**VERMIN ACT FURTHER AMENDMENT BILL 1923**

**House of Assembly, 28 August 1923, pages397-9**

Second reading

**The COMMISSIONER of CROWN LANDS (Hon. G. VR. Laffer)—**This Bill although a short one is very important. Before dealing with some aspects of the question I will read the report of the Parliamentary Draftsman:—

This Bill relates to two matters arising in connection with the working of the Vermin Acts, 1914 to 1922. These matters are, firstly, the fixing of the period for the simultaneous destruction of vermin as provided for in the Act of 1914, and secondly, the legal procedure in respect of prosecutions for failure to comply with the provisions of the Act relating to such destruction of vermin. As regards the first point, the position under the existing legislation is as follows:—The Vermin Act, 1914, provides (to paraphrase the effect of section 20, subsection (1) ) that simultaneous destruction of vermin shall be proceeded with by all owners and occupiers of land within the district of every district council, vermin board, and associated vermin board during the four months of January, February, March and April in each year. This, of course, only imposes an obligation on each owner or occupier to destroy the vermin on his own land. In addition to this, the Vermin Act, 1914, requires, by section 39 and section 41, subsection (1), subdivision (a), that every owner and every occupier of land adjoining land reserved as a breakwind in the Pinnaroo Railway District shall destroy all such vermin on so much of the breakwind reserve as adjoins his own land during the same four months. The Vermin Act Further Amendment Act of 1919 by section 4 introduced a new provision. It gave power to district councils, vermin boards, and associated vermin boards to make a recommendation that any other period than the four months mentioned in the Act of 1914 should be the months for simultaneous vermin destruction. The new period was not to be longer than of four months duration. Upon such recommendation the Commissioner of Crown Lands could, by notice in the Gazette, declare the period recommended to be the period for simultaneous vermin destruction within the particular district; and thereupon it became obligatory upon every person within such district,, during that new period to destroy all vermin on his land. This latter provision has not worked well. Only eight councils or boards have made recommendations; others, while complaining that the period of four months fixed by the Act is too long, appear not to have availed themselves of the power of altering the period by making a recommendation to the Commissioner. Without a recommendation the Commissioner, of course, could not do anything to alter the period fixed by the Act. The result was that the old period of four months remained in force in most districts. This period is too long for the destruction of vermin to be effectively carried out. One farmer, for example, might complete the destruction of vermin on his block during January and February; another farmer, his neighbour, might leave the matter over till April on his block. The result would be that the work of the first man. in clearing his block of vermin would be largely undone by the influx of vermin from the land of the man who left the destruction of the vermin stand over till late in the period. This Bill is intended to alter the present system in two ways. Firstly, by clause 3, it cuts down the normal period for vermin destruction fixed by the Act from four months to three by omitting April from the old period. Secondly, it gives power to the Commissioner, without the necessity for any recommendation being made, to fix a period not exceeding three months, or more than one period not exceeding in the aggregate three months, as the time or times for simultaneous vermin destruction. These periods might be at any suitable time of the year. The effect of this amendment, in practice, will be that the Commissioner of Crown Lands will be enabled to act upon any information which he receives from the Government’s officers, or from any other source at all, and fix as simultaneous destruction periods the times at which the destruction of vermin can be most effectively carried out in the particular districts. If the Commissioner does not fix any special period, the months of January, February and March will continue to be the proper time. The new provision relating to the simultaneous destruction period will not apply only to the destruction of vermin by owners and occupiers on their own land, but also to destruction on the breakwind reserves in the Pinnaroo Railway District, and on drainage lands by the persons liable to destroy vermin in those places. Clauses 4, 6, and 8 make provision for the amendments consequent upon the amendments in the law made by clause 3. The other matter with which the Bill deals is the subject of proving offences against the Act in Courts of law. Unless the person prosecuting is relieved from the necessity of proving in the ordinary way certain matters, which, though matters perhaps of common knowledge in a particular district, are difficult of strictly legal proof, it would be almost impossible to secure a conviction even in the case of a flagrant breach of the Act. Section 24 (i) of the Act of 1914, therefore, provided that when an owner or occupier is charged with the offence of not destroying the vermin on his land at the proper time, the averments in the information should be deemed to be proved in the absence of proof to the contrary. This section was intended to enable the prosecution to dispense with strict proof of such matters as that certain land was within a vermin fenced district, or within a district council, or that the person charged was the owner or occupier thereof. These questions, are however, in most cases questions of mixed fact and law, and the High Court in several cases held that the word “averments” did not apply to allegations of mixed fact and law. The High Court has also held that a statutory enactment making the averment in an information proof of the fact averred unless evidence to the contrary were given would not apply if the prosecutor actually proved these facts or any of them by ordinary evidence. These decisions have the prosecution of offenders against the most complicated matter, and in order to counteract their effect, clause 5 of the Bill proses to insert a new subsection in section 24 of the 1914 Act rendering averments in an information proof of the matter averred, although such averment might not be an averment of fact only, and notwithstanding that ordinary evidence might be given as to the facts averred. Clause 7 of the Bill proposes to insert a section in the principal Act in order to overcome certain difficulties which have occurred in connection with proving that the persons alleged to be authorised by the various district councils and vermin boards to inforce observance of the Act are, in fact, authorised. This clause also inserts a new section in the Act dealing specifically with the proof of certain matters by means of allegations in informations. There has been considerable discussion in the Courts as to whether these matters could properly be proved by such allegations, and the clause in the Bill proposes to remove air doubt as to the validity of this mode of proof.

This Act has been very difficult to administer, and consequently the local governing bodies have made very strong recommendations to the Government for it to be amended. There was a test case from the District Council of Truro which was tried before Mr. Paine, S.M., who inflicted a fine upon the man who was supposed not to have destroyed his rabbits. The defendant appealed and the case went before Mr. Justice Gordon, who, after partly hearing it, said the matter was so complicated that he preferred to state it for the opinion of the Full Court. The Full Court, with Mr. Justice Gordon, Mr. Justice Poole, and Mr. Justice Angas Parsons on the bench, sat to consider it. The points reserved for the decision of the Full Court were:—

(1) Was there sufficient proof that the respondent was an authorised person within the meaning of part II. of the Vermin Act, 1914?

(2) Was there sufficient proof that the appellant was the owner of the land mentioned in the information?

(3) Was there sufficient proof that the land was within the district of the District Council of Truro?

(4) Was the evidence sufficient to justify the conviction of the appellant of the offence with which he was charged?

(5) If the above questions are answered in the negative, is it competent for the appellant to call further evidence on the appeal in respect to such matters?

The report goes on—

After having examined the questions in detail and citing authorities, His Honor answered them as follows:—

(a) No. The allegation of authority is a conclusion of mixed facts and law and so is the allegation that the land is within the district council of Truro,

 (b) 1. No. The allegation is not proved by evidence and as an allegation of mixed fact and law.

2. Yes.

3. No. The allegation is not proved by evidence, and is an allegation of mixed fact and law.

4. Presents no difficulty ....

In conclusion, His Honor added that it was regrettable that an Act dealing with a matter of such importance to the pastoral and agricultural industries of the State, which had often to be administered by laymen, and in proceedings for offences construed often by lay justices of the peace, should present such a maze of difficulties partly the result of obscure language in the Act, and partly of judicial decision the accuracy of which that Court could not question. Without the assistance of some artificial presumptions proof of an offence under the Act as it now stood would be exceedingly difficult, yet the prosecutor who relied on the existing sections dealing with presumptive proof would be fortunate if he could thread this labyrinth of enactment and decision successfully.

That shows how difficult it is to get a decision against landholders charged with neg­lecting to carry out the provisions of this Act, and these clauses are designed to meet that problem. Simultaneous destruction of vermin is one point strongly urged by local governing bodies, and when one realises the importance of the matter he can understand how necessary it is that legislation dealing with vermin should receive the support of every member of this House. During the last two years I have gone to the South-East twice, and the burden of complaint there has been in connection with the administration of the Vermin Acts. When I was there quite recently a comprehensive delegation of representatives of most of the local government bodies met me and discussed this question because they realised that in the South- East there was a lot of sandy country where rabbits found a lodgment. Owing to the neglect of the local governing bodies in enforcing the Act, and the difficulty in getting a prosecution, the vermin pest was a great problem. The task that something should be done to rectify the matter. My experience of local government bodies is that there has been a great deal of neglect in the proper administration of the Act. I have had members of these bodies coming into my office complaining that even the councils of which they were members would not carry out the provisions of the Act. When we realise what enormous value stock is to this State, we must be aware that anything we can do to increase the stock-carrying capacity of the country should be done. In the South-East there has been evolved a fumigator which has proved most effective. Men have come into my office and asked for particulars about land that has been unoccupied for years. When they have secured possession of it they have told me that with the aid of this fumigator they can keep the rabbit pest down. The information given to me is that they can clear that land at a cost from 9d. to 2s. per acre. Recently the Government decided that we would advance money to the district councils to purchase these fumigators and give them a period of five years in which to pay off the capital cost.

Mr. GUNN secured the adjournment of the debate until August 29.