Legislative Council

Tuesday, the 2nd October, 1962

CONTENTS

The PRESIDENT (The Hon. L. C. Diver) took the Chair at 4.30 p.m., and read prayers.

BILLS (20): ASSENT

Messages from the Governor received and read notifying assent to the following Bills:—

1. Associations Incorporation Act Amendment Bill.
2. Amendments Incorporation Act Amendment Bill.
3. Reprinting of Acts Authorisation Act Amendment Bill.
4. Building Societies Act Amendment Bill.
5. War Service Land Settlement Scheme Act Amendment Bill.
6. Firearms and Guns Act Amendment Bill.
7. Business Names Bill.
8. Iron Ore (Mount Goldsworthy) Agreement Bill.
9. BP Refinery (Kwinana) Limited Bill.
10. Declarations and Attestations Act Amendment Bill.
11. Evidence Act Amendment Bill.
12. Interpretation Act Amendment Bill.
13. Church of England (Northern Diocese) Act Amendment Bill.
14. Cemeteries Act Amendment Bill.
15. Law Reform (Statute of Frauds) Bill.
16. Lotteries (Control) Act Amendment Bill.
17. Grain Pool Act Amendment Bill.
18. Superannuation and Family Benefits Act Amendment Bill.
19. Stamp Act Amendment Bill.
20. Coal Mines Regulation Act Amendment Bill.

QUESTIONS ON NOTICE

MOTOR VEHICLES: RAILAGE

Kalgoorlie to Perth: Freight Earnings

1. The Hon. J. D. TEAHAN asked the Minister for Mines:

   What were the rail freight earnings by the W.A.G.R. for the twelve months ended the 30th June, 1962, in respect of the transport of new cars and motor vehicle bodies (ex Eastern States) from Kalgoorlie to the metropolitan area?

   The Hon. L. A. LOGAN (for The Hon. A. F. Griffith) replied:

   Railway freight earnings for the transport of new cars and motor vehicle bodies (ex the Eastern States) from Kalgoorlie to the metropolitan area for the twelve months ended the 30th June, 1962, were £249,400.

PARLIAMENT HOUSE SITE

Approval for Alterations

2. The Hon. A. L. LOTON asked the Minister for Local Government:

Is is a fact that with the exception of work in connection with Parliament House, parliamentary approval is required before alterations by way of—

(a) roadways;

(b) soil removal;

(c) drainage;

(d) removal of permanent fixtures;

(e) electrical installations; or

(f) any other works

can be proceeded with on the Parliament House site, Permanent Reserve Number (A↑1162)?

The Hon. L. A. LOGAN replied:

No; so long as the alterations conduce to the purpose of the reserve; namely, "Parliamentary Buildings."

LEAVE OF ABSENCE

On motion by The Hon. W. F. Willesee (for The Hon. F. J. S. Wise), leave of absence for twelve consecutive sittings granted to The Hon. H. C. Strickland (North) on the ground of private business.

EDUCATION ACT AMENDMENT BILL

Second Reading

THE HON. L. A. LOGAN (Midland—Minister for Local Government) [4.33 p.m.]: I move—

The the Bill be now read a second time.

The "leaving age," as applied to school children, was defined by Act. No. 72 of 1957 as meaning the age of 14 years, unless a greater age is proclaimed, but with the restriction that such greater age may not exceed 15 years. Under the present arrangements, classes which include children who turn 14 during the year usually reduce in size as the year progresses and certain children reach their fourteenth birthday. As a result, there is a certain wastage in that the smaller class and its teacher have to be maintained for the full duration of the school year.

The purpose of the amendment which appears in clause 3 of the Bill is to redefine the "leaving age" so that that age will, in future, mean the age of a child at the end of the school year in which the pupil attains the age of 14 years. As a consequence, the child will be more likely to study well in his last year at school in anticipation of completing the full year's curriculum and, as a result, be more knowledgeable at the end of his nine years of schooling.

Practically all children now commence schooling at the beginning of the year in which they turn six. Every child, except in a few special cases, will, under the present policy of chronological promotion, spend some years in a primary school and two years in a secondary school. It is considered that that is the least which should be done to meet present-day demands of society. The scholars who intend leaving school when they are 14 will benefit, because the teachers will be able to plan a two-year course which will be completed by the majority of students.

There is provision, nevertheless, in clause 5 which will enable the Minister for Education to use discretionary power to enable a pupil to leave school earlier in order to support his parents, or for some other very special purpose. It is intended that this discretion will be exercised generously during the first year or so under the new arrangement. The conditions applicable are set out in the clause. It might be mentioned in this connection that all other State Acts contain sections exempting children from school for stated reasons and at the discretion of the Minister, or the Director of Education.

Members will recall previous amendments to the Education Act directed towards increasing the school-leaving age. One of those was in 1943, which authorised the raising of the age to 15 years by proclamation, and again in 1957. As previously mentioned, an enabling Bill was passed to permit the progressive raising of the school leaving age to 15 years. The higher age was not achieved under either of these measures for several reasons, among which were the shortage of teachers and accommodation. The provisions of this Bill will not be dependent upon such factors, for they require neither additional classrooms nor more teachers.

It might be added that the school-leaving ages in the other States are—

Tasmania—16.

New South Wales—15.

Victoria, Queensland and South Australia—14.

In respect of the latter three States, there is provision for increasing the school-leaving age, but that has not yet become a practicability for reasons very similar to those experienced here in Western Australia.

In the matter of truancy, the Act presently requires welfare officers to return a child caught playing truant to its parents. Under present-day conditions, this is not always practicable, there being quite often no parent at home. In that event, there is an obligation on the part of the welfare officer to take the child to the parent's

place of employment. As that can cause embarrassment, it is considered a far better proposition for the child to be taken to school when no parent is at home.

In the case of a child convicted in court of truancy, it is provided he may be released on probation and subjected to the supervision of the Child Welfare Department. It is more desirable and appropriate that truants should be placed on probation to those officers who actually supervise their attendance at school, and this suggestion has the support of the Child Welfare Department. The amendment proposed provides the necessary legal backing for their supervision and relieves the Child Welfare Department of that responsibility.

There is not, however, any action which might be taken by the court, the Education Department, or the Child Welfare Department in the event of a child breaking the terms of his probation. This will be rectified by authorising the director-general to have the child, or the person responsible for him, appear before the Children's Court, which will be empowered to commit the child to the care of the Child Welfare Department.

In the case of habitual truants, it is mandatory for a court to commit a child to an institution. There is unanimity of thought as between the Child Welfare and Education Departments that there are occasions when it would be preferable for the child to be suitably placed with a foster parent. The amendment proposed provides discretionary power to the Child Welfare Department in that direction when exercising the provisions of section 10 of the Child Welfare Act, and an enabling measure is also to be introduced to amend that Act.

The Chairman of the Government School Teachers' Tribunal established in 1960 has sought some clarification of the tribunal's jurisdiction. District allowances are still paid to some teachers in a few areas of the State, but the tribunal has no jurisdiction to hear appeals or to make decisions concerning such allowances. This measure will rectify the position.

The director-general may, under the provisions of regulation 134, appoint, transfer, reduce the grade, demote, suspend, or dismiss a teacher for misconduct, breach of the regulations, or gross inefficiency. The teacher may under present statutory powers appeal only if penalised for misconduct or breach of regulations, but not in cases of conviction and punishment for gross inefficiency. There is a provision in this Bill which will enable appeals against dismissal for gross inefficiency. Teachers—or the teachers' union on behalf of teachers—may appeal to the teachers' tribunal in respect of any matter within its jurisdiction.

Although the tribunal has jurisdiction under section 37AE, subsection (3) (b) (iii), to deal with teachers' college student allowances and dismissals, no machinery is provided to enable such appeals to be lodged. For instance, the definition of "teacher" in the Act, makes no provision in respect of teachers' college student allowances and dismissals. There is an amendment in the Bill to provide such necessary machinery.

The important amendment in the Bill with respect to the school-leaving age is regarded as something of a compromise on measures which have been passed, but which successive Governments have been unable to proclaim.

It is considered that the relative provisions in this Bill will entail only a comparatively small increase in expenditure and yet provide some definite advantage to the pupils concerned.

Debate adjourned, on motion by The Hon. W. F. Willesee.

CHILD WELFARE ACT AMENDMENT BILL (No. 2)

Second Reading

THE HON. L. A. LOGAN (Midland—Minister for Child Welfare) [4.52 p.m.]: I move—

That the Bill be now read a second time.

With respect to habitual truants, the Education Act, prior to the introduction of the current amending Bill, provided under section 18, that a parent might be summoned before the Children's Court to show cause why a habitual truant should not be sent to an institution.

Correspondingly, section 42 of the Child Welfare Act provides that any order made by justices under section 18 of the Education Act shall direct the child to be sent to an institution. It will be seen, therefore, that under the present law it is mandatory for a justice when making an order to order the committal of the child to an institution.

The current Education Act Amendment Bill substitutes the committal of the child to the care of the Child Welfare Department instead of to an institution. Upon its passing, therefore, there will be no justification for the retention of the corresponding section 42 in the Child Welfare Act. The purpose of this Bill is to repeal that section.

Resulting from the proposed amendments to the two Acts, a habitual truant ordered by a justice to be committed to the Child Welfare Department will, in future, be subject to the discretionary powers available under section 10 of the Child Welfare Act.

Subsection (2) of that section makes provision for all wards to be dealt with by the director in any of the following ways:—

(a) Placed in some receiving depot.

(b) Detained in an institution.

(c) Transferred with the approval of the Minister from one institution to another institution or from one form of training to any other, which in the opinion of the director is likely to prove more beneficial to the child.

(d) Boarded out, apprenticed, or placed at service with some suitable person.

(e) Placed in the custody of some suitable person who may be willing to take charge of such child.

Officers of both the Child Welfare and the Education Departments consider that, in some cases, it would be better if the child could be suitably placed with a foster parent.

The introduction of this measure conforms to the wishes of many members of this House who considered that complementary legislation should be introduced to the Acts affected, instead of to one Act. It would have been possible to include the provisions of this measure in the Bill to amend the Education Act; and, unfortunately, such a step is sometimes taken and results in some confusion. The passage of this Bill will ensure that the Child Welfare Act, as well as the Education Act, will be amended.

Debate adjourned, on motion by The Hon. W. F. Willesee.

TOWN PLANNING AND DEVELOPMENT ACT AMENDMENT BILL

Report

Report of Committee adopted.

MENTAL HEALTH BILL

In Committee, etc.

Resumed from the 27th September. The Deputy Chairman of Committees (The Hon. A. R. Jones) in the Chair; The Hon. L. A. Logan (Minister for Local Government) in charge of the Bill.

The DEPUTY CHAIRMAN: Progress was reported after clause 21 had been agreed to.

Clause 22: Revocation of approval or permit—

The Hon. L. A. LOGAN: When I dealt with this Bill previously I promised to obtain information on several points which were raised. I shall move an amendment which will bring about the appointment of a deputy director who is a psychiatrist. For that purpose the Bill will have to be recommitted for the reconsideration of clause 5, relating to the definitions.

Regarding clause 21, Dr. Hislop considered that in some cases the period of one month was too short, while Mrs. Hutchison thought it was too long. To overcome the objection raised by Dr. Hislop it is intended to move an amendment for the inclusion of the words, "or within such further period as the Minister may allow."

Another point raised concerned the control over private hospitals. While the director has the over-all control over these hospitals, the provisions of this measure will not apply to them, and the board of visitors will not have any control. Division 1, part III, of the Act deals exclusively with State services and hospitals.

A further point in regard to the appointment of a permanent medical officer was raised by Dr. Hislop when dealing with clause 10. The information I have obtained on this point is as follows:—

> Clause 10 gives the power for the employment of medical officers as distinct from psychiatrists, which qualification would be necessary in respect of the director and the superintendents and deputy superintendents of any hospital.
>
> The power to appoint medical officers is necessary as apart from those of the status mentioned above, many others will be employed in the mental health services—such as neurologists, pathologists and may be radiologists, and all those doctors of a junior status who today form the hard core of the medical services in our mental health services.
>
> Furthermore, a reference to clause 19 will show a number of other services, as distinct from hospitals, which will require the need for medical officers—such as hostels, centres for geriatric patients, etc.
>
> It will be noticed in clause 10 that it excludes appointments as provided for in clause 9, i.e. superintendents and deputies of hospitals, who, as I have mentioned, must be psychiatrists.

The information I have given covers most of the points which were raised. In due course I shall move for the recommittal of the Bill, to enable the necessary amendments to be made.

The Hon. R. F. HUTCHISON: When the Minister refers to the appointment of a deputy director who is a psychiatrist, does he mean one who is also trained in social sciences? Will this psychiatrist be a fully-trained psychiatrist, or will he be a doctor who has received a little training in psychiatry?

The Hon. L. A. LOGAN: I think Dr. Hislop said the other night that this psychiatrist will be one of the highest qualified men it is possible to appoint. In fact, he said that from the time they start on their training, it takes 13 years before they reach the status required under this legislation.

The Hon. R. F. Hutchison: Is it not necessary to make that quite clear in the Bill? I am very anxious about this because it is very important.

The Hon. J. G. HISLOP: I do not think there need be any anxiety about the use of the word "psychiatrist"; because in the Bill it is provided that the psychiatrist shall be a psychiatrist whose name appears in the list prepared by the Medical Board. Therefore the Medical Board is going to decide on the person appointed as the psychiatrist. It will not appoint a man who has done a lot of medicine and a little psychiatry, but will appoint a person who is qualified in medicine and has done a lot of psychiatry.

The Hon. R. F. HUTCHISON: It is still not quite clear to me. I am talking about a person trained in social sciences, like Dr. Wright who was here and who knows all sides of it. I hope there will be no misunderstanding about what I am trying to say. I was wondering whether we could add that the psychiatrist must be trained in the social sciences.

The Hon. H. K. Watson: What do you mean by that?

The Hon. R. F. HUTCHISON: A lot of these people are trained in psychiatry but they are not really trained for a position like this one. They do not understand the sociological side. As a matter of fact, some of them are very offhanded about it. We want to make sure that we appoint a man who knows just what is needed in the treatment of these people. It is not just a matter of treating them with drugs and medicines and saying that if these drugs and medicines do not work then nothing will. It means more than that.

The Hon. G. C. MacKINNON: Mrs. Hutchison mentioned social sciences. I wonder if she could tell us what degrees or qualifications she thinks are desirable for this man to hold?

The Hon. R. F. HUTCHISON: I cannot say offhand, but I could do so if I were given a little time. However, there are such qualifications, because I discovered this when I was overseas. I also saw some of the things that can happen if a fully qualified man is not appointed. Dr. Hislop will know the qualifications necessary.

The DEPUTY CHAIRMAN (The Hon. A. R. Jones): If the honourable member wishes to do something about this matter, the only thing I can suggest is that she submit an amendment. This cross-questioning of one another has gone far enough, and if the honourable member does not have the information she desires, I do not know what she can do.

Clause put and passed.

Clause 23: Power to make grants or subsidies—

The Hon. J. G. HISLOP: It seems to me that the provisions contained in subclause (3) of this clause and in clause 88 (2) (c) are rather loose. We should not simply provide that regulations may be made in regard to the method of conducting hospitals. I would rather have the provisions included in the Bill than provide that regulations may be made. We all know what regulations are; and, if they were varied from time to time, they could prove very difficult with regard to approved hospitals. Surely it is known how an approved hospital must be conducted; and therefore these provisions should be included in this legislation.

It is quite obvious from what the Minister said that there shall be no board of visitors for this sort of hospital, even though the Government makes a subsidy. However, instructions will be given as to how it will be conducted. It is not quite as easy in these approved hospitals as one may think. Therefore, the provisions should be included in the Bill.

The Hon. R. F. HUTCHISON: I have the same thought in my mind. Will these hospitals be visited by a board of visitors? Under clause 23 the Governor may, out of moneys appropriated by Parliament, make grants and give annual subsidies towards the cost of maintenance of a private hospital approved under this division. Surely there will be a board of visitors. Another question: Are they free hospitals? I do not know. Also, would the Government subsidise the private psychiatrists who run these hospitals? I would like the Minister to answer that question.

The Hon. L. A. LOGAN: The provisions in this Bill at the moment dealing with the visiting committee apply to approved mental hospitals and deal exclusively with State institutions and hospitals. We may have to consider further the question of extending the power of this visiting committee to private hospitals, but I do not feel we can go that far at the moment.

The supervision of these private hospitals will be under the control of the director. However, I would prefer to leave the other matter until later. If, as a result of the operation of this legislation, it is found that some amendment is necessary along the lines suggested, then that will be the time to make such an amendment. But at this stage, it would be wrong to include the private hospitals.

Clause put and passed.

Clauses 24 to 27 put and passed.

Clause 28: Reception and admission—

The Hon. J. G. HISLOP: I believe this is one of the most controversial clauses in the Bill, and not one of my colleagues to whom I have spoken is happy about it. I know that no doctor will be happy about

referring an individual to an approved hospital without first having a second opinion. I am quite certain that clause 81 (3) will be used instead of clause 28. Subclause (3) of clause 81 reads as follows:—

> Notwithstanding any other provision of this Act, a medical practitioner may, where he thinks it expedient or desirable so to do, refer a person as, in his opinion, suffering from nervous disorder . . .

No single medical officer is going to refer a person under clause 28 because such person may be out on the street again within 72 hours if the superintendent of the hospital does not agree that the patient is suffering from mental disorder. I know I will use clause 81.

All my colleagues to whom I have spoken are still of the opinion that a certificate from two doctors is required. Personally I would do away with the reference to a justice of the peace, which appears later on in the Bill. I have known where two medical men have had difficulty in examining a patient; but, having decided to send him to Heathcote, there has been a great delay in locating a justice of the peace. There are plenty of them, but when required in a hurry they are as scarce as hens' teeth. If the Bill were altered to provide for two medical certificates, that would be all that would be necessary for most of the work to be done.

With regard to the clause which states that 72 hours shall be the period during which a patient shall be examined by the psychiatrist to ascertain his condition, those engaged in psychiatry say that 72 hours is not long enough.

I cannot alter clause 28 at all. It needs a complete reversal of principle. Unless the Minister for Health is willing to reconsider this question and provide for two medical men, it is difficult to alter the clause. But I certainly intend to ask that the 72 hours be altered to seven days. All my colleagues with whom I spoke on the week-end agree that seven days is a much better period than 72 hours.

The Bill appears to provide that the detention of an individual in a mental hospital can be shortened from what it was previously. The Bill will make admission easier, and when we make admission easier we have to protect both the patient and the doctor. If two doctors admit a patient, then the patient could be admitted for seven days. If we provide for a period of not more than seven days we will give protection to both sides.

I am not going to try to force my views. If they are accepted, well and good. So far all the suggestions I have made in regard to the Bill have been accepted.

The Hon. F. R. H. LAVERY: Dr. Hislop said he spoke to some of his medical friends, and I have spoken to some psychiatric people who say this is a necessary clause in view of people coming from country districts. There is a great difficulty in finding two doctors in some country areas. There may be only one doctor for four or five small towns. That is one reason why the psychiatrists are looking forward to one doctor being allowed to act.

In regard to subclause (3), sometimes a doctor cannot make a diagnosis within five to seven days. I have been in hospital myself for that long waiting to find out what was wrong with me. I think that in the case of someone with a mental breakdown 72 hours is not very long. The idea is that if a patient is not as ill as was thought, he can go to some other hospital. I want to see people in and out of these hospitals as quickly as possible.

The feeling among men who have handled this type of patient is that 72 hours could be the more effective period in seven out of ten cases, but in the other three it would not be so effective.

I would not like to say that a limit of seven days should be prescribed. A patient might still show a great weakness, although the doctors' diagnosis of his condition might not be such that he would have to remain in the hospital. In that event he would have to leave.

The Hon. W. F. WILLESEE: The point raised by Mr. Lavery is pertinent because in the country we have circuit doctors who are entirely on their own and cannot devote a lot of time to a particular matter. This is merely a question of referral.

I have only a lay knowledge of mental diseases, but there could be a very violent reaction by a patient within 24 or 48 hours; or there could be an alternative reaction so that the patient would regain complete health. If a doctor cannot see a patient at fairly frequent intervals he may prefer to send him to where he can get the best medical attention. If two doctors were available it would be better than having one doctor make the decision. If we interfere with the clause, we should suggest that where there is an alternative it can be used, but where there is no alternative the medical officer should be allowed to do the best he can in the interests of his patient.

The Hon. L. A. LOGAN: We have to appreciate that this is a fairly new conception in our mental health legislation. Dr. Hislop is concerned about it, and has made reference to clause 81. If he reads the Bill properly he will appreciate that the patient will not be admitted on one doctor's recommendation, but only referred. The patient will not be admitted until such time as the psychiatrist admits him. Although one medical practitioner could possibly be charged at a later stage with admitting a patient to a hospital, the patient is not admitted on the doctor's say-so but is only referred. The final decision lies with the psychiatrist in charge of the hospital. There is a safeguard

there. That is a fairly new concept, and it goes further than the Victorian legislation.

Something new like this might create a few problems, but Parliament sits every year and we can always amend the legislation if necessary: In an endeavour to see whether this will work as those responsible for it hope it will work, I think we should give it a trial. I have already accepted amendments made by Dr. Hislop, but it would be difficult to alter this provision.

The Hon. J. G. HISLOP: It will certainly have to be a trial, because the Minister says that a case will be referred to an institution, and will only be admitted on the word of the medical officer in charge of the institution. That is all right if the institution has a number of beds and will admit the patient. But more often than not we have to ring up to find out whether a patient can be admitted. Then too, in respect of mental health diagnosis it is very diffcult to find out whether the patient is fit for admission.

The F. R. H. Lavery: Do you think subclause (4) protects you there?

The Hon. J. G. HISLOP: No; it simply says that if they agree, they admit the case.

The Hon. F. R. H. Lavery: It does provide for a second doctor.

The Hon. J. G. HISLOP: I am not going to force my opinion, but I thoroughly dislike every word in clause 28.

The Hon. W. F. Willesee: How do you like the position in regard to one doctor?

The Hon. J. G. HISLOP: I do not like it at all.

The Hon. W. F. Willesee: He has no alternative; he has to make a decision.

The Hon. J. G. HISLOP: We have no great difficulty in sending people down from the country because very often a police officer is called upon to assist, and a police officer is mentioned in the Bill. I do not think we can make any Bill cover all the requirements of this enormous State, and that is what this clause tries to do. If I sign a certificate today, it can be used next year, as the law exists. But now the authorities want to make it 14 days.

The vast majority of people live within the city area, but this is an attempt to cover the whole State. I do not know that it would take more than 14 days to come from any point within the State to Heathcote. People living well outside the metropolitan area could be brought here by air. People are probably brought more quickly from the north-west than they are from Dumbleyung. I think 14 days is a long period.

As I see the Bill, it is an attempt to achieve uniformity for the whole State. If those responsible for it like to make this experiment, I am not going to continue to argue, but I hate every word in this clause. I think it is against all medical practice at the moment; and at some time or other I think we will have to resort to clause 80 which states that civil or criminal proceedings shall not lie against any person for anything done in reliance on any referral, etc.

The Hon. E. M. HEENAN: I understand that Dr. Hislop is mainly critical of the 72-hour period in subclause (3). My view is that we should have adequate protection for the individual. These people are going to be referred to a hospital by a medical officer who has made an examination within 14 days. Then, having reached the hospital, they cannot be kept there for more than three days unless the superintendent, or a psychiatrist, gives some other certificate.

It seems to me that this is a measure of protection for an unfortunate individual who might show signs of needing treatment but who quickly recovers. I am inclined to favour it on that ground—that it is a protection for an individual. Surely three days ought to be adequate for the superintendent of a hospital, or a pyschiatrist, to decide whether or not a patient should be retained. For those reasons I would like to see the provision remain as it is.

The Hon. N. E. BAXTER: I would like to know what is meant by the words in lines 10 and 11, page 15—"based upon a personal examination." Do they mean a personal examination of a patient in a doctor's surgery, where, perhaps, the doctor questions the patient and observes him and then decides to refer him to a mental institution; or do they mean a thorough investigation of the patient's state of health?

A person may need neuro-surgery, and I think the words "personal examination" are rather brief and inadequate. A person should have a thorough examination prior to being referred to a mental institution; because, after all, psychiatrists make their examination only on questions and answers. In the circumstances I think a doctor should have to make more than a brief examination of a patient.

The Hon. L. A. LOGAN: I think if the honourable member looks at clause 82 he will appreciate that no medical officer will sign a referral without a complete examination of the patient; because he is liable to a fine of £200. I would also refer the honourable member to subclause (2) of this clause. Possibly the responsibility on a medical practitioner under this legislation will be greater than it is under the present legislation. I think the Bill will adequately cover the position.

Clause put and passed.

Clauses 29 and 30 put and passed.

Clause 31: Examination of persons not taken care of, cruelly treated or wrongfully detained—

The Hon. R. F. HUTCHISON: I wonder if it would not be better to have the words "the Director or any other authorised officer of the Department or a police officer" rather than the present words. To whom does "any other officer" refer?

The Hon. L. A. LOGAN: All officers of the department would be authorised to carry out the instructions contained in this clause.

Clause put and passed.

Clauses 32 to 54 put and passed.

Clause 55: Application to the Court—

The Hon. L. A. LOGAN: I have some amendments on the notice paper to alter the word "person" to the word "patient". If members look at the clause they will appreciate why it is necessary to make these alterations in order to avoid confusion as to the intention of the clause. The word "person" appears three times in paragraph (b) on page 30, and I think the amendments are self-explanatory. I move an amendment—

> Page 30, line 11—Delete the word "person" and substitute the word "patient".

Amendment put and passed.

The clause was further amended, on motions by The Hon. L. A. Logan, as follows:—

> Page 30, line 13—Delete the word "person" and substitute the word "patient".
>
> Page 30, line 14—Delete the word "person" and substitute the word "patient".

Clause, as amended, put and passed.

Clauses 56 and 57 put and passed.

Clause 58: Patients and others to be afforded interviews—

The Hon. J. G. HISLOP: This seems an extraordinary clause to me. It states—

> A patient requiring an interview with a medical officer of the hospital shall be afforded that interview, within three days of the request being made . . . .

I think if a patient makes a request to interview a doctor that interview should be as soon as possible, unless the person is one who asks for an interview every five minutes, and is making a nuisance of himself. Surely we do not have to put in the Bill that if a patient wants to interview a doctor it must be within three days. There will be a large staff at the hospital, or hospitals, and there will be psychiatrists, and so on. Therefore, why have that provision in the Bill?

If a patient of mine makes a request to interview me I see him that day, or as soon as I can arrange it. There does not seem to be any reason as far as I can see for having this provision, although I can see the reason for the provision that interviews with the board shall take place at the next meeting of the board. I would say that if a patient required an interview with a medical practitioner he should be afforded that interview; and perhaps we could use the words "within a reasonable period".

The Hon. L. A. LOGAN: Of course "a reasonable period" could possibly be longer than three days.

The Hon. J. G. Hislop: Why state it at all?

The Hon. L. A. LOGAN: I think for the reason that up to the present when patients have requested interviews with medical officers those interviews have not been granted. I presume that is what has happened in the past, and this provision will make sure that the patient has an opportunity of talking to the medical officer. It is a safeguard. If we were to peruse the complaints that have been made in the past regarding some of our mental patients I am sure we would see that where they have requested interviews those interviews have not always been granted. Therefore this provision is for the protection of the patient. I suppose the reason for the three days is that a patient may wish to see a particular medical officer and he may be off duty, or something like that, because it says, "a medical officer" and not "the medical officer."

The Hon. F. R. H. LAVERY: When we had a Royal Commission some years ago into the treatment afforded to patients at the Claremont Mental Hospital this question was brought forward very forcibly. I happened to be interested in a particular patient at that time; and it seems to me that the doubts raised by Dr. Hislop have a great deal of substance. I believe that if a patient wants to see a doctor, for medical reasons, he should be able to do so within hours, or as soon as possible.

I shall not mention the name of the patient to whom I am referring, although I could give his name if it were required; and evidence was given before the Royal Commission in regard to this matter. A certain doctor at the hospital got an idea into his head, because certain patients did make one or two extra appeals to meet the medical officers throughout the year, and he said, "Let them wait; I will see them later". But he never saw this particular patient. The Royal Commissioner was very scathing in regard to the matter, and I think the answer given by the Minister is probably the reason for this amendment.

The Hon. R. F. HUTCHISON: I support what Dr. Hislop has said. Unless there is some special reason for it I think if a patient makes a request to see a medical officer, that request should be granted as soon as possible. I think it is one of the old ideas that it does not matter about seeing these mental patients as soon as they want to see a doctor. I know of a patient who asked to see a doctor, and when she finally did see him she was in a bad state. I agree that a medical officer should see the patient at once; and if a particular doctor is not available, another one should be deputed to see the patient.

The Hon. L. A. LOGAN: This does not necessarily refer to a patient seeking medical advice, but to one seeking an interview. If there were 50 to 100 patients asking for an interview at the same time it just could not be managed. If the patient requires medical attention the medical officer should see he gets it without asking for it. I think the provision is fair enough.

The Hon. J. G. HISLOP: I am not sure whether I am glad or sorry that I raised this matter. Firstly we have heard the damning indictment against the permanent staff of the hospital that when an interview is asked for it is not granted. That seems to be the attitude throughout. If that is the case I will leave the provision as it is, because it will at least ensure that an interview does take place. But it seems extraordinary to me that interviews are not granted. In this matter of an interview one must realise that it is part of the mental hygiene treatment for these patients with tormented minds. A good deal of probing must take place, and because of that I would support a provision that would guarantee the patient an interview.

The Hon. R. F. HUTCHISON: I move an amendment—

Page 31, line 26—Delete the words "three days" and substitute the words "twenty-four hours".

The Hon. L. A. LOGAN: As I have said it would be impossible on the same day to grant interviews to 50 to 100 patients. Three days is a reasonable period. It is not a medical check, but a request for an interview.

Amendment put and negatived.

Clause put and passed.

Clause 59: Letters of patients—

The Hon. L. A. LOGAN: I move an amendment—

Page 32, line 9—Add after the word "Director" the following passage:—

; or

(g) a legal practitioner,

This will give the right for letters to be received unopened by the Governor, the Minister—that is the Minister for Health —a member of the Parliament of the State, a judge or the court, the board or a member of the board, or the director. I do not know whether Dr. Hislop wishes to include "medical officer"; but I think it would be wrong to go beyond the provisions in the Bill. There is a further amendment on the notice paper and possibly if I raise objections to that now the whole situation might be covered.

As I have mentioned, letters written by patients can cause considerable harm to relatives receiving them if the letters are not censored before they leave the hospital. Letters written to the people mentioned above are in a different category. What is more, the officials concerned will not visit the hospital, whereas the guardian or the next of kin will or should.

The Hon. R. F. HUTCHISON: I move—

That the amendment be amended by adding the following passage:—

; or

(h) next of kin or guardian,

The Hon. J. MURRAY: May I appeal to you, Sir, to take the Minister's amendment first, because it is a desirable one. If you accept the two together we might lose the first with the second.

The DEPUTY CHAIRMAN (The Hon. A. R. Jones): Since it would make no difference I suggest Mrs. Hutchison withdraw her amendment.

The Hon. R. F. HUTCHISON: I would like to know what happens if the patient has no legal practitioner. I am, however, quite prepared to withdraw my amendment.

Amendment on the amendment, by leave, withdrawn.

Amendment put and passed.

The Hon. R. F. HUTCHISON: I might say here that I was asked to bring this amendment forward and to inquire what would be the position if a person had no legal practitioner. Who would lodge an appeal in such a case?

The Hon. F. R. H. Lavery: This is only the case of a patient writing a letter to somebody.

The Hon. L. A. LOGAN: I move an amendment—

Page 32, line 10—Insert before the word "shall" the words "as such,".

The inclusion of these words was requested by another place to make sure that if a letter were written, for example, to "Mr. Willesee, M.L.C.," as such it would not be opened. But if it were addressed merely to "Mr. Willesee" then it might, and should be opened. It is to ensure that the letter will not be opened by the superintendent if it is written to one of the people previously mentioned.

The Hon. J. G. HISLOP: Is not that rather restrictive? The person concerned is not normal, and if he writes to Mr. Willesee, or myself, and leaves out the letters M.L.C., the letter will be opened and then sent on if approved. The words do not seem necessary.

The Hon. L. A. LOGAN: If a letter is written and addressed to Mr. Willesee without the letters M.L.C. being added, how would the superintendent know that it is meant for Mr. Willesee, M.L.C.?

The Hon. G. C. MacKinnon: The superintendent is entitled to some protection.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 60 to 63 put and passed.

Clause 64: Incapable persons—

The Hon. H. K. WATSON: I move an amendment—

Page 34, lines 30 to 38—Delete subclause (4).

I did have notice on the notice paper of my intention to move to delete subclause (3), but upon further consideration I have decided not to do so, because that subclause has really been taken out of section 32 of the Public Trustee Act, 1941, with the exception that the law at the moment —that is, the Public Trustee Act, 1941— provides that notice shall be given to the Public Trustee. However, subclause (3) of the Bill goes further and states that the Public Trustee may be heard on the hearing of the application.

I am dubious about the last few words, but after considering the matter I am disinclined to agree that there should be any variation in the subclause as it stands at the moment. I have moved for the deletion of subclause (4) for this reason: Its effect would be virtually to deprive a natural person from being appointed as a manager in favour of the Public Trustee. I feel that an individual no less than a corporate trustee, is—if he is a fit and proper person—entitled to be granted the administration of the estate and certainly should not have to prove to the court that he is entitled to be appointed.

The Hon. L. A. LOGAN: The other night I mentioned the point raised by Dr. Hislop and Mr. Watson, and on consideration I thought that subclauses (3) and (4) should be taken out of the Bill. The notes before me confirm what Mr. Watson has said—that subclause (3) should remain— and I have no objection to subclause (4) being deleted.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 65 and 66 put and passed.

Clause 67: Powers of manager—

The Hon. L. A. LOGAN: I move an amendment—

Page 36, lines 19 to 21—Delete all words after the word "powers" down to and including the figures "1941" and substitute the words "set out in section sixty-eight".

These words are in clause 68 and I do not think there is any need for duplication.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 68: Additional powers conferrable on managers—

The Hon. L. A. LOGAN: I move an amendment—

Pages 36 to 39—Delete subclause (1) and substitute the following:—

Powers conferrable on managers.

(1) The Court may, by order, authorise or direct the manager of the estate of an incapable person to do all or any of the following, that is to say—

(a) take possession of all the property of the incapable person;

(b) demand, receive and recover income of, and moneys due or that become due to, and any compensation or damages for injury to the estate or the person of, the incapable person;

(c) pay any debts of, and settle or compromise any demand made by, or against, the incapable person or against the estate and discharge any encumbrance on the estate;

(d) invest any moneys forming part of the estate in any securities in which trustees may by law invest;

(e) sell, or grant an option to purchase, any property of the incapable person, by public auction or private contract, in such manner and on such terms or conditions and for such purposes as the Court, or, if the Court so orders, the manager, thinks fit;

(f) grant or concur in granting a lease of any property of the incapable person, for such term and on such covenants, including, without limitation, an

option or options of renewal, as the Court, or, if the Court so orders, the manager, thinks fit;

(g) surrender, or concur in surrendering, any lease, accept any lease, accept the surrender of any lease or renew any lease;

(h) execute any power of leasing vested in the incapable person, where he has a limited estate only in the property over which the power extends;

(i) repair, and effect any insurance necessary for the protection of, any of the property of the incapable person;

(j) expend money in the improvement of any property of the incapable person, by way of building or otherwise;

(k) make exchange or partition of any property of the incapable person, or in which he is interested, and give or receive money for equality of exchange or partition;

(l) carry on, or join in carrying on, any trade or business of the incapable person or in which he is interested and raise and employ in the trade or business any additional capital to that then employed therein;

(m) agree to the alteration of the conditions of, or to a dissolution of and the distribution of the assets of, any partnership that the incapable person has entered into or sell any partnership interest of that person;

(n) complete any contract for the performance of which the incapable person is liable or enter into any agreement terminating his liability thereunder;

(o) bring, and defend, actions, suits and other legal proceedings, in the name of the incapable person;

(p) exercise any power or give any consent required for the exercise of any power, where the power is vested in the incapable person for his own benefit or the power of consent is in the nature of a beneficial interest in him;

(q) surrender, assign, or otherwise dispose of, with or without consideration, any onerous property of the incapable person;

(r) sequestrate the estate of the incapable person, under the provisions of the bankruptcy laws;

(s) bring lands of the incapable person under the operation of the Transfer of Land Act, 1893;

(t) surrender any policy of life assurance of the incapable person;

(u) apply or expend moneys of the incapable person, whether arising from real or personal property and whether income or capital, for the maintenance of that person, of the husband or wife of that person or of any person wholly or partially dependent on that person, or for the maintenance, education and advancement of the children, grandchildren or any infant relative of that person, in such manner and to such an extent as the Court, having regard to the circumstances and the value of the estate of that person, considers proper and reasonable;

(v) expend moneys of the incapable person in the purchase of a home for that person, or for the wife, husband or children of that person; and

(w) mortgage, charge (with or without power of sale and on such terms as the Court thinks fit), deal

with or dispose of, as the Court thinks most expedient, any property of the incapable person, for the purpose of raising, securing or repaying, with or without interest, money that is to be, or that has been, applied to, or for, the carrying into effect of all or any of the things authorised by the Court, under this Part.

This may seem a long amendment, but in fact there is little difference between this subclause and the one I am moving to delete, excepting that provision is made for power to invest money. To do this it was necessary to rearrange the drafting of the subclause. In another place it was agreed that the issue raised by Mr. Guthrie would be given consideration here.

The Hon. J. G. HISLOP: In my second reading speech I made a plea that some lessening of the powers of the Public Trustee might take place under certain conditions; and in particular that the affairs of the elderly people who are in Claremont through no fault of their own, but simply through the process of ageing, could be handled by their families rather than immediately taken over by the Public Trustee or a court-appointed manager.

Quite a number of these elderly people already have their affairs handled by a legally appointed committee, which is doing quite a good job, and I cannot see why this set-up should be suddenly interfered with by the provisions in this Bill.

If members think about this measure they will find that within a month of an individual being admitted to Claremont the Public Trustee can ask that an investigation be made by another psychiatrist to ascertain whether the person concerned is incapable of handling his affairs. However, the measure does not say that the psychiatrist must be one from outside the institution. I presume it could be one within the institution. I would plead with the Minister that this be looked into to see whether it will not be too harshly applied in some cases.

The Hon. L. A. Logan: It is an order of the court.

The J. G. HISLOP: Yes, but I think a further look at this would be wise. I can give a personal example: A friend of mine in the latter part of life became difficult to handle and his wife had to put him into the mental hospital. This man had plenty of means and a family that could look after his affairs, but they were taken over. Although his wife was in need of a certain amount of care herself she found it extremely difficult to get anything more than a mere pittance because of this control. So far as I can see under this clause there is nothing to permit a committee to continue, without interference, to look after the affairs of an individual who is in a mental hospital.

I think we should pause here for the time being so the Minister can review the matter. If he comes back and says he is satisfied that justice is being done to everybody, well and good. We should look at this measure very carefully from now on with a view to protecting the assets of individuals in relation to their families. I am not happy that we are doing justice to all concerned.

The Hon. A. L. Loton: It is better for a family to look after them.

The Hon. J. G. HISLOP: Much better. I would like to be reassured by the Minister that we are doing justice to these individuals. Personally I do not think we are.

Sitting suspended from 6.15 to 7.30 p.m.

The Hon. L. A. LOGAN: Prior to the tea suspension, Dr. Hislop wondered whether there were sufficient safeguards for patients who were incapable of looking after themselves. He also raised a point in connection with the manager of a patient's estate. Surely it is possible for the family of a patient to be represented among those controlling the patient's affairs. If one is dealing with a family, one deals with one person who is represented as being the head of that family. However, there is no reason why a court could not appoint three members of the family to be the managers of a patient's affairs.

The Hon. J. G. Hislop: Would it not be better to change the word "person" to "persons"?

The Hon. L. A. LOGAN: Does not the word "person" embrace "persons"? If we study the Interpretation Act I think we will find that it does. I think the problem raised by Dr. Hislop would be safeguarded.

The Hon. F. R. H. LAVERY: I refer the Committee to paragraph (t) concerning the surrender of a policy of life assurance of an incapable person. With present-day treatment a patient may be incapable for a time and then become a normal citizen again.

The Hon. L. A. LOGAN: A policy might have to be surrendered to enable further payments to be made in connection with the treatment of a patient. It could arise that there is no other income apart from the moneys of a life assurance policy. A policy is of no benefit to the patient after he dies and it may be of some use to him while he is alive. The surrendering of that policy might be of some advantage to him.

The Hon. F. R. H. Lavery: I am concerned whether the wife or dependants of a patient who is in hospital would be protected.

The Hon. J. G. HISLOP: I am not going to oppose this clause, although I think one or two of the items should be looked at, particularly the one referred to by Mr. Lavery in connection with life assurance policies. The amount of money involved in surrendering a life assurance policy is small indeed and has no relationship to the actual policy. If a patient is likely to live for a lengthy period the court should allow him to borrow against the policy. Some years ago I made inquiries about surrendering a policy and I was offered £1,700 as the surrender value when the total amount was approximately £5,300. If that sort of thing is allowed to happen here it could place a family at a disadvantage.

I would like to ask the Minister whether he considers a clause might be added here or elsewhere which would give the family or interested persons the right to appeal to the court against a decision already given. If fresh evidence can be brought forward the public would feel that it had some rights in this matter and that the affairs of a patient were not taken over completely by the Public Trustee and managed without any consideration for the patient or the patient's family; or that a patient's affairs were managed only in accordance with what the court decided. The court may make an order, and once it has done so the individual will have no right of appeal.

The Hon. H. R. Robinson: It would do that only in special circumstances.

The Hon. J. G. HISLOP: I want to be certain of that. Within 30 days of a person being admitted to a mental hospital the Public Trustee can ask whether the patient is a capable person. I want the public to feel it has some protection by having the right of appeal.

The Hon. J. M. Thomson: You want to ensure that the families interested are protected?

The Hon. J. G. HISLOP: Yes. Under the clause the court decides what a family shall receive in maintenance, depending on the size of the estate. In the case of my friend, the amount that was allowed to the individual I mentioned was much less than the estate could afford. I think the public should know that the moment a person enters a hospital the relatives lose all right to the estate.

The Hon. L. A. LOGAN: I can assure the honourable member that I will take this matter up with the Minister for Health to ensure that the family of the patient is safeguarded against any unnecessary action on the part of the manager, trustee, or Public Trustee. However, when Dr. Hislop first spoke, he referred to the Public Trustee doing these things. It is not the Public Trustee who takes this action, but the court.

The Hon. J. G. Hislop: The Public Trustee performs the actions after the court has so ordered.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 69 to 71 put and passed.

Clause 72: Examination of accounts of managers being natural persons—

The Hon. L. A. LOGAN: On the notice paper I have quite a list of amendments to move in regard to this clause. As printed, the clause seeks to grant wide powers to the Public Trustee. It will give him overriding power over a natural person or an ordinary trustee. I do not think it is right that it should be necessary for a natural person or a trustee to refer all his actions to the Public Trustee for consideration. It is stretching the limit a little when, by an Act of Parliament, we force a natural person to go to the Public Trustee. This could have the effect that, by continually having to refer matters to the Public Trustee, the natural person or the trustee could eventually say, "Let the Public Trustee do the lot"; and we do not want that to happen. It would be much better for the natural person or the trustee to refer any matter back to the Master of the Supreme Court. Therefore, I move an amendment—

> Page 41, line 14—Delete the words "Public Trustee" and substitute the word "Master."

The Hon. J. G. HISLOP: I thank the Minister for paying special attention to this clause because I would have raised opposition to it myself. As printed, it seems that a person would have little protection against the Public Trustee. I thoroughly agree with the amendment.

Amendment put and passed.

The Hon. L. A. LOGAN: As all of the following amendments set out on the notice paper are consequential on the first amendment I have moved to this clause, there will be no need for me to make any further comment.

The clause was further amended, on motions by The Hon. L. A. Logan (Minister for Local Government), as follows:—

> Page 41 line 18—Delete subclause (2) and substitute the following:—
>
> (2) When a manager dies, a person having possession of any books, papers or documents relating to the estate of an incapable person that was being administered by the deceased manager shall deliver them to the court;

and those books, papers or documents shall there be examined and disposed of in accordance with the rules.

Page 41, line 25—Delete the words "Public Trustee" and substitute the word "Master".

Page 41, line 30—Delete the words ", or may be,".

Page 41, lines 32 and 33—Delete the words "Public Trustee shall make a report thereon to the Master who" and substitute the word "Master".

Page 41, lines 38 and 39—Delete the words ", either by the Master or the Public Trustee," and substitute the words "by the Master".

Page 42, lines 1 to 3—Delete the words "; and those accounts shall be kept in safe custody and preserved by the Public Trustee for a period of not less than twelve years".

Page 42, line 7—Delete the words "Public Trustee" and substitute the word "Master".

Page 42, lines 8 to 11—Delete all words commencing with the words "Public Trustee", and ending with the word "who" and substitute the word "Master".

Page 42, line 16—Delete the words "Public Trustee" and substitute the word "Court".

Page 42, lines 17 to 19—Delete the words "and by the Court, on the reference to the Master, under this section, of any question arising out of the accounts,".

Clause, as amended, put and passed.

Clause 73: Accounts and payment of corporate trustees—

The Hon. L. A. LOGAN: I have no amendment to move to this clause. I merely rose to my feet because I was wondering whether this was the safeguard which Dr. Hislop was seeking a little while ago.

The Hon. J. G. HISLOP: Yes; I think this clause would cover it. There is another feature of the clause which I would like the Minister to consider. From my reading of it it does not appear as if a natural person appointed as a manager can receive any payment for the work done in administering the estate. Some of these estates could be fairly large which could mean that a great deal of work would be involved in the administration of them. Therefore, I think a natural person should be entitled to payment for his work in the same way as a trustee organisation.

The Hon. L. A. Logan: I will have a look at that point for the honourable member.

Clause put and passed.

Clauses 74 to 78 put and passed.

Clause 79: Person under eighteen years in need of, and not receiving, treatment to be a neglected child—

The Hon. F. R. H. LAVERY: I understand this provision is a new departure, although the psychiatrists are pleased with its inclusion in the Bill.

The Hon. L. A. LOGAN: The only comment I can make is that this provision will give power under the Act to treat minors. After a child has been declared as a neglected child, it comes under the Child Welfare Department which then takes over.

The Hon. J. G. HISLOP: Regarding the point I raised earlier relating to the payment of a natural person who is appointed as manager, I am informed that it is covered by clause 72 (5), so there is no need to inquire into that matter any further.

Clause put and passed.

Clauses 80 to 87 put and passed.

Clause 88: Regulations—

The Hon. L. A. LOGAN: I move an amendment—

Page 50, lines 1 to 4—Delete paragraph (b) of subclause (2).

This was brought about at the request of Dr. Hislop. We have already agreed to the necessary amendment to the definitions, and the amendment before us is in line with what has been agreed to.

The Hon. J. G. HISLOP: It is quite obvious that the power to cancel the registration of a medical practitioner does not lie within the Act.

The Hon. R. F. HUTCHISON: Previously I referred to a diploma of psychology. The letters D.P.M. denote the holding of a Diploma of Psychological Medicine.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 89 to 91 put and passed.

Postponed clause 8: Administration of Department—

The Hon. L. A. LOGAN: In compliance with the promise I made to ascertain whether a deputy director who is a psychiatrist can be appointed, I can inform this Chamber that it is proposed to recommit the Bill for the further consideration of clause 5. The amendment which I am about to move is consequential to the amendment which will be moved when we deal with clause 5. I move an amendment—

Page 6, line 21—Insert after the word "Department" the words ", being a psychiatrist,".

Amendment put and passed.

The Hon. L. A. LOGAN: I move an amendment—

Page 6—Insert after subclause (6) in lines 25 to 35 the following new subclause:—

(7) Notwithstanding, and without limiting, any other provisions of this section, the Governor may appoint a psychiatrist to be the Deputy Director.

Amendment put and passed.

Postponed clause, as amended, put and passed.

New clause 89—

The Hon. L. A. LOGAN: I move—

Page 50—Insert after clause 88, in lines 1 to 31, the following new clause to stand as clause 89:—

Medical Board to maintain register of psychiatrists.

89. (1) The Medical Board appointed under the Medical Act, 1894, shall, for the purposes of this Act, prepare and maintain a register of psychiatrists, containing the names of every medical practitioner practising in the State who has made a special study of, or who has gained and maintained special skill in the practice of, psychiatry and who is recognised by the Medical Board as a specialist in psychiatry.

(2) Where the Medical Board is of the opinion that a medical practitioner, whose name is contained in the register of psychiatrists prepared and maintained pursuant to this section, has ceased to be a specialist in psychiatry, the Board shall remove his name from that register.

This new clause will replace clause 88 (2) (b) on page 50, which has been deleted.

The Hon. R. F. HUTCHISON: Will this new clause ensure that the deputy director will have to hold the Diploma of Psychological Medicine?

The Hon. J. G. HISLOP: The suggestion made by the honourable member cannot be agreed to, because the Diploma of Psychological Medicine is of recent origin. If it is provided that the deputy director shall hold such a diploma, then a number of our senior psychiatrists, who have been practising for many years, will have to attend the University to undertake the necessary course for the purpose of obtaining that degree.

When new or higher qualifications are introduced, the principle has been to allow a number of years to elapse before the provision becomes a *sine qua non*. The same principle is adopted by the College of Physicians and the College of Surgeons. Whilst it is desirable for officers in senior positions to hold the Diploma of Psychological Medicine, I must point out that it is not yet mandatory.

It is slowly being accomplished because although the College of Physicians and Surgeons has been in force in Australia for 20 years, this diploma is a rather new one. If I remember rightly, Dr. Moynagh possesses it, but not everyone does. There are many people experienced in psychiatry who have not yet obtained the diploma; but eventually it will be looked for from every practising psychiatrist.

This Chamber has never at any time when compiling legislation deprived anyone of his livelihood. For instance, when considering the registration of dentists, we registered those who were practising at the time. We have done that in many other fields as well and consequently it would be unjust to lay it down as a requirement at the moment because to do so would be to restrict the number who could apply.

The Hon. R. F. HUTCHISON: Because of the present steps being taken and the general outlook with regard to mental health, now is the time to ensure that we obtain the best person as director in this field. We must, therefore, insist that he has this diploma. This is the only point about which I am concerned at the moment.

I fully realise the truth in what Dr. Hislop has said and I do not want to penalise anyone. However, there is no reason why we should not now aim to obtain the top man, as we are starting out in a new field. This diploma is looked upon as a necessity for top positions in other parts of the world, and I hope that on this occasion we in Western Australia will not fall behind. I hope the Minister will take cognisance of what I am saying because I am very earnest about it. I thank Dr. Hislop for his explanation.

The Hon. F. R. H. LAVERY: When speaking on the second reading of this Bill, I expressed my concern about the very point raised by Mrs. Hutchison. In the *Public Service List* for 1961, of the 40-odd men listed under the Mental Health Services, only nine have the letters D.P.M. after their name. I ask the Minister in charge of the Bill in this Chamber to request the Minister for Health to ensure that the person appointed to this position has the D.P.M.

The Hon. L. A. LOGAN: All I can do is to assure Mrs. Hutchison and Mr. Lavery that their request will be forwarded to the Minister for Health for his consideration.

New Clause put and passed.

First Schedule—

The Hon. J. G. HISLOP: In almost every other mental health Bill in Australia the forms that are used are included in the schedule. I hope that this Bill will not

be proclaimed until those forms are made known to the profession and tabled in the House. Otherwise there will be complete confusion and many difficulties. Those who are required to work under this Act should have some knowledge of the forms.

The Hon. L. A. LOGAN: Those comments will also be forwarded to the Minister for Health, and I am sure they will receive his consideration.

Schedule put and passed.

Second Schedule—

The Hon. L. A. LOGAN: It will be noticed on page 52 that in paragraph (c) of clause 2 the words "under section six of the Inebriates Act, 1912," appear twice, and as there is no necessity for this, I move an amendment—

> Page 52, lines 10 and 11—Delete the words, "under section six of the Inebriates Act, 1912,".

Amendment put and passed.

Schedule, as amended, put and passed.

Title put and passed.

Bill reported with amendments.

HEALTH ACT AMENDMENT BILL

Assembly's Message

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

BUSH FIRES ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 26th September, on the following motion by The Hon. L. A. Logan (Minister for Local Government):—

> That the Bill be now read a second time.

THE HON. L. A. LOGAN (Midland—Minister for Local Government) [8.25 p.m.]: Usually any debate on bush fires legislation is very animated, and again on this occasion certain aspects have been raised.

The Hon. E. M. Davies: It is a burning question!

The Hon. L. A. LOGAN: I would like to refer to one or two points raised by Mr. Willmott. I believe he has some misconception with regard to section 38, because he was growling about the new provisions relating to seniority. If the honourable member reads section 38, he will find that the seniority is contained in it. It has been there for the last eight years. All we are trying to do is to make sure that the chief bush fire control officer and the deputy chief bush fire control officer are classified as the first and second in seniority. Section 38 reads—

> (1) A local authority may from time to time appoint and employ such persons as it thinks necessary to be its bush fire control officers under and for the purposes of this Act and shall—

Not may, but shall—

> —determine the seniority of the bush fire control officers appointed by it.

All we wanted to do was to make sure that the chief bush fire control officer and the deputy chief bush fire control officer are number one and two before the seniority of the others is decided. As a matter of fact I think nearly every local authority has done this in the past.

I do not think there is any need to worry that because there is a bushfire burning in one chap's territory, someone else is going to walk in and take over. As a matter of fact, I think the local authority has to direct that a particular person can control an area, and no-one can take over unless the local authority instructs him to do so. It will be seen that we are not endeavouring to take power away from the local authorities, but to ensure that it is extended. I think Mr. Willmott should have another look at that one.

The Hon. F. D. Willmott: We have already done that.

The Hon. L. A. LOGAN: I do not think the honourable member has done it correctly. He also made complaints that local authorities were not made aware of the divisions of the Bill. It must be appreciated that the predominance of members on the Bush Fires Board are representatives of local authorities. Five are on the executive of the Country Shire Councils Association, including the past president, the present president, and the deputy president. They are Mr. Jack Stewart from Bruce Rock, Mr. Les Nenke from Moora, Mr. J. Heitman from Morawa, Mr. Jack Purse from Boyup Brook way, and Mr. Steve Knight from Cuballing. They are all on the executive of the association, and surely there is no need for us to worry about informing the local authorities when they are represented.

I might as well inform members that the Bush Fires Board met this morning with 100 per cent. attendance, including the five members of the local authorities. The board has asked me not to accept the amendments proposed by Mr. Willmott and Mr. Abbey, but to keep the Bill as it is printed.

I know that Mr. Willmott has mentioned a few local authorities but I would like to say that there are 90 local authorities which come under the control of the Bush Fires Act and only four out of the 90 have not as yet issued regulations in regard to ploughing firebreaks in their areas.

I understand that two of the four will be making regulations within a short space of time and that will mean that only two will not have complied with the provisions laid down in the Act.

The Hon. G. C. MacKinnon: Bruce Rock.

The Hon. L. A. LOGAN: I think that is one of them; but it is not on my list, and I am not going to give the honourable member my list. I think it is interesting to note that the 86 local authorities which have met the requirements of the Act have all made their own regulations. There is no set standard, and they have made their regulations according to the conditions of their own particular areas. They have, at different times, attempted to get some uniformity but it has always been voted out because they preferred to make regulations to meet their own particular requirements.

The Hon. H. K. Watson: Different to the Companies Act.

The Hon. L. A. LOGAN: As I said earlier, I regret to a certain extent that since the Bush Fires Act was set up the volunteer aspect has been somewhat removed. But I think it was ever thus; as soon as legislation is brought in to cover a matter such as this, there are loopholes here and there and they can only be dealt with by further legislation, and so the volunteer aspect disappears.

Only a few years ago employees of shire councils were given time off to go out and fight fires, and they went out willingly to help. Today, they are paid for doing the same job and if their ordinary time expires they have to be paid overtime. That is not good in the interests of fire fighting in the country districts, but it is a sign of the times and we have to accept it.

According to my notes, the Solicitor-General has advised that under the provisions of section 38 of the Bush Fires Act a local authority may issue directions to any of its bushfire control officers and from this power they can make whatever arrangements they consider fit in their district respecting the officers who shall actually take charge of a fire which has attained extensive proportions. They could do this either by the seniority of control officers or some other arrangement similar to that indicated in the amendment proposed by Mr. Willmott. As most local authorities have had arrangements of this type for a considerable period there seems no reason to bind them to the procedure which is proposed in the amendment and which takes away the discretion which local authorities already possess.

There again I think that the honourable member is unconsciously trying to take some of the power from the local authority. I think that if we have a look at the amendment proposed by Mr. Abbey we will find it is trying to take power from the local authority and put it into the hands of the bushfire officers.

The Hon. F. D. Willmott: I do not think so. Can you tell me where?

The Hon. L. A. LOGAN: I think that is what he is trying to do. Mr. Syd Thompson raised the question of whether an officer had authority to ban the use of harvesters. Subsection (4) of section 38 reads as follows:—

> A bush fire control officer appointed under the provisions of this section shall, subject to such directions as may be given by the local authority, and subject to this Act take such measures as appear to him to be necessary or expedient and practicable for—
>
> (a) preventing the outbreak of bush fires;
>
> (b) protecting life and property in the case of an outbreak of bush fire;
>
> (c) controlling and extinguishing a bush fire or preventing the spread of the fire;
>
> (d) exercising an authority or carrying out a duty conferred or imposed upon him by any of the provisions of Part III of this Act;
>
> (e) procuring the due observance by all persons of the provisions of Part III of this Act.

Regulation 38A of the regulations made under the provisions of the Bush Fires Act reads:

> (1) Where in the opinion of a bush fire control officer the operation on any day of any harvesting machine or tractor on any land is likely to cause a bush fire, that officer may by wireless broadcast or by written notice served on a person or by oral direction but subject to such directions as may be given by the local authority—
>
> (a) prohibit that person from operating any harvesting machine or tractor on that land on that day or during specified periods on that day;
>
> (b) restrict the use of harvesting machines or tractors on that land on that day or during specified periods on that day in accordance with conditions stipulated by the officers.
>
> (2) The person on whom a notice is served or a direction is given in accordance with subregulation (1) of this regulation, shall comply with the terms and conditions of that notice or direction.
>
> (3) A person shall, when required by a local authority, provide a plough or other specified machine appliance or fire-fighting equipment in or in the

vicinity of any land or paddock where harvesting operations are being carried on.

I think Mr. Thompson raised the legal aspect of that particular part of the Bush Fires Act. Although I have not checked, I believe there is an amendment on the notice paper endeavouring to restrict the authority of forestry officers to Crown land and forestry land. I think members will appreciate that really means that if a fire is approaching an area under the control of forestry officers, those officers will have to sit still and wait for the fire to get to the property controlled by them before they can operate. I do not think that is reasonable.

In many cases forestry officers are called out and requested by local authorities to give assistance, and I do not see any reason why they should be restricted in that respect.

The Hon. C. R. Abbey: Why should they take control?

The Hon. L. A. LOGAN: I do not think they take control.

The Hon. C. R. Abbey: They take it under the Act.

The Hon. L. A. LOGAN: They take control when they are asked, and that is because they are experienced in the job. We have to remember that, unfortunately, some of these local authorities have not had very much experience in fire-fighting.

The Hon. C. R. Abbey: A lot of them have.

Hon. L. A. LOGAN: Forestry officers are being continually trained for fire fighting, and I think it is reasonable to ask them, rather than someone with no experience, to assist.

The other main provision deals with proposed new section 68, whereby the board has the power to take proceedings against a local authority. I know that Mr. Willmott has one or two personal matters in his mind when he objects to this section. The section was requested by some of the executives of the local authorities themselves.

As I mentioned earlier, only four out of 90 have not complied with the conditions of the Act; and the opinion is held that if 86 or 88 of the authorities can comply with the requirements of the Act, then the others should be made to do so. I think that is fair and reasonable. They are not over-happy that we can only bring in a penalty of £50. They wanted to go so far as to say the Minister should suspend the local authority. However, if the Minister for Lands tried to do that he would have to fight it out with the Minister for Local Government.

Unless the board makes an application to the Minister for this purpose, the Minister is not likely to allow the Bush Fires Board to prosecute the local authority unless there is some genuine reason for it. So there is a safeguard in that respect. I repeat: This was a request from the local authorities themselves. It was considered again by the board this morning when the five representatives of the local authorities were present, and they requested that this section remain in the Act.

At the moment I can only be guided by those men who have given the Bill quite a lot of time and thought over the last few months, and particularly since the Royal Commission was held on the bush fires which occurred last year. Not all of these recommendations come from that report, but most of them do emanate from it. Some of the local authorities were criticised in the commission's report for not carrying out their duties under the Bush Fires Act.

There are a lot of requirements which local authorities have to comply with, and there are others under which they may do certain things but are not required to do so by law. If there are any other points they can be raised in Committee. I thank members for the interest they have taken in this Bill.

Question put and passed.

Bill read a second time.

In Committee, etc.

The Chairman of Committees (The Hon. W. R. Hall) in the Chair; The Hon. L. A. Logan (Minister for Local Government) in charge of the Bill.

Clauses 1 to 6 put and passed.

Clause 7: Section 18 amended—

The Hon. G. C. MacKINNON: I would like to bring this matter to the attention of the Minister. I have received a letter from the shire of West Arthur, and some gentlemen in that shire feel that the introduction of this amendment places unnecessary restriction on landholders and takes away from the bushfire control officer all centralised control so that he will not be in a position to say whether a particular area of bush is to be burned or not. It is also placing on the council, or possibly the shire clerk, the invidious task of deciding who shall be allowed to burn in any one year irrespective of the applicant's problems. The landowner will have to make sure he is on the schedule by applying, anyway, just in case he decides to put through a burn.

I have checked this clause fairly carefully with the parent Act, and the amendment is very much in line with that Act. Like any other member, as much as I would like to agree with my constituents, I find myself in some doubt as to the wisdom of opposing the clause. I shall let the Minister have the letter, and perhaps he and other members can satisfy the queries I have raised on behalf of the shire in my district.

The Hon. C. R. ABBEY: I, too, feel we should examine this clause closely, but perhaps not in the same way as Mr. MacKinnon has indicated. I believe that a centralised control is good to a large degree, inasmuch as there is one officer issuing the permits; and in that case the shire clerk is undoubtedly the right person. Let me relate the situation as it used to exist in my district. We had seven control officers, all of whom issued permits. The position was examined and the road board at the time in its wisdom decided, after consulting the officers concerned, that it would be much better to have a central office, and the shire clerk, who was the control officer, was to issue the permits. This was decided upon because he could easily be contacted, much more easily than, say, a farmer. If the shire clerk is not aware of conditions in a certain district, he can easily contact the officer controlling that area and make himself *au fait* with the position and as to how the local conditions fit in with the requirements of the board.

However, I would question the provision that requires a notice of intention to burn to be lodged by the 1st September. In my experience, at that time of the year there is no danger, even in the dry areas of the State; and, as I understand the present situation, no permit is required to burn before the 1st October. Therefore, why is it necessary to make it the 1st September in this legislation? It seems to me to be an unnecessary, restrictive clause, and one at which we should have a good look. If members turn to page 6, they will find that at the top of the page it states that application for permission to burn for the purpose of developing or clearing may be made to the local authority after the 1st September. It is rather conflicting.

The Hon. L. A. Logan: No; it is not.

The Hon. C. R. ABBEY: I know what the purpose of it is. After the 1st September the local authority may ask for additional protective requirements. But is that necessary up to the 1st October, at least?

The Hon. F. D. Willmott: Yes.

The Hon. C. R. ABBEY: In my own province I would say those requirements would be unnecessary up to the 1st October.

The Hon. F. D. Willmott: There are no restrictions from the 1st September to the 1st October, and that is the reason for it.

The Hon. C. R. ABBEY: But it appears that this is only applying the same conditions up to the 1st September as pertain now up to the 1st October.

The Hon. L. A. Logan: No; you are getting things confused.

The Hon. C. R. ABBEY: Perhaps I am, but that is how I read it. I think the clause would confuse anybody, although the Minister may have an answer.

The Hon. L. A. LOGAN: A person who has been developing and clearing new land can apply to the local authority, or give notice to it, that he desires to burn that country during the coming burning season. That is all he has to do up to the 1st September.

The CHAIRMAN (The Hon. W. R. Hall): Will the Minister please address the Chair?

The Hon. L. A. LOGAN: I am sorry, Mr. Chairman. The idea of this is to make sure that all of those people who want to burn new clearing will notify the local authority so that the authority will be able to balance out the area during the burning period, particularly in regard to the bushfire officers and the equipment. We do not want everybody lighting fires on the one day, otherwise there could be a lot of trouble. The idea of this is to let the local authority know who is going to burn.

The Hon. H. K. Watson: That is all?

The Hon. L. A. LOGAN: Yes; and if necessary it can regulate its work force, or the bushfire brigade and equipment accordingly. Whether members say the 1st September is the right date or not, has nothing to do with the burning-off period.

There may be some extenuating circumstances in a case where a person has not applied by the 1st September, and he could apply to the local authority after that date and be granted permission to burn. I think we must make sure that if there are extenuating circumstances provision is made for them.

The Hon. G. C. MacKINNON: I am grateful to Mr. Abbey and to Mr. Logan, because this area of West Arthur has not long been in the South-West Province, and I am not fully familiar with it. The explanation given is in line with my own thinking, and I now feel quite satisfied that this clause is required. After an explanation to the shire I think it would probably agree.

The Hon. C. R. ABBEY: The Minister's explanation is quite logical; but if I want to burn on my property, say, on the 1st March, I would have to apply on the 1st September of the previous year for a permit; or, in effect, notify my intention to burn during the following year. That is all right to a certain extent, but I may decide in December that it was necessary to put a fire through an area of land that at the 1st September I thought would not be ready for burning for some considerable time.

The Hon. F. D. Willmott: That is provided for.

The Hon. C. R. ABBEY: It seems to me that paragraph (c) applies more to special conditions and not only because a farmer may have forgotten to apply before the 1st September.

The Hon. L. A. LOGAN: The only answer I can give to the honourable member is that the provision may be necessary in circumstances such as these: Everybody in the district who wants to burn has made application to the shire by the 1st September, and the programme has been worked out; and then somebody comes along just before the burning season and says, "My clearing is dried up to such an extent that I believe it will really burn and I would like to put a fire through." As the authority has worked out its programme for the area, to give such a person a permit would require some extra precautions, and I imagine it would want that authority which is in the Bill to enable it to impose any extra conditions that might be necessary.

The Hon. C. R. ABBEY: It would seem that this is a good idea, but I think the notice is far too long. If notice were given, say, 30 days before the opening of the burning season, it would be sufficient for any local authority to make out a programme suitable for its requirements, and would also give the landholder sufficient time to prepare for the burning.

The Hon. F. D. WILLMOTT: I think the date the 1st September has something to do with the restricted burning times as laid down in the Act, which commences on the 1st October. I think the date is made the 1st September in the Bill so that it gives 30 days before there are any restricted burning times, and so that owners of property or persons who have given notice of their intention to burn can do protective burning without having to get a permit; in other words, they have 30 days in which to do it.

Clause put and passed.

Clauses 8 to 17 put and passed.

Clause 18: Section 38 amended—

The Hon. C. R. ABBEY: Despite the Minister's doubt, I think it would be better if I proceeded with the amendment I have on the notice paper. I do not disagree with the provision, and I am not trying to amend it in the same manner as Mr. Willmott. I am, in effect, adding to subsection (1) to which I would refer members, and with which I agree. This is, in effect, what happens. Most shire councils have been appointing bushfire control officers with the seniority of chief and deputy chief bush fire control officer under that provision, and have been doing it willingly. I see the point in Mr. Willmott's projected amendment but I do not quite agree with the method he used. I move an amendment—

> Page 11, line 28—Insert after the subsection designation "(1)" the paragraph designation "(a)".

This would not interfere with the functions of the shire councils who appoint these officers. It merely enables the man on the spot, who has been appointed for the time as the controlling officer of the immediate brigade, to take charge. He will have the local knowledge required and sufficient experience to control the fire. So why should a man from another section, who may be senior in the district, take control? That is what could happen with the system of seniority. There appears to be sufficient control and I see no reason why my amendment should not be passed.

The Hon. L. A. LOGAN: When replying to the second reading debate, I said I thought Mr. Abbey was cutting across the principle of the Bill and taking some of the power from the local authority. I was not far wrong, because the spirit of the Act gives control to the local authority. This amendment will take that power away and place it in the hands of an ordinary officer, which the Act does not empower. The Act actually gives power to the control officer and, consequently, overriding power to the chief control officer. "Chief control officer" is purely a title accorded under the Act, and the direction is given by the authority.

Seniority accorded under the Act is no more than a statement of fact and depends on the power given by the local authority to the chief fire control officer. So the amendment could take away power from the local authority. Whilst the amendment could apply to localised fires, we have had fires which have not been localised; and in such cases the amendment would not operate. We are trying to ensure that when a fire gets out of control somebody in the local authority should have power to take over control.

The Hon. C. R. ABBEY: It was not my intention to cut across the power of the local authority. The Act is designed to enable the local authority to delegate its power. It would be unworkable if the chief bush fire control officer had to consult with the authority on all matters. This could be likened to an army unit where there is the controlling officer who must have a central point from which to direct the fire; and under whom there are lieutenants who can be compared with the control officers. There must be a man in control at the seat of the fire, and his authority is delegated by the power of the chief bush fire control officer. I cannot agree that we are taking away power from the local authority.

The Hon. G. C. MacKINNON: I agree with Mr. Abbey. I would like the Minister to look further at section 38. The local authority may still from time to time appoint such officers. The amendment does in fact legislate for what is at the moment actual practice. I would refer members also to subsection (4) of section

38 which deals with the prevention of the outbreak of fires. This is all under the local authority and the amendment in no way reduces the power and control of the local authority. I support the amendment.

The Hon. L. A. LOGAN: Perhaps I should read what the Bush Fires Board said about this. The board said that the amendments moved by Mr. Willmott and Mr. Abbey only served to interfere with the right of the local authority to determine the power of the chief control officer and his deputy, and also of any other senior officer. That possibly is where Mr. MacKinnon and I agree. It was never intended that the seniority provision should be used to supersede the activities of an officer in his own area. Members should bear in mind that these provisions have been in the Act for eight years, and that most local authorities are operating under them with commonsense and also in a most practical manner. Actually the Bill makes no change in the existing provisions other than to give specific names to the first two officers in seniority. So this will only put into law what has been the practice, and in doing that will take away its flexibility.

The Hon. H. K. Watson: I think you are right.

The Hon. L. A. LOGAN: I do not think we should do that. I would like to read the following suggested amendment drafted by the Crown Law Department:—

> Page 11, lines 32 to 37—Delete all words after the word "Act" down to and including the word "Officer" and substitute the following words:—"and of those officers shall appoint two as the Chief Bush Fire Control Officer and the Deputy Chief Bush Fire Control Officer who shall be first and second in seniority of those officers, and subject thereto may determine the respective seniority of the other bush fire control officers appointed by it."

The only difference I can see is that under the present Act they shall, but under this they must place the chief fire control officer and the deputy fire control officer one and two in seniority, and they may declare the other officers. If the amendment before the Committee is accepted, we will lose the flexibility which could be desirable in certain parts of the State.

Thee Hon. F. D. WILLMOTT: I am in agreement with the Minister because it gets around to what I mentioned in my second reading speech: that some local authorities have refused to name seniority among their bushfire control officers only because the captains of the brigades—who are the bushfire control officers in most cases—have refused to have anything to do with it. I know of 11 brigade captains who said they would resent it if it were done, because they thought it would be interfering with their way of working, which is: whoever is the fire control officer or the captain of the brigade at a fire becomes senior for that time. The amendment suggested by the Minister covers that point, and I will be happy to give it my support.

The Hon. C. R. ABBEY: The proposal of the Minister certainly goes a long way to meet the requirements that Mr. Willmott and I have expressed; but I would make this point to the Minister: He complains that in my amendment there is a lack of flexibility. I have endeavoured to place the man who is on the spot, in control of the fire, which is general practice, but he shall be subject to the direction of the chief fire control officer of the district or his deputy. I do not know of anything more flexible than that. The chief fire control officer could remove him if he were considered to be incompetent. It is putting into practice what has been a very worth-while method. I intend to continue with my amendment, but if the Committee does not support it I will certainly agree to the amendment to be moved by the Minister.

The Hon. L. A. LOGAN: In regard to flexibility, it may be that the control officer does not want to take control as there may be somebody present who is more knowledgeable than he is and therefore he would want to hand over to him. However, under this amendment he could not do so. I think the Committee will be wise if it disagrees with Mr. Abbey's amendment.

The Hon. W. F. WILLESEE: Without a great deal of background on this subject I have listened with interest to what has been said and I am impressed by the fact that the Minister is prepared to compromise and put up a practical suggestion in regard to the situation. On that basis I intend to vote against this amendment.

Amendment put and negatived.

The Hon. L. A. LOGAN: I move an amendment—

> Page 11, lines 32 to 37—Delete all words after the word "Act" down to and including the word "Officer" and substitute the following:—
>
> > and of those officers shall appoint two as the Chief Bush Fire Control Officer and the Deputy Chief Bush Fire Control Officer who shall be first and second in seniority of those officers, and subject thereto may determine the respective seniority of the other bush fire control officers appointed by it.

The Hon. F. D. WILLMOTT: As I indicated, I am in agreement with the proposal put up by the Minister. Therefore, it is not my intention to proceed with the further amendment to this clause which I have on the notice paper.

The Hon. G. C. MacKINNON: I understood Mr. Willmott to say a minute ago that certain areas were not happy about

the need to appoint these officers and he agreed with the Minister's suggestion because it may be optional.

The Hon. F. D. WILLMOTT: I am quite happy about its being arbitrary for the chief and the deputy chief, but I do not want a local authority to declare seniority.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 19 put and passed.

Clause 20: Section 45 amended—

The Hon. F. D. WILLMOTT: I move an amendment—

> Page 12, line 24—Insert after the word "amended" the following passage:—
>
> (a) by substituting for the word "near" in line one of paragraph (a) the word "on";
>
> (b) by substituting for the word "near" in line two of paragraph (a) the word "on"; and
>
> (c)

To understand this amendment it is necessary to look at the parent Act. Section 39, subsection (2) (a) reads as follows:—

> Where a bush fire is burning in or on forest land, or in or on Crown lands, if a forest officer appointed under that Act is present at the fire, the powers and authorities conferred by this Act upon a bush fire control officer appointed under this Act by a local authority are vested in and are exercisable by the forest officer.
>
> (b) Where a forest officer is present at the bush fire the powers and authorities are not exercisable by the fire control officer so appointed, except with the approval of and subject to the directions of the forest officer.

There is a complication when we come to section 45, which reads as follows:—

> Where a bush fire is burning in or near forest land, or in or near Crown lands . . .

then it goes on in the same manner as I have previously read. Section 39 deals with bushfire control officers, and section 45 with bushfire brigades. In actual practice it is not a matter of interfering with the bushfire control officer; it is one of interpreting the words "in or near." Time and time again in practice I have seen an argument occur between the fire brigade and the forestry officer as to when the forestry officer should take over, because there is nothing definite about the word "near." It could mean five yards of five miles.

Many forest officers believe the Act could read "in or on." As the Act is at present they try to take control before a fire has left agricultural land and that is when the arguments start. I have endeavoured to find out just how this word crept into the Act—and that is actually what it did do; because in the 1937 Act—the father of the present Act—this word did not appear; but the marginal note in that Act reads, "When a fire is in or near" forest land. In the Act itself the words are, "in or on".

In 1940 a lengthy amending Bill was brought down containing many far-reaching amendments to the Bush Fires Act. Among them was the alteration of the word "on" to "near." In an endeavour to find out why, I studied the debates. The Minister, when introducing the Bill, dealt fully and fairly with all the principal amendments. He finished by saying that those were the main provisions of the Act. There was no mention whatever of the alteration of that word. I studied the debates which took place in another place, both during the second reading stage and the Committee stage. At no point was the alteration of the word mentioned. I studied the debates in his House, through the second reading stage and through the Committee stage. In this Chamber the Bill was recommitted twice, and not at any stage was attention drawn to that word being changed.

I think it was overlooked, and that members did not realise the effect it was going to have. It slipped into this Act and it is high time it slipped out again, because of the confusion brought about by any argument as to who should be in control.

It is not a question of Forests Department men not coming in to assist. They do. They work under the control of a bushfire brigade captain until such time as the fire enters State forest or Crown land. There is no argument then; the Forests Department officers take over. I would like to see the word "on" put back into the Act.

The Hon. L. A. LOGAN: I think the Committee should have a good look at this. I do not doubt that Mr. Willmott has undertaken considerable research into the matter. We must appreciate that our forests represent a most valuable asset. We might have the situation where a fire passes through pasture land and moves very close to and becomes a danger to State forest. We may have a competent brigade officer who may not be handling the situation very well; yet there may be an efficient Forests Department officer who is available but who is not allowed to take control. I do not think that flexibility should be taken away. As a general rule Forests Department officers are better trained in fire-fighting methods than ordinary brigade officers.

I appreciate that the word "near" may cause problems. However, I think somebody should be available to safeguard what could be a million pounds' worth of trees in State forests, and should take

control before a fire got into State forest itself. I hope the Committee will not agree to the amendment.

The Hon. J. MURRAY: I think Mr. Willmott has dealt with this matter very competently. It is a great pity the Minister should object to sensible amendments. His point of view regarding flexibility could result in a ridiculous situation which could undermine—and I use the term in its full meaning—the whole voluntary system of bush fire control in the south-west. It is the interference of juniors from the Forests Department that is causing unrest in local bush-fire brigades.

The Minister makes play with words when he says that those people are knowledgeable in fire control. Half of them are babies at fire control. Mr. Willmott's amendment does not stop Forests Department officers from taking charge when fires are on their own territory. Brigade officers do their best to control fires and to keep them away from State forests. If a Forests Department officer thinks that a brigade officer is not doing a good job, then he can take steps to stop the fire getting out of control if the fire reaches State forest. I see no reason why Forests Department officers should take control of fires out of the hands of fire brigade officers.

The Hon. C. R. ABBEY: I am in favour of Mr. Willmott's amendment. Nobody is more concerned about a fire than the man who owns the land. The Minister made play on the fact that Forests Department officers are greatly concerned about fires approaching State forests. However, no-one is involved in greater effort than those men who are vitally concerned. The pastoralist and his neighbours are concerned because their livelihood may be affected. They do not want to see any fire spread to a forest reserve. They would still have to fight that fire because it would be a menace to the whole district.

Those men have had more experience, usually, than the majority of Forests Department officers. Some of the senior officers of the department may have had a good deal of experience, and they co-operate very well. However, I have seen very foolish things done by departmental officers.

On one occasion a fire moved very rapidly because of a very strong wind. The departmental officer in charge allowed the fire to come right on to the road, and he made no attempt to burn back. That was due to his training. Forests Department officers are trained not to burn back; they believe that a back fire can cause more trouble than the main fire. However, there are many situations in a crop fire or a pasture fire when back burning is of great value. It is a question of meeting fire with fire. This officer to whom I am referring allowed the fire to come right on to the road; and naturally it jumped over and could not be checked. Had there been a back burn I am sure, from my own experience, that the fire could have been stopped at the road.

That is the sort of criticism we receive from the bush-fire brigades. They know they can handle a fire. They do not want to interfere with Forests Department officers, but they prefer to handle those fires which come within their jurisdiction.

The Hon. F. D. WILLMOTT: The Minister pointed out that State forests were of great value. Mr. Abbey mentioned that when a fire is on private property the owners may be up for personal financial loss. In the case of State forests, the Government, may have to meet any loss, as well as the milling industry, but the Forests Department officer himself, as an individual, does not have to stand any personal financial loss. That is where, very often, trouble starts between the brigades and the department's officers. The brigade officer, and any man with him who may have to stand a financial loss, will do their utmost to control a fire.

The best way for a fire to get out of control is for an argument to start. The fire control officer and the captain may be fighting a fire with men on two or three fronts. Directions may have been sent to one front, and then the department's officer steps in with other instructions. An argument ensues, and by the time it is over the fire may have become out of control. Members have only to use their imaginations to see what could happen.

The Hon. L. A. LOGAN: Mr. Willmott's purpose will not be accomplished by taking out the word "near" and putting in the word "on". It seems to me that he wants a clearer definition of the word "near" and possibly a better description of the term "forests officer"; or a tightening of the qualifications of such an officer before he is allowed to take contol of a fire.

The Hon. F. D. Willmott: That won't do it. It was all right for years when the wording was "near or on."

The Hon. L. A. LOGAN: As Mr. Murray just said, forest officers can take control when it gets into their forest. What about a day when it is 110 degrees in the shade and there is a fire in the forest? How do we take control of it then?

The Hon. F. D. Willmott: It may be on pasture land.

The Hon. L. A. LOGAN: It would be controlled much better by the forest officer than by the brigade officer. We should not have a million pounds' worth of forest go up in smoke.

We should have a better definition of the word "near." If we did, we might accomplish something. It would be a

danger to accept the amendment. This matter was discussed by the board this morning—five senior men in local government—and they were very happy to have this. I am in the hands of the Committee.

The Hon. A. L. Loton: The committee on the Local Government Bill said it was the last word, but each session since we have had an amendment.

The Hon. L. A. LOGAN: I am trying to be fair and reasonable. The individual is concerned about loss of income through having his pasture burnt. I am concerned about that and also about the fact that our forests might get burnt. Forestry is our fourth main industry and we should do everything possible to maintain it. I am the Minister in charge of the Bill; and, as the Bush Fires Board looked at it this morning and suggested that I do not agree to the amendment, I must oppose it.

The Hon. J. MURRAY: I did not intend to rise again, but the Minister put a different construction on my words from what I intended. I said that forest officers could control a fire in their own forest lands or Crown lands.

The Hon. L. A. Logan: We are dealing with a fire.

The Hon. J. MURRAY: Yes; and a disastrous fire occurred some months ago, and that was because the forests people had allowed it to come off private property on to bush country that was unclean.

The responsibility of the Forests Department is primarily to look after Crown lands and State forests. The department collects each year from the sawmillers something in the vicinity of £1,000,000 in royalties for the conservation of our forests. The conservation of forests is not the replanting of cut-out timber; it is the preventing of fires from going into Crown lands and forest country and burning out young trees.

In the early days they used to regularly plough breaks around settled land and then perhaps go a few chains into the bush and plough another break. Probably each break would be half a chain in width and there would be up to five chains of timber country between them.

In cultivated country a wisp of wind can send fires for miles in about half an hour. That can occur in the silvergrass country at Boyup Brook. We do not have forest protection in that class of country; but we do in the forest lands where we endeavour to prevent fires from reaching the tops of trees, as fires in the treetops are a menace throughout the State.

The Hon. F. D. WILLMOTT: The Minister talked about a better definition of the word "near"; but it would not work out. We could say that "near" meant a mile, or a chain, or something else. But fires do not burn along a chalk line. If we say it means 40 chains, who is going to decide when the fire has travelled that distance? By the time the argument is over, the fire will have gone another 40 chains. The only thing to do is put back the words "in or on." There will then be no room for argument.

The Hon. H. K. Watson: That would make it uniform with the earlier section.

The Hon. F. D. WILLMOTT: Yes; as it is now in the Act. It should be "in or on" and then everybody would know exactly what is meant.

The Hon. G. C. MacKINNON: If a fire looks as if it is going into the forest, then obviously the control should be transferred, and it should be transferred at a suitable time. During the course of a fire there are times when control can be transferred, and there are times when it is extremely unwise to transfer it. Let us be definite and, realising that these definitions are only used and only to be used if there is an argument, accept Mr. Willmotts' definition. Let us include the amendment in the hope that at all times when there are fires the sort of co-operation will exist which generally does exist.

The Hon. F. D. Willmott: Yes, it does.

The Hon. G. C. MacKINNON: A fire might be well under the control of a bushfire control officer and the forestry man might say, "You carry on"; and, in fact, he sometimes does. As we have to legislate, it is essential that we should be definite and clear, and I think the amendment makes the position definite and clear.

This is not a matter of a bushfire control officer walking up to a forestry officer in the middle of an engagement and giving a snappy salute and saying, "I hand over." That sort of thing does not happen. The bushfire control officer might say to the forestry officer, when they are a mile inside the fire, "We know what the Act says, but we cannot do anything. Will you take control?" There needs to be a clear-cut line, and I think the words "on or in" make a clear-cut line.

The Hon. L. A. LOGAN: If a fire is approaching a forest, or Crown land, and we take out the word "near" and the bushfire officer wants to give control to the forestry officer, would he not be debarred from doing so? If the forestry officer did take control at the request of the bushfire control officer and something happended to someone's property, and he did not have the Act to back him up, would he not be liable?

The Hon. F. D. Willmott: The same thing applies today.

The Hon. L. A. LOGAN: No; with the inclusion of the word "near", they both have power. If we take out the word "near" the powers will be exercisable by the forestry officer only on forest land

and not outside. By agreeing to the amendment we might leave the forestry officer open to some legal proceedings.

The Hon. F. D. Willmott; No; it has not happened in years.

The Hon. L. A. LOGAN: Probably because nobody has ever taken the matter up.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 21 to 27 put and passed.

Clause 28: Sections 66, 67 and 68 added—

The Hon. F. D. WILLMOTT: I move an amendment—

> Pages 16 and 17—Delete proposed new section sixty-eight.

There is any amount of power in the Bill for the board to take action where local authorities do not carry out everything necessary for the control of fire. Sections 33 and 35 deal with the position. If members will look at those sections carefully, they will realise that all the powers mentioned there are in the hands of the board in the event of a local authority not carrying out its duties. I refer members particularly, to section 35. Under that section there is plenty of power available without going to the length proposed in this new section. Section 34 deals with firebreaks and any inflammable material, and all the actions that shall be taken for the prevention of fire. The actions the board can take are set out under that section.

What is proposed in the Bill applies to the whole Act. To my way of thinking the provisions of this clause could be used to take the administration of the Act out of the hands of local government. When replying to the second reading debate the Minister said there were four local authorities which had not drafted regulations, but the number had now been reduced to two.

The Hon. L. A. Logan: It could be reduced to two in a short time.

The Hon. F. D. WILLMOTT: Therefore, I do not think this clause is necessary merely for the purpose of dealing with local authorities, because if members care to read the report of the Royal Commissioner they will see he has made a good deal of comment about the lack of co-operation between the board and local authorities, and he points out that legislation and enforcement will not bring this about. The commissioner said that more common sense needs to be applied to achieve co-operation between the board and local authorities. This will not be done by the provision in this clause. The more this Bill is circulated among local authorities the more they are concerned about it. I hope the Committee will agree to my amendment.

The Hon. C. R. ABBEY: I fully agree with what Mr. Willmott has said. The provision in the clause is punitive and it should not be applied as between Government and local government. We have been told many times that local government is the third arm of government and when it becomes necessary to insert such a provision as a Statute we are breaking down the whole system and we will not obtain the co-operation between the board and the local authorities that we are seeking.

There is sufficient provision in the Act as it stands for the board to take action against the local authority that does not provide sufficient firebreaks. We are giving the Government department—

The Hon. L. A. Logan: Why do you call it a Government department?

The Hon. C. R. ABBEY: Any Government department—

The Hon. L. A. Logan: This is not a Government department.

The Hon. C. R. ABBEY: It is a body that is under the control of the Minister. I ask the Minister to point to any other Act that contains such a punitive provision. In my opinion, it is entirely unnecessary and should be deleted from the Bill.

The Hon. H. K. WATSON: I support the comments expressed by Mr. Willmott and Mr. Abbey. The clause seems to be extraordinary and, to my mind, offends first principles. Last year we passed the Local Government Bill granting local authorities power to do, more or less, anything under the sun, relying upon their common sense and good judgment. Under this clause, however, they will be placed on the same basis as the illegal bookmaker, the operator of a pin-ball machine, or anyone else that breaks the law. It is inconceivable that a local authority would break the law in the same way as an ordinary citizen.

At the moment there is ample power under the Local Government Act to take action against a local authority which fails to maintain the standard expected of it; namely, the power of suspension exercised not by a bushfire control board, but by Parliament or the Government. No authority, other than Parliament or the Government, should have power to take proceedings in a court of summary jurisdiction against a local authority. For instance, the Bush Fires Board, could sue the Greenbushes Shire Council, not in a civil case, but in a court of summary jurisdiction. The proposition has only to be propounded to realise its absurdity. I fully support the amendment for the deletion of this provision.

The Hon. L. A. LOGAN: Sections 33 and 35 are entirely different to the provision contained in this clause. They deal with

a set of circumstances wherein an individual fails to carry out the instructions issued to him. This clause deals with the local authority.

The Hon. F. D. Willmott: Which is what it should not do.

The Hon. L. A. LOGAN: It is a matter of opinion. Suppose there is an area that is surrounded by 10 local authorities, all of which have carried out the regulations, but one local authority in the centre of that area will not comply with the requirements of the law. In such circumstances it could be that, because of the action of that one local authority, it could jeopardise all the interests of the other local authorities.

To place upon the Minister for Local Government the responsibility of suspending a local authority because it has failed to carry out the provisions of the Bush Fires Act would be taking things much too far; and I for one would never do it, because I would have to have a greater appreciation of the neglect of a local authority before I took action to suspend it. The board cannot take such action of its own accord, but only under the written authority of the Minister.

Mr. Abbey referred to a Government department, but when there is a majority of local authority representatives on the Bush Fires Boards, it cannnot be regarded as a Government department. This provision has been requested by local authorities themselves. Surely we are entitled to take cognisance of a request made by local authorities. If they want to impose upon themselves such a penalty, they have every right to do so. I would point out that one section of the Act deals with instructions issued by a local authority upon an individual, and when the individual does not carry out those instructions, the local authority can take action against him. However, this clause refers to the general provisions of the Bill itself.

As I said earlier, some local authorities have not drafted regulations in regard to firebreaks. At the moment, no action can be taken against a local authority if it fails to do that. There is no such provision in existence. Sections 33 and 35 deal with entirely different circumstances. They relate to individual landholders, and to instructions issued to them by local authorities. If a landholder does not comply with such instructions the matter is dealt with by the local authority. It can cause the job to be done and charge the landholder with the amount. If the local authority does not perform its functions then the Bush Fires Board can step in and the local authority will be charged with the cost of the work. Section 35 deals with the powers of the Minister on default by local authorities.

If 86 local authorities are prepared to abide by the provisions of the Act, then one or two others should not be permitted to hold out. That is the principle involved.

Amendment put and a division taken with the following result:—

Ayes—8.

Hon. C. R. Abbey	Hon. R. Thompson
Hon. J. G. Hislop	Hon. H. K. Watson
Hon. G. C. MacKinnon	Hon. F. D. Willmott
Hon. R. C. Mattiske	Hon. J. Murray

(Teller.)

Noes—10.

Hon. E. M. Davies	Hon. C. H. Simpson
Hon. E. M. Heenan	Hon. R. H. C. Stubbs
Hon. A. R. Jones	Hon. J. M. Thomson
Hon. L. A. Logan	Hon. W. F. Willesee
Hon. H. R. Robinson	Hon. R. F. Hutchison

(Teller.)

Pair.

Aye.	No.
Hon. A. L. Loton	Hon. H. C. Strickland

Majority against—2.

Amendment thus negatived.

The Hon. F. D. WILLMOTT: I move an amendment—

Page 17—Insert at the end of the clause the following new section:—

> 69. Wherever a local authority disagrees with a decision of the Board given under this Act the local authority shall have the right of appeal to the Minister.

As the Committee has agreed to the inclusion of new section 68, this amendment becomes very necessary. Where a local authority feels aggrieved at the decision of the board, it should have the right to appeal to the Minister.

The Hon. L. A. LOGAN: I do not think this amendment is necessary. The board does not do anything without the permission of the Minister, because new section 68 (3) states—

> If in his opinion the circumstances of the case so warrant, the Minister may authorise the Board in writing to take proceedings against the local authority . . . .

The Hon. J. G. Hislop: It is a case of appealing from Caesar to Caesar.

The Hon. L. A. LOGAN: It appears so. All through, the board is under the control of the Minister, and they have access one to the other.

Amendment put and a division taken with the following result:—

Ayes—6.

Hon. C. R. Abbey	Hon. H. K. Watson
Hon. R. C. Mattiske	Hon. F. D. Willmott
Hon. J. Murray	Hon. E. M. Davies

Noes—13.

Hon. E. M. Heenan	Hon. C. H. Simpson
Hon. J. G. Hislop	Hon. R. H. C. Stubbs
Hon. R. F. Hutchison	Hon. R. Thompson
Hon. A. R. Jones	Hon. J. M. Thomson
Hon. F. R. H. Lavery	Hon. W. F. Willesee
Hon. L. A. Logan	Hon. H. R. Robinson
Hon. G. C. MacKinnon	

(Teller.)

Pair.

Aye.	No.
Hon. A. L. Loton	Hon. H. C. Strickland

Majority against—7.
Amendment thus negatived.
Clause put and passed.
Title put and passed.
Bill reported with amendments.

ADJOURNMENT OF THE HOUSE: SPECIAL

THE HON. L. A. LOGAN (Midland—Minister for Local Government) [10.26 p.m.]: I move—

That the House at its rising adjourn until Thursday, the 4th October.

Question put and passed.

House adjourned at 10.27 p.m.

Legislative Assembly

Tuesday, the 2nd October, 1962

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