are saying to the justices, in effect, "The penalty has not been severe enough, therefore we are increasing it and you can use your discretion accordingly."

The Hon. R. J. Rudall—In proper circumstances.

The Hon. F. J. CONDON—What is the necessity for it? We are going too far and making ourselves look ridiculous.

Clause passed.

Clauses 55 to 77 passed.

Clause 78—"Proceedings on arrest without warrant."

The Hon. F. J. CONDON—The present law provides that the Commissioner of Police cannot issue a warrant until application is made to a justice of the peace. Under this clause will the Commissioner of Police be able to issue a warrant without going to a justice of the peace?

The Hon. R. J. RUDALL—All persons arrested are not arrested on warrant. This clause merely applies to persons arrested without a warrant.

Clause passed.

Clause 79—"Arrest without warrant where warrant has been issued."

The Hon. F. J. CONDON—I believe that under the present law if a person wants to issue a warrant against another an application must be made before a justice of the peace. Does this clause give the Commissioner of Police power to issue warrants?

The Hon. R. J. RUDALL—Unless a warrant is obtained from a justice of the peace a person cannot be arrested on a warrant. The only warrant the Commissioner of Police can issue is a general search warrant.

Remaining clauses (80 to 85), schedule, and title passed.

Bill reported without amendment and Committee's report adopted.

CONSTITUTION ACT AMENDMENT BILL (MINISTERS).

Received from the House of Assembly and read a first time.

DOG FENCE ACT AMENDMENT BILL.

Received from the House of Assembly and read a first time.

ROYAL ADELAIDE HOSPITAL.

The President laid on the table the report of the Parliamentary Standing Committee on Public Works on new nurses' quarters for the Royal Adelaide Hospital (Northfield Ward), together with minutes of evidence.

ADJOURNMENT.

At 5.08 p.m. the Council adjourned until Wednesday, September 23, at 2 p.m.