been on the commission in the one instance, and on the board in the other, have been of considerable practical assistance to the other members.

Workers' representatives have been able to put forward views and suggestions based upon their practical experience in their undertakings; based upon their discussions with their fellow-workmen; and, in many instances, their membership of the State Electricity Commission, and of the Wundowie Charcoal Iron Industry Board of Management, has been of very great help to those organisations.

I cannot understand why the Minister and the Government would oppose this principle. The Minister did not give us any reason for doing so. He simply dismissed the whole proposition by saying he did not believe in it. It is not sufficient in a deliberative House such as this for a Minister, or for anyone else, to say, "I do not believe in this." Much more is required. It is necessary in such a situation for the Minister or the member concerned to give reasons why he does not believe in it. Until the Minister can put forward some convincing reasons, if any exist—and I do not know of any—the Committee should strongly support the amendment moved by the member for Belmont.

Progress

Progress reported and leave given to sit again, on motion by Mr. O'Neil.

House adjourned at 6.8 p.m.

Legislative Council

Tuesday, the 24th September, 1963

CONTENTS

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

QUESTION WITHOUT NOTICE

SITTINGS OF THE HOUSE

Show Week Adjournment, and Thursday Nights

The Hon. F. J. S. WISE asked the Minister for Mines:

> As it is customary during the main week of the Royal Show for Parliament not to meet on one or two days, in order to enable members to take part in the show and also to visit their own districts where shows are being held, can he indicate to the House what his intentions are in regard to next week's sittings?

The Hon. A. F. GRIFFITH replied:

> Yes. The Government has decided that this House and another place will not sit during Show week. Sittings will be resumed on the following Tuesday; and, as from Thursday, the 10th October, we will sit at night on Thursdays as and when required. Naturally, if it is not so required, we will not sit; but I think it is fair to say to members that we can be expected to sit on a Thursday night.

METROPOLITAN REGION PLAN

Alterations to Maps after Tabling: President's Ruling

THE PRESIDENT (The Hon. L. C. Diver) [4.42 p.m.]: The Hon. F. J. S. Wise has asked whether it would not more satisfactorily satisfy the needs of this situation if the plans were wholly withdrawn and fresh plans tabled on a fresh motion.

The Minister claimed that the requirements of the Act have been complied with in that there is no requirement that the scheme should remain tabled for twenty-one days. Having studied the Act, I must agree with this contention, but I feel bound to say that to table the plans for a period less than that set down for disallowance would be most unusual, and I must draw the attention of members to Standing Orders Nos. 337 and 339, which provide for access to tabled papers by members, the Press, and the public.

My reading of the Standing Orders relating to tabled papers is that in the absence of any time limit imposed when papers are tabled they remain in the custody of the House for the duration of the session, when files and other departmental documents may be returned.

However Standing Order No. 340, to which The Hon. F. J. S. Wise has referred, does permit the Clerk, in the event of any file or original being urgently required, to hand it temporarily to the department concerned; so that, had the Town Planning Department requested the temporary return of the plans, the Clerk would have been quite justified in releasing them.

The Minister has given a very frank explanation of the circumstances, together with full details of the alterations as well as tabling maps and overlays showing these alterations. I have made inquiries into the circumstances surrounding the making of the alterations, and I believe this was done with the best of intentions. There is no reason whatever to believe that any other changes have been made.

The Act provides that amendments to the regional scheme may be made when necessary and, if the present set of plans is restored to its original condition, the Minister can, in due course, arrange any alterations he requires.

In view of all the circumstances, I consider there is no need for a fresh set of plans to be tabled. The Minister has moved that the plans be restored to their original state and I am prepared to allow this motion to proceed.

Point of Order

The Hon. F. J. S. WISE: May I, Sir, ask for clarification in connection with your ruling on one point.

The PRESIDENT (The Hon. L. C. Diver): Is this on a point of order?

The Hon. F. J. S. WISE: Yes. Does your ruling mean that on a motion for the tabling of papers, any action connected therewith is now restricted to the time that is left of the 21 days of the days of tabling; that is to say, five further sitting days?

The PRESIDENT (The Hon. L. C. Diver): I would say that is a correct interpretation of my ruling.

The Hon. F. J. S. WISE: Since that is so, and as there have been differences in the days of sitting of both Houses, what is the situation in regard to both Houses if only two days have to elapse before the time expires in the Assembly? Or should a further five days be available in the Assembly if action is contemplated?

The PRESIDENT (The Hon. L. C. Diver): I would say I have no jurisdiction as regards the procedure that is adopted in the Assembly. As President I can only make determinations on points of order as they apply to this Chamber.

I have been advised by the Clerk that in the event of a disallowance motion being moved in one House it applies to the scheme generally. That means to say that if this House moves successfully for a disallowance, the Metropolitan Region Scheme will be disallowed irrespective of what happens in another place. Five days remain in which to move for disallowance in this House.

Debate (on motion) Resumed

Question put and passed.

SUPREME COURT RULES

Disallowance of Amendments: Motion

Debate resumed, from the 10th September, on the following motion by The Hon. H. K. Watson:—

> That the rule No. 29A inserted in order LXV of the Rules of the Supreme Court and the amendments to appendix N of the Rules of the Supreme Court as published in the *Government Gazette* of the 7th February, 1963, and laid upon the Table of the House on the 6th August, 1963, be and are hereby disallowed.

THE HON. A. F. GRIFFITH (Suburban —Minister for Justice) [4.48 p.m.]: I am now in a position to comment upon the motion moved by Mr. Watson to disallow this particular rule. When moving his motion, Mr. Watson appears to have been under some misapprehension both as to the relevant facts and as to the effect which the disallowance of the amendments would have. Two amendments were gazetted on the 7th February, 1963. The first inserted new rule 29A which reads—

> A counsel fee shall not, in any case, be allowed to a practitioner who is a paid clerk of, or is in receipt of a salary from, a practitioner or firm of practitioners.

The rule thus prohibits the allowance of a counsel fee to a salaried employee, whether he appears as the only counsel, the leading counsel, or as junior or extra counsel. However, it does not prohibit the appearance in court as counsel of a salaried practitioner, or prohibit his being paid a fee as a solicitor for his attendance in court.

The second amendment inserts a new passage after the note to item 16 of appendix N of the rules of the Supreme Court and declares, in effect, that the existing note to item 16 may be relaxed in certain cases, provided that where two counsel appear in a case and they happen to be partners, no counsel fee for the extra counsel shall be allowed, and the amendment is subject to new rule 29A.

Early in his speech, Mr. Watson suggested three grounds of legitimate criticism. Firstly, he said that the amendments "upset the normal legal and lawful practice which has existed in this State for the past 60 years." Mr. Watson appears to have been wrongly informed. The new rule 29A is the same in substance as the rule which was in force between 1909 and 1953, and the prohibition against a counsel fee as extra counsel being allowed to a salaried practitioner or to a partner of leading counsel has been in existence since the 7th April, 1960.

The rules of the Supreme Court, as they existed prior to 1953, provided, in order 65, rule 35, for many matters relating to costs in legal proceedings. The rule was divided into 61 paragraphs and paragraph (46) stated—

> No counsel's fee shall, in any case, be allowed to any practitioner who is a paid clerk of, or in receipt of a salary from, any practitioner or firm of practitioners.

That is the same in substance as the new rule 29A. In 1953, following several discussions between the Law Society and the then Chief Justice, the judges formulated scale costs on different lines from the old scale which had contained many obscure items, and which had proved a constant source of irritation to clients and had not reflected the importance of the work undertaken. In the process order 65 was rewritten and simplified and paragraph (46) of rule 35 was dropped.

The principal items in the new scale comprised "getting up case for trial" (which provided for the remuneration of the solicitor preparing the case) and "conduct of trial" (which provided for the remuneration of the barrister acting as counsel to conduct the case in court). The new scale was, to some extent, experimental. The judges watched its operation closely and considered that the form in which the item of fees for "conduct of trial" was expressed gave rise to abuses and created anomalies.

In 1960 it was decided to reintroduce separate allowances for counsel fee on trial and for a solicitor attending at the trial to instruct counsel. Where two counsel appeared on the same side, the question always arose as to whether the second counsel was substantially acting as counsel or merely as solicitor attending to instruct counsel; that is, to draw his senior's attention to any point which the solicitor thought should be remarked on. The judges considered that where the extra counsel was a salaried employee or partner, he appeared mainly because he had already prepared the case for trial and for the real purpose of acting as solicitor attending counsel. The new scale, however, had adequately provided for the item, "getting up case for trial" and provided a much lower fee for appearing as solicitor attending at trial to instruct counsel than it did for appearance as extra counsel.

This may be best illustrated by an example. On a claim for £3,500, the scale provided that leading counsel may be allowed a fee of £175. If second counsel is certified for, he would be entitled to half this sum; namely, £87. If, however, the second counsel really appeared as solicitor to instruct counsel, he was entitled only to £31. Separately, as remuneration for the solicitor who prepared the case for trial and instructed counsel, the scale allowed a fee of £175. In this example it will be seen that where the second counsel filled in court a fairly passive role and acted merely as solicitor attending counsel, he should be paid only £31 instead of £87.

Following discussion with the Law Society, the judges promulgated new rules on the 7th April, 1960, and these included a new appendix N which had been agreed with the Law Society. These new rules included a note to item 16 which reads as follows:—

> Extra counsel shall not be certified for as a matter of course. The certificate shall not be granted for either the instructing solicitor or his partner, or his, or his firm's associate or employee, or a partner, associate or employee of the leading counsel or his firm, or a practitioner who is, in the opinion of the Judge, acting more in the role of an instructing solicitor than in the role of extra counsel.

This note to item 16 still stands, and if the amendments gazetted on the 7th February, 1963, are disallowed, the note promulgated in 1960 will have full force and effect and will effectively prevent salaried practitioners and partners of leading counsel from being allowed a fee as extra counsel.

The two further grounds upon which Mr. Watson criticised the amendments of 1963 were that they changed and stultified

the Statute law and deprived legal practitioners of some of the rights which Parliament had conferred upon them by the Legal Practitioners Act, and that they did those things in a manner which usurped the legislative supremacy of Parliament.

The amendments, in fact, in no way prevent the appearance as counsel of salaried practitioners or partners, but merely regulate the question whether the fees for appearances should be allowed as counsel fees or as fees for solicitor attending counsel. This matter of regulation of costs is one which Parliament has expressly delegated to the judges of the Supreme Court by section 167 (1) (d) of the Supreme Court Act, 1935. Parliament itself did not regulate the matter of counsel fees, but left it to the judges to decide and to promulgate what should be fair as between the proper interests of the profession and those of the public. Therefore, so far from usurping the legislative supremacy of Parliament, the judges, in their regulation of counsel fees in the Supreme Court, have merely given effect to what Parliament authorised and expected them to do.

Last year the judges were asked by the Law Society to allow some amelioration of the situation regarding the prohibition of a second counsel fee in certain cases. By the second amendment, gazetted on the 7th February, 1963, the judges agreed to a temporary easing of the situation for a period of twelve months as an experiment, but still retained the prohibition against extra counsel fees for salaried practitioners and partners of leading counsel. If the second amendment is disallowed, the only real effect will be that the temporary amelioration will be lost.

Mr. Watson gave some illustrations in support of his motion. It was first suggested that the rule prejudices young practitioners seeking experience in the Supreme Court. That is true enough in the case of salaried practitioners and junior partners, but it is suggested that inexperienced practitioners should normally obtain their experience as counsel in the inferior courts and before tribunals other than the Supreme Court, and, further, that they should not gain their experience in the Supreme Court at the expense of the litigants as though the inexperienced counsel were, in fact, experienced as such.

It is not as though the inexperienced practitioner is not paid at all for his appearance in the Supreme Court, because normally he would still be allowed the fee appropriate to the item, "solicitor attending counsel." This fee, in the case of the salaried employee, is substantially greater than the salary he would be paid by his employers for the services he renders on the case.

In fact, if an employed solicitor who appears as counsel should be entitled to a fee as such, it would be possible for his employer to sit back and make a handsome profit from the counsel fees of his employed practitioners.

Two cases were cited where an experienced practitioner had become a salaried employee. It is suggested, however, that in nearly every case where a practitioner, whether young or experienced, is good enough really to earn counsel fees, he should have no difficulty at all in this State in arranging a satisfactory partnership or in establishing his own practice.

It was further suggested that the real purpose of the amendments is to help the recently established separate bar. This is not apparent from the amendments, the first of which merely reinstates a rule which was in force from 1909 to 1953, and is still in force and always has been in force as a rule of the High Court of Australia; and the second amendment merely provides amelioration for the profession other than the separate bar.

Furthermore, it would still pay a firm of solicitors to have their own employee or partner appear with the leader, rather than employ a member of the separate bar for the purpose, since at least the employee or partner will receive a fee as solicitor for instructing counsel, while if a member of the separate bar is retained as counsel, no part of his fee will be payable to the instructing firm.

However, even if the amendments should have the effect of benefiting the separate bar, that result may not be a bad thing. The success of the British system of justice depends largely upon a strong and independent bar. Where counsel finds himself confronted with a conflict of instructions, interests, and duties to the court and to the client, it is at least easier for a member of the separate bar to remain independent, than it is for a salaried employee, or even a partner.

The Hon. F. J. S. Wise: I do not want to disturb the Minister's line of discourse, but how did the separate bar come into existence outside of an Act of Parliament?

The Hon. A. F. GRIFFITH: I understand that, in the interests of serving the community, it was considered desirable by the Chief Justice and the justices at the time. I do not think it is necessary to have an Act of Parliament to create a separate bar, but in making that statement I may, or may not, be correct.

The Hon. F. J. S. Wise: Our law envisages only one bar.

The Hon. A. F. GRIFFITH: The basis of the operation, as the judges see it, is to establish a separate bar in order that the public may be better served. In doing so, the scale of fees as laid down in this rule regulates the amount that counsel, under various headings, are entitled to receive.

The Hon. F. J. S. Wise: These amendments really support the establishment of a second bar.

The Hon. A. F. GRIFFITH: I think that is correct. Mr. Watson also made the point that Crown Law officers are entitled to counsel fees under an amendment to the Act passed in 1960. The purpose of that Act, however, was merely to place Crown Law officers in exactly the same position as solicitors in private practice in relation to costs and counsel fees, and it it is to be remembered that there is no personal gain to a Crown Law officer who appears as counsel or extra counsel. When two Crown Law officers appear on the same case, the judge has still to assess whether or not the Crown Law officer who appears as extra counsel should be paid as such or merely as solicitor attending.

The rules of the High Court of Australia, in fact, prevent counsel fees from being paid to Crown officers. Order 71, rule 93, of the High Court rules provides—

> Counsel's fee shall not, in any case, be allowed to a practitioner who is a paid clerk of or is in receipt of a salary from a practitioner or firm of practitioners or the Commonwealth or a State.

It is believed, however, that this provision in regard to Crown officers is merely to ensure that there is no distinction made between fees to practitioners of the several States, as, in three States of Australia where a separate bar is established, no salaried practitioner or partner of leading counsel can be allowed a counsel fee for appearing as extra counsel. In those States, therefore, the practice to which our judges take exception cannot arise.

The judges have always been extremely sensitive of what goes on in relation to appearances of counsel in the Supreme Court, and of the need to protect the public as well as to ensure the interests of the profession. It is submitted that the judges have discharged their statutory duty in regard to counsel fees conscientiously and well, and that it would be undesirable that the amendments to the rules should be disallowed.

Debate adjourned, on motion by The Hon. G. C. MacKinnon.

COMPANIES ACT AMENDMENT BILL

Recommittal

Bill recommitted, on motion by The Hon. H. K. Watson, for the further consideration of clause 2.

In Committee, etc.

The Chairman of Committees (The Hon. N. E. Baxter) in the Chair; The Hon. H. K. Watson in charge of the Bill.

Clause 2: Section 291 amended—

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

> Page 2, line 25—Delete the word "January" and substitute the word "July".

There is a proviso to this clause which states that the subsection shall not apply to a claim by any person against an insolvent company under any charge given by such creditor corporation. As that establishes a new principle it is desirable that any such corporation should be given due notice of such proposal after the Act is enacted. In anticipation that the Act would be enacted this month I felt that three months' notice—that is notice to the 1st January next—would be sufficient.

Inasmuch as the Act will not now come into operation until it is proclaimed, the time permitted for notice—quite apart from the fact that it may not be proclaimed before the 1st January next—will disappear completely. Therefore, in consequence of that I seek to make the time for due notice the 1st July, 1964, rather than the 1st January, 1964. This amendment is purely consequential upon the adoption by the Committee of the proposal inserted at the instigation of the Minister that the Act shall come into operation on a date to be proclaimed.

Amendment put and passed.

Clause, as amended, put and passed.

Bill again reported, with a further amendment.

BUSH FIRES ACT AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by The Hon. A. F. Griffith (Minister for Mines), read a first time.

MOTOR VEHICLE DRIVERS INSTRUCTORS BILL

Second Reading

THE HON. A. F. GRIFFITH (Suburban —Minister for Mines) [5.14 p.m.]: I move—

> That the Bill be now read a second time.

It is a very easy matter for any person to set himself up in business as a professional driving instructor; the project calls for little enough outlay and, in fact, a driving school may easily be set up and advertised through such expedient as a removable painted sign attached to the hood of a vehicle.

Indeed, a person, say on night shift, after finishing his work in the early hours of the morning could thereupon undertake professional driving instruction. Such an incidence is quoted merely as an example, and leads us to the point of considering whether it might not be advisable all round to make provision for the licensing of professional driving instructors.

The question of a person's traffic record should be taken into account and his knowledge and ability to pass that knowledge on to a pupil. A person with a bad traffic record might well be considered unsuitable in this direction.

Quite a large proportion of people are taught by professional driving instructors and while there is no desire or intention of penalising a person wishing to teach another person without demanding a fee, such as a father teaching a son or daughter and so on, it is considered the time has come in this State to regularise matters affecting professional driving instruction. The whole matter of licensing and testing has been under consideration for quite some time past.

Further consideration was given recently following representations by the Royal Automobile Club, the Perth Chamber of Commerce, and the Association of Driving Schools. The representations made were along the lines that persons who set themselves up as professional driving instructors should be registered and qualified by examination; and that is precisely what this measure proposes.

It might be well, before explaining the provisions in more detail, to emphasise that this legislation affects in no manner the private instructor teaching without reward. There will be no interference of instruction on a voluntary basis. The main points are—

(a) Every person who teaches another person to drive a motor vehicle for fee, reward, salary or wages,, etc., must hold a license to do so.

(b) Persons eligible to hold such a license must be over 21 years of age, hold a driver's license in this State and have done so for the past three years; or held a driver's license in this State, and have held one for the past three years in another State or country.

(c) The person must be of good character and be a fit and proper person to be a driving instructor and proficient in the act of driving a motor vehicle.

(d) Under clause 2 the Bill will come into operation on a date to be fixed by proclamation. This will allow ample time for the regulations to be prepared and the prescribed forms to be available. It will also give existing driving instructors, and those intending to apply to be licensed, ample time to put their house in order.

(e) The Commissioner of Police will administer the Act in the Police Department of the State, subject to the directions of the Minister in accordance with clause 4.

(f) No offence is constituted until three months after the coming into operation of the Act. This will provide a sufficient hiatus for persons who desire to be licensed as driving instructors to obtain the necessary qualifications.

(g) Fees for licenses, permits, and renewals will be prescribed by regulation, and not fixed by the Act. The method adopted is more flexible and obviates the necessity of going back to Parliament on each occasion when a change of fees is proposed. In this respect clauses 7 and 11 apply. It is intended that instructors will be required to undergo a qualifying examination for which a fee of £2 is proposed, and the annual fee for a driving instructor's licenses is proposed to be £3. I think the same fees are prescribed in South Australia, and in New South Wales.

(h) An applicant for an instructor's license will have to undergo a test for proficiency. The person applying for an instructor's license would have to undergo a prescribed examination and obtain a certificate of competency from a prescribed authority. The National Safety Council of Western Australia Incorporated has undertaken to be such prescribed authority. The test could be written, oral or practical; and include examination in traffic laws, driving practice, vehicle manipulation and teaching technique.

(i) The tests and courses to be set out by the National Safety Council, or other prescribed body, are to be such as are approved by the Commissioner of Police, and the fees therefore are to be prescribed by regulation.

(j) The Commissioner of Police is to have authority to issue a certificate of competency.

(k) Where an instructor's driving license is cancelled, or he ceases to hold a driver's license, his instructor's license automatically is suspended for the same period of suspension.

(l) The Commissioner of Police is to have power to suspend or cancel an instructor's license, or suspend for such a term as he thinks fit, if the instructor is guilty of conduct which, in the opinion of the commissioner, makes him unfit to hold the license. For instance, he could be the type of person who displays rather offensive behaviour to his pupils.

(m) There is power given to the Commissioner of Police to delegate any of his power, etc. under the Act. This may be of considerable advantage in this State, where the distances are great and there are big and growing communities like Kalgoorlie, Albany, Bunbury, Geraldton, etc.

(n) A right of appeal is to be given to instructors against such a decision by the commissioner, or against a refusal to grant an instructor's license. The appeal is to be made to the court of petty sessions constituted by a stipendiary magistrate.

There is no intention that the passing of this measure would deprive any person of earning his living.. The license requirement will not come into operation until after the expiration of three months from the coming into operation of the Act. That should enable all persons who have been teaching to satisfy the authorities as to their competency or, on the other hand, to rectify any omission in that regard which becomes apparent on test.

Debate adjourned, on motion by The Hon. R. Thompson.

CONSTITUTION ACT AMENDMENT BILL.

Second Reading

THE HON. A. F. GRIFFITH (Suburban —Minister for Justice) [5.23 p.m.]: I move—

That the Bill be now read a second time.

The purpose of this Bill is to amend the Constitution Act, 1889, and its amending Act of 1900, where necessary, for the purposes of reprinting the principal Act. It will be seen in clause 2 that the principal Act means the Act 52 Victoriae, No. 23, and its amending Act 64 Victoriae, No. 5.

There have been repeated enquiries over quite an extensive period of time for up-to-date copies of the Constitution Acts. These are, in the main, comprised in two Statutes at present in operation. They are the Constitution Act, 1889, to which this Bill refers, and the Constitution Acts Amendment Act, 1899, the subject of a separate measure. These Acts have long been out of print.

The Attorney-General or Minister for Justice, as the case may be, is empowered, under the provisions of the Amendments Incorporation Act of 1938, to authorise a reprint of an Act in order to incorporate all amendments. This procedure is a common one and is adopted in respect of Acts that are out of print or have been so amended as to be difficult to read. Unfortunately, these two Statutes with which we are concerned have been considerably amended by others that were so framed that the amendments take the form of homeless sections which cannot, in their present form, be incorporated. As a consequence, the reprinting of these Acts may not be proceeded with under the Amendments Incorporation Act, in their present form, and the introduction of this measure is necessary. This, then, is a preliminary measure necessary to tidy up the amending Act preparatory to reprinting the consolidated Act under the Amendments Incorporation Act. In this particular instance very little tidying up is necessary, as will be seen by reference to the Bill. There are only two outstanding points. These occur in clauses 4 and 5 and both deal with homeless sections.

The homeless section covered by section 4 is to do with the disqualification of Federal members for the Western Australian Parliament. Section 16 of the principal Act was repealed by Act 57 Vict. No. 14 and is now being replaced by the homeless section added by Act 64 Vict. No. 5 as amended by this Bill. As a consequence, the homeless section now becomes section 16 in the consolidated Statute.

Section 5 deals in a similar manner with the repealed section 16 concerning members of the Western Australian Parliament being required to vacate seats on sitting in Federal Parliament. The current legislation now in operation in that regard was added by Act 64 Vict. No. 5 as a homeless section and that section has now been given a number, i.e., 17, in the consolidated Act.

The question may be raised as to whether it is desirable to still retain in our legislation two Acts containing our Constitution, namely, the Constitution Act, as amended by the 1900 Act, and the Constitution Acts Amendment Act, 1899, and its amendments.

It is considered that the method now proposed of dealing with these measures is the most desirable, even though it necessitates still retaining two Acts instead of having a single comprehensive one. Under the course now proposed, members will be able to see clearly what is being done and that no change in the law is, in fact, intended.

It may be helpful at this juncture to point out that the long title of this Bill has been framed so as not to admit of any amendment after its introduction. This will be clearly appreciated by reference to the long title which stipulates this measure as being a Bill for an Act to amend both Acts where necessary, but purely for the purposes of reprinting. As a consequence of this title, Parliament is precluded from passing any amendment under the title of this measure, other than such as is necessary for its reprinting under the Amendments Incorporation Act.

The Hon. F. J. S. Wise: No new matter?

The Hon. A. F. GRIFFITH: No new matter. It may be of assistance to draw members' attention to a similar previous Bill directed towards giving a section number to a homeless section. The Bill to which I refer is No. 80 of 1962. This Bill gave a homeless section a number which was inserted into the Administration Act under clause 3 of the amending Act No. 56 of 1959.

In order that members might have a clear view of the intentions of this legislation, arrangements have been made for a proof reprint to be prepared for the information of members of Parliament. Members are all aware that parliamentary officers have gone to considerable trouble in preparing unofficial reprints of the Constitution Acts for binding with the Standing Orders. It is emphasised that these reprints, being unofficial, would not be acceptable in courts of law. Generally, their accuracy might, perhaps, not be seriously questioned, yet on the passing of this measure all members of Parliament and the very many persons desiring to refer to the Constitution will be enabled to have by them an official reprint which will be acceptable in all courts of law. I would like to say that the reprints to which I referred are now being distributed to members.

As this is not a Bill by which any change in the Constitution of the Legislative Council or of the Legislative Assembly shall be effected, the concurrence of an absolute majority of the whole number of members is not required pursuant to section 73 of the Constitution Act, 1889.

It is not my intention to proceed past the second reading stage of this Bill until I am convinced that all members are satisfied as to the reason for its introduction. I want there to be no doubt whatever in anyone's mind on that score, or any unanswered query as to the Government's intention in bringing this measure forward. I repeat, the only object is to fill a long-felt need for a clear and understandable print of our Constitution as existing at the present time.

Debate adjourned, on motion by The Hon. F. J. S. Wise (Leader of the Opposition).

CONSTITUTION ACTS AMENDMENT AND REVISION BILL

Second Reading

THE HON. A. F. GRIFFITH (Suburban —Minister for Justice) [5.31 p.m.]: I move—

That the Bill be now read a second time.

Following the distribution of the Bill, there will be a copy of the reprints. These will be distributed to members in a similar manner to those that were distributed while I was explaining the previous Bill.

This is the second measure which is being introduced with a view to ensuring there being available to all persons interested a clear and readily understandable copy of our Constitution.

This Bill amends the Constitution Acts Amendment Act of 1899 and its many subsequent amendments for the purpose of reprinting. For that purpose, it is necessary to revise certain of those amending Acts.

This measure contains far more extensive changes than the brief measure introduced earlier for the reprinting of the 1889 Act, because it has been more a point to include the bulk of the amending Statutes in the Constitution Acts Amendment Act rather than in the Constitution Act of 1889. Nevertheless, this measure is in principle identical to the other in most respects.

Action has been taken, however, to exclude from the Constitution Acts Amendment Act, as amended, the nominal lists and boundaries of the electoral provinces and the electoral districts, which are now set out in sections 6 and 19 and in the second schedule. Their retention in the 1889 Act is misleading as by reason of the various Electoral Districts Act, culminating in that of 1947, a great number of the names and all of the boundaries are quite outmoded and do not reflect the position existing today.

As indicated when explaining the earlier Bill affecting the Constitution, the operation of the existing provisions of the various Acts will be quite unchanged by the passing of this measure. It is emphasised again that no amendments to this Bill may be accepted, its purpose being for the reason only to enable the reprinting of the existing law in accordance with the provisions of the Amendments Incorporation Act.

Lest there be some doubt as to the purpose of some of the amendments, it is desired to explain that some of these provide for the removal of some deadwood remaining in the 1899 Act. They are in the form, as previously referred to, of nominal lists of electoral provinces and districts and a schedule of the boundaries. These provisions are not only inoperative but misleading.

In order to assist members to appreciate more readily the purpose of this preliminary measure, which is necessary to tidy up the 1899 Act and its amendments preparatory to its consolidation and reprinting there have been prepared a number of reprints available for distribution to members of Parliament, and these I have already referred to.

There is no provision in this Bill by which any change in the Constitution of the Legislative Council or the Legislative Assembly shall be effected and, therefore the concurrence of an absolute majority of

the whole number of members is not required pursuant to section 73 of the Constitution Act, 1899.

It is not my intention to proceed past the second reading stage of this Bill until I am convinced that all members are satisfied as to the reason for its introduction. I want there to be no doubt whatever in anyone's mind on that score, or any unanswered query as to the Government's intention in bringing this measure forward. I repeat, the only object is to fill a long-felt need for a clear and understandable print of our Constitution as existing at the present time.

I am anxious that members receive as much opportunity as they desire to thoroughly examine these two Acts and satisfy themselves that this action should be taken. No other purpose is intended than to provide members with an up-to-date copy of the Constitution Act, which, to the best of my knowledge, is unavailable in any place other than our Standing Orders.

Debate adjourned, on motion by The Hon. F. J. S. Wise (Leader of the Opposition).

INDUSTRIAL ARBITRATION ACT AMENDMENT BILL

Second Reading

THE HON. F. R. H. LAVERY (West) [5.37 p.m.]: I move—

That the Bill be now read a second time.

Before I speak on this measure I would like to thank the Minister for his kindness in having the Bill moved down the notice paper on Thursday last when I did not have some documents with me.

This is a small Bill that was previously before this House in 1960. It was presented then by the Hon. George Jeffrey, and after debate was passed by this House, but to the best of my knowledge did not reach the top of the notice paper in another place.

The intention of this Bill is to amend section 99 of the Industrial Arbitration Act, 1912-61. It deals with the imposing of penalties on employers for breaches of the Act. The policing of this section of the Act is believed to be the function—or prerogative—solely of the trade union movement of Western Australia. The modern trend of thought, of course, is that all parties to an industrial agreement or award have a duty to ensure that the provisions of the Industrial Arbitration Act of Western Australia are adhered to. However, there is always the few who get away with breaches of the Act under which they work.

This Bill is before the House as a result of a decision of the trade union movement which protests at the way penalties are being imposed under the Industrial Arbitration Act of Western Australia at present. Under section 98 it is provided that a penalty up to £500 can be imposed on any party breaching an industrial award. Strangely enough, no provision is made for a minimum fine. The proposals in this Bill are logical in view of the attitude of the courts to the unions should they themselves breach the award or agreement. It is not intended that a minimum penalty shall be specified for a first offence—and, I repeat, no minimum penalty is specified for a first offence—but, in all cases, for a second or succeeding breach. In other words, the *status quo* will remain for the first breach, but for all others a minimum penalty will prevail.

The Bill proposes a minimum fine of £15 on those brought before the court for a second offence, if proved guilty. The Trades and Labour Council of Western Australia is very perturbed at the trend of some employers to breach awards with impunity; and I will give examples of cases brought before the court in recent times. The employers concerned have been fined, and, therefore, I shall not mention their names. It seems that a great number of breaches occur in the building industry and particularly within the Carpenters' Union awards. One of its officers is engaged almost full-time in the preparation of briefs for the prosecution of offenders. The cases I quote are listed in the *Western Australian Industrial Gazette* for all members to check, and they are in the four volumes I have before me. Members who desire to have the use of these volumes can do so.

A couple of years ago the Carpenters' Union proceeded against a builder for the evasion of £400 in wages, and he was fined £60, which, to my way of thinking, was a reasonable penalty. This builder had employed a carpenter at a lower rate than the award. Another contractor was fined £4 with £7 19s. 6d. costs for an underpayment of wages of £217. Another case in the country districts was an underpayment of £248, and this person was fined £4 with £7 11s. 6d. costs. In a country court a contractor who failed to register an apprentice was fined £5. Strange that he should get off so lightly because this is a serious breach and one which the court treats seriously.

The parents of those lads believe that their sons are apprenticed whereas, in many cases, employers engage lads of about 15½ years of age supposedly as apprentices, and dismiss them when they are approximately 18 years of age. They then employ another lad of about 15½, and thereby get their work done the cheap way.

A lad of 18 is in a difficult position when trying to get an apprenticeship. The situation arrives where the parents approach the union, and the union is left with the job of trying to re-establish the

youth concerned in a job with a reputable firm. I must say in all fairness that there are many firms who realise what has occurred, and, providing the lad can show that he had reasonable teaching under his previous employer, he is usually apprenticed. Of course, it makes him two or three years late in finally becoming a fully fledged artisan.

This is all because some employers, unscrupulous fellows, fail in their duty to the industry. I will now quote some cases which are listed in the 1959, 1960, 1961, and 1962 issues of the *Western Australian Industrial Gazette*. These examples will show that some employers seem to think that, as they have breached the award and been fined a small sum, they can carry on like Gallagher.

The first figure I mention will be the charge number and the second figure will be the date. According to the 1959 journal one employer had complaints numbers 63 to 73—that is, 10 complaints. There were three more complaints against this employer, Nos. 191 to 193 in 1959; four more, Nos. 18 to 21 in 1960, and nine more in 1961, Nos. 12 to 21. That was the case of an employer who had breached the award many times but who was getting away with a very small penalty on each occasion.

There was another case of a builder in a big way against whom complaints were made. These complaints are Nos. 157 to 159, in 1959; Nos. 47 and 48 in 1962; and No. 72 in 1962.

The Hon. J. M. Thomson: What was the fine inflicted?

The Hon. F. R. H. LAVERY: The charge in one case related to the time and wages book, and there was another case where the employer failed to pay travelling time. The others were for underpayment of wages.

The Hon. J. M. Thomson: But what was the fine imposed?

The Hon. F. R. H. LAVERY: I will answer the honourable member's question in a moment. There was also a firm of painters against whom complaints Nos. 52 to 66—15 complaints in all—were made in 1960, and there were also two other complaints Nos. 12 and 108 in 1962. It shows that that particular employer was not paying much attention to the fact that he had been before the Arbitration Court on a previous occasion, because he was breaching the award with impunity.

In another case there were complaints Nos. 172 to 174, 186, and 235, made in 1960, while in the country complaints Nos. 184 in 1962, and 190 in 1962, and 147 to 149 in 1961 were made in regard to similar happenings. In this case I can give Mr. Jack Thomson the figures involved because I have them in front of me. This was a case where a man in the country had three apprentices. On the first charge he was fined £3 with 8s. costs, on the second charge he was fined £3 with 8s. costs, and on the third charge £5 with 8s. costs.

Surely a person who has been fined once for not registering an apprentice should know what the position is and should not repeat the offence. I think members will agree with me that once a person becomes apprenticed he thinks he is set for life; but if after three years he discovers that he has never really been apprenticed his whole future is in jeopardy because he realises he can be thrown on to the scrap-heap.

I realise that when introducing legislation it is not necessary to speak for hours, but I mention these cases to show what is happening and why there is a need for a Bill of this kind. Apart from the case involving the signwriter all of the cases I have mentioned have been in connection with the building trade.

There was also a case involving the meat industry. In that instance an apprentice was not registered. The person concerned was cautioned and had to pay 8s. costs. In another case where the union took action for a breach of the time and wages book, a fine of £1 with 8s. costs was imposed.

The Hon. A. R. Jones: How long had the apprentices been working in these cases?

The Hon. F. R. H. LAVERY: In one case he was in the third year and in the other two one lad was in his second year and the other was in his first year, all with the same employer.

There was another case where a union took action against an employer who had short paid his apprentice to the extent of £19 14s. 1d. For that breach the employer was cautioned and ordered to pay the back wages, and he was also ordered to pay 8s. costs. For an apprentice an underpayment in wages of £19 14s. 1d. would mean that he had received short payment over a period of many weeks.

Another underpayment of wages occurred in the plastering trade and in this instance the employer was cautioned and only 8s. costs were involved.

In answer to Mr. Jack Thomson's query, in one case an operative painter was involved when he failed to employ ticket-writers, and there was another instance in the furniture trade where the employer employed an apprentice and failed to register her.

I could go on telling members of the sums of money involved in underpayments, and, although in the latter cases the individual sums were not great, the point the unions make is that if the court allows employers merely to pay the back wages, and a few shillings in costs, they will continue to breach the awards. In one instance I quoted, a person had

breached the award 14 times, and it is time something was done to stop that sort of thing.

In the building industry in Western Australia there is a reasonably good set-up between the unions and the employers. As I have said, the unions have to police the awards and if they find there has been a breach and the employer agrees there has been a breach and is prepared to pay the sum of money involved, no action is taken. Consequently, some hundreds of cases each year do not even come before the court. Even if a case does come before the court, frequently the union will say to its counsel, or to the court, that it is not looking for a heavy penalty, but all it wants is a conviction to be recorded. However, in the cases I have quoted people are deliberately making no attempt to obey the awards of the court, and that is why the Trades and Labour Council of Western Australia seeks this amendment to the Act.

As a point of interest, in New South Wales the courts can go even further than we seek by this amendment. If the court in New South Wales thinks fit it can impose a penalty on a guilty employer and order that some portion of the fine be paid into the court so that it can be passed on to the union which has had the job of prosecuting for an infringement of the award. This is done because no costs are allowed to cover the expenses incurred by the union.

I hope the Bill will pass because the trade union movement in Western Australia has, to a very considerable degree, worked in close co-operation with the employers. Also in many cases where employers have breached awards they have secured—and this occurs particularly in the building trade—contracts at the expense of employers who pay the correct wages. My own personal opinion is that the chap who will underpay his staff will also undercut in the work that he does for his principal. In that case the principal is not getting a satisfactory job done for the money he pays. Therefore, on behalf of two different sections of the community, the honest employers and the honest employees, I commend the Bill to the House.

Debate adjourned, on motion by The Hon. A. F. Griffith (Minister for Mines).

LEGISLATIVE COUNCIL PROVINCES

Redistribution and Adult Franchise: Motion

Debate resumed, from the 19th September, on the following motion by The Hon. J. G. Hislop:—

> That this House expresses the opinion that there should be a redistribution of the provinces of the Legislative Council of Western Australia, which would involve amendment to the Electoral Districts Act of 1947 which should be introduced into the Parliament of Western Australia, such amendment or amendments to provide that the Electoral Commissioners appointed under the Act shall redistribute the fifty Legislative Assembly districts into Electoral provinces, containing complete and contiguous Legislative Assembly districts so as to provide a more equitable distribution of Legislative Council provinces than obtains at the present time; and that contingent upon a redistribution of the provinces of the Legislative Council of Western Australia as aforesaid and not otherwise, this House expresses the opinion that future elections for the Legislative Council could be conducted upon the basis of adult franchise with compulsory enrolment and compulsory voting; and to that end, this House requests the Government to forthwith introduce legislation to give effect to the provisions and amendments contained within this motion.

THE HON. L. A. LOGAN (Midland—Minister for Local Government) [5.58 p.m.]: A discussion on this motion is a rather interesting exercise, if nothing else. On reading it I would say that it could be divided into four parts. First of all it calls for a redistribution, secondly for adult franchise, thirdly for compulsory enrolment, and fourthly, for compulsory voting.

That is rather a tall order to be carried out in one hit, and for members of the Legislative Council to give consideration to, in view of the action that has been taken in this House over the many years that I have been here. There has been very little alteration made to the Constitution since the framers of it originally prepared it. I would say that those framers were pretty wise guys, because the Constitution has stood the test of time, despite the fact that on one or two occasions we have been told it has not.

Certain issues have been raised regarding differences of opinion between this Chamber and another place. That factor is not mentioned in this motion, but there has been some criticism in relation to it. However, even in that respect this House has a very good record. Few measures have been tossed aside without our giving consideration to them, and when there have been conferences of managers the two Houses have got on particularly well.

The Hon. F. J. S. Wise: That depends on a point of view, too.

The Hon. L. A. LOGAN: I think one has only to look at the record. When members consider the number of times the managers of the two Houses have met, and the fact that only on six or

seven occasions have they failed to reach agreement, I feel sure it will be agreed that this is not a bad record at all. I may be wrong—though I do not think I am very far wrong—but, for the most part, when the managers of the two Houses have met they have invariably agreed to some compromise or another.

The Hon. F. J. S. Wise: That, of course, is quite extraneous.

The Hon. L. A. LOGAN: That may be so, but I am merely pointing out that whatever the constitution of the House may be it could still be open to criticism. As I have already said, the original framers of the Constitution must have done a pretty good job because, as we all know, it has stood the test of time.

In my humble opinion it will require a great deal of study and thought before we can think of changing the entire Constitution in one fell swoop in order to comply with the four requirements of the motion before the House. I will not say that after having given the matter all that time and consideration I might not agree to the suggestions made. When we have had a look at the figures given by Dr. Hislop concerning the unbalance of the Legislative Council seats at the moment—if I might use that expression—we must come to the conclusion that a redistribution is certainly necessary.

In the case of the North Province, for instance, we have three Legislative Assembly members and three Legislative Council members. The same applies to the Province of Midland, which I represent—there are three Legislative Assembly members and three Legislative Council members. In the pastoral areas, however, and in Kalgoorlie and Esperance, there are four Legislative Assembly members and six Legislative Council members. So it goes on. I think Dr. Hislop indicated the other night that the South-West Province is represented by three members in the Legislative Council, while the same area is composed of seven Legislative Assembly seats. It would seem, therefore, that there is an unbalance in this area.

Whether we should have a redistribution of seats and leave it at that; or whether we should have a redistribution and think about the introduction of compulsory voting is a matter which needs some consideration. It has been suggested that we might have compulsory voting under the present franchise. That suggestion has been made in all seriousness. After having looked at this matter, I have come to the conclusion that we cannot have compulsory voting where there is a non-compulsory enrolment. I do not think it will work.

Accordingly, the further we go into this whole question the greater are the problems that confront us. In his motion Dr. Hislop seeks an expression from this House. If the expression of the House is favourable then the resolution will be passed to the Government for consideration. I might point out that I am not speaking on behalf of the Government at the moment, because I do not know what the Government thinks about the matter. I am speaking to the motion purely as a member of the Legislative Council.

The motion as framed gives the commissioners—whoever they may be—pretty wide scope in setting down what they should do. I daresay that in all fairness—and providing of course that the motion is successful—it is the right attitude for us to adopt, because I am sure nobody wishes to be accused of gerrymandering. At the same time, however, none of us wishes to be placed in the position of putting ourselves out of Parliament by our own vote. At the moment I do not intend to say what support I will give to the motion.

I will be interested to hear further discussion, and if this Houses expresses the opinion sought by the motion, it will have to go before the Government and, as a responsible Minister in that Government, I will have to give the matter consideration. Because that may occur, and since I may have to give consideration to the motion later, I think it would be wrong for me to express an opinion on it now. That being so, I do not propose to say any more on the subject.

Sitting suspended from 6.5 to 7.30 p.m.

THE HON. F. J. S. WISE (North—Leader of the Opposition) [7.30 p.m.]: This is a very interesting motion. I have forgotten the exact words the Minister used in describing it.

The Hon. L. A. Logan: An interesting exercise.

The Hon. F. J. S. WISE: It is more, surely, than an exercise. I refuse to believe that one who has been as long in this Chamber as has Dr. Hislop, and one who has listened to debates on three of the four points the Minister raised on this matter, would be merely delivering this motion to the Chamber for exercise purposes. I feel I know the honourable member too well to believe that. I am sure that his motion was introduced in order that it might receive, in some form or another, the full consideration of this House.

The questions that are propounded in the motion have all been debated—with one exception—at very great length through the years, and varying decisions have been made on them, most of the decisions being contingent upon the absence of fulness in relation to the subject within the propositions themselves. As Dr. Hislop forecast earlier in the session, he has given the House, in this motion, an opportunity of supporting or rejecting his ideas.

Dr. Hislop based his case primarily on the necessity for a redistribution of the province boundaries, and in supporting that case gave particular examples of the inconsistencies and inequalities both in numerical strength and in voters in the respective provinces, and the extraordinary changes which have taken place through the years.

The Redistribution of Seats Act of 1911 initiated the thinking in regard to province boundaries—that they were to remain, to all intents and purposes, however the Electoral Commissioners acted in regard to Assembly boundaries, consistent, and almost on all fours, with the areas as they then existed. That principle has been carried through in the amendments to the law which culminated in the Electoral Districts Act of 1947 wherein the same principle occurs and to which I will refer at some length in a moment or two.

In his speech, after dealing with the disproportionate instances in enrolments in the different provinces, Dr. Hislop illustrated his point of view by stating that he believed the present franchise is of an archaic character. He said—

> I am not tempted to make any partial changes because in this motion it is essential that there be a redistribution of seats at the same time as an alteration is made to the franchise. The making of a partial attack on either franchise or representation does not interest me at all.

Dr. Hislop made it clear that in the passing of time it was essential to regard the franchise of the Legislative Council in the light of the changing circumstances throughout our history; and he suggested that something on the lines of the Senate should be adopted, without the principles of voting contained in that regard—that is, all the population vote for the Senate. He said that on a similar basis there should be the equivalent of adult franchise for the vote for this Chamber, as obtains in the Senate. That was Dr. Hislop's firm view. In reaching that conclusion he gave particular emphasis to the point. He said—

> In reaching towards a conclusion I desire to emphasise again that this motion gives no party privileges of any sort whatsoever. I have no idea what will happen under this scheme and, for that matter, neither does anybody else. An electoral commission will be appointed—it is an impartial body—and will make its decision; and I do not think anybody in this House can hazard a guess as to what will happen. Maybe some of us will have more difficult seats to fight, and maybe some will have easier seats to fight, but it will mean the representation of the people of the State in this House will be a much more just one.

I think that the mention of franchise is the most important of the statements made by the honourable member. I could interpolate his comment—"Maybe some of us will have more difficult seats to fight." I think that an apt conclusion—and one that could be justified in an analysis of what could happen—is that some of us may lose our seats if the principles in his motion are effected.

The first proposal contained in the motion is to provide an amendment or amendments to the Electoral Districts Act so that the Electoral Commissioners shall redistribute the ten province seats. That is to say that the 50 Assembly districts shall be altered very differently—or may be.

Under the powers given to the commissioners in the Electoral Districts Act, they are able to move of their own volition if five seats have either 20 per cent. above the quota or below the quota. They may also act on a proclamation following a motion passed by the Legislative Assembly. Apart from these two provisions, the Electoral Commissioners do not act.

The proposal of Dr. Hislop would mean that the Electoral Districts Act would have to be amended in many particulars. It could mean the amendment of the Act to give to the Electoral Commissioners far wider authority than they now have. It could even mean unlimited powers. However, that would be for the two Houses of Parliament to decide, because section 13 of the Act provides, irrespective of any other consideration affecting the constitutionality of the proposal, that it must be regarded as not being effectively dealt with unless passed by a constitutional majority. That provision is in section 13 of the Act.

This means, therefore, that if this proposal is given effect to, legislation must be introduced in the Legislative Assembly and must be passed by a constitutional majority before it even reaches this Chamber, no matter in what form the amendments are regarded by the Government as being requisite to give effect to this motion.

I give that illustration to show how watertight is the protection of the alteration of the franchise. Even after consideration is given to all that is contained in this motion, the commisioners cannot act unless a Bill is introduced along the lines I have mentioned. I think that is quite proper. It is important when one is dealing with alterations to the franchise that the protection the Act provides should be exercised. This situation cannot be lightly dealt with. It must be done through both Houses of Parliament with a constitutional majority in each.

Therefore, I differ from the opinion of the Minister for Local Government that this is simply an exercise. This is something very seriously entered into and is

something which must be seriously considered and contemplated in the light of its possible effects.

Although there has been specific mention now as to where boundaries shall be; what quotas may obtain; what shall prevail in regard to the North Province—particularly mentioned in two cases—I draw attention to the fact that on the introduction of a Bill to amend the Act it may contain provisions to cancel out all those things. Therefore it is not an idle assumption to repeat that at least one province, as it now exists, may disappear. We can guess at one or two, if we like; that would be an exercise. But we can take it for granted that if the Electoral Districts Commission receives a charter of this kind, and if a Bill is passed by both Houses to give effect to the words of this motion, such a condition must obtain.

Several members in this Parliament could lose their seats, for no other reason than that their provinces would be incorporated in other provinces, or become new provinces entirely; or their construction could be quite different from what it is at present. To get the equity illustrated by Dr. Hislop in the difference between 48,000 votes in one province and 15,000 in another almost contiguous to it, and 25,000 in another, certainly poses a very serious question for the commissioners, no matter what their charter may be. But, believing, as I do—and this goes for all of the members whom it is my privilege to lead in this Chamber—that the principles in the other three matters are so important, I would say that if—even if it threatens at this point to affect prejudicially certain individuals—it brings about a basis of justice and equity in the value of votes, it is a very important matter for us to consider.

If it means a personal sacrifice to the members remaining, that is something of the utmost importance. Adult franchise is suggested for a Chamber which, in the words of Dr. Hislop, has been elected on a franchise of an archaic type. That is no new statement in this Chamber. The contentions that have been raised previously in support of that argument have, as I have already said, been discarded because of other considerations at other times. But now that we have most of these critical things put together, I think it would be in the interests of the whole community to have a house of this kind elected as a result of the same sort of principle, even though differing in authority, as applies to the Senate of the Commonwealth.

Dr. Hislop makes the redistribution of boundaries of the 50 Assembly seats contingent upon something else happening. I have no objection to that, provided it is contingent upon this other happening, not that it could be or may be, but that it should be. I suggest it is worth the consideration of every member that the word "could" in the seventh last line of the motion be amended to read "should." That would make the one contingent upon the other. But without that definite statement it is not contingent at all. The word "forthwith" appears in the fourth last line. The contingency I would raise is that if the motion is approved by the House, consideration of amendment of the Electoral Districts Act, and, indeed, the Electoral Act, should be made as nearly as possible forthwith.

The Hon. E. M. Heenan: I think that is in line 23.

The Hon. F. J. S. WISE: It is in the fourth-last line of the motion as printed Forthwith means, surely, immediately. We do not wish to imply that it would be interpreted in that fashion, but would be interpreted to mean as soon as practicable

The Hon. A. F. Griffith: You think it should mean—

The Hon. F. J. S. WISE: Forthwith.

The Hon. A. F. Griffith: —that the application of the amending legislation should have regard for the next Legislative Council election.

The Hon. F. J. S. WISE: I would not mind that, if it can be done in time. The sooner the question is faced the sooner we will get away from the inequities that opponents of ours have found firm argument to reject. But if we get all of those points that have been argued back and forth over the years—and this is one—and they are allowed to persist, it must mean that we will get into an even worse condition than obtains today; and, I repeat, contiguous provinces have a variation between 48,000, and 15,000 or 18,000.

I have mentioned that section 13 of the parent Act provides very definitely that it shall not be lawful to present to the Governor for His Majesty's assent any Bill to amend the Act unless the second and third readings of such Bill shall have passed with the concurrence of an absolute majority of the whole of the members for the time being of the Legislative Council and Legislative Assembly respectively.

So, I am refusing to accept the motion as simply an exercise—refusing to accept it, as we have on many occasions refused motions moved which, in the opinion of this House, were pious and meant nothing. I would prefer to regard this as fundamental to our parliamentary institution and the privileges of the people within their rights to elect on a proper franchise the members to the two Houses of Parliament of this State; and I would prefer that it be taken most seriously, even though it may prejudicially affect many members. We must face it and should face it.

I would like to interpolate a little of my own thoughts on that point. The Electoral Districts Act and the actions of the commissioners of the past have unconsciously and unintentionally done some very cruel things. In my lifetime in the Parliament of Western Australia I have seen members—young, vigorous, family men—occupying a seat which they would hold for the whole of their lifetime, or as long as they would wish, deprived of that seat by its very destruction. I can name many men whose future in the political and public life of this State was important to them and to the State. They were scrapped by the cruel effect—not the action—of the redistribution of seats.

Ministers of the Crown have lost their seats. Some, fortunately for themselves and for the State, have been able to re-enter political life; and there is no provision in any law of this State to give any compensation to men who, if this Act were not invoked, would have continued in public life for many years, and who have burned their boats, so far as their old professions and occupations were concerned, behind them; they have been thrown on the scrapheap with no compensation whatsoever.

There have been many professional men in this Chamber who, on entering politics received less as a salary than they did beforehand. Those men were in seats which, it cannot be denied, they would have held during their lifetime. Some of those men had young families. It is time this Parliament considered the situation which is going to occur over the next 50 or 100 years on every occasion that the Electoral Districts Act is invoked to review the electoral districts boundaries.

The parliamentary superannuation scheme, which was commenced by the members themselves with no subsidy from any Government, initially made provision for the compensation of members who were defeated or had retired. Those circumstances have altered, but not to the degree that it means not giving some compensation after retirement or after defeat—a very different matter from the aspect I am now raising, and quite extraneous to this motion. I repeat I am interpolating, really, that it is time some consideration was given to that point, because as a result of Dr. Hislop's proposal, many men in this Chamber could disappear from public life.

I do not see anything wrong with that if it means a better distribution and value of votes recorded. But it is very wrong that an individual in the prime of life, with family responsibilities, having discarded all his background in business—in his former life—should be thrown on the woodheap without compensation at all. I am suggesting that is something the Government may give consideration to.

The Hon. A. F. Griffith: I was wondering how you might consider your remarks in reference to your party's policy to abolish the Upper House.

The Hon. F. J. S. WISE: We cannot deal with hypothetical cases at this stage. We have to deal with what will actually occur.

The Hon. A. F. Griffith: It is not hypothetical to say your party believes in the abolition of this Chamber.

The Hon. F. J. S. WISE: It is hypothetical to say such a proposition will succeed even in the lifetime of the Minister. So do not let us deal with the matter I have just referred to on the basis of hypotheses; let us deal with it on the basis of equity and justice, because this is not the only House of Parliament. This House is less likely to be affected than the Legislative Assembly, to which place I particularly referred in regard to the sacrifices that have been made. Men like John Triat, Fred Smith, Harry Seward, and many others, lost their seats. Some of them came back to Parliament, but the principle is there—they were thrown to the wolves.

The Hon. G. C. MacKinnon: You are suggesting there can be amelioration of this problem by means of the Parliamentary Superannuation Act.

The Hon. F. J. S. WISE: That has nothing to do with it.

The Hon. G. C. MacKinnon: I was wondering.

The Hon. F. J. S. WISE: That is separate and distinct. The parliamentary superannuation scheme is something members themselves have made possible by their contributions; but this is something which should be compensated for in an entirely different fashion. It is extraneous to the motion, but is somewhat involved in it, otherwise you, Sir, would have called me to order long ago. In my view, the motion follows an assurance given by the mover when speaking on another occasion.

There are some aspects of the motion that one could not be enthusiastic about, because of the strictures contained in the line that it has been suggested should be amended. But it is as safe as any motion of this kind can possibly be, because both Houses of Parliament must review any amendment which is implicit in the putting into effect of the motion.

Amendment to Motion

With those observations I support the motion, but at this point I move an amendment—

> That the word "could" in line 24 of the motion be deleted and the word "should" substituted.

Debate (on amendment to the motion) adjourned, on motion by The Hon. A. F. Griffith (Minister for Justice).

BUNBURY HARBOUR BOARD ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 19th 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. W. F. WILLESEE (North) [8.2 p.m.]: This Bill deals with the principle of granting additional borrowing powers to the Bunbury Harbour Board to enable it to come into line with the State Electricity Commission and the Fremantle Harbour Trust. The measure seeks to permit the board to depart from the usual practice of borrowing exclusively from the State's funds and, if agreed to, it will give an opportunity to companies, trusts, and private enterprise in all its forms to invest money in the Bunbury Harbour Board by way of debentures or stocks which, in turn, will be guaranteed by the State Government.

The purpose of seeking to grant the board this additional power of borrowing is to relieve the Treasury of the responsibility of creating loan funds entirely for the purpose of financing the activities of the Bunbury Harbour Board, and so will enable the board to obtain public finance to augment its funds.

The type of money raised will be obtained from an area of limited investment, and probably the bulk of it will come from investors in Western Australia. I think one must guard against the danger that if too great a call is made on this avenue of investment there would be a tendency for a higher rate of interest to be offered by those competing in the loan market and so loans would range from those with a low rate of interest which offered a gilt-edged investment, such as those raised by the harbour board, to those loans with a high rate of interest.

However, this is mere supposition, and I support the Bill because I consider that in the long run the provision of better port facilties will tend towards lower costs, better operation, and lower wharfage and harbour dues; and an improvement in port facilities will create a good impression in the minds of tourists from overseas. It will also have a favourable reaction on trade within the State and that which goes out of the State.

With the amendment which appears in my name on the notice paper and which I intend to move in Committee, I support the Bill.

Question put and passed.

Bill read a second time.

In Committee

The Chairman of Committees (The Hon. N. E. Baxter) in the Chair; The Hon. L. A. Logan (Minister for Local Government) in charge of the Bill.

Clauses 1 to 4 put and passed.

Clause 5: Sections 54A-54J added—

The Hon. W. F. WILLESEE: I move an amendment—

Page 8, lines 8 to 10—Delete all words after the word "Act" down to and including the word "Account".

I consider this portion of the clause particularly harsh because if the Bunbury Harbour Board were to show a profit within its own organisation at the end of the year's trading, that money should be retained within the organisation and used to finance its next year's activities. There is the probability that if this policy were followed it would save the board borrowing money at interest rates to that extent. On the other hand, if profits that are made are to be paid into the Treasury, I suggest that the board would be operating to a point only just better than breaking even, which is contrary to the principle of this organisation. To continue to borrow for future improvements and to cover maintenance costs there is a tendency to keep costs higher than they should be. It is agreed that borrowing is necessary to a certain point, but I cannot see any advantage in handing over profits to the Treasury if and when the Treasury so demands.

The Hon. G. C. MACKINNON: When Mr. Willesee spoke it sounded as if it would be obligatory for any profits made by the board to be credited to the Public Account. I do not think that is intended. I would also ask how this provision compares with any similar provision contained in the Fremantle Harbour Trust Act, under which that trust operates.

The Hon. W. F. WILLESEE: I do not think it is obligatory for the board to pay any profits over to the Treasury, but if the Treasury so desires it could be done, and to have that happen would constitute a bad principle, in my opinion, and would result in further bad principles occurring within the board's operations. I would point out that a similar provision is contained in the legislation which controls the operations of the Fremantle Harbour Trust.

The Hon. J. G. HISLOP: I would like to know whether a provision similar to the one in this clause was not the reason for discord in the Midland Junction Abattoir Board a year or so ago. Is it necessary for the board to continue in this fashion? It seems to me that this organisation is borrowing from the Treasury and that it has over-borrowed. However, at the same time, all these loans are very carefully considered in regard to the amount required before an application is made. It

would appear that if the board organises its business to enable it to make an annual saving and so have some freedom or liberty to extend its activities if it so wishes, it is wrong to attempt to cramp the activities of the board.

If the board has to conclude each year with the realisation that it has no right to the money it has earned, discord must occur. I can recall the prolonged discussion that took place in this Chamber several years ago regarding a similar provision that affected the operations of the Midland Junction Abattoir Board. The people there objected greatly to that provision being inserted in the legislation. I am wondering whether this is a question of the profit that is earned, or a question of control by the Treasury, in that any borrowing by the board should be handled in this way.

The Hon. L. A. LOGAN: I would remind the Committee that in 1960 when an amendment to the Fremantle Harbour Trust Act was being considered, members of all parties, both in the Legislative Assembly and in this Chamber, expressed the opinion that more control should be exercised by the Treasury over the finances of the trust, and not less. That was the opinion held in 1960. It could be that in the years that have passed members have had a second thought on the question and now consider that the local board should have more power.

I would prefer to leave the clause as it is, because, unless the Treasury requests payment of funds to be made to the Public Account, such action is not obligatory. As Mr. MacKinnon has said, it is not mandatory that the money should be paid to the Treasury. It will only be done when the Treasury considers it should be. The Bunbury Harbour Board is a fairly responsible board and the same provision will apply to the Albany Harbour Board. It is ironical that we are to restrict the activities of the Fremantle Harbour Trust with a similar provision and yet smaller boards will not be subject to control by the Treasury if it deems that such control shall be exercised.

The Hon. W. F. Willesee: We could amend the Fremantle Harbour Trust Act, too.

The Hon. L. A. LOGAN: We cannot, because that Act is not being reviewed by the Committee. I will not oppose the amendment at this stage, but I would prefer to see the clause remain as printed purely because of the expressions of opinion that were made previously, and also because of the control the Treasury exercises over the Fremantle Harbour Trust.

The Hon. C. R. ABBEY: I have some sympathy with the mover of this amendment in that I realise he has for his aim an improvement of the board's authority. I well recall the situation that occurred in the Midland Junction Abattoir Board a few years ago as a result of its having to hand over to the Treasury any surplus it made.

I think we could draw a comparison between the two boards. This board, and similar Government instrumentalities, should be given more autonomy in the administration of their financial affairs. If they are given the power to borrow, then they should also be given the power to retain profits. I am well aware that in the past, through its good business management, the Midland Junction Abattoir Board made profits at the end of the year, although its charges were less than those of other abattoirs in the State. The Bunbury Harbour Board could be placed in a similar situation.

If the members of the Bunbury Harbour Board are given an incentive to effect savings in the board's operations, they will be able to further their future plans by using the funds from the profits, and the board should be given the right to establish a reserve account for capital expansion. It is frustrating to boards and Government instrumentalities to have to approach the Government year after year for loan funds for expansion; this creates difficulty in planning ahead.

The Hon. F. J. S. WISE: In the past we have heard the complaint that some board or Government instrumentality had been made into a taxing authority by the Government, where rates were so struck and incomes so regulated that a profit accrued to the Treasury from an instrumentality designed not to make a profit but to serve the public.

If a board of this kind has sufficient business acumen to administer its important responsibilities profitably, and if it is entitled to use the surplus profit within the ambit of the provisions in this Bill, then the Government will be relieved of the necessity to borrow loan funds for capital expenditure. On those two grounds I support the amendment.

The Hon. G. C. MacKINNON: Proposed new section 54I states that any profit at the end of the financial year may be used by the board unless the Treasurer requires payment to be made to the Public Account. The Minister has explained that the words proposed to be deleted have been included in the provision to enable the Treasurer to ensure the repayment of advances to the board. If those words are deleted from the provision the Government will be reluctant to advance money to the board to carry on its lawful functions.

The town of Bunbury and its harbour are growing, but it is unreasonable to expect this board to be given a greater right to retain surplus profits than is given to the older established Fremantle Harbour Trust. As a provision similar to proposed section 54I is in the Fremantle

Harbour Trust Act, then surely this proposed section should be agreed to in its entirety. If the amendment is agreed to the Government will be more restrained in advancing money to the Bunbury Harbour Board. Furthermore, members of the Bunbury Harbour Board are quite happy with the Act as it is.

The Hon. W. F. WILLESEE: If any borrowings are made by the Bunbury Harbour Board through the Treasury, they would be covered by the normal principles applying to loans. Some form of debenture would be issued, and the rate of repayment as well as the rate of interest would be shown.

The Hon. G. C. MacKinnon: I was referring to the Government advancing money to the board.

The Hon. W. F. WILLESEE: No Treasurer would advance money to a board or trust where the repayment depended upon the profits. Repayment of loans would be covered by the normal practice, and the period as well as the rate of interest would be stipulated. By agreeing to the amendment we would not be decreasing the ability of the Bunbury Harbour Board to obtain money from the Treasury, or from any other source, and we would at the same time ensure that the board retained control of its profits.

The Hon. J. G. HISLOP: I ask the Minister to report progress on this clause so that he can obtain from the Treasurer the exact meaning of the words proposed to be deleted. The clause could perhaps be amplified to set out the circumstances in which the Treasurer could recall money advanced. This provision deals only with the use of the profits. I presume that loans and advances to the board are covered by other provisions.

It seems to be a practice to include in Bills the words which are now proposed to be deleted. For that reason the circumstances under which the Treasurer may require profits to be paid to the Public Account should be set out clearly.

The Hon. L. A. LOGAN: The repayments of loans, and the rate of interest are covered by proposed new sections 54G and 54H, while 54I deals with the use of any surplus profit. The Government will be spending much more on the Bunbury Harbour and the Albany Harbour, than those two respective boards will borrow and spend themselves. I can visualise £500,000 being spent by the Government on the Bunbury Harbour; this is in addition to what the board may borrow and spend, because the board borrows money mainly to enable it to carry out its functions.

In the Bill it is sought to establish the right of the board to borrow money, and if it can borrow £100,000 a year that is so much less the Government has to borrow to finance works in this State. If the words are not retained in the provision, it will be possible for the board to have a surplus profit year after year and to hold in reserve a considerable amount which it cannot use, and which the Treasury cannot get hold of. If profits accumulate they ought to be put to a better use than being placed to the credit of the board. I am not opposed to the suggestion that progress be reported.

Progress

Progress reported and leave given to sit again, on motion by The Hon. L. A. Logan (Minister for Local Government).

ALBANY HARBOUR BOARD ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 19th 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. W. F. WILLESEE (North) [8.29 p.m.]: This Bill is identical with the previous one, and any remarks I made in connection with the previous Bill apply to this. Therefore, it is unnecessary for me to make the same remarks again. Subject to the amendment standing in my name I support the second reading.

Question put and passed.

Bill read a second time.

STAMP ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 19th September, on the following motion by The Hon. A. F. Griffith (Minister for Mines):—

That the Bill be now read a second time.

THE HON. N. E. BAXTER (Central) [8.30 p.m.]: This is not a very large Bill, but it does give some food for thought. As explained by the Minister, the measure deals with compensation paid from the dairy compensation fund, which is based on a stamp charge on butterfat produced. As explained in the Minister's second reading speech, over the years a considerable fund has been built up to the extent that today it is approximately £49,000 in credit.

One feature does strike me, and it is this: Since this Act has been in force from August, 1961, to June, 1963, there have been 902 reactors to tuberculosis upon which compensation has been paid, mostly at £35 per head; and in the latter stages at £40 per head. Even so, as I said before, this has left the fund in a particularly healthy condition. During the last 12 months, compensation was paid for 229 beasts at £40 per beast, making the total

compensation paid roughly £9,160. With the affluent state of this fund, one wonders whether some consideration should not be given to making the compensation figure even higher.

To purchase a reasonable dairy cow today, one has to go into the market or buy privately and pay beyond £40; and it is no fault of the particular owner if his beast is a reactor to tuberculosis. Therefore I feel some consideration should have been given to increasing the payment of compensation to an amount greater than £40. It is not likely that there would be a huge upsurge of tuberculosis amongst dairy cattle. Of course, we never know; and the time might come when some disease will make a great demand, by way of compensation, on this fund. However, to increase the figure by £10, bringing compensation to a total of £50 per head would provide more reasonable compensation and give the owner of a beast that had to be destroyed a chance of buying another beast.

I do not think an increase in the compensation payable such as I have mentioned would affect the fund so seriously that it could not meet other contingencies, should they arise. I put forward this thought on the matter because I feel that as we have progressed over the years with this particular legislation the Government could have given further thought to increasing the compensation to assist the dairymen who have to bear losses in these circumstances.

THE HON. A. F. GRIFFITH (Suburban —Minister for Mines) [8.34 p.m.]: May I say briefly that I will convey the views of the honourable member to my colleague, the Minister for Agriculture. This Bill, of course, is to reduce the rate applied rather than increase the compensation payable on beasts that have been destroyed as a result of suffering from disease. However, I repeat, I will convey the honourable member's sentiments to the Minister for Agriculture.

Question put and passed.

Bill read a second time.

In Committee

The Chairman of Committees (The Hon. N. E. Baxter) in the Chair; The Hon. A. F. Griffith (Minister for Mines) in charge of the Bill.

Clause 1 put and passed.

Clause 2: Second Schedule amended—

The Hon. H. K. WATSON: I rise merely to draw attention of the Committee to the very unusual nature of this clause. Taxation has always been the prerogative of Parliament; and this Bill produces a very unusual provision inasmuch as the tax imposed may, from time to time by proclamation, be reduced. Seeing that the power conferred upon the executive by proclamation is a power to reduce the tax, I satisfy myself with drawing attention to the very unusual departure in this Bill, but also voice the opinion that if at any time a Bill is brought before the House providing for so much tax or such greater amount as the Governor may by proclamation declare, it will receive my strong opposition on principle.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

BEE INDUSTRY COMPENSATION ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 19th 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. N. E. BAXTER (Central) [8.39 p.m.]: I do not seem to get very much time to gather my thoughts together when I am jumping from one subject to another. This particular measure deals with the bee industry compensation fund, and some of the Bill's main purposes, as indicated in the Minister's second reading speech, are very laudable. In his speech the Minister had this to say—

> The main purpose of this Bill is to enable compensation to be paid at the full market value of the property to be destroyed in the interests of the industry.

The speech continues by saying—

> All circumstances considered, it is not unreasonable to assume a beekeeper should be entitled to be properly and fully compensated and that is what this Bill proposes.

In regard to this fund, a contribution as high as 6d. can be levied if done so by the authority, but, in the past, the license fee has been set at only one penny per hive, which has yielded a rather small amount of money—somewhere around £200 to £234. Under section 11 of the parent Act there is a limit to the amount that can be held in the fund: it cannot exceed £1,000. Because of this, there have been years when no levy was made.

As a result of heavy demands during the past year, these have almost, as one might say, bankrupted the fund; and from information contained in the Minister's speech it would seem that before claims are finished for this particular year the fund will be bankrupt. In other words, the authority will have to resort to falling back on the Government to

meet the deficit. It seems strange to me that we have left the limitation of £1,000 in the parent Act. When one looks at the dairy cattle compensation fund—the one we have just discussed—and realises the height to which the fund has grown, and compare the value of that industry to the State as against the apiarian industry, one sees a vast discrepancy.

On account of what has happened, particularly over the past 12 months, and the fact that it is proposed to be even more stringent in regard to the bee or honey industry, particularly in relation to disease, infected combs, hives, and that type of thing, I am of the opinion that some consideration should have been given in this Bill to amending section 11 of the Act so that an increased maximum amount could be held in the fund.

Even though under this measure it is proposed to make some amendment to section 11, one would have thought this facet would have also been considered. The figures given in another place show there are 45,000 hives registered in this State, and one penny a hive works out at about £187 10s. which is coming into the fund. I presume the balance of money shown in the figures has come from investments of fund moneys, which have built the amount up to over £200. But how long can we continue like this?

I feel the apiarists of this State would not object if this fund were allowed to rise to a maximum of £2,000 in order to give them protection. Their contribution as individuals would not be very high. There are some apiarists who have well over 100 hives each, and some probably have more; but, after all is said and done, 100 hives at one penny per hive is not a great tax to pay for protection if anything should happen and it should be necessary for the owners to be compensated for disease or loss.

I suggest the Government might give further thought to this matter and amend section 11 of the Act to allow the authority to build up a greater reserve for the purpose of compensation in the future. I feel the apiarists are quite prepared to look after their side of the industry and pay in enough money to cover themselves by way of compensation rather than have to go to the Government and ask it to make up the deficit. I believe this is quite a good measure, and I support the Bill.

Question put and passed.

Bill read a second time.

In Committee

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.

Clauses 1 to 4 put and passed.

Clause 5: Section 11 amended—

The Hon. N. E. BAXTER: I am of the opinion that the maximum amount in the fund for compensation should be increased for the reasons I suggested during my second reading speech. It is difficult to work out an amendment at this stage, and I would request the Minister to report progress so that I can prepare one.

The Hon. L. A. LOGAN: I will be happy to accede to the honourable member's request. The section of the Act provides that where funds are deficient they can be made up from the Treasury. A complication could arise. If beekeepers are charged 6d. per colony, the fund could be increased considerably. If a charge of 4d. were imposed the fund could be increased to £1,000. It might be a safeguard if we provided for a charge of not more than 4d. Beekeepers may not wish to pay 6d. per colony. We have to look at the problem from the point of view of the beekeepers and of the Treasury. Beekeepers may not be prepared to pay 6d. per colony at the present time.

Progress

Progress reported and leave given to sit again, on motion by The Hon. L. A. Logan (Minister for Local Government).

OFFENDERS PROBATION AND PAROLE BILL

In Committee

The Chairman of Committees (The Hon. N. E. Baxter) in the Chair; The Hon. A. F. Griffith (Minister for Justice) in charge of the Bill.

Clauses 1 to 8 put and passed.

Clause 9: Power of Courts to make probation orders—

The Hon. F. R. H. LAVERY: I refer members to lines 10, 11, and 12 on page 7 of the Bill. I would like the Minister to explain the provision more clearly.

The Hon. A. F. GRIFFITH: My interpretation of the clause is that the court may exercise a discretion in placing a person on probation for a period of not less than one year or more than five years. It is plainly and simply that.

The Hon. F. R. H. LAVERY: Apparently there will be no probation for anyone unless he is sentenced to twelve months imprisonment or more. I have in mind a person who is sentenced to six months imprisonment. Apparently that person will not have an opportunity of being placed on probation.

The Hon. A. F. Griffith: I will have a look at the point raised and will advise the honourable member before we complete the Bill.

Clause put and passed.

Clauses 10 to 17 put and passed.

Clause 18: Judge or Chairman to decide questions as to breach of probation—

The Hon J. M. THOMSON: The first portion of this clause in quite clear, but I have not been able to satisfy myself as to the intention of the latter portion. Would the Minister explain the procedure to be adopted by the judge or chairman when a probationer commits an offence during his probationary period?

The Hon. A. F. GRIFFITH: I refer members to the wording of this clause. If a probationer commits an offence during his probationary period, he will not be tried by a jury. Some of the questions on points of law being put are difficult for me to determine. It appears that the decision in such a matter would not be made by a jury, but by a judge. However, I will have a look at this point.

The Hon. J. G. HISLOP: I think there is a simple explanation. The probationer has been convicted of an offence, and if he were convicted by the verdict of the jury the decision as to whether he committed another offence during his probation period is given either by the judge or the chairman.

The Hon. A. F. Griffith: That is so.

Clause put and passed.

Clauses 19 and 20 put and passed.

Clause 21: Establishment of Parole Board—

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

> Page 19, line 10—Delete the words "three men" and substitute the words "one man".

My purpose in moving the amendment is so that the board of five will act together. The amendment is really in two parts, but that is the purpose of it. At present women are serving on the prisons board, and in these cases I think women and men should act together. Women should not deal specifically with women's cases and men should not deal specifically with cases concerned with male prisoners. Society is composed of men and women and they should work together in cases such as these.

As I said during the debate on the Juries Bill, there are intelligent men and intelligent women and there are dull men and dull women; and women have just as much at stake in this board as men have. I cannot see why they should be divided in this instance, because a woman's knowledge of humanity and her intuition could be very valuable to the board in dealing with male prisoners. It would be in the interests of young men to have women on the board hearing their cases, and it would be in the interests of women to have men on the board dealing with their cases. I think opinions should be pooled for the benefit of all those who are to be released on parole.

The Hon. G. C. MacKinnon: I think the married men would be too frightened to comment on it.

The Hon. R. F. HUTCHISON: That may be so, but women would not be too frightened to comment. Women now serve on juries, on an equal basis, and there have not been any of the dire consequences that were envisaged by some members during the debate. Women also serve on the Prisoners' Aid Association in company with men. I hope members will agree to the proposition.

The Hon. A. F. GRIFFITH: If we agree to this amendment and the one which Mr. Dolan proposes to move there will be six people on the board.

The Hon. R. F. Hutchison: It could be the one man.

The Hon. A. F. GRIFFITH: That is what I wanted to clarify. In that case there would be a board consisting of five members, a judge, the Comptroller-General of Prisons, a gaol officer, and two women. I hope the Committee will not agree to that.

As much thought as possible has been put into this Bill and I was able to gain experience of what goes on in the other States. The fact that women are serving on juries has nothing to do with the matter. Why we should try to bring that argument in, I do not know.

The Hon. R. F. Hutchison: This is dealing with justice.

The Hon. A. F. GRIFFITH: It has nothing to do with the case.

The Hon. R. F. Hutchison: It is the same as this.

The Hon. A. F. GRIFFITH: It has nothing to do with the case, and I hope the Committee will not agree to the amendment. In the preparation of the Bill I think I have gone a long way and recognised that where women offenders are being dealt with there should be two women on the board; but where male offenders are being dealt with I think we should leave the position as it is set out in the Bill. In the other States I do not know whether they have women on the boards, but I do not think they do. There were no women on the Victorian board. I hope the Committee will leave the Bill as it is.

Amendment put and negatived.

The Hon. J. DOLAN: I move an amendment—

> Page 19, line 10—Insert after the word "Governor" the passage, ", one to be a member of the Gaol Officers' Union."

I think during my second reading speech I indicated that one of the goals of the parole board should be to ensure the protection of society. I gave just one example but there are others where mistakes have been made, and I feel that in the creation

of this board we must be particularly careful to guard against any mistake which could affect public safety in any way.

I think gaol officers would be more intimately associated with the men who will come up before the parole board than anyone else on the board. Secondly, a gaol officer sees the prospective parolee in all his moods; he sees him in his good moments and in his bad moments and, consequently, he is more likely to be impartial than any other member of the board.

I can imagine that anybody coming up before the parole board would be on his best behaviour. He would have himself so schooled that he would present the best side of his character to the board. It is quite possible the gaol officers, by virtue of their association with certain men, would realise that there are particular aspects of a man which might make him a danger to the public if he were paroled.

I would like members to forget the fact that a gaol officer is a member of a union. I would also like them to remember that he is a humane individual who is more likely to be sympathetic than otherwise. Having seen prospective parolees from the more intimate side, I think a gaol officer could give a more unbiassed and balanced judgment than perhaps any other member of the board. I commend the amendment to members.

The Hon. A. F. GRIFFITH: I think Mr. Dolan's amendment is well meant, but it has one obvious weakness. He told us he thought that a gaol officer would have a much more intimate knowledge of, and association with, the prisoner than would anybody else on the board. I pose this question: How could a gaol officer at Barton's Mill have an intimate knowledge of a man at Fremantle? Conversely, how could a gaol officer at Fremantle have an intimate knowledge of a man at Karnet or some other place? In other words, he could not really have an intimate knowledge of all prisoners. He may have a knowledge of a prisoner if he happened to be serving at the same prison, but if he were not the whole thing would break down, would it not?

The honourable member talked about gaol officers having an intimate knowledge of prisoners. I think that is the crux of the matter and, in the deliberations of the board, its members would seek the advice not of the gaol officer, if he were made a member of the board, but of all gaol officers serving in the various institutions where the prisoner may have been held. I think gaol officers could, in such a way, be of greater assistance to the board than by having one of their number as a member of the board.

If the amendment is agreed to the gaol officer concerned might well find himself in the not-very-happy position where some prisoners may take exception to his attitude towards them, one way or the other. I would prefer to leave the Bill as it is.

The Hon. R. Thompson: The point is that prisoners don't like them now, anyway.

The Hon. F. R. H. LAVERY: Whilst the Minister put up some good points in opposition to the amendment, I should like to put forward some views in connection with it. I have had a good deal of experience with the system at Fremantle and if some prisoner required advice, or wanted to discuss something concerning his private life, the present Comptroller-General of Prisons, when he was superintendent, would make his office available to me so that I could see the prisoner by himself.

Of course he was well guarded, but we were left to discuss things by ourselves; and, on finding out some of the information for which the prisoner was looking in regard to his family, I had a private discussion with the Superintendent of Prisons. He did not hesitate to point out that the gaol officer concerned had been under his control for a long time, and he had made a good report about him. I do not think it is as awkward to deal with as the Minister would have us believe. The point the Minister made about Barton's Mill was a good one, but most prisoners go to Fremantle before they are found to be suitable for Barton's Mill.

The Hon. J. G. HISLOP: This concerns me considerably. A member of the Gaol Officers' Union could find himself in a difficult position. Neutral people should care for these prisoners, and the board should rely on reports from them rather than have their presence on the board, because if there was a particular person in a gaol who had been refused parole, the gaol officer would lose a good deal of control if he had been acting as an officer of the union on the board.

Greater neutrality would give us better control, and it would be better to rely on the reports of these officers which could be used by the board. The board will consist of a judge nominated by the Chief Justice, and he will be a man of considerable experience. The Comptroller-General of Prisons will also be on the board. It would be dangerous to allow an officer in daily contact with a prisoner to be on the board. He would not find his position an easy one.

The Hon. F. R. H. LAVERY: I would like to read this extract from the Annual Report of the Prisons Department—

> The Adult Probation and Welfare Service was instituted by the Prisons Department during the year, and its officers, Mr. C. A. Gannaway and Mr. C. Lee are now responsible for the supervision of all parolees and probationers, except in special instances where such persons are placed under supervision of mental health officers.

In addition, the written reports of the parolees are now directed to the officers of the Service instead of the Secretary of the Board as before. This enables the supervising officers to have a complete record of the activities and movements of the persons under supervision, and thus to be able to provide the Board with well-informed reports for its information and action where necessary.

The point I am making is that the reports will come from gaol officers. If it is good enough for the reports to come from gaol officers, surely it is good enough for a gaol officer to be on the board.

Amendment put and negatived.

The Hon. F. R. H. LAVERY: In regard to women appointed by the Governor, and in answer to a remark made by the Minister, I would point out there are two separate boards in Victoria, both of which furnish reports. One is the annual report of the male parole board, on which there are five men, and the other is the report of the female parole board, on which there are two men and three women.

The Hon. A. F. GRIFFITH: I said I did not think there was a woman on the board in Victoria dealing with male prisoners. So Mr. Lavery has made my point for me. Like Victoria, here we will have a five-man board dealing with males; but there will be two women on our board as distinct from the Victorian board.

The Hon. F. R. H. Lavery: You have three men and two women?

The Hon. A. F. GRIFFITH: Yes. I can assure members the appointments will be made after careful consideration with a view to obtaining the most suitable people, including women, to fulfil this function in the best possible way.

The Hon. R. F. HUTCHISON: I am not satisfied about this whole matter. I am not satisfied with the Minister's explanation, or that the subject has been brought forward in the best possible way. It does not matter what happens in other States. We are adult enough to make our own decisions. I will bring down legislation later to make my point. I have discussed this very widely, and there is great dissatisfaction at the practice of having women in the minority and men in the majority on these boards. This is one board on which men and women should be given equal opportunity to act for the good of the prisoners, particularly when they have equal intelligence. I am not at all satisfied.

The Hon. A. F. GRIFFITH: I could not do anything, really, to satisfy Mrs. Hutchison.

The Hon. R. F. Hutchison: You have never tried!

The Hon. A. F. GRIFFITH: I have gone as far as I think I should go. The Bill places two women on the board.

The Hon. R. F. Hutchison: That is condescending of you!

The Hon. A. F. GRIFFITH: I did not say anything about condescension. I merely said two women would be appointed to the board.

Clause put and passed.

Clauses 22 to 25 put and passed.

Clause 26: Leave of absence—

The Hon. J. DOLAN: Could the Minister tell me if any provision is made to replace a man on the board during his absence on leave?

The Hon. A. F. GRIFFITH: These will be appointments made by the Governor-in-Council, and if the leave is extended leave there will be nothing to stop a replacement being made by order of the Governor-in-Council. Does that answer Mr. Dolan's question?

The Hon. J. Dolan: I think so.

Clause put and passed.

Clause 27: Resignation of members—

The Hon. A. F. GRIFFITH: In the case of the resignation of a member there would, of course, be another appointment; and the same thing would apply in the case of long service leave.

Clause put and passed.

Clause 28: Meetings of the Board—

The Hon. F. R. H. LAVERY: I mentioned that in the reports from Victoria—both the male and female sections—the chairman was perturbed at the fact that the amount of work grew as the year progressed, and finally he had to seek the appointment of another parole officer. The board in Victoria held 47 meetings, and I wondered whether the Minister could tell us whether the Chief Justice would be available to attend 47 meetings in the year.

The Hon. A. F. Griffith: It will not be the Chief Justice.

The Hon. F. R. H. LAVERY: Or the judge he appoints. We are short of judicial staff. We have just appointed another judge and I want to know whether this board would be starved for staff.

The Hon. A. F. GRIFFITH: I appreciate the views of Mr. Lavery. We cannot, however, compare the activities of our board with those of Victoria—at least not at the present time—because we have not made a start. Victoria, of course, has a much greater population than we have. I think I mentioned that there were more than 700 prisoners in this State, and I feel there would be considerably more in Victoria.

As to the change of staff, I will, well before the Bill is proclaimed, to the best of my ability with the assistance of the

officers of the department who help me in making determinations, try to cover the situation so the board can make an effective start. I cannot at this stage say how many parole officers will be appointed. I think I remarked during my second reading speech that the situation may well be limited according to the availability of suitable people. It is my hope that some career opportunity will be created for people who want to qualify as employees of this board.

The Hon. F. R. H. LAVERY: In the annual report of the Victorian Parole Board (Male) for the year 1957-58, under the heading, "Activities of Parole Officers" is the following extract:—

(b) Each officer combines the role of probation and parole officer.

(c) The number of cases handled by the male officers during the year was—

Pre-sentence reports	140
Probation cases	1,039
Parole cases	320
	1,499

The Hon. A. F. Griffith: We will also have honorary parole officers.

Clause put and passed.

Clauses 29 to 51 put and passed.

Clause 52: Regulations—

The Hon. F. R. H. LAVERY: I may have overlooked such a provision, but I did not notice, when going through the Bill, any provision whereby a report shall be issued to Parliament each year.

The Hon. A. F. Griffith: You have passed the clause dealing with that matter.

The Hon. F. R. H. LAVERY: I probably have, but I just wanted to make sure that the Bill did contain this provision.

The Hon. A. F. GRIFITH: The provision is contained in clause 34 which states that a report must be made before the 1st October each year to the Minister. I presume that the report will be laid on the Table of the House as is the case with reports of all boards.

The Hon. F. R. H. Lavery: Thank you.

Clause put and passed.

Clause 53 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

CRIMINAL CODE AMENDMENT BILL

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

PRISONS ACT AMENDMENT BILL

In Committee

The Chairman of Committees (The Hon. N. E. Baxter) in the Chair; The Hon. A. F. Griffith (Minister for Mines) in charge of the Bill.

Clauses 1 and 2 put and passed.

Clause 3: Section 2 amended—

The Hon. F. R. H. LAVERY: This clause mentions institutions for the reception of convicted inebriates. Is it contemplated that a new home will be provided or does the clause refer to those already established?

The Hon. A. F. GRIFFITH: The explanatory note I have on this clause is as follows:—

> In clause 3 of the Bill, there is provision for the insertion of a reference part VIB—institutions for the reception of convicted inebriates, subsections 64.0 to 64Q—into section 2 of the Act, which lists the several parts of the Act. This reference was included in the main body of a Bill passed by Parliament last year but its insertion in section 2 was overlooked.

This clause is merely included to rectify the position.

Clause put and passed.

Clauses 4 to 15 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

House adjourned at 9.46 p.m.

Legislative Assembly

Tuesday, the 24th September, 1963

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