

noxious industry—regional special industrial area” and “existing and proposed hazardous industry” provide a cross hatching.

If you peruse the regulations, Mr. Speaker, you will see that some are broken hatch and some just ordinary lines across the square, but there is no actual line of demarcation; and they are closely knitted, and there is much affinity as far as the meanings are concerned. As this particular barrister pointed out, it might be all right for town planning experts—they can read the symbols quite quickly and interpret them—but it is difficult for an ordinary layman to understand and appreciate them.

All the shires that I have had contact with are of the opinion that the symbols are quite good. They say they will serve the purpose but will need some reviewing in regard to the wording and the actual interpretation.

The various shires are quite conscious of their responsibility in drawing up these schemes, especially in regard to the ratepayers, and in most instances they endeavour to talk the matter over with the ratepayers. On numerous occasions they have, in the Canning district, had protest meetings and invited the ratepayers along to discuss any scheme that has come up.

As I said previously, the Canning shire is at present working on scheme No. 9; and any time a scheme is published or gazetted, naturally there is a barrage of protests. But on each occasion that various landowners have come forward and have had the matter explained to them, they have gone away quite satisfied. I think that is all due to the fine administration that is carried out by the shire.

These shires have quite a big job to do. One of the shires in my area has appointed a town planning officer who works very closely in conjunction with the Town Planning Board, and quite close co-operation has eventuated from these appointments of town planning officers.

The Minister should give close attention to discussing matters of this nature with the shires. They should be brought into all the discussions because, after all, the Town Planning Board should be very pleased that a local government has an administrative staff to draw up local schemes. It must help the Town Planning Board. Therefore I feel the board should assist the shires wherever possible.

I believe the Minister in another place has received a deputation from the association of shires or councils and has agreed to give the matter good consideration. He has seen some of the information that has been obtained from the authorities in the Eastern States, and I think he appreciates there are certain features of the regulations which will have to be amended.

I have not spoken to the Minister in regard to the matter; and, although it was discussed at length in the other House, it was not quite as comprehensive as the disallowance motion I have moved.

I will not delay the House any more. The motion is quite clear. The shires in my area feel that the matter can be resolved as a result of a little get-together of the Minister and the association, and they feel that any future gazettal or compilation of town planning regulations should be made with the knowledge of the shires in the various districts.

Debate adjourned for 14 days, on motion by Mr. Lewis (Minister for Education).

House adjourned at 9.14 p.m.

Legislative Council

Thursday, the 12th September, 1963

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The PRESIDENT (The Hon. L. C. Diver) took the Chair at 4 p.m., and read prayers.

QUESTION WITHOUT NOTICE

SITTINGS OF THE HOUSE

Thursday Nights

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

Can he indicate to the House when he thinks that longer sittings on Thursdays may be necessary to include sittings after tea?

The Hon. A. F. GRIFFITH replied:

I think it will be agreed that I endeavour to be as considerate as possible in respect of Thursday sittings, bearing in mind that I am aware of the fact that country members—and particularly gold-fields members—like to get back to their electorates for the week-ends. However, I must say that I find some difficulty in continuing to arrange a notice paper which suits the need of everyone in the House who may want to get away, and I cannot undertake to be able to continue to do so.

We will not sit after tea on a Thursday until it becomes necessary; but I would like it understood that, instead of—as in the past—dealing on a Thursday with matters on which a vote is not necessary, we must expect as from next week to carry out our business on a Thursday the same as we do on a Tuesday and a Wednesday.

The Hon. F. J. S. Wise: Thank you.

QUESTIONS ON NOTICE

BUS SERVICE: MERREDIN-PERTH

Terminus and Ticket Office at Merredin

1. The Hon. A. L. LOTON (for The Hon. G. Bennetts) asked the Minister for Mines:

In connection with the new bus service from Perth to Merredin and return, will the Minister advise—

- (1) Will the bus terminus be located outside the goods shed in the main street at Merredin?
- (2) If the answer to No. (1) is "Yes," will consideration be given to establishing a ticket office at this point for the convenience of passengers?

The Hon. A. F. GRIFFITH replied:

- (1) Yes. The passengers alight from the bus at the Merredin Post Office and join at a point opposite the post office.
- (2) Tickets can be obtained at the railway station or on the bus. The question of issuing tickets at a convenient position near the starting point at Merredin will be considered if experience suggests that such is desirable.

MULLEWA-MEEKATHARRA TRAIN

Seating during School Holidays

2. The Hon. D. P. DELLAR asked the Minister for Mines:

- (1) Is the Minister aware of the unsuitable conditions which prevail on the train operating between Mullewa and Meekatharra during school holiday periods as follows:—

- (a) insufficient seating accommodation resulting in teenage children being required to stand in corridors throughout the whole journey, irrespective of the fact that parents in some instances have paid first-class fares for seating and sleeping facilities for their children; and

- (b) the absence of a senior conductor on this rail service?

- (2) Will the Government investigate this matter with a view to alleviating the position so that passengers will have sufficient suitable accommodation during the next school holiday period?

Employment of Senior Conductor

- (3) Is it intended to provide a senior conductor on this service?

The Hon. A. F. GRIFFITH replied:

- (1) (a) Seating accommodation for 171 passengers was provided on this train during the last holiday period and only 134 passengers travelled. Some of the children travelling between Mullewa and Mt. Magnet would not occupy the side door carriages supplied to cope with the extra traffic and crowded into the corridor coaches of their own choice, which I understand was because groups with various school and other affiliations preferred to travel together.

- (b) An acting conductor is employed and he provides a satisfactory service.

- (2) This is normal practice before each holiday period.

- (3) Answered by No. (1) (b).

SHOPPING CENTRE IN COCKBURN

Application by P. G. Cook

3. The Hon. F. R. H. LAVERY asked the Minister for Town Planning:

- (1) Has an application from P. G. Cook, for the re-zoning for a shopping centre of portion of Cockburn Location 10 and being Lots 68 to 72 inclusive and Lots 74 to

79 inclusive on plan 7719 and being part of the land comprised in Certificate of Title Volume 1257 folio 646, been submitted to the Town Planning Commission for approval?

- (2) (a) Has a decision of approval or rejection been effected?
 (b) If approved, on which date was the applicant notified?

The Hon. A. F. GRIFFITH (for The Hon. L. A. Logan) replied:

- (1) An application for re-zoning of this land was submitted to the Minister from the Cockburn Shire Council.
 (2) (a) Yes.
 (b) The Cockburn Shire Council was advised on the 10th September, 1963.

MOTOR VEHICLE (THIRD PARTY INSURANCE) ACT AMENDMENT BILL

Second Reading

THE HON. E. M. HEENAN (North-East) [4.7 p.m.]: I move—

That the Bill be now read a second time.

This Bill proposes to amend section 6 of the principal Act and to add a new section to be known as section 6A. The sole purpose of the measure is to allow one spouse to sue another and, if successful, to recover damages. As the Act now stands this cannot be done, and members are well aware that the position has been the subject of much criticism, particularly in recent years.

It might be of interest to members if I give a brief outline relating to the common law rule which causes this situation to exist, the situation being that a husband cannot sue his wife, nor can a wife sue her husband, in actions of tort. The mutual relations between husband and wife were, and still are to a large extent, dominated by the common law doctrine of unity according to which the legal personality of each spouse is merged into the other.

This dogmatic fiction found expression in the rule that no injury inflicted by one spouse on the other during the subsistence of the marriage could give rise to liability. This rule precluded any action by the husband against the wife, or *vice versa*, for a tort committed during the marriage.

The rule has been retained in the common law which expressly lays down that no husband or wife shall be entitled to sue the other for a tort. It has been subjected to much criticism in recent years by judges and other competent authorities, particularly in the light of the great increase in claims arising from motor vehicle accidents and the like.

The reason generally offered to explain the exclusion of actions between spouses is that such are unseemly and tend to destroy the harmony which should exist between husband and wife. This reason may have had considerable merit in times gone by, but the position is now vastly different, particularly in claims arising from motor-car accidents when the nominal defendant is covered by insurance, and the actual defendant is invariably an insurance company.

Another reason advanced in support of the common law rule is that if it were abolished, thus enabling one spouse to sue the other, there would be the risk of collusion between the parties. On the face of it there is probably some weight in this contention, but it has to be remembered that our criminal law provides severe penalties for fraud, which render collusion unlikely and, at least, very dangerous and foolish.

Under the principal Act as it now stands, a father can recover damages from his son or daughter, or *vice versa*; the fiancée of a young man can recover damages from him; and in all these cases, therefore, the risk of collusion would not appear to be any less than if the parties were husband and wife. It therefore seems illogical that the old common law rule which prevents one spouse from taking action against the other, should be retained.

As is well known, the interested party in motor accident claims is usually, in this State, the Motor Vehicle Insurance Trust, which is constituted under an Act. It is compulsory for everyone who drives a motor vehicle to take out a policy of insurance with the trust. When claims are made by one party against the other, the names of the respective parties are used in the litigation, but, in actual fact, it is the trust which is the defendant; it is the trust which from the beginning handles the claim on behalf of the defendant; and it is the trust which pays out if the claim is successful.

It will be appreciated, therefore, that this is a vastly different state of affairs from that which existed in old times when the rule was formulated and when it was believed that actions between spouses were unseemly because they would tend to disturb the harmony which should exist between husband and wife.

I might add that the amendment proposed in this Bill has been drafted almost wholly along the lines of the South Australian Act; and that State, as far as I can gather, is the only one in Australia that has, up to date, abolished the common law rule. However, I believe that in England the rule has been abolished. I also understand that the proposal now submitted in my Bill is the subject of consideration by the Attorneys-General of the various States who, no doubt, have in mind submitting some measure which will

be more or less common to all of the States. I am told that that is the position, but I do not know it for a fact.

I conclude by again stressing that the rule which precludes one spouse from suing the other in actions of tort has been greatly criticised by judges, by law societies, and by text-book writers on the subject. I think there can be no valid reason why we, at this point of time, should not bring our Act into line with modern thought on the subject.

The Hon. A. F. Griffith: What effect would your proposal have on third party insurance premiums?

The Hon. E. M. HEENAN: I have not got a complete answer to that question. It could only be adequately answered by people who are competent to calculate such matters.

The Hon. N. E. Baxter: By actuaries.

The Hon. E. M. HEENAN: Yes. I cannot disguise the fact that some small increase in premiums might result, because obviously if the Bill is passed it will enable a section of the community to make claims who, in the past, have been unable to do so. Even if it results in a small increase in premiums, I feel that the good it will achieve will far outweigh the small cost involved to the community.

There is little more that I have to say at this stage, but I will be pleased, later, to answer any questions that may be raised.

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

BEEKEEPERS BILL

Second Reading

THE HON. A. F. GRIFFITH (Suburban --Minister for Mines) [4.21 p.m.]: I move—

That the Bill be now read a second time.

Statutory provision has been made for the regulation of the beekeeping industry and the protection of apiaries from diseases peculiar to bees and beekeeping since the turn of the century. The industry, from its infancy until about the year 1930, was regulated and safeguarded by the provisions of the Contagious Diseases (Bees) Act of 1909.

During the nineteen twenties, the industry was imperilled by the persistence of diseases peculiar to bees with the result that, in 1930, the Contagious Diseases (Bees) Act was repealed and replaced by new laws contained in the Bees Act of that year, which was framed on the Victorian and New Zealand Acts.

Though the industry was at that time somewhat hampered by the prevalence of disease, it was rapidly expanding in importance. Not only was the local market

being provided for but also a surplus for export was being produced. Nevertheless, many keepers of bees were in danger of losing their livelihood through the persistence of disease in apiaries, and the new legislation provided for the isolated districts. As a consequence of the many proclamations issued under the 1930 Act, at present in force, we find that almost the whole of the south-western portion of the State has been proclaimed a disease-infected area.

The greatest fear of the commercial beekeeper is the threat of quarantine through the proclamation of his feeding grounds as a disease-infected area under section 6 of the Act. This section contains very severe restrictions on the removal of honey, wax, hives or other appliances from an infected area into any other part of the State. As a consequence, a beekeeper, though taking all the precautions for the prevention of disease or eradication action to cure a disease afflicting his apiary, could be prevented from finding new sources of food, which are essential to enable the bees to regain a healthy condition and maintain it.

The introduction of this measure is therefore directed towards the making of better provision for the eradication of disease and pests among bees, the orderly conduct of the industry, and the improvement of the products of beekeeping, as its title implies.

While the greater bulk of the existing laws are maintained in this Bill, its provisions will remove several complicated procedures which, though introduced in 1930 with a view to controlling diseases in bees, are not well understood throughout the industry, or capable of being effectively implemented. The passing of this measure would simplify control from the beekeeper's point of view and enable officers of the department to give greater assistance to the industry and to do their job more efficiently.

The clauses in the Bill have been discussed in detail with the executive of the beekeepers' section of the Farmers' Union, which concurs with the introduction of this measure. Upon its passing, the industry will start again on a completely clean plate because large areas of valuable beekeeping country, at present proclaimed as disease-infected areas, will be thrown open to the industry and the quarantine provisions in this legislation will be applied only to apiaries presently known to be diseased. One important benefit which will result will be the throwing open of new sources of food. As a result, there will be healthier apiaries and less robbing, and, consequently, less likelihood of disease spreading.

In June, 1962, the Government appointed Dr. F. G. Smith as senior apiculturist in charge of the apicultural division of the

Department of Agriculture. Since his appointment, Dr. Smith has made a complete investigation of the industry and upon assessment of his findings and the established inadequacies of existing legislation, this Bill was drafted.

New matter introduced includes provision for the appointment of inspectors. Specific authority is not contained in the Bees Act of 1930-1957. At present brands are issued by the Director of Agriculture. This Bill provides for application for a registered brand to be made to the Registrar of Brands.

The quarantine provisions already explained will be applied to apiaries. These provisions will replace those contained in section 6 of the Act, which provides for the proclamation of districts by the Governor to be infected areas. The incidence of robbing will be reduced through the application of quarantine as an isolation of an apiary, rather than the anchoring of an apiary to one particular place or district. This will enable sufficient sources of food to be available to affected hives.

Finally, persons will not be permitted to keep or transport bees in such a manner as to cause a nuisance to any other person. The passing of this Bill will provide the authorities and the industry with a more practical piece of legislation than at present existing. Its provisions will be more readily understood and, as a consequence, may be expected to lead to even greater co-operation between the industry and the department and its inspectors. It will enable more effective measures to be taken for the control of disease with less likelihood of hive-destruction orders being necessary. The measure is commended to members.

Debate adjourned, on motion by The Hon. J. Dolan.

OCCUPATIONAL THERAPISTS ACT AMENDMENT BILL

Second Reading

THE HON. A. F. GRIFFITH (Suburban—Minister for Mines) [4.27 p.m.]: I move—

That the Bill be now read a second time.

It frequently occurs that students taking the occupational therapy course complete it and become qualified occupational therapists before the age of 21 years. Under the Occupational Therapists Act, however, a person though qualified may not be registered if under 21 years of age. As a consequence, there are times when persons holding the necessary qualifications are yet unable to obtain registration, and are prevented from being usefully employed as qualified occupational therapists until attaining their majority.

The registration requirement is understandable in the case of qualified juniors desiring to engage in private practice. Such practice entails legal liability for any consequences arising out of actions done, and there could be financial obligations associated with their activities. On the other hand, there is quite a lot of scope for the employment of qualified juniors in institutions, by the Government, and by registered occupational therapists.

The purpose of this Bill is to permit of provisional registration of occupational therapists who qualify before attaining 21 years of age. Provisional registration would be replaced by full registration upon their attaining their majority.

Debate adjourned, on motion by The Hon. R. H. C. Stubbs.

FIREARMS AND GUNS ACT AMENDMENT BILL

Second Reading

THE HON. A. F. GRIFFITH (Suburban—Minister for Mines) [4.29 p.m.]: I move—

That the Bill be now read a second time.

This Bill has two main objectives: Firstly, to clarify some of the wording in section 11A with respect to the disposal by the police of firearms held in custody; and, secondly, to amend the regulation-making powers as affecting the sale of arms and the removal of the limit of 5s. which may be charged for a gun licence.

The amendment in clause 2 is introduced to clarify the powers of the Commissioner of Police to dispose of weapons which have come into his possession—as instanced by one taken from a person who is mentally ill.

Difficulties have arisen in connection with that part of the section concerning police powers in the case of a person who refuses to lawfully dispose of a firearm within the six months provided in the Act.

The police at present have power to request the owner of a firearm, for which he has no licence and which is in their custody, to dispose of it within a period of six months. Under certain circumstances, the position of the Commissioner of Police becomes obscure in the event of the owner refusing the request or procrastinating or disappearing altogether.

A case in point may be of interest. A firearm comes into the possession of the police; the owner is not a suitable person; he is approached and is given the opportunity to sell or otherwise dispose of the firearm; he agrees to sell but keeps putting it off; and when approached after six months have gone by, he flatly refuses to dispose of the firearm. Section 11A, therefore, ceases to have effect and nothing further can be done.

Take another example. An owner not eligible for a licence disappears and cannot be located within six months. He will not dispose of the firearm when finally located. Once again, section 11A has no effect. As a consequence of such happenings, the police now have quite an accumulation of firearms. These must be cared for, but the department cannot demand the fee normally charged for such service, which is £1 per annum.

The amendment proposed in clause 2 will enable the commissioner to require the owner—ineligible for a licence—of firearms in police custody, at any time, lawfully to dispose of them within a period of, say, three months. Neglect or refusal to do so will permit the commissioner to dispose of the firearms and so recoup the incidental costs such as handling and maintenance charges, advertisements, postage, and so on, before paying the net return to the owner.

It will be seen from a perusal of the Bill that the existing paragraph (c) of clause 11A has now been divided up into three parts; paragraph (c) dealing with the matters just explained; paragraph (d) which covers action to be taken in the case of such an owner dying; and, a new subsection (3) to section 11A, by which the commissioner is empowered to sue and recover fees due in respect of weapons held in safe custody at the request of an owner.

Clause 3 amends section 18—the regulation-making section. The amendment in paragraph (a) of this clause enlarges the existing provisions in paragraph (c) of section 18 to enable regulations requiring notice of the sale of arms to unlicensed persons to be made. The full High Court recently upheld the right of a Melbourne gun dealer to sell firearms to people living in other States without their producing firearms licences. That case has highlighted existing practices and pointed to the need for some suitable amending legislation in this State.

The normal procedure here is for a person who desires to purchase a firearm to obtain a permit to do so. Subsequently, he is issued with a licence before delivery of the firearm is effected. The verdict of the full High Court was the cause for some concern right throughout Australia. It became evident that each State would need to enact legislation to ensure not only the maintenance of lists of dealers in each State but also that dealers be required to notify the police of interstate sales as it is necessary that particulars of such sales be conveyed to the police in the State concerned for the necessary attention.

The first amendment in clause 3 will, as previously indicated, enable regulations to be made. These will stipulate what sales or deliveries of firearms are to be notified to the Commissioner of Police and will

lay down the period within which such notice will need to be given. This prescribed period will need to be of quite a short duration in view of the danger of indiscriminate interstate trading of firearms if the notices and interstate advices are to be effective. Legislation of this nature is recommended by all Australian police commissioners and also the Commonwealth Attorney-General.

The second amendment in clause 3 deletes the proviso which places a maximum of 5s. on the fee which may be charged for a gun licence. In support of this proposal, it may be said that there is a great deal of paper work involved each year at the various police stations in writing a complete renewal form in respect of the 75,000 licences. Copying of mutilated originals invariably leads to some mistakes. These give rise to a considerable amount of correspondence through the recording office.

There are at present two types of forms, the original and the renewal, the latter being a complete rewrite of the original each time a renewal is effected in January each year. It is proposed to develop a new type of original licence. The licence will be issued on a better quality paper, which may be retained by the licence holder indefinitely subject to annual renewal by issue of an official receipt. The new procedure will dispense with the present type of renewal licence. A considerable saving in stationery and clerical labour will follow and the queries and mistakes previously referred to will be obviated.

As the licence is a monetary form, it would not be desirable, from either an audit or accounting view, to have two types of fees for one form, namely, 5s. for a single firearm and 10s. for multiple firearms. The amendment proposed in the clause will consequently facilitate the drawing up of new regulations to provide a flat rate of 10s. for all firearm licences, irrespective of the number of firearms held by a particular person.

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

OFFENDERS PROBATION AND PAROLE BILL

Second Reading

THE HON. A. F. GRIFFITH (Suburban—Minister for Justice) [4.37 p.m.]: I move—

That the Bill be now read a second time.

This Bill contains four main parts. It is set out in part I that the Bill in its application and construction is not intended to apply to a child as defined by the Child Welfare Act of 1947 and convicted of an offence by a children's court. Nor is the Bill intended to be read so as to limit or

otherwise affect the provisions of the Child Welfare Act in respect of the release of such a child on probation. Furthermore, the Bill—except where expressly provided—does not lessen any power or jurisdiction conferred by any Act or otherwise upon any court or judiciary. It is important to note that nothing in the Bill in any way affects Her Majesty's Royal prerogative of mercy.

The main purpose of part II of the Bill is to permit the courts, on the conviction of a person for any offence punishable by a term of imprisonment otherwise than in default of payment of a fine, to release such person on probation for a period of not less than one year nor more than five. It is intended that a conviction for an offence in respect of which a probation order is made shall be deemed not to be a conviction if the probationer complies with the requirements of the probation order and does not commit any further offence. The order on the expiration of the probation period is discharged without further action by any court.

Several of the clauses in part II contain comprehensive means by which all contingencies likely to arise during the probationary period, such as breaches of the terms of probation, new offences committed, and suchlike, may be dealt with. There are provisions for the appointment of a chief probation officer, his deputy, stipendiary officers, and honorary probation officers—the latter in respect of areas of the State located more than 50 miles from the town hall in Perth, but empowered also to discharge their duties in any part of the State. Certain administrative officers, by virtue of their office, will be honorary probation officers. It is likely some clerks of courts of petty sessions and some officers of the Child Welfare Department will be appointed honorary probation officers.

The functions, powers, and duties of the chief probation officer and the probation officers are prescribed in the Bill and are to be further defined by rules made in that connection by the judges. Each probation officer is, in relation to a probation order, to be subject to direction by the court that makes the order, but otherwise the chief probation officer will be under the control of the Minister or such other person as the Minister shall from time to time determine. In this legislation, it is proposed that release on probation shall supersede release on recognisance wherever practicable.

It will be appreciated, therefore, that one of the main objectives of the new proposed probation system is to protect an offender, who is considered by the court worthy of protection, against all the social disadvantages of being dubbed a gaolbird and from the recording of a conviction,

which, in itself, through some other enactment, would impose a disqualification or disability under which he could well lose his normal means of livelihood. It is expressly required that the probationer must readily understand the terms of the probation order, its effect particularly as regards medical or psychiatric or psychological treatment of residential provisions—if made—and the fact that if he fails to comply with the requirements of the order, he will be liable to be sentenced for the offence, and, in addition, that he expresses his willingness to comply with all requirements of the order.

It will be readily appreciated that the concurrence of the prospective probationer and his willingness to endeavour to carry out the terms of a probation order are basic requirements to the success of the probation system, which is a system based on good faith and endeavour towards personal rehabilitation under the supervision of the probation officers and the supervising court. It is impossible at this juncture to estimate with any degree of certainty the saving to the State Treasury through the implementation of the proposed probation and parole system.

The Hon. F. J. S. Wise: That is not the objective, though.

The Hon. A. F. GRIFFITH: I thank the Leader of the Opposition for his interjection: That is definitely not the objective. There is no doubt, however, that it will be less costly to the State to have a person on probation or parole instead of in prison. The present day cost of keeping a prisoner in gaol is estimated between £7 10s. and £7 15s. a week. Working on a daily average population figure of 650 at £7 10s. per week, the total cost would exceed £250,000 a year. That is approximately the number of prisoners in detention and the mathematics need not be calculated to apply according to the figures I have quoted to the House. That figure approximates the annual cost of maintaining all prisons in the State and is based on the annual report for 1961 tabled in Parliament last session.

It is not suggested that in the early stages there would be a saving of £7 10s. per week on every person on probation or parole, for the general overall cost of maintaining prisons would remain practically the same. There would be an immediate saving, nevertheless, to the extent of the cost of feeding a prisoner. Perhaps it may seem to members that I am accentuating this side of the story, but that is not the purpose.

Our main prison at Fremantle shares with many of Australia's earliest penal establishments in its architecture the hand of the convict. Our penal system has come down to us as a relic of the past, steeped in the traditions of the convict days and reminiscent of the ticket-of-leave era. In 1918 a Bill was passed to permit of the

establishment of reformatory prisons and to constitute the Indeterminate Sentences Board to be responsible in the main for the rehabilitation of prisoners sentenced to indefinite terms of imprisonment under provisions in complementary amendments to the Criminal Code.

The amendments then passed authorise the board to recommend to the Comptroller-General of Prisons the temporary release of prisoners with a view to testing their reform and objectively leading to their ultimate release on probation by the Governor.

The great hopes expressed at that time have barely materialised. Only about 12 to 20 offenders have been directly committed to reform prison. Three times as many have been transferred on the recommendation of the board from prison to the reform prison. On the 30th June, 1961, 85 persons were under the supervision of the Indeterminate Sentences Board. Twenty-seven of those were in reformatory prisons, 24 with indefinite sentences were on parole, and 11 with finite sentences were on parole. Six were on probation. A disturbing feature with respect to the remaining 17 was that they were at large in other States and beyond the reach of the board.

The normal procedure is for the board to release the prisoners, under section 64H of the Act, temporarily to test their reform, in the first instance, for a period of six months, with six-monthly extensions thereafter. In general application, the testing period is usually set at two years. The recommendation by the board for temporary release is subject to the concurrence of the comptroller-general. The board is accordingly an advisory one only, with some minor exceptions, but more especially in the matter of the return of a prisoner to the reform prison when he has broken any condition of the release order.

Though the board has done excellent work since its inception, it has been somewhat restricted in its scope by the nature of the sentences passed.

The passing of an indeterminate sentence is not done with a view to lengthening the term of imprisonment. Its objective is to ensure that the offender who is developing into a habitual criminal through associating with hardened criminals during repeated periods of short term imprisonment, be sentenced to an indefinite term in the reformatory prison. There he will associate with those who are willing to endeavour to adjust their outlook on society in general and so win for themselves the right to be let out into society, but still under careful supervision in an attempt to find out whether he is prepared to live in free society without supervision. Such release under the control of the correctional authorities is

referred to as parole. This is the last step in a correctional scheme of which probation may be the first step.

Part III of the Bill deals in the main with those persons who are already serving either a definite or indefinite period of imprisonment at the time when its provisions are proclaimed. It makes provision also for those who have been convicted of an offence but not sentenced before the proclamation of the provisions in the part, and finally for those convicted and sentenced to terms of imprisonment after the proclamation of the part.

There is provision for the establishment of a board to be called the Parole Board, to supersede the Indeterminate Sentences Board established under the 1918 amendment.

The Indeterminate Sentences Board was, of its nature, an advisory body subject to the control of the comptroller-general. It had power to visit reformatory prisons, interview prisoners on reform, grade them in classes in accordance with the progress achieved in that direction and, with the concurrence of the comptroller-general, permit them to leave the reform prison temporarily with the view to testing their reform. Until quite recently, however, prisoners so released to test their rehabilitation—and this was commonly, though rather erroneously, referred to as being on parole—were left very much to their own resources. Being ex-prisoners, they were entirely suspect by the police, yet enjoyed little enough contact or guidance from the board to assist their adjusting themselves to society.

The board of five members, instead of three previously, will be under the chairmanship of a judge. The comptroller-general will be a member, as also three men appointed by the Governor where matters affecting male prisoners are being dealt with, and one of these men and two women appointed by the Governor when matters affecting female prisoners are being dealt with.

It will be noted in clause 28 (2) that the chairman alone shall determine any question of law arising before the board. Whereas the existing board is responsible directly to the comptroller-general and, through him, is required to report annually to the Minister, the new board will be directly responsible to the Minister in charge of the administration of these new parts in the Act and will be required to report annually to him. The new board will be required also to report to the Minister, as required by him, on persons in custody but found not guilty on the grounds of insanity, those undergoing life imprisonment, and any other prisoner specified by the Minister, as also any special matter relating to the operation of the Act.

The services of the board will consequently be readily available to the Minister for Justice, or the Attorney-General, as the case may be, and through him to the Governor, in respect of petitions for release submitted by prisoners through the comptroller-general under prison regulation 150 (a).

There is a need for the Minister and, through him, the Governor to have at their disposal the services and advice of a highly qualified board representative of both the judicial and penal services and of the members of the community itself. That is one of the important proposals contained in this measure.

The board will be under obligation to report to the Minister once a year and also whenever specially requested by the Minister to do so, and to make recommendations to the Minister with respect to each person found not guilty of an offence on the ground of insanity and ordered under the appropriate provisions of the Criminal Code to be kept in strict custody until Her Majesty's pleasure is known and who is, for the time being, in that custody.

The board will also be required, whenever requested in writing by the Minister, to furnish him with a report and recommendation with respect to every prisoner whose sentence has been commuted to a life sentence and every prisoner who has been sentenced to life imprisonment and at that time is serving such imprisonment. Further, the board will be required to report to the Minister on any prisoner specified by him.

Finally, the new board, whenever requested, will be required to furnish the Minister with a written report upon any special matter relating to the operation of the Act, or to the exercise of any power or function of the board, as the Minister may in his request specify.

The provisions in this Bill in that regard are far superior to existing procedure. Under existing procedure, the Minister for Justice becomes, as it were, the last man in and is required to make a recommendation to the Governor along purely departmental lines, unless he arbitrarily decides to make a release recommendation contrary to the opinion of the permanent head of penal services.

I might say that this is something which I would not do, unless the circumstances were very unusual. I find the only way I can make recommendations to His Excellency the Governor for remission of sentence to be served by prisoners is by accepting the recommendation of the prison authorities. I have not the advantage, as the board will have, of seeing the prisoners first-hand, or of having personal knowledge of them; therefore, I think it

will be fair to say the board will be in a position to give a prisoner fairer treatment than, perhaps, the Minister can give.

There is provision for the appointment of a chief parole officer, his chief assistant and other persons of either sex as stipendiary parole officers.

The ultimate success of the new board will depend to a great extent on the board itself and on the success of the work carried out by parole officers. The non-existence of such officers has constituted an almost insurmountable difficulty to the Indeterminate Sentences Board over the greater part of its existence in the proper assimilation of reform prisoners back into the community.

There is provision for the fixing of minimum terms of imprisonment by the court. At the present time, if a person is sentenced to 12 months' imprisonment, it is not likely in the normal course of events that he will be in prison for twelve months. This comes about through the effect of the prison remission regulations. These regulations provide for a marks system, under which marks are allotted for good conduct whilst in prison. The prison sentence is shortened to the extent to which marks for good conduct are accumulated. Under this Bill, the remission regulations are not to apply to terms of imprisonment in respect of which a minimum term is fixed under part III.

Upon the passing of this measure, it will be obligatory on the courts in most cases where a person is convicted of an offence, and the term of imprisonment imposed is not less than 12 months, to fix a minimum term of imprisonment as part of the sentence, unless the court considers that the nature of the offence and the antecedents of the convicted person render the fixing of a minimum term inappropriate.

The court may, in its discretion, fix a minimum term to be served in prison if the sentence is for a term of less than 12 months. In either case, the minimum fixed shall be less than the term of imprisonment imposed.

While the existing prison remission regulations are not to apply to a term of imprisonment in respect of which a minimum term is fixed under this part, there is provision for new regulations to be made under this section of the legislation providing for the reduction of minimum terms fixed in accordance with this measure as an incentive or reward for good conduct and industry. So it will be seen that the principle of awarding a reward by way of lesser term of imprisonment for good conduct in prison is maintained in this Bill.

No minimum term of imprisonment will be fixed, however, in respect of a term of imprisonment imposed on a habitual criminal if, at the expiration of that term of imprisonment, he is to be detained during the Governor's pleasure in a reformatory

prison under section 661 of the Criminal Code, or, similarly, if a person is to be so detained in a reformatory prison, other than as a habitual criminal, that is, under section 662 of the Criminal Code; nor shall it be competent for judges to fix a minimum term in respect of a term of imprisonment imposed on a person for life, whether with or without hard labour.

The reason for limiting judges when fixing terms of imprisonment for these categories is self-evident. As regards terms of imprisonment imposed under sections 661 and 662 of the Criminal Code, it is quite apparent that the finite or definite term of imprisonment fixed by the judge prior to the prisoner entering upon his indeterminate sentence is, in fact, the minimum term of imprisonment which the judge considers an equitable punishment prior to the prisoner entering upon a period of reform. As regards "lifers," it is apparent the fixing of a minimum term of imprisonment is inappropriate.

While an obligation is placed on the courts to impose a minimum term without any discretion other than the court considering the nature of the offence and the antecedents of the convicted person rendering the fixing of a minimum term inappropriate, subclause (1) of clause 40 establishes that a term of imprisonment imposed will not be invalidated by reason only of the failure of the court to fix such minimum term, or by the court fixing a minimum term not in accordance with this part of the Act.

In the event of that happening, the prisoner may, on application to the comptroller-general, under paragraph (b) of subclause (2) of clause 40, fix a minimum term. The court competent to do this would be the Court of Criminal Appeal in respect of a sentence by the Supreme Court or a court of petty sessions, or alternatively, the Supreme Court in respect of a sentence by a court of petty sessions.

Every prisoner undergoing a term of imprisonment in respect of which a minimum term has been fixed, automatically comes under the control of the parole board as soon as the minimum term, or such period of imprisonment of a duration less than the minimum term and calculated under the provisions of subclause (2) of clause 39, has been served.

The parole board will then be competent, upon the completion of the minimum term of imprisonment previously referred to, to release the prisoner from prison on parole under the supervision of a parole officer.

It will be seen, therefore, that whereas the Indeterminate Sentences Board was established primarily to deal with the reform of prisoners undergoing indeterminate sentences and those nominated by the board to be transferred from a prison to a reformatory prison and, consequently, was responsible for a very small percentage

of imprisoned persons, the proposed parole board could well become responsible for the majority of prisoners, and that to the extent to which the judiciary exercises its prerogative and discretion in nominating minimum terms when passing short-term sentences.

The parole board may recommend to the Governor the release on parole of a prisoner serving life sentence, except sentences commuted from death sentence or for murder, and upon such recommendation, the Governor may release a "lifer" from prison on parole for a period not exceeding five years as may be recommended by the board.

As mentioned earlier, this provision does not apply to a prisoner undergoing a sentence of imprisonment for life commuted pursuant to section 679 of the Criminal Code from a sentence of death, nor does it apply to a prisoner sentenced to imprisonment with hard labour for life, pursuant to section 282 of the Criminal Code.

The new provisions emphasise that the new parole board is not to be subservient to the wishes of the comptroller-general in its recommendations to the Governor. Nevertheless, the comptroller-general's interests in the security of prisoners and his rightful place as such in the community is maintained by the vote which he may cast as regards such recommendation as a nominated member of the board.

A parolee, upon carrying out the terms and conditions of his parole satisfactorily to all concerned, shall be regarded as having served his term of imprisonment or his detention during the Governor's pleasure in a reformatory prison on the completion of the parole period as stated in the parole order. He is accordingly by force of clause 43 wholly discharged from further penal obligation in respect of the crime committed and, furthermore, in the case of an habitual criminal, he ceases to be such.

On the other hand, until the prisoner is in any way discharged from his sentence of imprisonment or detention, he is, while released on parole, regarded as being still under sentence for the offence in respect of which he was so released or detained during the Governor's pleasure; he is regarded furthermore as having not suffered the punishment to which he was sentenced, or as having not undergone detention during the Governor's pleasure. In the case of an habitual criminal, he is regarded still as being an habitual criminal and liable to further detention during the Governor's pleasure in the event of breaking his parole or committing an offence for which he is sentenced to imprisonment during the parole period, or after the completion of that period.

This latter provision means that although a prisoner may have been released on parole for the stipulated period, and

though he may have carried out that parole satisfactorily to all concerned, the whole term of his period of parole will be wiped out should he commit any offence for which he is sentenced to imprisonment even after the parole period. In that case the prisoner would be liable to be returned to prison to complete the uncompleted portion of his finite or indeterminate sentence passed in respect of the original offence.

The parole board may cancel the parole order before the expiration of the parole period, or vary the conditions of the order. This authority extends also to "lifers" released on parole by the Governor for a period not exceeding five years under clause 42 on the recommendation of the board.

In the case of a prisoner on parole committing an offence during the parole period, his parole is cancelled upon his being convicted and sentenced to another term of imprisonment in respect of such offence. This is set out in subclause (2) of clause 44. Furthermore, should such parolee be not apprehended for the additional offence until after having completed his parole, the parole period, even though it has been otherwise carried out quite satisfactorily, is cancelled.

The provisions in the Bill make it very clear that the intention of this legislation is for the parole board to persevere time and time again, if necessary, in their efforts through the system of parole to bring about the rehabilitation of prisoners.

The Bill is commended to members for their earnest consideration. The measure presents a very carefully planned reform of the application of our penal laws, which is considered to be long overdue.

May I say in conclusion that personally I am very keen that legislation of this nature should at least be given a trial? I think this is a social reform which should be acceptable to all forms of political thought. I do not think there will be any political approach to a matter of this nature.

No parole system is perfect. I hope this does not happen; but, if the Bill becomes law, the imperfectness of this particular parole board might become as evident as are the weaknesses in parole boards in other parts of the Commonwealth of Australia or, for that matter, of the world. However, I think that legislation of this nature will undoubtedly create a far more satisfactory situation than exists at the present time.

While in Victoria I had the opportunity, through the courtesy of Mr. Justice Barry, who is chairman of the Victorian parole board, of being in the room, and listening to the activities of the parole board in that State.

I found the experience most interesting. It conveyed well and truly to my mind the inadequacies of the system which we have in Western Australia at present. One aspect which did register very firmly in my mind was that the success of this board would depend very largely upon the chairman of the board and upon the members of the board.

I commend the Bill to the House, and hope it will receive the support of members. If it is passed we will lose as little time as possible in setting up the board. However, we must ensure that we have the machinery to enable the board to operate before we go that far. I wish the board, in its activities, the success which I believe it will deserve.

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

House adjourned at 5.8 p.m.

Legislative Assembly

Thursday, the 12th September, 1963

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