**DOG FENCE ACT AMENDMENT BILL 1960**

**LEGISLATIVE COUNCIL, October 19, I960, pages 1422-1423**

Second reading

The Hon. C. D. ROWE (Attorney-General)

—I move-—

*That this Bill be now read, a second time.*

*Its* objects are to amend the Dog Fence Act so as to increase the penalties for damage to and unauthorized removal of any part of the dog fence and to render both the person causing the damage or removal and his employer liable therefore, and to place upon the owner of any vehicle, the driver of which causes the damage or removal, the onus of proving that the driver was not at the material time engaged upon his ordinary employment nor acting within the course and scope thereof. The damage that is caused to vermin fences from time to time is causing sheep owners throughout the pastoral areas great concern and representations have been to the Chairman of the Pastoral and Dog Fence *Boards* by the Stockowners’ Association of South Australia stressing the difficulties experienced in recovering penalties and compensation for such damage in particular for damage caused by vehicles. These representations were referred to the Crown Solicitor for advice. The Crown Solicitor considers that, sections 43 and 44 of the Dog Fence Act require attention, and recommended that those sections should be recast with increased penalties, and provision for compensation for damage. He also recommended that provision be made for the employer’s liability for damage caused by his employee in the course of his employment and for placing upon the owner of a vehicle, the driver of which causes damage to a fence, the onus of proving that the driver was not, at the material time, engaged upon his ordinary employment nor acting within the course and scope thereof. The Government agrees with these recommendations.

Section 43 of the principal Act at present prohibits wilful damage of any part of the dog fence for which the penalty is a fine not exceeding £50; and under section 44 a person who, without authority, removes any part of the dog fence or does any act whereby the fence ceases to be dog-proof commits an offence for which the penalty is a fine not exceeding £100, The penalty for a similar offence under the Vermin Act is a fine not exceeding £20 or imprisonment for a term not exceeding six months. The Government feels that the penalties under both Acts should be uniform and should be a fine not exceeding £100 or imprisonment for a term not exceeding six months.

Clause 3 substitutes for sections 43 and 44 of the principal Act new sections 43, 44 and 44a. The new section 43 (1) makes it an offense for a person, without lawful excuse, the onus of proving which lies on him, to cause damage to any part of the dog fence. The penalty for the offence is a fine not exceeding £100 or imprisonment for a term not exceeding six months. Subsection (2) of the section has the same effect as the repealed section 44 except for an increase in the penalty as stated earlier. Subsection (3) of the section empowers the court in addition to or in lieu of any penalty imposable under the section to order a convicted person to compensate the person responsible for maintaining the damaged fence, for the damage.

The new section 44 (1) makes the employer of a person who in the course of his employment damages or removes any part of the dog fence liable for the necessary expenses incurred in restoring it as a dog-proof fence. Subsection (2) of the section provides for the recovery of those expenses in any court of competent jurisdiction. Subsection (3) of the section provides that where damage to or removal of any part of the dog fence is caused by the driver of a vehicle, the owner of the vehicle shall be deemed to be the employer of the driver unless the owner proves that at the material time the driver was not in the ordinary employment of the owner nor acting within the course and scope thereof. The new section 44a contains an interpretation which places beyond doubt that any gate or ramp pertaining to the dog fence shall, for the purposes of sections 43 and 44, be deemed to be part of the dog fence.

The Hon. F. J. CONDON secured the adjournment of the debate.