

importance that the Wynyard tunnel shall be used effectively to relieve congestion on a busy thoroughfare and that, if at all possible, escalators shall be provided.

Motion agreed to.

Bill read a second time and reported from Committee without amendment; report adopted.

Bill read a third time.

ADJOURNMENT.

Motion (by Mr. J. J. Cahill) agreed to:

That this House do now adjourn until Wednesday next at 11 o'clock, a.m.

House adjourned at 4.26 p.m.

Legislative Council.

Tuesday, 14 November, 1950.

Printed Question and Answer—Constitution Amendment (Legislative Assembly) Bill (Bill Reserved)—Assent to Bills—Leave of Absence—Centenary of the University of Sydney—Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill—Moratorium (Amendment) Bill—College Street Pedestrian Subway Construction Bill—Electricity Commission (Balmain Electric Light Company Purchase) Bill—Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill (second reading)—Moratorium (Amendment) Bill (second reading)—Adjournment (National Club).

The PRESIDENT took the Chair at 4.30 p.m.

The opening Prayer was read.

PRINTED QUESTION AND ANSWER.

PAYMENT BY AUSTRALIAN GOVERNMENT TO INTERNATIONAL WORLD BANK.

The Hon. P. M. MCGIRR asked the VICE-PRESIDENT OF THE EXECUTIVE COUNCIL:—(1) Can the Minister say what amount has been paid by the Australian Government into the International World Bank? (2) How was this money paid—in gold, or by way of products? (3) Is such bank paying interest on the amount, and, if so, at what rate? (4) Is this the same bank that has made a loan to the Australian Government, and, if so, on what terms was the loan made?

Answer,—(1) Australia's subscription to the International Bank for Reconstruction and Development is \$200 million, and the Articles of the Bank Agreement provide that only 20 per cent. of each member country's subscription may be used for loans. The other 80 per cent. of the authorised capital can be called up only when required to meet the bank's obligations and is therefore in the nature of a guarantee fund. Of the 20 per cent. capital subscription called up, 2 per cent. must be in the form of gold or U.S. dollars immediately available for lending; the remaining 18 per cent. is paid in the currency of the various member countries (or partly, if the bank agrees, in the form of non-negotiable, non-interest-bearing securities), and may not be used for loans without the consent of the country whose currency is to be used. In accordance with these provisions, Australia has subscribed in cash and gold and by lodging special security with the bank's depository, a total sum of £17,313,955.

(2) The subscription has been made in the following form: (a) Gold valued at £1,242,537 has been lodged to the account of the International Bank at the Bank of England. (b) Australian currency to the amount of £160,868 has been credited as a working balance to the account of the International Bank at the Commonwealth Bank, Sydney (the latter being the Australian depository for the International Bank. (c) Special non-negotiable, non-interest-bearing security to the amount of £15,910,550 has been issued to the International Bank and lodged with the Commonwealth Bank.

(3) No interest is paid by the bank on member country's subscriptions, but the Articles provide that the governors of the bank shall determine annually what part of the bank's net surplus, after making provision for reserves, shall be allocated to surplus and what part, if any, shall be distributed between member countries. If any part is to be distributed, up to 2 per cent. shall be paid, as a first charge against the distribution for any year, to each member on the basis of the average amount of loans

outstanding during the year made from the paid-up capital funds of the bank out of currency corresponding to its subscription. Any balance remaining to be distributed shall be paid to all members in proportion to their shares in the bank. In this respect, regard must be had to the fact that it was never intended that the paid-up capital of member governments should provide the whole, or even a major part, of the bank's lending resources, and accordingly the bank is empowered to borrow funds for use in its operations, provided that it obtains the approval of the member in whose markets the funds are to be borrowed. Interest is payable on bonds issued by the bank in various markets in respect of such borrowings.

(4) The International Bank for Reconstruction and Development is the bank from which the Commonwealth Government recently obtained a loan of \$100 million. This loan is subject to the following terms: (a) Period of repayment is twenty-five years from 1950, repayment to commence in September, 1955. (b) The rate of interest is $3\frac{1}{2}$ per cent. per annum, plus an additional commission of 1 per cent. per annum. The bank is required under the Articles of Agreement to charge a commission of not less than 1 per cent. per annum and of not more than $1\frac{1}{2}$ per cent. per annum, the commission charge being set aside in a special fund to meet any defaults which occur. (c) A commitment charge of 15s. per cent. per annum is payable in the first $2\frac{1}{2}$ years on unused balances of the loan not drawn within this period. Thus the rate of $4\frac{1}{2}$ per cent. per annum ($3\frac{1}{2}$ per cent. interest plus 1 per cent. commission) is payable in the first $2\frac{1}{2}$ years only on those portions of the loan which are drawn within this period.

Assent, his Excellency had reserved the bill for the signification of his Majesty's pleasure thereon; that the proper measures would be forthwith adopted for obtaining the King's decision accordingly; and that in the meantime the bill had been transmitted to the Legislative Council, to await his Majesty's pleasure.

ASSENT TO BILLS.

Royal assent to the following bills reported:

Hunter Valley Conservation Trust Bill.
Wild Dog Destruction (Amendment) Bill.

LEAVE OF ABSENCE.

The PRESIDENT reported the receipt of a communication from the Governor intimating that leave of absence had been granted to the Hon. A. A. Alam for six months commencing on 24th November, 1950.

CENTENARY OF THE UNIVERSITY OF SYDNEY.

The PRESIDENT reported the receipt of the following communication:

The President,
Legislative Council,
Parliament House, Sydney.

Dear Sir,

At a regular meeting of the Senate of the University of Sydney held on 6th November, 1950, the Senate placed on record its appreciation of the ceremony arranged by you and members of the Council on 10th October, 1950, to mark the centenary of the passage of the Act incorporating the University.

The Senate asked me to convey to you and members of the Legislative Council its thanks for the cordial congratulations conveyed to the Senate in the resolution passed by the Legislative Council on 10th October:

Yours faithfully,
(Sgd.) W. H. MAZE, Registrar.

CONSTITUTION AMENDMENT (LEGISLATIVE ASSEMBLY) BILL.

BILL RESERVED.

The PRESIDENT reported that this bill, as finally passed by the Legislative Council and the Assembly having been presented to the Governor for the Royal

COAL AND OIL SHALE MINE WORKERS (SUPERANNUATION) AMENDMENT BILL.

Bill received from the Legislative Assembly and read a first time.

Motion for suspension of standing orders agreed to.

MORATORIUM (AMENDMENT) BILL.

Bill received from the Legislative Assembly and read a first time.

Motion for suspension of standing orders agreed to.

COLLEGE STREET PEDESTRIAN SUBWAY CONSTRUCTION BILL.

Bill received from the Legislative Assembly and read a first time.

ELECTRICITY COMMISSION (BALMAIN ELECTRIC LIGHT COMPANY PURCHASE) BILL.

Message received from the Legislative Assembly disagreeing to the amendment made by the Legislative Council in the bill.

IN COMMITTEE.

(The Hon. E. G. WRIGHT in the Chair.)

Consideration of Legislative Assembly's message.

The Hon. R. R. DOWNING, Minister of Justice and Vice-President of the Executive Council [4.43]: I move:

That the Committee does not insist upon its amendment disagreed to by the Legislative Assembly in this bill.

The Committee will recall that the amendment moved by the Hon. Sir Henry Manning had for its purpose the placing beyond doubt of the position of the Hon. H. D. Ahern who, we understand, is at present employed by the company proposed to be acquired by the Electricity Commission. When accepting the amendment moved by the Hon. Sir Henry Manning, I intimated to hon. members that I felt that the Hon. H. D. Ahern was in a special position and that he was entitled to consideration. The amendment was accepted so that the Minister in charge of the bill in another place would be given an opportunity to consider the matter. Consideration was given to it, and the Minister felt that there were some grounds for feeling that the Hon. H. D. Ahern was in a special position, even although he did not like departing from what might be considered to be the principle laid down in the Constitution Act. However, he felt that the amendment could be accepted only

if it were agreed to by an almost unanimous expression of opinion of hon. members in another place. When the matter came before that Chamber, considerable criticism was directed at the Legislative Council's amendment, and the Government, on consideration of the tenor of the debate, felt that it could not accept the amendment because of the absence among members of the Opposition of the condition that the Government felt should exist, namely, general recognition of the special circumstances of the case. Without saying anything more on the subject at this stage, it is not actually free from doubt whether the bill brings the Hon. H. D. Ahern within the provisions of section 17B of the Constitution Act, 1902.

The Hon. Sir HENRY MANNING [4.48]: Before examining the amendment which has not been accepted by another place, there are one or two preliminary matters to which I wish to refer. The Minister has just stated accurately that the amendment was accepted merely for the purpose of having the matter considered by the Minister in another place. There is no criticism in that respect at all. Another statement made by the Minister just now is also accurate; that is, that I moved the amendment so that the position of the Hon. H. D. Ahern could be placed beyond doubt. It is arising out of that matter and the section of the Constitution concerned that I wish to make a few remarks, because it is important that we should have these matters enunciated. In the first place, the amendment that is now the subject-matter before us was moved by me, as the Minister has stated, to place beyond doubt whether the election of the Hon. H. D. Ahern to this Chamber would be invalidated in consequence of the alleged acceptance of this particular office. Of course, if my amendment had been accepted, there would have been no difficulty. I do not wish to discuss the reasons that prompted those in another place to take the action that they did. I do not think it is necessary. However, I wish to state some of the reasons for my attitude on

this matter so that the Minister and his Government will deal with the amendment in a way that might do great service to both this House and another place. The amendment provides that the transferred servant in question shall not be deemed to be the holder of, or accept, an office of profit under the Crown within the meaning of section 17B of the Constitution Act. Before his election becomes void it is necessary that, after election, he shall have accepted an office of profit under the Crown.

Before a member comes within section 17B of the Constitution, four requirements must be satisfied. First, there must be an acceptance; secondly, that acceptance must be of an office; thirdly, the office must be an office of profit; fourthly, the office must be an office under the Crown. I do not intend to discuss whether this is an office, or an office of profit. But has there been an acceptance? Is this an office under the Crown? Is the commission, for the purposes of section 17B of the Constitution, the Crown? I suggest that both questions should be answered in the negative. I should have adopted that attitude earlier, but for the obvious attraction of an amendment. I submit that there has not been an acceptance, and that the Commission is not the Crown within the meaning of section 17B of the Constitution.

I do not wish to be at cross purposes with the Minister, but I point out that there are a number of reasons why he might take the course that he suggests, with the added obligation either to take the advice of the Crown law officers and assure the House that the office does not come within the meaning of section 17B, or ask the House to decide the matter. The House undoubtedly has the right to decide whether this is an acceptance, whether the commission is the Crown, and whether the Hon. H. D. Ahern's election was perfectly valid. I suggest the latter course. This is an extremely difficult matter to decide; but it can be reduced to a few simple propositions. There are at least

two ways in which the safety of a member's seat may be threatened. One is to declare the election invalid; the other is to treat it as void. The two are vastly different. Where an election is declared invalid, the Parliament considers the merits of the case, but where an election is declared void by legislation that leaves the House without a choice. Therefore, it is important to remember that we are considering whether the election is void. In many cases that is a difficult matter to decide. I do not suggest that it is in this instance but we must take extreme care to avoid an injustice. None of us wishes the Hon. H. D. Ahern to retain his seat if he is not entitled to do so, because that would establish a dangerous precedent. On the other hand, if his seat is validly held, we should be very loth to suggest that he should vacate it for fear that the legislature might consider his election void. Those are the two difficulties that are presented. The matter has been dealt with over and over again by English writers on parliamentary procedure. Ever since Elizabethan days when doubts have arisen it has come up for decision in the House of Commons. Before about 1856 all such cases, either of disqualification from election, or of voidance of election, were treated as matters of privilege. It became somewhat irksome at that stage for Parliament to continue treating questions in which a declaration was necessary or desirable, because a select committee was usually appointed for the purpose. Consequently that function was transferred to a Court of Disputed Returns. That procedure was not adopted in cases where, by the statute, the election to a seat in the House became void, as in the case now before the Committee. In this instance the Government can say that on the advice of its legal advisers it is convinced that the continued occupancy by the Hon. H. D. Ahern of his seat in this Chamber is entirely valid; or, if it does not feel disposed to do that, it can have the question of whether his election is void referred for consideration to a select

committee consisting of most of the legal members of the Legislative Council and the report of that select committee can be dealt with by this Chamber at its pleasure, or it may be dealt with in the first instance by the House itself.

I mention those two courses so that the Government might consider them. They are suggested not in any spirit of hostility—far from it—but with a full regard to the need to preserve the orderly conduct of the affairs of this Parliament. It is only when members have a true appreciation of the duties that they have to perform in circumstances such as these that they can claim to be acting in the right way, and are establishing precedent that may be safely applied on future occasions to either parties or individuals in similar circumstances. I hope that the Minister will give earnest consideration to my suggestions.

Colonel the Hon. H. J. R. CLAYTON [5.3]: I support the suggestions made to the Minister by the Hon. Sir Henry Manning. On the last occasion that this subject was before the Committee I expressed the view that the Hon. H. D. Ahern had not come within the mischief of section 17B (3), which provides that:

If after being elected as a member of the Legislative Council any person accepts any office of profit under the Crown . . .

My submission then was and now is that no opportunity has been afforded to the Hon. H. D. Ahern of accepting or rejecting an office of profit under the Crown. No limit of time has been prescribed within which he can exercise either an election or his volition to accept. Before the bill becomes law he is simply a servant of the Balmain Electric Light Company, but as soon as the measure becomes law he will be holding an office of profit under the Crown which he has not had an opportunity of accepting. In those circumstances the mischief either has been committed or never will be committed. The position of the Hon. H. D. Ahern is different from that of a member of the Legislative Assembly to whom the

appropriate provision of the Constitution Act applies. Section 26 of that Act expressly provides:

No person—

- (a) holding an office of profit under the Crown other than one or more of the offices enumerated in the Second Schedule hereto; or
- (b) having a pension from the Crown during pleasure, or for any term of years,

shall be capable of being elected or of sitting or voting as a member of the Legislative Assembly.

There is no such expression as “if after being elected as a member of the Legislative Assembly” in that provision. It does not matter whether it is before or after his election, no person holding an office of profit under the Crown can be elected or sit or vote as a member of the Legislative Assembly. It is not a question of whether he does or does not accept the office of profit with his eyes open. When the matter was last before the Committee Sir Henry Manning pointed out that if a person held an office of profit under the Crown and submitted himself for election to this Chamber and was elected he would not have created an offence. If a person now holding an office of profit under the Crown submits himself for election to this Chamber, nothing contained in the Constitution Act relating to the Legislative Council would prevent him from being elected. I do not know whether that argument would apply to the Hon. H. D. Ahern. The combination of the facts that the hon. member did not accept an office of profit under the Crown, and that he or some other person could be elected to this Chamber, makes it obvious that the Hon. H. D. Ahern does not come within the mischief of this section.

A clear distinction is made in the Constitution Act in respect of members of the Legislative Assembly and members of the Legislative Council. It seems that the Legislature has determined that in no circumstances can a person belonging to the Legislative Assembly hold an office of profit under

the Crown; but it is obvious that the Act contemplates that there shall be more latitude in respect of a member of the Legislative Council. I support the suggestion put forward by the Hon. Sir Henry Manning and I hope that the Committee will deal with the position of the Hon. H. D. Ahern as it sees fit after proper consideration.

The Hon. R. R. DOWNING (Minister of Justice and Vice-President of the Executive Council) [5.8], in reply: I agree that this matter merits consideration. Hon. members will appreciate that no question will arise immediately the bill is assented to as to the eligibility or otherwise of the Hon. H. D. Ahern to occupy a seat in this Chamber. The Committee will recall that the bill provides that the assets of the Balmain Electric Light Company are not to be taken over until an appointed day. From recollection I think the appointed day is to be not later than six months after the Land and Valuation Court assesses the value of the assets of the company. I expect that the appointed day for the acquisition of the Balmain Electric Light Company will not arrive for some months, and until that happens the eligibility or otherwise of the Hon. H. D. Ahern to remain a member of the Legislative Council will not come into question. I have due regard to the matters raised by the Hon. Sir Henry Manning, and Colonel the Hon. H. J. R. Clayton. I do not wish to be understood as agreeing completely with the Hon. Sir Henry Manning's contention as to the proper procedure to be adopted, but I assure the Committee that, as he suggested, the law officers of the Crown will be asked to examine the position. I appreciate the Hon. Sir Henry Manning's view that there is a distinction between the section of the Constitution Act which declares an hon. member's seat void if he accepts an office of profit under the Crown and the other provision of that Act that his seat shall become vacant upon certain contingencies arising.

The Hon. Sir HENRY MANNING: *May* lays down that in both cases it is a question of privilege.

The Hon. R. R. DOWNING: I appreciate the question of privilege referred to in *May*. I do not wish to give the impression that I am bound to any expression of opinion, but I am in some doubt as to whether section 20 of the Constitution Act read with section 27 (1) of the Constitution (Legislative Council Elections) Act, and section 175B of the Parliamentary Electorates and Elections Act does not make the position in New South Wales somewhat different from that in England. The Hon. Sir Henry Manning may be quite right in his contention but I have some doubts because of section 27 (1) of the Constitution (Legislative Council Elections) Act respecting the determination of questions affecting the qualifications of a member of the Legislative Council. The section reads:

The law for the time being in force relating to the determination of any dispute or question respecting any election, return, or qualification of a Member of the Legislative Assembly, or respecting any vacancy therein shall, mutatis mutandis, apply to the determination of similar disputes or questions respecting the election, return, or qualification of a Member of the Legislative Council, as reconstituted in pursuance of section 17A of the Principal Act, or respecting any vacancy in the Legislative Council as so reconstituted, with the following modifications, that is to say—

Section 175B of the Parliamentary Electorates and Elections Act reads:

Any question respecting the qualification of a member of the Legislative Assembly, or respecting a vacancy in the Legislative Assembly, may be referred by resolution of the Legislative Assembly to the Court of Disputed Returns, and the Court of Disputed Returns shall thereupon have jurisdiction to hear and determine the question.

Because of section 27 (1) of the Constitution (Legislative Council Elections) Act one would read that section of the Parliamentary Electorates and Elections Act as, "Any question respecting the qualification of a member of the Legislative Council or respecting a vacancy in the Legislative Council" may be referred to the Court of Disputed

Returns. The points raised by the Hon. Sir Henry Manning have aroused doubt in my mind whether such a question could be referred to the Court of Disputed Returns, having in mind also that in one section reference is made to a seat being declared "vacant" and that in section 17B (3) of the Constitution Act reference is made to an election becoming "void."

The Hon. Sir HENRY MANNING: There is a precedent to cover the situation.

The Hon. R. R. DOWNING: The precedent that the Hon. Sir Henry Manning has in mind is the Trautwein case, which turned on the provision of the Constitution Act that on the happening of a particular event a seat becomes vacant. The question for the Court of Disputed Returns was whether the member had been found guilty of an offence that was an infamous crime, and it was referred to the court by a resolution of the House.

The question of the Hon. H. D. Ahern's position will not arise for some months and there will be ample opportunity between now and the meeting of the House after Christmas for the Government to obtain the advice of Crown law officers and to consider his position fully. The most that I can do at this stage is to assure hon. members that the Government will give consideration to the position and will act in such a fashion that no injustice will be done to the Hon. H. D. Ahern. Of course, if he is deemed not to be the holder of an office of profit under the Crown, the question of his qualification to hold his seat will not arise. I have considerable doubt whether his position with the commission would be an office of profit under the Crown and that to my mind is the most substantial matter. I have no doubt that the members of the commission itself, who are appointed by the Governor, are holders of offices of profit under the Crown, but whether a servant of the commission is the holder of such an office is a matter of grave doubt.

The Hon. Sir HENRY MANNING: There is also the question of whether under these circumstances there is an acceptance.

The Hon. R. R. DOWNING: That is so, but the gravest doubt in my mind is whether a servant of the Commission is the holder of an office of profit under the Crown. In the time that is available before this question need be determined the Government will, as the Hon. Sir Henry Manning suggested, obtain the views of the Crown law officers and hon. members can be assured that they will be informed of the result.

Motion agreed to.

Legislative Council's amendment not insisted upon.

Resolution reported; report adopted.

COAL AND OIL SHALE MINE WORKERS (SUPERANUATION) AMENDMENT BILL.

SECOND READING.

The Hon. W. E. DICKSON (Minister for Secondary Industries and Minister for Building Materials) [5.17]: I move:

This bill be now read a second time.

The purpose of the bill is to make several amendments to the Coal and Oil Shale Mine Workers (Pensions) Act and thus remove anomalies that have been proved to exist as a result of nine years' administration of the Act and to amend what has in several instances proved to be inequitable administration. For the edification of hon. members I propose to give a brief explanation of the principal objects of the measure. The bill proposes to extend the definition of "Mine Worker" so as to include persons who are engaged in the transport of coal or oil shale from a mine to the point at which the material is delivered by the owner of the mine; persons who screen, wash or load coal or oil shale at such point of delivery; and persons who are employed in the making of

coke. In open-cut mining, great difficulty has been experienced in obtaining adequate replacements of machines and motor lorries. Therefore, the owners who have been unable to maintain sufficient vehicles have arranged with contractors and sub-contractors for the transport of coal. Considerable doubt has been expressed as to whether their employees can, under the present Act, contribute for a pension and consequently it is proposed to amend section 2 of the Act to provide for these persons and also to provide that the owner of the mine shall be responsible for contributions in respect of such persons.

Also, for economic reasons several open-cut colliery owners have constructed central-loading sidings which receive coal from more than one colliery. Formerly, coal was screened at each colliery, but the screening is now done after the coal is delivered to the siding, with the result that mine workers who were eligible to contribute when working on the screens at the colliery are not now eligible because they are not employed in or about a colliery, but are employed after the coal is delivered to the screens which, in some instances, are up to three miles from the colliery. It is not argued that the owners are wrong in adopting this method, but it does not seem just that these men should be denied the rights that they would have enjoyed in normal circumstances. It is proposed to amend section 2 of the Act to cover these persons, but at the same time safeguards will be provided, for the point of delivery of the mineral is strictly defined. In addition, under the Coal and Oil Shale Mine Workers (Pensions) Amendment Act of 1949, provision was made to include certain coke workers, but this provision excluded men who were actually engaged at the works, and who had been so employed for many years. As it is only reasonable that these men should be allowed to contribute until they are compulsorily retired at the age of 65 years, provision is made in the bill for their inclusion under the definition of mine worker.

The measure provides increases in pensions and certain additions to benefits payable under the Act. Sections 6, 7 and 8 of the Act are amended by the bill to increase the present rate of pension for a mine worker from £2 15s. a week to £3 7s. 6d. Provision is made also for the payment of a pension of £3 7s. 6d. a week in all future awards after the date on which the measure becomes law. The costs incurred in providing additional benefits under this enactment will be explained to hon. members at the conclusion of my remarks concerning the other increases that are provided. Provision is made under this legislation also for increases in the allowances or additions to a pension payable under section 9 of the Act, and the allowance for a wife or adult female dependant is to be increased from £2 2s. 6d. to £2 12s. 6d. a week. Subsection (5) of section 9 of the Act empowers the Pensions Tribunal to suspend the allowance or addition in respect of a wife who is invalided and eligible for a Federal pension, and, in lieu thereof, pay the husband an allowance of 30s. a week to enable him to employ a female to care for his wife. That allowance is now inadequate and will be increased to £2 5s. a week.

The bill authorises the tribunal to grant additions to the pensions of certain pensioners who are permanent invalids and have to employ nurses to care for them. The Government has, for some time, had under consideration the position of a retired mine worker who is receiving a pension in respect of himself only, and who, by reason of illness or an accident, and not by his own fault, so deteriorates in health as to be unable to care for himself. The Government holds the view that if a retired mine worker is without substantial means the tribunal should be in a position to award him an allowance of £2 5s. a week to enable him to arrange for a female relative over 16 years of age to care for him, and the bill, for this purpose, inserts a new subsection (5A) in section 9 of the Act.

A further object of the measure is to authorise the tribunal to grant pensions to dependants of a deceased mine worker who was at any time a contributor to the fund. Section 10 of the Act provides a pension for the widow of a deceased pensioner, the widow of a mine worker who died or dies as a result of injuries sustained in the industry, and the widow of a mine worker, whether or not a contributor to the fund, who dies from natural causes. The present rate of £2 5s. a week will be increased to £2 12s. 6d. The bill also relieves an extreme hardship that is experienced at the present time where an allowance is made for a female to care for an invalid wife. Under the present law, if a husband dies before his wife that allowance ceases, and the widow must provide for the nurse out of her £2 5s. a week, which would be impossible. In such a case or in the case of any widow who is totally invalided or unable to perform her domestic duties, the tribunal will, after the passage of this bill, be in a position to grant an allowance of £2 5s. a week to enable the widow to employ a female over 16 years of age to care for her. The tribunal will determine the award on the circumstances of each case.

Under section 10 of the Act, the widow and the child or dependants under 16 years of age of a pensioner who dies, or of a mine worker who dies as the result of injuries sustained in the industry, and the widow of a mine worker who, being a contributor, dies of natural causes, are eligible for the allowance that is paid for them under section 9. But no provision is made for the child of a contributor who dies from natural causes. I am sure that this was never intended, and the tribunal has been of the same opinion. The bill will enable the tribunal to pay such a child the allowance provided for under section 9, namely, a maximum of 10s. a week, and will validate the action of the tribunal in recognising the anomaly and awarding such an allowance where the circumstances have warranted it. The measure also entitles the mine worker, in certain

circumstances, and the dependants of a deceased mine worker, to receive a pension under the Act as well as compensation under the Workers' Compensation Act of 1926, or damages independently of that Act. At the present time, under subsections (2), (3), (3A) and (4) of section 10, machinery is provided for the calculation of a period of disqualification from the receipt of her widow's pension in the case of a widow who receives compensation following the death of her husband from injuries sustained in the industry. This provision is very harsh, for it means that after suffering the loss of her husband, and perhaps being left to clear debts out of the compensation payable, she cannot receive her pension for some lengthy period. This measure provides that she shall be entitled to a pension immediately she lodges an application, and any Federal social services for which she might qualify will be deducted under section 13 of the Act. Also, any widow at present under disqualification will receive her pension as from the date of proclamation of the measure, the rate of benefit to be increased from £2 5s. to £2 12s. 6d. a week.

Under section 10A of the Act a *de facto* widow of the mine worker is entitled to the same benefits as a true widow. The rate of her pension will be increased similarly, and the tribunal, if her circumstances warrant, and if she is totally invalided, may award her an allowance of £2 5s. a week to provide for a female over 16 years of age to care for her. Under section 16 of the Workers' Compensation Act of New South Wales certain lump sum payments in accordance with a table are provided for the loss of a limb or part of the body, and under the Coal and Oil Shale Mine Workers (Pensions) Act any such lump sum must be taken into account when calculating the period of disqualification which must expire before a mine worker, if permanently disabled, can receive his pension. The Government believes that this should not be so, and the Act is to be appropriately amended.

Also, where any mine worker is awarded compensation for injury and accepts a lump sum for a legitimate purpose, such as the purchase of a home, the payment of a mortgage or medical expenses, and the tribunal is satisfied that the money was used for the stipulated purpose, the amount so used should be deducted from the amount to be considered when calculating the period of disqualification. Provision is made also that any such mine worker at present under disqualification can be so treated by the tribunal.

It has been claimed that under this Act any mine worker is entitled to claim his pension at the due date of compulsory retirement irrespective of income and assets—that is, that there is no means test. Yet if a mine worker is receiving weekly compensation payments when he reaches retiring age, this compensation is deducted from his pension, and in fact he is being penalised for an injury sustained in the industry which was not due to his own fault. It is proposed to insert a new subsection (5) in section 12 of the Act to overcome this anomaly. Any such mine worker at present being so penalised will receive his pension as from the date upon which this Act becomes operative. Hon. members will no doubt recall that prior to the amending bill of last year service pensions were paid in addition to miners' pensions. The elimination of this right imposes a great hardship upon some service pensioners, and the bill provides that the amount of the service pension under the Australian Soldiers' Repatriation Act of 1920 shall not be deducted from pensions payable under the principal Act. Thus the *status quo* of any pensioner affected by that provision will be restored as at the date on which it became operative, namely, 16th October, 1949.

For the information of hon. members I now propose to indicate how the necessary finance will be arranged for the increases in rates of pensions and allowances provided by this bill. The amount required will be not less than £293,000

per annum, but no payment will be required from the consolidated revenue of this State. It has been calculated that the proposed increases in Federal social services will mean a saving to the scheme of not less than £118,000 a year, and it is intended that this bill will operate from the same date as the Federal legislation. The Federal Treasurer has given an assurance that the Commonwealth age, invalid, widows' and service pensions will be increased by 7s. 6d. for each man and his wife as from 1st November. There remains the sum of approximately £175,000 to be accounted for. For the financial year ended 30th June, 1950, the excess of revenue from contributions into the pensions fund over all expenditure was over £300,000, and of that yearly surplus £75,000 can be applied for the purposes of this bill, leaving £100,000 to be provided by the mine workers and mine owners. It is proposed to increase contributions by workers by an amount of 6d. a week, making the total contribution 4s. 6d. a week. Section 19 of the Act already provides that the employer shall pay three and a half times the amount payable by the individual employee, and therefore whereas at the present time the contribution made by the owners is 14s. a week, this will be increased to 15s. 9d. a week. Section 19 of the Act will be amended to enable the tribunal to re-estimate the revenue required for the year 1950-51, and to obtain that revenue.

The provisions of the original Act are to be reverted to, and the bill provides that the Chairman of the Miners Pensions Fund shall be appointed by the Governor for such time as may be specified in and by the instrument of his appointment. Prior to the introduction of this bill the Chairman of the Joint Coal Board was, by virtue of his office, a member and chairman of the Pensions Tribunal. The Federal Government has now agreed that such a position cannot continue because the position of Chairman of the Joint Coal Board is a full-time job, and his duties leave no time for the study of the many difficulties that arise under this scheme. Section

15 of the Act will be amended, therefore, to provide for the appointment of a chairman by the Governor, as was done when the scheme was inaugurated in 1941. It is proposed further to authorise the payment of a higher subsidy to mine workers whose incapacity for work was caused by the inhalation of dust before November, 1947. Under the Coal and Oil Shale Mine Workers (Pensions) Further Amendment Act of 1947, mine workers partially incapacitated by the inhalation of dust in coal mines became eligible, subject to certain conditions, for a subsidy sufficient to bring the partial compensation being received up to the level of the maximum compensation for which the worker might have qualified if he had been totally incapacitated. That maximum compensation was contingent upon the average weekly wage earned by the worker prior to the injury. This applied as from 5th November, 1947. Further, it has been found in a number of cases that, due to sickness and lack of trade during the twelve months prior to the cessation of employment, the average weekly wage was unduly low. In some cases the average was barely £3 a week. Hon. members will see that those workers who were in this unfortunate position could not qualify for a reasonable percentage of the maximum compensation, at that time £3 10s. a week. To obtain this small maximum the average weekly wage earned prior to the injury would need to have been not less than £5 7s. a week. Section 19B of the Act covering the payment of subsidy is proposed to be amended to allow the amount of subsidy payable to be calculated as though the average weekly wage had been not less than £5 7s.

Finally, this bill amends the title of the Principal Act, which has been known as the Coal and Oil Shale Mine Workers (Pensions) Act because the fund was originally a pensions fund. It is no longer a pension fund but a superannuation fund, because the miners as well as the colliery owners contribute to it. The bill provides that the name of the Act shall be changed to the Coal and

Oil Shale Mine Workers (Superannuation) Act. I feel that hon. members generally will agree that measures such as those introduced for the benefit of sections of the community have the effect of imbuing the worker with a sense of security, and it is hoped that the effect of this legislation will be to create an influx of virile labour by attracting young men to the coalfields. I feel that they will realise not only that the mine worker is being looked after while employed in the industry, but also that a reasonable measure of financial stability is being provided for the day when he retires, either through age or accident, and reasonable stability is being provided for his widow and children. Recruitment to the industry has been lacking in the past and many workers have left the industry for other callings. This legislation should do a great deal towards attracting young men to the industry and arresting the drift of workers into other fields. I commend it to hon. members.

The Hon. T. ARMSTRONG [5.37]: I do not intend to oppose the bill because it would be futile to do so. On a number of occasions I have spoken on this question, and I remind hon. members who might not be aware of the fact, that when the 1949 amending bill was before the House I remarked that it could be classed as an anomalous bill to create anomalies. I said that it was "a bill to perpetuate and make further anomalies"—that I was right has been clearly demonstrated to-night by the Minister's statement. All the amendments that are in the bill now before the House could have been made in the first instance, thus avoiding the necessity of dealing with them now piecemeal. The legislation was originally called the Coal and Oil Shale Mine Workers (Pensions) Act, but it is intended to alter the title to the Coal and Oil Shale Mineworkers (Superannuation) Act. Webster's dictionary defines "superannuate" as "to retire and pension because of old age or infirmity." In my opinion those words do not apply to persons in the coalmining industry, for

The Hon. W. E. Dickson.]

it cannot be on account of old age or infirmity, that a coalminer is obliged to retire at 60 years of age. Indeed, the coal owners themselves have reasonably asked that the retiring age should be extended to 62 years, but have met solid opposition to this request.

According to *Common Cause* there is no hope of altering what was proposed at a recent conference in Melbourne. It is interesting to recall that since 1941 there has been much legislation dealing with the subject of miners' pensions. The first was Act No. 45, assented to in October, 1941; the second was Act No. 12 of 1942, assented to in June of that year; the third was Act No. 14 of 1947, assented to on 28th March, 1947; the fourth was Act No. 39 of 1947, assented to on 19th December of that year; the fifth was Act No. 7 of 1948, assented to on 22nd April, 1948; and the sixth Act was No. 26 of 1949, assented to on 5th October of that year. Those Acts have now been consolidated and the seventh measure is now before the House. The original legislation provided for a pension of £3 a week for a retired miner and his wife and the bill increases this amount to £6. Since the last measure was assented to on 5th October, 1949, the pension of a retired miner and his wife has been increased by £1 2s. 6d. a week. It has been said on more than one occasion that if these concessions and other considerations were granted to the miners everything in the garden would be lovely and coal production would be improved. To-day stoppages still occur almost daily and the public is still being denied coal by those whom it has treated so generously. It must be admitted that mine workers have been treated generously, when their position is compared with that of other workers. According to the Auditor-General's Report the total income of the Railway Service Superannuation Fund since its inception is £19,240,820. Payments totalling £19,237,863 have been made, and the surplus is £2,957. Over £7,000,000 of the income was collected from the employees and the number of

contributors at 30th June was 53,407. Even with the 25 per cent. increase that was granted last year, the rank-and-file member of the Railways Department would be lucky indeed to receive a retirement pension of more than £3 10s. a week. If a railway man dies while he is in the service his widow is given a refund of the contributions plus interest, but if he dies within six months of retirement his widow receives the amount he has paid to the fund less the actual amount he has received between his retirement and the date of his death but is not granted a pension. The widow of a mine worker, though she has made no contribution to the fund, receives a substantial advantage over the widow of the railway worker. Even a *de facto* wife receives almost as much under the mine workers' pensions legislation as the wife of the railway employee who has spent a lifetime in the service of the department. The receipts of the Police Superannuation Fund as at 30th June, 1950, were £479,000, the disbursements £484,000, and the credit balance in the fund was £1,591. Since the beginning of that fund the receipts have been £9,816,537 and disbursements £9,831,121. Of that sum, over £2,000,000 was received from the members of the police force.

Taking the State Superannuation Fund the Government pays two-thirds of the contributions, but the funds have accumulated so that, at 30th June, 1949—and these are the latest figures that I have available—they were £20,874,983. In the circumstances, one should like to ask the Minister whether it is not about time that hon. members and others interested had actuarial reports made available to them. It was computed by the chairman of the royal commission that, on an actuarial basis, there was a deficit of about £10,000,000. The Auditor-General has reported that two actuarial reports have not been submitted, and the House has a perfect right to know when they are to be made available. The miners have received many benefits that should make them feel that they have an obligation to the community. For instance, a mine

worker under this measure will receive a weekly payment of £6 at the age of 60, whereas, workers in outside industry must wait until they are 65 years of age before they receive the old age pension. If we calculate the contribution of 4s. 6d. a week by the mine worker on the basis that he has paid into the fund for a period of five years, he will have paid into the fund during that period an amount of £65. After retirement, if he lives for five years he will receive from the fund, on the basis of a pension of £6 a week, the sum of £1,560. In addition, the Government and the Joint Coal Board have attempted to help the miners to build homes under the building society scheme. The Government has agreed to pay £216 towards the cost, on a building society loan of £1,240:

The Minister has mentioned £293,000 as being the additional amount payable under the proposed increase. The increase of £1 2s. 6d. a week amounts to £293,000, but the social service payments are £116,000, leaving a sum of £177,000. To the period ending 30th June, 1949, the Government paid £604,500 towards its cost; the community paid £2,504,697, and the mine workers paid £1,037,591. Interest amounted to about £39,795. Thus, of approximately £4,500,000 income, £3,264,727 has been paid as pensions to retired mine workers, many of whom have not contributed a single penny towards the fund. The Government has treated the employees in the coal-mining industry "most wondrous kind." I know of no other organisation in the State that has been similarly treated. The Government should make a greater contribution towards the cost of the Mineworkers' Pensions Fund. Originally, it was suggested that the Government should pay one-quarter, the employees one-quarter, and the owners one-half of the cost, but the Government limited its contribution to £80,000 a year and so far has paid approximately one-quarter of the amount paid by the owners, and one and a half times that paid by the employees.

The new definition of "Mineworker", which was explained by the Minister, will cause a great deal of confusion. It will include men who work, perhaps, a considerable distance from the mine. That might be all right at a large mine, or open cut which has the prospect of a long life, but those men might pay 4s. 6d. a week for years, only to find that the mine had ceased to function. How will they be treated?

Reference has been made to the employer of workers on lorries. Half a dozen men may buy a lorry between them. In such a case each employer might be required to contribute 15s. 9d. a week for each employee. I hope that the Minister will examine that matter. I have seen many ramps where the coal is not screened. The lorry is merely backed up and the coal emptied onto a non-moving screen. I should like the Minister to explain that provision more clearly.

A person who is drawing, say, £4 a week compensation may retire at 60. He would not then go back to the mine. Are we to assume that he would receive £6 a week from this fund as well as £4 a week compensation? If so, it would be a little over the odds. The winning of coal in this country is becoming very costly. I agree that the service pension should not be taken into consideration, but I cannot agree that a man who is drawing £4 compensation weekly until he is 60 should then draw a further £6 a week.

Hon. members may be interested to hear the average daily earnings of contract miners in the industry for the fortnight ended 3rd June, 1950. These figures, which are very high indeed, show that these men can afford to pay much more than they do towards the Mineworkers' Pension Fund, and should not be given both compensation and a pension. The statement showed the daily average earnings of 2,105 employees to be £3 10s. 4d, after deducting costs. The Government is over-generous in giving £6 a week pension to one section of the community only. Why should the railway pensioner, for instance, be given a

mere pittance in return for a lifetime of valuable service, when the coal miner is retired on a handsome pension after doing nothing in recent years at any rate, to serve his country? Strikes to 11th November, 1950, caused a loss of 1,273,428 tons of coal. Yet we are told that if these pensions are approved everything in the garden will be lovely. I have my doubts. History can repeat itself and though, time after time, consideration has been given to these employees they have produced not one more ton of coal.

Miners represent only 1.1 per cent. of the employees in New South Wales, yet last year they were responsible for 52 per cent. of the manshifts lost in the State. Hon. members will probably be weary of my quoting facts about the coal-mining industry, but those who take an interest in such matters cannot fail to see the changing pattern of Australian production. Production of brown coal has steadily advanced, unhampered by the violent fluctuations that are common to the production of black coal. In 1926, 2.4 per cent. of brown coal was produced, but by 1949 production had increased to 14.8 per cent. The increasing use of brown coal in Victoria is a growing threat to one of our main export markets for black coal. People should note these trends. Open-cut mining also is changing the pattern of Australian black coal production. In 1939, .3 per cent. or only 43,000 tons, came from open cuts, but in 1949 the percentage was 16.4, or 2,316,000 tons, at least half of which was produced in New South Wales. In order to show the inconsistency of employees in the coal-mining industry, let me point out to the House that in 1949 over 2,800,000 tons of coal or 26 per cent. of the total output was lost in New South Wales through strikes. That lost coal was worth £4,000,000. In the same year, New South Wales miners, as a result of disputes, lost £2,435,000 in wages. The irregularity of coal supplies has been of major effect in restricting the development of industrial production in the post-war

years. During 1948 the wages lost by employees of private coal companies amounted to £831,000. The combined profit of those companies was £203,000, or 24 per cent. of the amount of lost wages.

The earnings of the men in the coal industry are second only to those of men who enjoy the lead bonus and far transcend those of employees in any other industry. Hon. members must remember that impossibilities cannot be achieved; the burdens on the coal industry cannot be increased forever. A pension of £6 a week for a man and his wife, together with 10s. a week allowance for each dependant, in return for the paltry contribution of 4s. 6d. a week, is a proposition that most members of this House and, indeed, most persons, would be glad to embrace. They would be delighted to obtain even half those benefits for such a small contribution. The State is giving those singular benefits to coal miners and they are indeed fortunate. I recall that only in October of last year the amount of these pensions was reviewed in legislation of this Parliament, and now hon. members are asked, without any actuarial calculations having been made available to them, to agree to a further increase of £1 2s. 6d. a week for a man and his wife. I personally cannot reconcile the figures that were put forward last year with those that have been put forward on this occasion.

The Hon. Sir NORMAN KATER [6.3]: The Hon. Thomas Armstrong has covered this matter so adequately that there is need for me to say very little. Indeed, all that I have to say is to ask the Minister to give the House a definition of "*de facto* wife." The bill contains no definition. I approach this matter in all seriousness because I realise that without a definition difficulties may arise and advantage might be taken of this measure in a fashion that is not intended by its provisions. I do not know what a *de facto* wife is. The term is nebulous and has never been defined. The Minister in his reply might inform hon. members that a *de facto* wife is

one who lives with a miner, but what does that mean? The generally accepted implication of the term, "living with a man," is that there is a certain amount of intimacy between the man and the woman. Is that intimacy necessary for the establishment of a *de facto* wife? How could a miner prove that the woman with whom he is living is a *de facto* wife? I should very much like the Minister to answer that question in his reply. Also, how could a woman prove that she is the *de facto* widow of a miner? Is it necessary that she be living under the same roof as the miner, and if she has been living under the same roof with him and has been looking after him, but there has been no intimacy between them, is she a *de facto* wife? Can a miner prove that a woman is his *de facto* wife, and can a woman prove that she is a *de facto* widow if she has not been living under the same roof as has the mine worker? I presume that only one *de facto* wife can be recognised, but if a miner has been associated with several women how can one of them prove that she is the real *de facto* wife?

The Hon. S. C. WILLIAMS: Such a man should be sent to Egypt.

The Hon. Sir NORMAN KATER: Not necessarily. I am speaking of human beings as some of them live. That point rests upon the question whether it is necessary to prove that a *de facto* wife has been living under the same roof. Furthermore, if a miner has been living apart from his wife, can he have a *de facto* wife, and, if so, what benefits shall she enjoy? In all seriousness I ask the Minister to answer those questions so that the pensions tribunal may have some guide as to the definition of a *de facto* wife and as to the requirements of proof.

The Hon. W. E. DICKSON (Minister for Secondary Industries and Building Materials) [6.8], in reply: The Hon. T. Armstrong gave the House an interesting survey of the history of the coal-mining industry and from his remarks hon. members are able to appreciate the

ill-feeling that for far too long has been apparent between employers and employees on the coalfields. This administration's problem—and it is a difficult one to solve—is to improve employer-employee relations and to obtain the highest possible production of coal for the development of Australia. The Hon. T. Armstrong compared the miners' pensions fund with other pensions and superannuation schemes, but his comparison was not a fair one because the type of industry must be taken into account. The principal purpose of this legislation is to attract employees to the coal-mining industry.

The Hon. T. ARMSTRONG: But 28 per cent. of employees in the industry never go down the mines and their position is no different from that of workers in any other industry.

The Hon. W. E. DICKSON: I appreciate that point, and it is difficult to draw a line of demarcation between classes of employees in the coal-mining industry. The legislation governing pensions schemes in mining industries—and I refer particularly to the metal-mining industry—usually includes all employees working "in or about" the mines. In the metal-mining industry men known as "surface employees" are provided for. If the miners' pensions legislation attracts more workers to the coal-mining industry the greater production that is so urgently needed may be achieved. The community generally, and not the mine owners, will pay this increase, and I am sure that the public will be satisfied to do so if there is an increase in coal production.

The Hon. T. ARMSTRONG: The community will wake up some day.

The Hon. W. E. DICKSON: I do not think that it is objecting to the miners' receiving increased pensions. The objections of the public are directed towards the lack of coal supplies. Although I have not seen the report of the actuaries to which the Hon. T. Armstrong referred, I know that the surplus in the fund last year was about

£311,000. The whole scheme must, of course, be dissected and analysed by an actuary, and one can only wait to see what will be the ultimate result. In the hon. member's opinion, it is not right that those employed in the coal mining industry should have a pensions scheme better than that available to employees in other industries—in other words, he does not agree with sectional legislation—and I agree that there is strong argument for his point of view. The hon. member suggested the case of a man in the industry who has contributed to the fund for a number of years, and who, on the closing of the mine in which he is employed might lose all that he had paid into the fund. With the present shortage of men in the industry I have no doubt that to-day such a man would readily find employment in another mine. However, I feel that some provision should be made for such cases. The Hon. T. ARMSTRONG also raised the question of whether an employee receiving weekly compensation payments for an injury which he suffered in the course of his employment, would continue to receive them after retirement when he automatically became eligible for superannuation payments. A mine worker pays into the fund in order to receive superannuation on retirement, and a worker receives weekly compensation payments as a consequence of having suffered, through no fault of his own, an injury while working in the industry. The two matters are quite distinct, and there is no reason why a mine worker should not receive compensation for his injury and at the same time collect the pension to which he has contributed. Such a system has operated in Queensland successfully for many years.

The Hon. T. ARMSTRONG: That does not apply to workers' compensation generally.

The Hon. W. E. DICKSON: No.

The Hon. T. ARMSTRONG: Then this is special legislation for one section of the community?

The Hon. W. E. DICKSON: That is so. I do not know whether the hon. member is suggesting that it should apply to all sections, although I agree that such a scheme would be acceptable in most industries. Although this is a good superannuation scheme, it must be recognised that the coal mining industry, despite this and other inducements, is still not attracting a sufficient number of employees.

The Hon. Sir Norman Kater has asked for the definition of a *de facto* wife, and queried whether, under the scheme, a mine worker could have more than one wife. The position is that a *de facto* wife is a woman who, without having gone through any formal ceremony of matrimony, lives with a man and accepts him as her husband. When a person becomes a beneficiary under the scheme, he must then aver whether or not he has a *de facto* wife and it is not open to him later to say that he is supporting a *de facto* wife and to claim in respect of her. When he comes under the provisions of the scheme he makes a declaration as to his *de facto* wife. He is not permitted to produce her at a later stage.

The Hon. Sir NORMAN KATER: Must the tribunal accept the declaration?

The Hon. W. E. DICKSON: The number of *de facto* wives would be very small and the matter could safely be left to the Tribunal. The provision has operated for a number of years and has caused no difficulty.

Motion agreed to.

Bill read a second time.

IN COMMITTEE.

(The Hon. E. G. WRIGHT in the Chair.)

Clause 2. The Coal and Oil Shale Mine Workers' (Pensions) Act, 1941-1949, is amended—

- (a)
- (b) by inserting next after section 2B the following new section:—
- 2C (1)
- (2)

(a) a person not being a body corporate who contracts with the owner of a coal or oil shale mine in New South Wales or with any other person for the transport of coal or oil shale from the mine to the point of delivery where such coal or oil shale is to be delivered by the owner of the mine at such point of delivery and who is principally engaged in such transport;

(5) For the purposes of assessing contributions of owners under section nineteen of this Act a person who by virtue of paragraphs (a) and (b) of subsection two of this section is a mine worker shall be deemed to be employed by the owner of the mine from which such person transports coal or oil shale.

The Hon. W. E. DICKSON (Minister for Secondary Industries and Minister for Building Materials) [6.18]: I move:

That in paragraph (a) of proposed new section 2c (2) the words "not being a body corporate" be omitted.

The amendment is self-explanatory because a body corporate could not be a mine worker.

Amendment agreed to.

The Hon. W. E. DICKSON [6.19]: I move:

That there be added to proposed new section 2c (2) (a) the words "and who in the course of such engagement uses not more than one vehicle at any one time."

This provision defines the transport worker who is carrying coal from the open cuts. The owner of the vehicle becomes a contributor but if a person owns more than one vehicle he does not contribute and does not come within the scope of the scheme.

The Hon. T. ARMSTRONG: There is a provision that the retiring age shall be sixty years. Has consideration been given to altering the retiring age to 65 years?

The Hon. W. E. DICKSON: The Government would not agree to any such proposal.

The Hon. T. ARMSTRONG: The clause provides that all coke workers other than employees of the Broken Hill Proprietary Company Limited, Australia

Iron & Steel Limited and certain others shall now be included in the definition of "mine worker."

The Hon. W. E. DICKSON [6.21]: Previously it was provided that employees of any persons supplying or distributing gas for lighting, heating, motive power or other purposes, or of the Broken Hill Proprietary Company Limited or of Australian Iron & Steel Limited, and certain other employees should not come under the scheme. Under that provision some employees with many years' service were excluded from the benefits under the bill. That position has now been rectified.

The Hon. T. ARMSTRONG: In other words, constant dripping wears away a stone.

Amendment agreed to.

Amendment (by the Hon. W. E. Dickson) agreed to:

That there be added to subsection (5) of proposed new section 2c the words "(c) by inserting in subsection six of section three after the word 'Act,' where thirdly occurring, the words and symbols 'and in subsection two of section 2c of this Act.'"

Clause, as amended, agreed to.

Clause 3. (1) The Coal and Oil Shale Mine Workers (Pensions) Act, 1941-1949, is further amended—

(a) by inserting at the end of section six the following new subsection:—

(7) (a) The amount of pension per week payable to any mine worker who has, before the commencement of the Coal and Oil Shale Mine Workers (Superannuation) Amendment Act, 1950, been awarded a pension pursuant to subsection one, (1A), two or three of this section, shall as on and from such commencement and notwithstanding anything contained in this section be three pounds seven shillings and six pence.

(2) (a) The amendments made by paragraph (b), paragraph (c) and subparagraphs (i) and (ii) of paragraph (d) of subsection one of this section shall be deemed to extend to and from the commencement of this Act apply in respect of all mine workers who were immediately before such commencement in receipt of a pension pursuant to section six, seven or eight or an addition to a pension pursuant

to section nine of the Coal and Oil Shale Mine Workers (Pensions) Act, 1941-1949, as well as to mine workers becoming eligible for any such pension or addition thereto after such commencement.

(b) The amendments made by subparagraph (i) of paragraph (e) and subparagraph (i) of paragraph (f) of subsection one of this section shall be deemed to extend to and from the commencement of this Act apply in respect of all persons who were immediately before such commencement in receipt of a pension pursuant to section ten or 10A of the Coal and Oil Shale Mine Workers (Pensions) Act, 1941-1949, as well as to persons becoming eligible for any such pension after such commencement.

(3) The amendment made by subparagraph (iii) of paragraph (e) of subsection one of this section shall be deemed to have commenced upon the nineteenth day of June, one thousand nine hundred and forty-two.

Amendment (by the Hon. W. E. Dickson) agreed to:

That, in paragraph (a) of proposed new subsection (7), after the word "of" secondly occurring, there be inserted the words "section three of".

Amendment (by the Hon. W. E. Dickson) agreed to:

That in subclause 2 (a) the word "Act", first occurring, be omitted and there be inserted in lieu thereof the word "section".

Amendment (by the Hon. W. E. Dickson) agreed to:

That in subclause 2 (b) the word "Act," first occurring, be omitted, and there be inserted in lieu thereof the word "section."

The Hon. W. E. DICKSON (Minister for Secondary Industries and Minister for Building Materials) [6.26]: I move:

That the following subclauses be added:

(4) The amendments made by subparagraph (iii) of paragraph (d), subparagraphs (ii) and (iv) of paragraph (e) and subparagraph (ii) of paragraph (f) of subsection one of this section shall commence upon the day appointed and notified pursuant to subsection two of section one of this Act.

(5) This section shall, except where otherwise expressly provided, commence or be deemed to have commenced upon the date upon which any increase in age, invalid or widow's pension granted after the date upon which His Majesty's assent to this Act is signified under any legislation of the Commonwealth relating to social services takes effect.

The purpose of this amendment is to ensure that the date of the payment of the increased pensions provided by this bill synchronises with the date of the increased payments by the Commonwealth Government.

Amendment agreed to.

The Hon. A. D. BRIDGES [6.28]: Clause 3 as amended provides that payment shall be made to a female relative, but I wish the Minister to consider whether he would amend the clause to provide that, in a case where a female relative does not exist or is not available, some other person approved by the tribunal shall be appointed to assist in the care and maintenance of the pensioner and shall receive the payment provided in the clause.

The Hon. W. E. DICKSON [6.29]: There is some merit in the hon. member's suggestion, and although it is not in accordance with the accepted practice under the Act, I will discuss the matter with the Minister in another place.

The Hon. T. ARMSTRONG [6.30]: I take this opportunity to pay tribute to the work of the Registrar, Mr. O'Grady. He has rendered faithful and capable service throughout the years, and is well qualified to take charge of this organisation. I consider that he would be a valuable member of the tribunal dealing with cases that will come before it.

Clause, as amended, agreed to.

Clause 4. (No pension while compensation payable.)

The Hon. T. ARMSTRONG [6.31]: In my opinion mine workers should not be entitled to the full amount of compensation in addition to the full pension at sixty years of age.

Clause agreed to.

Bill reported with amendments; report adopted.

MORATORIUM (AMENDMENT) BILL.
SECOND READING.

The Hon. R. R. DOWNING (Minister of Justice and Vice-President of the Executive Council) [6.32]: I move:

That this bill be now read a second time.

In 1930 a Moratorium Act was passed to meet the emergency created by the impact on this State of a world-wide economic depression. The 1930 Act was amended in 1931 but, following the change of administration in 1932, the earlier legislation was repealed with certain savings and re-enacted though in a considerably modified form. The only substantial amendments made since 1932 were those of 1936, so that the present Act represents the 1932 Act as amended, and it is with that moratorium legislation that the present bill deals.

The Moratorium Act of 1932 extended the due date for repayment of all principal sums secured by mortgages to the day of the month in the year 1936 corresponding to the specified day in the year on which the debt was, by the mortgage instrument, repayable. Since then the Legislature has amended the Act on several occasions, further extending the maturity date in moratorium-barred mortgages; that is to say, all mortgages which were in existence prior to the passing of the first Moratorium Act of 1930 and all mortgages executed since that date which did not contain provisions excluding them from the benefits of the Act. That legislation, as amended in 1947, has resulted in the maturity date of mortgages subject to the Act being postponed until the 1951 anniversary of the original maturity date. As an example, a mortgage which, say, was originally expressed to mature on 3rd January, 1931, is, under the Act, repayable on 3rd January, 1951, and after that date the mortgagee might exercise his powers without any of the restraints imposed by the Act; that is, without seeking leave of the court. The present law provides also that "at call" and "on notice" mortgages may not be called up, nor notice given, before 28th February, 1951.

Hon. members will readily appreciate that all current moratorium-barred mortgages will become repayable at some date in the year 1951, and certain of them will fall due and become repayable in January next. The Government takes

the view that because of the shortness of time between now and next January, it is proper that mortgagors should be given a further interval in which to consider their position. With this purpose in view—and none other—the bill provides that the maturity date of mortgages subject to the Act shall be further postponed for a period of one more year—that is, until the 1952 anniversary of the original maturity dates.

I want to make this clear to hon. members—that this bill is not just another periodic extension of time for moratorium-barred mortgages. On the contrary, the Government's view is that no time has been more opportune than the present for the complete discontinuance of the moratorium legislation. Economic conditions have changed almost beyond recognition since the moratorium legislation was first enacted in 1930 as a depression measure, and, indeed, the position has changed quite considerably since 1947 when last we were called upon to consider this enactment. At that time, land sales control was in existence, and the effect of this was inevitably that in many, though not all, cases, upon any realisation of the security, the amount received by the mortgagor would have been less than he might have hoped to receive on an open market. I think hon. members will agree that a more favourable opportunity than the present for mortgagors to refinance moratorium-barred mortgages is not likely to occur. Support to this view is given by statistics that have been furnished by the Registrar-General as a result of certain test checks which have been undertaken in order to give the administration some guide as to the present position. The results of those tests are most illuminating.

First, it would appear that there are few, if any, moratorium-barred mortgages still existing in favour of banks to secure overdrafts. I might mention in this regard that one of the largest banks in New South Wales has intimated that it holds none at all now. Second, there has been an extensive and very rapid movement in the last five

The Hon. R. R. Downing.]

years in the discharge of mortgages subject to the Act. In fact, it is estimated that the total involved in moratorium-barred mortgages has fallen from roughly £150,000,000 in 1945 to roughly £39,000,000 to-day. Of this £39,000,000, it is believed that only approximately a quarter is referable to mortgages of rural lands, the greater part being over homes and small shops. The Government feels, therefore, that to precipitate an end of the moratorium legislation at the short notice available before the maturity date of moratorium mortgages under the present law, would probably lead to uncertainty and hardship, to an extent not easily predictable at this stage, and that by giving mortgagors a further year in which to consider their position, the bill provides a final breathing-space—the last act in the process of “tapering-off” this moratorium legislation. The measure contains also provisions, of which I shall have something to say in a moment, that are designed to remove some of the problems emerging from the continuance, for another year, of the moratorium postponement of mortgage-maturity dates.

An additional reason why it is felt that the time between now and January next is not sufficient is this: the Government is convinced that in many instances where mortgagees are in possession of the property mortgaged, mortgagors are not aware of their rights because of their inability to obtain a satisfactory statement of account. A mortgagor may have what he suspects to be a very substantial equity in a property but unless he can find out with precision what his actual position is, he finds it difficult, if not impossible, to obtain a purchaser. Prospective purchasers, not unnaturally, in buying an equity of redemption wish to know just how much is owed under the mortgage and if they cannot ascertain just how much this is they lose interest in the proposal. At present a mortgagor has, under section 13A, certain rights to obtain statements of accounts from a mortgagee in possession but he must tender “a reasonable sum for the

expense of preparing the account.” If the amount asked for by the mortgagee or his solicitor is more than the mortgagor can afford he must either embark on litigation to test the reasonableness of the amount asked for supplying the account or forgo his request for an account, and too many mortgagors have been in the unfortunate position of having to adopt the latter course. What is proposed is the enactment of a new section 13B giving the mortgagor a right to a verified statement of account on tendering the sum of £1 1s., and, in the event of default by the mortgagee in rendering account on tender of that amount, the mortgagee will be guilty of an offence and liable to a fine of £100. Conviction of the mortgagee for failing to supply this account will involve a cessation of any liability on the part of the mortgagor for further interest under the mortgage.

The machinery under which mortgagors will be enabled to obtain statements of account will do much to assist mortgagors to ascertain their true position. However, where the amounts charged against the mortgagor are excessive the bill further provides that accounts may be taken before the Master in Equity, thus eliminating the necessity under the present law of resorting to the expense of an equity suit for this purpose.

Turning again to the general postponement of maturity dates to 1952—and I repeat that there is to be no further statutory extension beyond 1952—it is important to consider the proposed amendment of subsection (3) of section 9 of the Act. It is proposed that a mortgagee should be enabled to require his mortgagor to repay before the 1952 anniversary if the mortgagee provides for the mortgagor alternative financial accommodation by way of mortgage at terms not less favourable than those of the existing mortgage. If the mortgagor unreasonably refuses to accept that offer, the mortgagee will be entitled to obtain an order permitting him to exercise his rights and call up the mortgage forthwith. It is provided

specifically that a new mortgage is to be deemed less favourable than the existing mortgage if it contains the personal covenant, or is for a term of less than five years. The personal covenant does not exist in mortgages subject to the Moratorium Act, except in instances where it has been affirmed by the mortgagor, and the bill seeks to avoid the position that a mortgagor may be compelled by a mortgagee to accept a short-term mortgage containing a personal covenant by way of alternative financial accommodation, or lose the benefit of the statutory extension granted by the proposed legislation.

I now refer briefly to section 19 of the Act which provides that a mortgagor may apply to the court for a further postponement of the maturity date beyond the maturity date provided for under the Act. This section acts as a safety valve in that it enables a mortgagor, with proper claims, to seek further extension through the courts. Section 19 has been in the Act since its commencement, but there has never been any occasion for its use because the Legislature has itself given an extension of the maturity date every few years. In view of the decision that there is to be no further statutory extension beyond 1952 it becomes of critical importance to look at section 19 and be sure that it will do the job it is intended to do, that is, allow the courts to exercise a reasonable discretion in giving mortgagors further time in deserving cases.

In the Government's view the rights of the mortgagor under section 19 are unduly circumscribed, and the section needs to be replaced by a new section having greater flexibility and giving a more reasonable degree of latitude to the courts. First, under the present section, application by a mortgagor cannot be made later than one month before the postponed maturity date. It is intended to remove this limitation. Secondly, the matters required to be established in a mortgagor's favour under

subsection 2 of the section are somewhat onerous and it is proposed to repeal that subsection and substitute for it a provision merely directing the courts to have regard to the hardship of the parties and the conduct of the mortgagor in his dealings with the mortgagee. Thirdly, the Government has at this point been considering, with concern, the distress caused to victims of recent floods. In the latter connection, it is proposed to enact a new subsection (2A) to provide that a mortgagor seeking further postponement to a date not later than 31st December, 1953, on the ground that he has suffered through flood damage in 1949 or 1950, is not to be refused unless the mortgagor's conduct in reference to the mortgage generally makes him undeserving of any latitude.

So far I have dealt with the principal objects of the bill which touch upon the main problem—that of “tapering off” the Act. Summarised, they are: (i) to amend section 18 of the Act to provide for a further postponement of the prescribed date for one more year; (ii) to amend section 9 which deals with the limitations on the rights of mortgagees to exercise powers before the maturity date; (iii) to amend section 19 which deals with the rights of mortgagors to apply for further extension beyond the maturity date; and (iv) to amend section 13A to confer additional rights on mortgagors in respect of mortgage accounts.

There are some auxiliary provisions which merit attention. First, it is proposed to insert in section 30 a new subsection to provide that the costs of an application to the court under Part II of the Act shall be borne by the party ordered to pay them, or where no order is made, by each party himself, notwithstanding anything contained in any covenant or agreement in the mortgage instrument to the contrary. Under the present section it has been held that where the court has refused to make an order for costs in favour of a mortgagee in a proceeding under the Act, the mortgagee is entitled nevertheless to charge the mortgagor with those costs under a clause, common to most mortgages,

whereby the mortgagor agrees to indemnify the mortgagee for any expense incurred in or about enforcing his rights under the mortgage. What the proposed amendment provides is that the court shall be the arbiter as to the liability for costs of the parties notwithstanding any agreement to the contrary.

The bill also proposes to insert in Part III of the Act—which is the permanent part of the Act and not subject to an expiry date—a new provision removing any doubt as to whether a mortgage without a personal covenant is an authorised trustee investment. It has been argued that a mortgage without a personal covenant is not an authorised trustee investment on the ground that the word “mortgage” in the Trustee Act contemplates the customary mortgage agreement including the personal covenant. The Government feels that this doubt should be cleared up, particularly in view of the proposed amendment to section 9 permitting a mortgagee to call up his principal before the maturity date under the Act by offering the mortgagor alternative finance by way of mortgage without the personal covenant. Mortgagees under Moratorium-barred mortgages will be assisted by this provision.

The bill also proposes to limit the liability of a mortgagor for Federal Land Tax in cases where the mortgagee is in possession. Under the Commonwealth Land Tax Act where a mortgagee has been in possession for three years, land tax is levied at the rate appropriate to the whole of the mortgagee’s land holdings. Under most mortgages this liability can be passed on to the mortgagor and represents a heavy and unjust burden. Cases have been instanced to the department in which the mortgagor’s land tax liability by virtue of his mortgagee’s extensive land holdings has been equal, or nearly so, to his interest liability. What the bill proposes is that the mortgagor’s liability for land tax should be limited to the amount of tax that would have been payable if the mortgagee had owned the subject property and no other land. It is felt that this will

provide additional inducement to mortgagees to provide alternative financial accommodation for mortgagors and will also reduce, to an even greater extent, the number of moratorium-barred mortgages in existence by the end of 1951.

Before concluding I should like to make three points: First, Part II of the Moratorium Act, is by this bill, self-expiring—there will be no occasion for legislation in 1951 or 1952 repealing or terminating any provision of Part II. Second, the great increase in property values since prior to 1930 when most of the moratorium-barred mortgages were given, renders it unlikely in the vast majority of cases that mortgagors will have difficulty in raising, on mortgage, by way of re-finance, an amount equivalent to the earlier mortgage. No more opportune time could be selected for the presentation of this measure.

The third point is that the exceptional cases, for example where property has depreciated seriously, will have to be dealt with at some time, and the bill gives authority to the courts to grant a further extension if the facts warrant it. In conclusion, I might say that the services of the Public Solicitor will be available to everyone who qualifies for assistance under the Legal Assistance Act, whether mortgagee or mortgagor, with regard to proceedings in all courts under the Act. I commend the bill to the House.

Colonel the Hon. H. J. R. CLAYTON [6.52]: The bill will meet with the approbation of hon. members, but I am impelled to comment upon a statement of the Minister about the difficulty of mortgagors’ obtaining a statement of account. He suggested that they should be able to receive accounts more easily and thus have a better opportunity to redeem their properties. I submit for the serious consideration of the Minister that in the unfortunate days of 1930-1931 many mortgagors were so distressed and harassed that they abandoned their properties. They did not consider the position of the mortgagee—and I do not blame them for it—but could bear the intolerable burden no longer. In the

last twenty years the properties have been managed by the mortgagees who have provided funds to meet rates, taxes, repairs, connections to sewerage and so on and have received rents. If the mortgage was say £900, perhaps only £600 is now owing. It is within my experience in four or five cases that the greatest difficulty is experienced in finding the mortgagor who fled twenty or thirty years ago to tell him the good news—that his property that was valued at perhaps £900 is now valued at £2,000, that he owes only £600 on it, and that he could sell it to-morrow, clear his indebtedness and enjoy the benefits of the proceeds of a holding that he thought was lost to him forever.

If this information could be broadcast or advertised it would be found that most of these mortgages would be redeemed within a year. It should not be difficult to devise a system by which mortgagors who abandoned their properties in the 1930's could be told that upon application the Public Solicitor would investigate their mortgages. At present when an effort is made to seek them out they try to evade the searchers. They know nothing of the personal covenant and think that Nemesis in the shape of the mortgagee has caught up with them and that what they have gained in prosperous times will be taken from them.

Motion agreed to.

Bill read a second time and reported from Committee without amendment; report adopted.

ADJOURNMENT.

NATIONAL CLUB.

Motion (by the Hon. R. R. Downing) proposed:

That this House do now adjourn.

The Hon. A. D. BRIDGES [6.57]: I should be glad if the Minister would refer to the Premier and the Chief Secretary additional facts relating to a matter concerning the National Club that was raised in another place by the hon. member for Bondi on 1st November, when he made

reference to the President of this House and to me. I feel that it would be advantageous to the Chief Secretary and the Department of Police if some additional information were submitted to enable the authorities to come to an effective determination regarding the circumstances of this matter. I have no intention in engaging in the personal recriminations that characterised the speech of the hon. member for Bondi. Suffice it to say that it becomes necessary for me to contradict some of the alleged facts that were given in his address in another place. First, the hon. member said that the President of this House and I controlled the National Club. I wish to state emphatically that that is not so. He said that the directors of the National Club were permanently appointed in their positions and that they could not be removed except by resignation or death. That is not so. He said that the Liberal Party owns the building in which the National Club is situated. That is not so. The National Club owns the building. The Liberal Club is, and has always been, only a tenant. The hon. member for Bondi said that the Liberal Party stacked a meeting of the Civic Club. That is not so. He said that eighty members of the Younger Set of the Liberal Party controlled the election of the president of the Civic Club. That is definitely not true. He said that a nominee of the National Club was elected as chairman of the Civic Club. That is not a fact. I am sure that hon. members will appreciate that, as deputy chairman of the National Club I am in a better position than is the hon. member for Bondi to state the facts of these matters. The hon. member stated that the National Club acquired the rights and assets of the Civic Club without paying for them. None of the assets or rights of the Civic Club has been transferred to the National Club. Nothing has been acquired from the Civic Club without due and proper payment.

Further, the hon. member said that the National Club pays the Civic Club £400 for liquor annually. That is an

absolute falsehood. He stated that the Liberal Party takes between £12,000 and £15,000 annually from poker machines that are used in the premises of the club. I do not think that I can emphasise too greatly the complete falsity of that charge. The National Club does not, has never, and will never, own poker machines or games of chance. It takes nothing like £12,000 in total revenue from the building that it owns. I assure hon. members that the National Club and the Liberal Party will never condone anything that, in any way, transgresses the law of the land. The hon. member for Bondi said that the proceeds of these machines were devoted to party political purposes. I do not know what are the functions of the directors, or the activities of the members, of the Civic Club. Suffice to say that a perusal of the memorandum and articles of association of that club, which are filed in the office of the Registrar-General, will show that its profits may be used only for the purpose of benefiting its members. None of the club's profits are diverted to the Liberal Party or, so far as I know, to any party. Again, the hon. member stated that the profits from the bar of the Civic Club are given to the Liberal Party. I repeat that the bar of the Civic Club belongs to that club, and to no other person, organisation, or party. The Liberal Party and the National Club do not participate in the profits derived from that bar.

The final matter that I should like the Minister to refer to his colleague is a statement, which appeared in the press yesterday and again to-day, that the Chief Secretary has instructed the Police Department to take certain action against the Civic Club in respect of the use of poker machines. If it is a fact that the Civic Club is transgressing the law by using poker machines, undoubtedly it is the duty of the Police Department to take action against it, and also against the many sporting, returned soldiers' and social clubs which in this State are apparently using fruit machines and poker machines without the slightest let or hindrance. I have

before me the latest copy of the returned soldiers' magazine. It contains an advertisement which reads:

Attention all clubs. For your poker machines phone or write, Amusement Vendors Pty. Ltd., 374 Elizabeth-street, Sydney. That publication is circulated widely, and daily, in the city of Sydney, but the advertisement is apparently not considered to be a breach of the law. I suggest that neither the Chief Secretary nor the Police Department should exercise the slightest discrimination against one club, or one political party, and not against others, merely because the club proceeded against happened to be a tenant of the National Club. I trust that there will never be a departure from the principle that should always animate the administration of the law of the land, that no advantage should be extended to or denied any particular section.

The Hon. R. R. DOWNING (Minister of Justice and Vice-President of the Executive Council) [7.5], in reply: As requested by the Hon. A. D. Bridges, I will have his remarks brought to the attention of the Chief Secretary. I have no doubt that the information he has given to the House will be of value to my colleague.

Motion agreed to.

House adjourned at 7.6 p.m.

Legislative Council

Wednesday, 15 November, 1950.

Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill—Moratorium (Amendment) Bill—Industrial Arbitration (Basic Wage) Amendment Bill—Superannuation Act: The Electricity Commission of New South Wales—College Street Pedestrian Subway Construction Bill—Industrial Arbitration (Basic Wage) Amendment Bill (second reading)—Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill—Appropriation Bill—Special Adjournment—Adjournment (Felicitations).

The PRESIDENT took the Chair at 4.30 p.m.

The opening Prayer was read.

COAL AND OIL SHALE MINE WORKERS (SUPERANNUATION) AMENDMENT BILL.

Bill read a third time and returned to the Legislative Assembly with amendments.