obviate the tendency of patients to become discontented and difficult to handle, due to infrequent visits by their relatives.

It is not my intention to see hospitals of this description remote from the metropolitan area. I have endeavoured to explain previously, and I endeavour to do so again, that the intention is to have a small suburban hospital situated in an area to serve the aged people concerned, and in which the sick could be treated. If they required specialist medical attention they could then be sent to Fremantle Hospital or Royal Perth Hospital.

With general medical practitioners in the various suburbs supervising the work of the trained nursing staff, who could be employed on a part-time basis to nurse the aged sick in their own homes after being discharged from the suburban hospital, this could prove to be a successful scheme. I think it would, to a large extent, meet the problem of the aged sick.

I would suggest that, together with the trained nursing staff who live in and around a particular area, these small hospitals, or even the homes of aged people, could be attended by visiting physiotherapists. All aged people who have suffered a stroke are not incapacitated to the extent that they must be admitted to the Shenton Park Annexe or any other hospital. Some of them are able to get around their homes, and they would respond to treatment by visiting physiotherapists and other social workers.

I am acquainted with the splendid work that is done by social workers not only under the administration of the Public Health Department, but also under the administration of the local health department. Splendid work is done by these visiting social workers; and if this can be done in these departments it can be repeated in connection with general nursing of the aged. I would not like the Silver Chain people to get the impression that I was implying they did not serve a purpose in the community. That is not what I meant to convey. They do serve a splendid purpose; but that organisation has not the resource to cope with the situation I have outlined. The Silver Chain will continue to serve a purpose, but it will have to be part and parcel of the over-all plan I have outlined.

Before I resume my seat I would like to give one example of this. In Fremantle there is a situation that lends itself ideally to the point I have been making. This could be used as a pilot scheme, as it were. I refer to St. Helen's which, until recently, was a training school for nurses in the Fremantle area. If that could be converted into a geriatric wing of the Fremantle Hospital the opportunity would be created to carry into effect some of the scheme I have outlined this evening.

There is a training school established immediately alongside the Fremantle Hospital. This was previously an infants' school. It is now a training school for the nurses at the Fremantle Hospital. Let us now use St. Helen's Hospital, which has approximately 30 beds, for the purpose of allowing our aged people to spend sufficient time there before being returned to their own homes, where they will then be under the supervision and care of part-time trained staff, such as physiotherapists and others.

The money expended in further huge buildings such as the Royal Perth Hospital —and, to a lesser extent, the Fremantle Hospital—should not be necessary. It is only those people who are chronically ill and who need specialist treatment who should be sent there. But by and large our aged people would derive a great deal more benefit if they were cared for in their own homes among familiar surroundings. I do not wish to take up any more time on these Loan Estimates, but I will have something to say later when the Annual Estimates are brought down.

Progress

Progress reported and leave given to sit again, on motion by Mr. Rowberry.

SITTINGS OF THE HOUSE

Show Day Adjournment

MR. BRAND (Greenough—Premier) [10.38 p.m.]: I crave your indulgence, Sir, to point out to the House that we will not be sitting on Show Day, which falls on Wednesday next week.

House adjourned at 10.39 p.m.

Legislative Council

Wednesday, the 26th September, 1962

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

CHILD WELFARE ACT AMENDMENT BILL (No. 2)

Introduction and First Reading

Bill introduced, on motion by the Hon. L. A. Logan (Minister for Child Welfare), and read a first time.

BILLS (3): THIRD READING

1. Health Act Amendment Bill.

   Bill read a third time, on motion by The Hon. L. A. Logan (Minister for Local Government), and returned to the Assembly with an amendment.

2. Judges' Salaries and Pensions Act Amendment Bill.

   Bill read a third time, on motion by The Hon. L. A. Logan (Minister for Local Government), for The Hon. A. F. Griffith (Minister for Justice), and passed.

3. Metropolitan Market Act Amendment Bill.

   Bill read a third time, on motion by The Hon. L. A. Logan (Minister for Local Government), for The Hon. A.F. Griffith (Minister for Mines), and passed.

TRUSTEES BILL

Second Reading

Debate resumed, from the 16th August, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

> That the Bill be now read a second time.

THE HON. F. J. S. WISE (North—Leader of the Opposition) [4.40 p.m.]: This Bill, which will be known as the Trustees Act of 1962, contains 109 clauses, and seeks to replace the Trustees Act, 1900, the Settled Land Act of 1892, and parts I and III of the old Imperial Act, 31 Victoria No. 8. It is proposed to comprise in this legislative scheme eight Bills to amend the law relating to trustees.

This move had its origin in a paper which was presented to the Law Society in August, 1960, by the instructor in law at the University, Mr. D. E. Allan. In this paper which dealt with the reform of the law of trusts the whole subject of trust law was very fully covered, and it prompted the Law Society to appoint a subcommittee of the Law Reform Committee to consider the various proposals. In considering the proposals for the reform of the law of trusts and related matters, from which consideration this and seven other Bills emerged, it is obvious that the subcommittee undertook an enormous task. A contribution of a very substantial kind has been made in the report which traces the whole ambit of trust law, and this work was carried out voluntarily by the Law Society.

When this and the accompanying Bills were introduced I asked the Minister, during the course of his speech, whether the report to which he referred could be made available to us, because it appeared to be wholly necessary to commence a basic study of the matter which was being referred to Parliament. Three days after the introduction of this Bill I asked a question without notice in this House as to whether the report could be made available. The Minister replied that he was not sure whether it could be made available; that it was the property of the Law Society; and that he would have inquiries made. I am not being in any way critical of the Minister's attitude, because I believe he thought the report was the property of the Law Society and came within its province, even though the Bills which emanated from it had been presented by the Government to Parliament.

My view in such matters has always been this: Whether or not very involved matters —technical or legal—are concerned, no member of Parliament should be expected to deal with them in a peremptory manner. We have a very great responsibility, and when we accept that responsibility we have, of necessity, to undertake the necessary research, whether the Bill in question consists of one clause or 109 clauses.

I can assure members that starting from scratch, as it were, the research was very difficult until the report of the subcommittee had been made available to me direct by the Law Reform Committee. Before dealing with the matter proper, I would suggest that in cases such as this where an enormous amount of work has been done, where a society of the standing, knowledge and repute of the Law Society has prepared such matter for the Government or for Parliament, we would be well served if we followed the practice of the English Law Reform Committee and the English Parliament; that is, have the reports printed and tabled even prior to the Bills they deal with coming before Parliament.

I have before me the fourth report of the Law Reform Committee which was presented to the British Parliament in November, 1956, and which is relevant to the subject matter before this House, as I shall detail later. If we were furnished at any time with such reports, in printed or in any other form, particularly where law reform is involved, we would be very much better served in a sensible, as well as a more knowledgeable, approach to the subject then under discussion.

The subcommittee which was appointed in August, 1960, undertook its task with great vigour. It met regularly throughout the year and considered in much detail the proposals submitted by Mr. Allan. I quote from the report which states—

> In addition Mr. Allan has visited Sydney, Melbourne and New Zealand to study the operation of the trustee legislation in those jurisdictions and to discuss various problems connected with the administration of trusts. The subcommittee has also corresponded on a number of points with lawyers in England and in the United States. Detailed consideration has been given to the trustee legislation of England, New South Wales, Victoria and New Zealand, and, on particular topics, to the legislation of other jurisdictions including some of the American States.

The report of the subcommittee goes on to state—

> Our view is that the present legislation (principally the Trustees Act, 1900 and the Settled Land Act, 1892) is so defective and out of touch with modern conditions that piecemeal amendment of the existing Acts would be undesirable. Instead we recommend that the existing legislation be repealed and replaced by the accompanying Bills.

I have read that extract to show that the subject has been very carefully examined by people, expert in their profession, who recommend that the eight Bills submitted to this Parliament are the means of meeting the modern trends and needs in trustee law. In one of my consultations with the members of the Law Reform Subcommittee, they suggested that any member who wished to confer with them would be very welcome to discuss, particularly with Mr. Allan, any detail or any matter relating to this legislation.

The subcommittee right through its report makes it very clear that many sections of the existing law have no conceivable relevance or application today. They consider the Trustee Act of 1900 to be a very defective instrument; and on that point they said—

> A study of the trustee legislation of other jurisdictions leads to the conclusion that there are very many gaps in the Western Australian Act. Subjects which should be dealt with are not to be found at all in the Act, whilst there are many sections that have no conceivable relevance or application today. In these circumstances it is thought that in many instances practice may well have outstripped the law. When one considers the onerous responsibilities which rest upon a trustee, it is clear that he is entitled to the most explicit and intelligible guidance which the law can give him.

In a Bill of this kind which is considered to be highly technical and almost wholly legal, it is very important that lay people have the opportunity of discussing with persons versed in teaching the subject, the principles contained in it; and, I repeat, that the instructor in law at the University is most anxious to be of help to any member in this connection.

It is obvious that they have brought together in this first Bill to be known as the Trustees Act of 1962, provisions relating to trustees which will ensure that a reasonable balance is held between the interests involved, and which will facilitate the efficient administration of trusts. Whilst extending very widely the authorities of trustees, supervisory powers are kept and review provisions are preserved within the authority and jurisdiction of the court. It is obvious, too, that, as members will see in the marginal notes of this Bill, some introductions from other jurisdictions are considered better to meet the modern needs of the trust laws; and one thing, too, is very patent, that they have made this no scissors-and-paste law. Indeed, I think that it represents a tremendous task on the part of the subcommittee to produce a Bill of this kind to meet all the modern needs of the trustee laws.

A check with the New Zealand and Victorian laws shows very clearly that the principles contained in our Trustees Act of 1900 are very much out of date and do not meet the situations of today. Without delving very far into all the details which will arise in the Committee stage of this Bill, I think that perhaps some reference may be made at this point to some of the new provisions.

Part III of the Bill deals with investments and introduces some new and some very wide fields compared with the present limitations. Clause 16 gives the full details of the field in which trust funds may be applied by trustees and the fields in which their trusteeship is authorised in that connection. That clause takes the place of the existing section 5 in the Trustees Act of today.

If members will look at section 5 of the present legislation, they will find some similarity with clause 16 in this Bill, but they will find some omissions which appear to be very important. These omissions seem to me to be so important that I have

discussed them with the big trustee companies and with highly placed banking officials in this city, and I will illustrate what I mean.

If members will look at section 5 of the Act, paragraphs (1) and (m), they will find there is provision for savings bank deposits to be authorised trust fund investments. They will find in paragraph (1) of existing section 5 that there is specific mention of the Rural and Industries Bank Savings Bank division; and in paragraph (m) provision is made for deposits in any savings bank authorised to carry on savings bank business under the Banking Act of 1945.

I would particularly like to draw the attention of the Minister to the fact that there is no substitute in the new proposed law for paragraphs (1) and (m) of the old section 5 which provides for authorised trust funds to be acknowledged in savings banks accounts as authorised trusts. I can assure the Minister that in locating this and discussing it with the assistant manager of the Commonwealth Bank, with the Chairman of Commissioners of the Rural and Industries Bank, and with secretaries of trustee companies, I discovered that they are very concerned that the new clauses do not include the ability which they now have of placing trust funds in savings bank accounts.

Trustee companies have very large sums —tens of thounsands of pounds—spread between different savings banks deposits, money necessary for them to have at call; and the provisions in the new Bill—and I will draw attention particularly to paragraphs (d) and (j) of clause 16—do not, as a substitution for the provisions contained in the present Act, meet the situation.

The Hon. L. A. Logan: Did Mr. Allan give you any reason for it not being included?

The Hon. F. J. S. WISE: I have not discussed this point with Mr. Allan because, unfortunately, after my consultations last week with the banks and the trustee companies, I have not been as mobile as I am normally.

The Hon. L. A. Logan: I just wondered.

The Hon. F. J. S. WISE: Members will note that in clause 26 of the Bill there is provision to use savings banks—any bank —as repositories for funds pending negotiation and pending the distribution of funds. It may be that the strict legal view is that the clause, when it becomes a section in the new Act, will cover the points which I have referred to as serious omissions. But if members will read the clause they will find it is a temporary arrangement and not something which is a continuing trust, or which provides a place for the lodgment of trust funds; it is purely temporary in its intent. So I draw the Minister's attention to that as something which could seriously embarrass both banks and trustee companies unless something equivalent to the existing specific provision is inserted in the Bill.

Members will find in the clause to which I have been referring at length—clause 16—several new paragraphs (k) to (n) and subclauses (3) to (8) inclusive which are new in respect of how investments of trust funds may be made. The subcommittee had quite a bit to say on the point of finding suitable avenues for the investment of trust funds, and was very concerned that in the future there should be no restrictions, such as are now placed upon trustees in regard to the omissions concerning applying or depositing trust funds. Members will find in the report under the comments on investments these words—

> We would stress that the problem as we see it is not simply one of finding investments that will provide a higher income return for the life tenant—for the most part today; the return offered by the authorised investments, taking into account that many of them offer an income tax rebate, is not inadequate. The major problem to our mind is to find investments that will guard the trust property against the risks of capital depreciation—and this is what the usual 'gilt-edged' securities generally do not do. Accordingly, we consider that a prudent investment policy for a trustee to follow would be to secure a distribution of the trust funds over both governmental and 'equity' securities. In this connection we would also stress that our proposal is in no way designed to encourage or even to permit a trustee to engage in speculation or 'to play the market' with trust funds. In fact section 16 is specifically designed to rule out any such possibility and the trustee in any event will remain under his general duty to invest in the manner of a prudent man of affairs having regard to the interests of those for whom it is his duty to provide.

Members will find that in the Bill the subcommittee very wisely extended that line of thought into the avenue in which investments may be placed; and the subcommittee, in summing up its thought on this matter, expressed its views in connection with investments in these words—

> Accordingly we think that if the range of authorised investments is to be broadened it should be done without any division of the trust property and that it should be left to the trustee, with proper advice, to secure a suitable diversification of his investments. We recognise that this will be something new in the field of trusts, but it is obviously so very desirable and essential today that we think it will be done in all jurisdictions within a very few years. Already

> it is being considered in several. However, as it is new, we suggest that the range should be broadened very gradually, and accordingly in this section we severely limit the class of equities in which a trustee may invest, in the hope that if the power proves satisfactory the range may be subsequently extended by appropriate amendments to the Act.

And that is the course which those responsible for the Bill have obviously followed in its drafting. The proposals put forward by the subcommittee, I find, are already—very recently—the law in England. Members will find in the next successive clauses—clauses 16 to 26—quite a lot of matters which I think more appropriately may be dealt with in Committee. But in all cases the subcommittee appears to advance adequate reason for the changes it proposes.

In part IV of the Bill, under the heading "General Powers of Trustees", it will be found that it is proposed to give to trustees very wide powers when dealing with trust properties. They will have conferred upon them new authorities including an unfettered and unlimited power of sale. That will be found in clause 27, which makes it very clear that the new provisions are intended to place a responsibility on the trustees and, at the same time, give them considerably more latitude in the operations of their responsibilities. The subcommittee had this to say on the extension of the general powers of trustees—

> One of our objectives in forming our recommendation has been to see that legitimate dealings with any property should not be frustrated solely because the property is subject to a trust and because the trustee has no power to deal with the situation; and in this connection we consider that in general the powers should be conferred upon the trustee without necessary application to the court, so that the jurisdiction of the court shall be strictly a supervisory or emergency jurisdiction. The provisions of this part therefore confer upon the trustees extremely wide powers of dealing with trust property, and these powers are counterbalanced by the provisions in s.94 enabling any person who is or may be aggrieved by a decision of a trustee in the exercise of a power conferred by this Act to apply to the court for a review of that decision.

A little later I will mention clause 94 and the succeeding clauses because they have some relevance to, and bear some comparison with, the existing section 12 of the present Act. In any case, the whole of part IV is designed to give very great authority in the conduct of a trust business; and it must be said that although it is very wide in relation to our present law, it is very close to the law existing in other jurisdictions, especially in New Zealand.

The Minister when introducing the Bill said that in many respects trustees have to be trusted. They have to be trusted not only to do the things which the law insists they must do, but to do as nearly as practicable what the testator would have done had he lived or would have wished would be done after he died.

Clauses 55 and 56 have a very close affinity to the proposed New Zealand law, and give the power to conduct, carry on, and convert businesses held in trust; and this authority will replace entirely the limited and general terms which are to be found in section 45 of the Trustees Act of today. If members will look at section 45 of the present Act, they will find that by comparison with these new proposals it is very rigid and inelastic, and very definite in its limitations.

The Law Reform Subcommittee is very sound in its views, and confident of the soundness of them, in respect of the particular provisions in these proposed new sections. I think in going through the Bill carefully one is met with the questions in one's mind: Are the powers being conferred too great? Is there still remaining the adequate protection that is so necessary for the beneficiary or beneficiaries? Or has, in the changing circumstances proposed, too great authority been vested in the trustees?

I am sure that many members have had experience before and during their period as members of this Legislature of handling in part or in whole some affairs of trusteeship, especially of aged people. I am certain that many of us have had that experience; and it is not new to find elderly people being very concerned with the application of the law in their interests—as to whether their interests are being protected; whether they are being exploited; whether they are getting as much out of the estate as they are entitled to get. I am sure members have met that situation, just as I have. At the same time there is the feeling that although any aggrieved person has the protection of the court, and of the law, a number of elderly people are very fearful of the law; they are very fearful, even though the law provides that any expenses shall be a charge on the estate. They are afraid of diminishing the value of the estate by any recourse to law.

All these things arise; and although in my personal experience I have never found unfairness, or undue harshness, applying in the case of trustee companies handling estates, we do have the mental attitude of those who are old, and who are always concerned as to whether they are being deprived of something that belongs to them. This feeling seems to be instinctive in them. It applies to beneficiaries of small estates more particularly; and when their recourse is only to the court—which

means the Supreme Court in all cases—they are fearful, even though the costs are permitted against the estate.

I think it is clause 97 of this Bill which makes all the necessary provision for the costs being charged against the estate, if an approach has to be made to the court. I think it could be safely said that such matters are of great concern both to the trustees and to the beneficiaries, especially where the estate is small. I feel a study of this Bill will suggest to most members who analyse it, as it does to me, that all these problems are amply covered by clauses 94 to 98, which give to the beneficiary the protection and the opportunity to have investigated any claim he may have, and to have amply covered any inquiry he may make of his trustee.

I can quite understand that it was neither in the province of this subcommittee, nor would it be its desire, to enter into the commercial aspects of such a law —that is to suggest that any internal operations or workings of a company might be the subject of review; because that was not the province of the subcommittee, or its desire. I raise this point because I think it is necessary in the course of debate on trusteeships and trust laws to endeavour to allay the fears of people whose estates are handled by trustees, whether they be private trustees or company trustees, and to emphasise that they have adequate protection within the law.

The next clause to which I wish to refer is clause 105 which is designed to ease the position in regard to a waste-of-assets situation. That clause enables all of the income to be paid to a beneficiary if there is some doubt that expenditure should be made on renovations, or those sorts of things, money for which is very hard to find in some trusteeships where the people are expecting all that can be gained from the estate to live on. Clause 105 appears to ease that circumstance. I think the proposals in this measure make adequate provision for this matter.

The next part of the Bill deals with protective trusts. The principles in clauses 58 to 60 also appear in an associated Bill. They are expressed in simple terms, and the clauses are clear and explicit. In justification for the alteration to the existing law in regard to protective trusts the subcommittee said—

> The interests of the living beneficiaries require that in every trust there should be adequate power in the trustees to maintain the beneficiaries from income or to advance capital for their maintenance, education or advancement. The provisions in this behalf in Western Australia today are archaic, limited, and unsatisfactory as a means of achieving this object. In every other jurisdiction whose legislation we have studied there are very wide powers in this respect in a form common to all those jurisdictions. We accordingly recommend that these sections be adopted in Western Australia, and they are included in the draft of the Trustee Bill in clauses 58 to 60 inclusive.
>
> All other jurisdictions include in these provisions a legislative form of protective trust.

In part VI of the Bill there appear to be very important clauses which deal with indemnities and the protection of trustees. These clauses are 62 to 76 inclusive, and they take in what appear to be very involved legal aspects. Very important to me, however, seems to be the non re-enactment of the old section 12. In the present Act section 12 is very short. It only comprises four lines in the Act, and makes a trustee responsible—and the trustee alone responsible—for the want of continued care and diligence.

The Law Reform Society is satisfied that that is entirely out of date; that it does not meet the circumstances of today at all. The committee claims—

> There is no equivalent to section 12 in the legislation of any other jurisdiction, and in our opinion it runs contrary to the whole basis of the law of trusts. It was introduced in Western Australia in 1900 in an attempt to provide a new concept of liability and to give effect to the belief that a trustee, who frequently had no special qualifications and who acted gratuitously, should incur no liability to the beneficiaries of the trust unless his conduct was negligent. This was in contrast to the attitude of other jurisdictions which imposed (and still impose today) strict liability upon a trustee in respect of his own acts and defaults, subject to a discretion in the Court to relieve him from liability where he has acted honestly and reasonably and can fairly in all the circumstances be excused for the breach of trust.

It went on to say—

> The result is that there are many instances in which it is extremely difficult to reconcile section 12 with the other provisions of the Trustees Act.

My inquiries show that there is ample case law surrounding the present section 12, and that these new provisions, in the view of the subcommittee and of the Law Society itself, will be overcome and will be more clearly expressed in regard to the responsibility as well as the deviation of the responsibility, of the trustees in certain circumstances; but, at the same time, providing for all the indemnity necessary within reasonable limits.

There are many other clauses in the Bill, which apply to other principles, some of them new; and a lot of them, it will be seen, have been gleaned—though not wholly lifted—from the New Zealand and Victorian law. From my discussions with the people who are particularly interested in this legislation it appears there will be very little, if any, complaint in regard to the principles from the trustee companies in this State, or from the people who are affected by those investments.

I think it is important to observe that the two largest trustee companies in this State would be the custodians of at least £50,000,000 worth of assets. The change in this law is very important to existing trusts and to existing trusteeships. It is very important for all the responsibilities of trustees, whether private or public or business trustee companies of the future. It is also important to say that in the trustee companies of this State are men of very great repute; men of the highest calibre in commercial as well as personal standing in this community. We are very fortunate in that regard.

I am assured by those with whom I have discussed this matter that from their particular angle, with the minor alterations such as the ones I mentioned earlier, and which I raised with them, there will be very little suggestion coming from them to the Government in connection with this legislation, which will be the parent Act associated with trustees.

THE HON. H. K. WATSON (Metropolitan) [5.30 p.m.]: When one follows Mr. Wise on a subject such as this one finds oneself in the happy position of being able to discard two-thirds of what one might otherwise have been inclined to say on the plea that the point has already been explained. It is in that very happy position that I find myself at the moment.

This Bill and several others, which are of the same series, make it very clear that the members of the Law Reform Committee has spent a lot of time and given much thought to endless questions arising out of trusts and trustees. In some of the Bills which will crop up later we find it has dealt with some age-old problems of trusts such as the rule against perpetuities and the rule against accumulations; but in this particular Bill they have endeavoured to bring right up to date the law relating to trustees, a law which Mr. Wise said has, so far as Western Australia is concerned, remained almost static and unaltered since 1900.

Mr. Wise referred to the very wide powers and extra provisions which by this Act are being conferred on trustees. But in that connection it is worth remembering this basic approach: That as is stated in clause 5 of the Bill the provisions of the Act apply if and so far only as a contrary intention is not expressed in the instrument creating the trust, and have effect subject to the terms of that instrument. That leads me to this point: The Trustee Act is merely designed to fill in the gaps, as it were, which are left in a trust document, whether it be a trust by will or a trust by deed. One could probably sum up this Bill by saying that it puts into statutory form for all trusts the provisions which one generally finds in a modern and well drawn document of trust.

I would also support the viewpoint expressed by Mr. Wise that when we are dealing with legislation of this nature—very involved legislation, particularly for those of us who are not lawyers, and, I suppose, even for those who are—we cannot have too much information about the measure.

After listening to Mr. Wise and his suggestion about the tabling of the report of the Law Reform Subcommittee for the information of members, I am prompted to remind the House that in New Zealand in respect of every Bill brought down in Parliament, and I think at Canberra in respect of every Bill brought down, and certainly, within my own knowledge, of every income tax assessment Bill brought down in the Commonwealth Parliament, members are presented not only with the Bill, but with a memorandum either attached to the front of the Bill or circulated separately from, but concurrently with, the Bill, explaining in detail the object of each clause and the effect of each clause.

I suggest to the Minister that the adoption of that practice in this Parliament might very well be given serious consideration. It would facilitate the second reading speech and it would facilitate consideration by members because, at the moment, we find this invariably happens: The Minister makes a second reading speech in explaining the Bill and that speech is not available in *Hansard* until at least a week later. I know it is within the province of members to request the Minister for a copy of his speech and the Minister is generally good enough to provide it.

The Hon. J. G. Hislop: It is sometimes very brief.

The Hon. H. K. WATSON: It can be; and it seems to me that this practice of circulating the memorandum with a Bill is probably the best way of facilitating the passage of the Bill. I would say that half the trouble we experience in this House and the hesitancy we sometimes have in passing a clause or a provision is not so much that we are definitely opposed to it, but rather that we do not know precisely what it means.

The Hon. F. R. H. Lavery: A very true statement.

The Hon. H. K. WATSON: That being so, we go back on the very old adage: "When in doubt, say 'No'." I could not

help thinking when reading this Trustees Bill and the Bills relating to charitable trusts and perpetuities, and also to the restraint in anticipation, that it would have helped members ever so much had we been following the practice of the Commonwealth Parliament and the New Zealand Parliament. For example, I would be sorry if one of these other Bills went through this House without Mrs. Hutchison knowing that after many years women were reaching a further stage of equality with men by the abolition of the restraint in anticipation.

I have been very carefully through the Bill; and, realising the eminence and the industry of the gentlemen who have voluntarily spent their time in the production of all this legislation, I am very reluctant to suggest any amendments to it. But there is one comparatively small point which occurs to me, and that is on page 8 of the Bill where, so far as I can see at the moment, it provides that where there have been more than two trustees and one of them has died, any two remaining trustees may appoint an extra trustee. Taking an illustration of, say, three trustees where two of them have died, I would have thought the power should rest in the sole remaining trustee to appoint one or more trustees. However, as far as I can see at the moment if there were three trustees and two have died, the Bill simply provides that the filling of the vacancies shall be done by two trustees, even though only one is left. I think that may be worth looking at.

This Bill also provides for the appointment of a custodian trustee, which proposal has quite a lot to commend it. A testator may leave a personal friend as executor and trustee who may find it very convenient for purposes of holding shares, securities, notes, debentures, and so on instead of having them scattered all around the place in the trustee's name and going to the trouble of having transfers or transmissions registered each time the individual trustee dies or any one of the trustees dies, to have a custodian trustee company whose business is simply to hold securities in its name and deal with them as the managing trustee may direct.

Mr. Wise has dealt extensively with the question of investments and enlarged on the classes of investment which a trustee can make. As I indicated earlier, part III contains provisions which today would largely be found in any properly drawn trust.

When it comes to conferring power to invest in stocks, shares and debentures of a company which is quoted on the Stock Exchange, the committee suggests that the investment shall be limited to a company which has a paid up share capital of not less than £1,000,000 and has paid a dividend in each of the 15 years immediately preceding the calendar year in which the investment is made.

I can appreciate the committee's difficulty in trying to put into words a criterion or yardstick governing this matter; but I would leave this thought with the House: The circumstance that a company has a capital of £1,000,000 is not necessarily a guarantee of stability and prudent management.

The Hon. F. R. H. Lavery: That is right.

The Hon. H. K. WATSON: We have had recent illustrations of "bigger the company, bigger the loss." It seems to me that with a restriction that high, most trustees in Western Australia would probably be precluded from investing in Western Australian companies, because there are not a great number of companies in Western Australia with a paid up capital of £1,000,000. They may have shareholders' funds of £1,000,000, but that is, of course, different from paid up capital. There are quite a number of well-managed and successful companies in Western Australia which have paid dividends for more than 15 years, but have not a paid up capital of £1,000,000, even though their shareholders' funds—that is, paid up capital plus reserves—could be well over that amount.

I am not sure whether the term "paid up capital" has been defined so as to include shareholders' funds. If it has been so defined then that would nullify the point I have just made. However, from reading through the Bill I cannot see that that point has been dealt with.

It is a difficult problem—I freely concede that. It is a very difficult problem when we start to put it down in black and white; but I think we might possibly give a little thought to that particular angle. I think also that the point raised by Mr. Wise concerning saving banks should be clarified. I am inclined to agree with him that the reference to savings banks towards the end of the Bill refers merely to moneys which are held in suspense and which require investment—not even investment, but lodgment somewhere—for a very temporary period. I think that at the end of the Bill it refers not only to savings banks but also to other banks.

The Hon. F. J. S. Wise: Any bank.

The Hon. H. K. WATSON: Otherwise, if the Bill at its end refers to other banks, why the necessity to specify other banks in the earlier part of the measure?

The Bill also proposes to clarify and make very definite the consequences which follow when an investment is purchased at a price which exceeds its redemption value, or when it is purchased at a price which is less than its redemption value. Generally speaking we have found in the past that

the difference—the capital profit or loss, as the case may be—has been treated as a capital item. It is proposed in the Bill to regard the surplus as having been derived ratably over the period during which the investment was held and, therefore, virtually to treat the surplus not as a capital profit but as income accruing from day to day. Any deficiency is to be recouped to capital out of the income.

The Bill is essentially a Committee Bill. One could spend much time discussing it. However, I once again express my appreciation and recognition of the work done by the Law Reform Subcommittee, and I express the hope that work of a like nature might conceivably be done in connection with many other Acts on our statute book which are long overdue for overhaul. I support the second reading.

Debate adjourned, on motion by The Hon. E. M. Heenan.

LAND ACT AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by The Hon. L. A. Logan (Minister for Local Government), read a first time.

MARRIED WOMEN'S PROPERTY ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 16th August, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

> That the Bill be now read a second time.

THE HON. R. F. HUTCHISON (Suburban) [5.53 p.m.]: I support this Bill as being one more enlightened step towards the emancipation of women. The Married Women's Property Act was first brought to the Legislative Assembly by the late Sir Henry Parker, Q.C., on the 20th January, 1892. It was assented to on the 18th March, 1892. I would like to quote to the House some of the remarks made by Sir Henry Parker in connection with this Bill. He said as follows:—

> But the bill that I am now asking members to pass I bring forward as a matter of justice towards one-half, and the gentler and nobler half, of the human race.

That is the language the honourable member used. I think we could emulate it sometimes. I quote further—

> This bill, sir, deals with the rights of married women. I have no doubt that most members are acquainted with their own privileges and with the rights and powers which they exercise over property. They also know that under the common law in force here, the law which regulates the rights of married women so far as property is concerned, married women have virtually no rights of property at all. The effect of marriage upon a woman is somewhat similar to the effect of a conviction in the case of a felon. In the latter case, until recently, the whole of a felon's property was forfeited to the Crown, and, under the law as it now stands in this colony, the whole of a woman's property, immediately she marries, is forfeited to her husband. As soon as the marriage ceremony is over she loses every article of property she possesses.

Further on he said—

> To show the injustice of the law as it now stands, and the justice of the case which I am now advocating, I may say that not only under the common law which operates in this colony is a woman denuded of everything she possesses as soon as she marries, but whatever property she may inherit or acquire after her marriage is also taken from her.

Further on in his speech Sir Henry Parker said—

> But it is the law of the land, that every penny which a woman possesses at her marriage becomes her husband's, and also, what she acquires after her marriage. If some kind old aunt or benevolent old uncle leaves her £100 or £500 after she marries, the whole of that money also goes to the husband, who may spend it as he thinks proper. He may gamble with it or drink it, or do what he likes with it. That is the state of our marriage laws in this colony at the present moment. It is a state of the law which, in most European countries, has been long looked upon as not in accord with Christian principles. I think that one of the noblest triumphs of Christianity is the way it has raised the standard with which women were regarded even among civilised nations before the Christian era.

Later on he said—

> In 1870, a law somewhat similar to this, but not going so far as this bill, was introduced into the Imperial Parliament and became the law of the land. A great many persons even then exclaimed against this concession, declaring that it would result in breaking up the marriage tie and put an end forever to that feeling of joint trust and confidence which ought to exist between man and wife. It was prophesied that it would revolutionise married life, and lead to untold wrongs and misery. I do not think anyone will be bold enough to say that the result verified these forebodings. The Act passed in England in 1870 remained the law until 1874,

when the Imperial Parliament still further liberalised and extended its provisions, and that law of 1874 remained in operation until the 1st January, 1883, when the bill that I am now introducing in this house became the law of Great Britain, and it has remained the law of Great Britain ever since that time. I have never heard one single word of complaint about the operation of that law. I have never heard of its having had the effect of breaking up the marriage tie. I have never heard of its having destroyed that feeling of mutual confidence and esteem that should exist between man and wife. I have never heard—as I have heard it stated here it will do—I have never heard that it has reduced man to the level of a beast. Nor have I heard of any undue advantage taken of it by married women. On the contrary, I do believe, from the fact of this law having been from time to time extended as it has been so as to give women still larger rights, that it must have been found to work admirably at home. Instead of destroying the feeling of trust and confidence between husband and wife which its opponents prophesied, it has apparently conduced to still greater trust and confidence, and to more satisfactory relations between married people, when it was found that all the trust and confidence was not to be on one side.

There is just one further quote from *Hansard*—

> One strong objection to the Bill of 1874, when introduced into the Legislative Council here, was the fact that while it proposed to allow married women to trade and to enter into contracts, it provided no means for making them subject to the bankruptcy laws. But the present Bill makes them subject to the bankruptcy laws, as much so as their husbands. That is, in cases where they trade separately from their husbands in respect of their own separate property.

I think I have illustrated the march of time, and I am very glad that I was able to read those debates to the House to show it is not before time that we amended these laws to bring women up to the status of human beings. It is encouraging to know that at least one woman has been elected to this Legislative Council, and I hope that we will soon see more women here.

This Bill is to add to the principal Act a section to deal with the disposition of trust estates by married women. A married woman can now by law dispose of her separate property as if she were single, without the consent of her husband; but, for example, if she is holding land as a trustee and it is to be sold, she cannot deal with it without the concurrence of her husband. A further amendment to the principal Act is one which is consequential on a provision in the Law Reform (Property, Perpetuities, and Succession) Bill, which will abolish the last of the disabilities applying to women in respect of property.

I think we must agree that these days men do take into consideration the fact that women are a part of society, and they do take proper cognisance of their status as people. A clause I should like to see considered in a Bill of this nature—and as a matter of fact I would like to see it included in this measure—would be one to give a wife the right to share in law in the matrimonial home. This is something that women's organisations have had in mind for a long time, and many cases of hardship arise because of the lack of a provision of this nature in our Statutes.

If a home is purchased for the occupation of a husband and wife when they are married, surely the wife should know the security of part-ownership; because after all a wife has to do her share towards the household. She may not actually earn money, but she keeps the home going—she rears her children, and she makes other contributions towards the welfare of that home if she is doing her duty; and, after all, it is only those wives with whom we are concerned and about whom we speak. Surely wives deserve the right to be part owners of the home!

I shall now quote a motion which was agreed to at a Women's Service Guild conference—

> Matrimonial Property: The Women's Service Guilds in conference assembled, believing that the contribution of the wife to the welfare and property of the family should, in justice, be given recognition, requests that legislation be introduced to give the wife a share in matrimonial property.

I think that should be done. A wife who is rearing a family, and doing her duty as a wife and mother, is fully entitled to be considered in law as an equal partner in the marriage. The feeling of security that being a part-owner of the property would give would be a great incentive, and would help to provide stability in the family life.

I realise that these days many homes are placed in joint ownership, and this practice, as far as I can ascertain, is working out very well indeed, The wife feels she has an interest in the home; it gives her a sense of security which plays a great part in modern life. In America, I believe, they now have a law called community ownership, which is based on these lines, although I have not yet seen a copy of it.

The Hon. G. C. MacKinnon: It is only in certain States.

The Hon. R. F. HUTCHISON: I cannot say in what States it operates, but I do know that it is in operation in some States in America, and I hope a similar law will be introduced into this Parliament in the near future. With those remarks, I support the Bill.

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

Sitting suspended from 6.15 to 7.30 p.m.

ADMINISTRATION ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 16th August, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

That the Bill be now read a second time.

THE HON. F. J. S. WISE (North—Leader of the Opposition) [7.30 p.m.]: The provisions of this Bill for an Act to amend the Administration Act are very simple. They are designed to supplement the power of a personal representative holding property for an infant under a will. Clause 4 of the Bill makes it clear that the power granted is in addition to any power the executor may have, for example, under the Trustees Bill, which members will find in clause 59 of that measure with which we were dealing earlier in the evening.

Further, this Bill makes it clear that where an infant cannot give to its personal representative a clear right in the form of a receipt, the infant is not in a position to discharge a right, or transfer an interest in a property. Although the personal representative is under a responsibility to distribute the estate, under the existing law that is not practicable. This amendment to the Administration Act will provide that the infant will be able to make a satisfactory discharge through the personal representative, and the distribution may take place as if, in fact, it were not the infant's property that was being administered.

To overcome the difficulty, the further alternative in the Bill is to enable the personal representative to appoint a trustee so that in the handling for an infant of the properties vested in the trustee the personal representative may appoint a trustee who can, and who, in fact, will, in collaboration with the new trustees legislation, handle the estate efficiently and effectively.

There is express care taken in the Bill which will be realised if members will look at subsection (5) of proposed new section 17A which reads—

> The power of appointing trustees conferred upon personal representatives by this section is subject to any direction or restriction contained in the will of the deceased.

So all I wish to say about the Bill is that it appears to be a very worthy supplement to be used in association with the proposed Trustees Bill; and, as this is one of the proposed seven measures, I support it.

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

TESTATOR'S FAMILY MAINTENANCE ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 16th August, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

That the Bill be now read a second time.

THE HON. F. J. S. WISE (North—Leader of the Opposition) [7.37 p.m.]: The purpose of this measure is to give protection to an executor claiming under the provisions of the will where the executor has properly distributed any part of an estate six months after the testator's death without notice of the claim. It gives relatives, or any other applicant, the right to pursue their claims lawfully against the assets, but the next-of-kin, six months after the granting of probate, to make their claims, must then abide by the effect of this law, which will mean that there can be no claim against the executor and he may distribute the estate without any further notice of any application under this Act.

The Bill seeks merely to simplify the distribution of the estate after six months have elapsed following the reading of the will.

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

CHARITABLE TRUSTS BILL

Second Reading

Debate resumed, from the 16th August, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

That the Bill be now read a second time.

THE HON. F. J. S. WISE (North—Leader of the Opposition) [7.38 p.m.]: This Bill is much more lengthy than the others associated with the Trustees Bill and contains proposals relating to the administration of charitable trusts. It is thought that if this Bill becomes law it will prevent the occurrence, in Western Australia, of a problem which has become a tragic one in the United Kingdom. The construction of this Bill is based on the laws relating to charitable trusts as they apply in England and, in particular, in New Zealand.

The Law Reform Subcommittee of the Law Society said that it is designed particularly for the purpose of keeping trusts in a healthy condition. In applying it to the statute law of Western Australia it is not, in our case, intended to cure anything in particular—anything of an unpleasant or unsavoury nature that so far has been experienced—but to prevent unhealthy happenings that have taken place under other jurisdictions in regard to charitable trusts. The Law Reform Subcommittee of the Law Society stated in the text of its report that all the provisions are designed to prevent charitable trusts falling into disuse and decay, as so frequently they have done in the United Kingdom.

On a study of the law and practices relating to charitable trusts, it was extremely interesting to find how old they are. They go back for centuries and the printed report of the committee on the law and practice relating to charitable trusts which was presented to the British Parliament is, of itself, a most revealing document. This report, which is commonly known nowadays as the Nathan report—because the committee was chaired by the Rt. Hon. Lord Nathan—pointed out that it was shown in evidence given to that committee that the number of charitable trusts in existence in the United Kingdom exceeded 110,000, and at least a quarter of them were 100 years old or more. They hold between them stock and securities to the order of £200,000,000.

So that when things did go awry and it was found in practice, through the years, that considerable attention was needed when administering them, the report of the Nathan Committee became an extremely valuable document. Some of the objectives then, in this connection, were to make recommendations for making charitable trusts at all times most beneficial to the community, and to adjust their application in changing circumstances.

When introducing this Bill the Minister said that three main changes in the law were proposed. In the first place, it is recommended that provision be made in our legislation to provide that it is and shall be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreational purposes. Members will find, in part II of this Bill, clearly set out what recreational charities we intended to mean, and how they are to apply. Both clauses 5 and 6 show very clearly what is intended in the interests of social welfare, in applying the interpretation of charitable trusts to recreational facilities.

There is not any doubt from the verbiage of clauses 5 and 6, that it will be in the interests of social welfare that facilities shall be classed as charitable. If trusts are effected in this manner for recreational purposes, they will be classified as charitable trusts.

The clauses in the second part of this Bill are designed to alter or reform the existing limitations in carrying out the original purpose of a trust. In the Nathan report more than one chapter deals with the need for the alteration of trusts; in particular one chapter deals with what is known as the cy-pres doctrine, which in French means "as near as possible." That doctrine has been applied through the centuries to mean that if the original purpose of a charitable trust could not be carried out as expressly stated, something as near as possible to the original intention was permissible within the law.

I might make that point more clear by quoting a few words from the Nathan report which deals with the cy-pres doctrine. Paragraph 300 of that report states—

> This doctrine which has been evolved in the course of centuries from the practices of the ecclesiastical courts and later on of the Court of Chancery, and which became binding on the commissioners when the scheme-making powers of the Court of Chancery were conferred on them by the Charitable Trust Act, 1960, as described in *Halsbury's Laws of England* in the following terms:—
>
> > Where a clear charitable intention is expressed it will not be permitted to fail because the mode, if specified, cannot be executed, but the law will substitute another mode, cy-pres that is, as near as possible to the mode specified by the donor. But there can be no question of the application until it is clearly established that the mode specified by the donor cannot be carried into effect, and that the donor had a general charitable intention.

This report goes on to refer to very many charitable trusts which were impossible of execution—quite impossible of being given effect to; for example, the abolition of a particular form of punishment, the abolition of slavery, the dying out of a particular disease. Money was bequeathed for these specific charitable purposes which were quite impossible of being given effect to. So provision had to be made, not only in the law or laws dealing with charitable trusts applying in the United Kingdom, but in those applying in very many other countries.

In this case the Law Reform Subcommittee recommends the adoption of the New Zealand charitable trust rule, and the almost counterpart of the New Zealand charitable trust law. Although this subject is, I admit, very involved, the Law Reform Subcommittee has certainly made

clear, in the verbiage used, the intention as well as the need. The committee states in part of the report as follows:—

(1) Whenever it is impossible, impracticable or inexpedient to carry out the original purpose, or whenever the amount available is inadequate for that purpose, or whenever the purpose has been effected already, or when the purpose is illegal, useless or uncertain, the Court may permit the application of the property to some other charitable purpose as the Court thinks fit.

(2) Similarly where the money available for the original purpose is more than is necessary, the Court may authorise the using of the surplus for some other charitable purpose.

That makes commonsense. Where money has been bequeathed for a charitable purpose, even if it has not been wholly used and the use has disappeared, other expedients, other uses, or other avenues may, if this Bill becomes law, be brought into being to enable at least the nearest purpose to the original desire to be given effect to.

The Hon. L. A. Logan: What happened to trust moneys previously when that could not be done?

The Hon. F. J. S. WISE: There are large sums tied up in other countries, and particularly the United Kingdom; until the law was reviewed very little could be done. The limitations were the "nearest rule". If the "nearest rule" applied, that would be something as similar as could be to the original intention. The law gives effect to the purpose of the trust, but it has been very difficult to administer by trustees of charitable trusts.

There are several clauses in this Bill which deal with the manner in which trustees may proceed with schemes for the proper application of charitable trusts, but these schemes have to be approved ones. They cannot be willy-nilly, or haphazardly, evolved; nor can they be carelessly administered. This law is developed to enable not merely the desire of the testator to be given effect to as near as practicable, but also to make sure, as the first clauses in the Bill provide, that every associated charitable purpose can have the benefit of such bequests according to the more modern interpretation of how best charitable funds can be applied.

The Law Reform Subcommittee goes to some length, both in its recommendations and in the Bill, to ensure that the supervision of these funds will be beyond reproach, and will be used in the proper channels. In the final summary of circumstances the subcommittee thinks that the proposals contained in this Bill will not only facilitate the proper administration of charitable trusts, but will also prevent the occurrence in Western Australia of a problem which has become so tragic in the United Kingdom.

This Bill, which is something quite new to Western Australia and quite distinct from Acts which have relation to charitable trusts, by its definition and title is solely confined to charitable trusts; it appears once more to be a job very well done by the subcommittee of the Law Society. I support the measure.

Debate adjourned, on motion by The Hon. E. M. Davies.

LAW REFORM (PROPERTY, PERPETUITIES, AND SUCCESSION) BILL

Second Reading

Debate resumed, from the 16th August, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

That the Bill be now read a second time.

THE HON. F. J. S. WISE (North—Leader of the Opposition) [7.54 p.m.]: This Bill, which is associated with the eight Bills dealing with the law of trusts, can be humbly described by one as being a very involved legal matter. It deals with rules of law, rather than with Statute law.

Even at the risk of being regarded as finicky in the examination of a Bill of this kind, I draw the attention of members to the unusual nature of the long title. It is—

AN ACT to amend the law of property known as the rule against perpetuities, and to make provision for other matters relating to property and succession.

I mentioned this aspect to the instructor of law at the University, because one could interpret the title of the Act as having reference to existing law—which it has not.

The Hon. L. A. Logan: It is only to apply from now on.

The Hon. F. J. S. WISE: One can go further and say that the short title is also unusual. The short title is—

This Act may be cited as the *Law Reform (Property, Perpetuities, and Succession) Act, 1962*.

As a Parliamentarian, and not as a legal person, I would say that every Bill to amend any law which comes before this House deals with law reform. With all respect I would ask the Minister to inquire whether a title, more suitable in dealing with this very worthy and important matter, could not be arranged—both in the long and short titles of the Bill. I have discussed this matter at University level, but I have not been able to confer with those

concerned since I raised the point. I think members will appreciate what I am driving at.

The Hon. L. A. Logan: The title does cover the relevant parts of the Act—part II relating to perpetuities, and part III to succession.

The Hon. F. J. S. WISE: That is true; but this is no more a law reform measure than any law reform Bill dealing with the metropolitan regional land tax. That too would be a law reform.

The Hon. L. A. Logan: The definition of law reform is applicable to this Bill.

The Hon. F. J. S. WISE: That is a very minor matter, but it can prove to be very important in the search for the Act when this Bill becomes law.

The Hon. H. K. Watson: I imagine the Law Reform Society has a scope as wide as the bounds of empire.

The Hon. F. J. S. WISE: That is true. Hundreds of Acts have been brought about by the activities of law reform committees of this and other countries. The purpose of this Bill is perhaps a very unusual one, but it, too, contains a subject that is bathed in antiquity. The subcommittee states this—

> The major part of this Bill is concerned to introduce several reforms of the rule of law known as the Rule against Perpetuities. The Rule against Perpetuities is concerned with limiting the control which a settlor or testator can exercise over his property in the future. It provides that any disposition of property which a person purports to make is valid only if it will vest an interest within a period measured by the duration of a life or lives in being at the date of creation of the interest plus a further 21 years.

In F. H. Lawson's *The Law of Property* a somewhat different definition is given which may be stated as follows:—

> Every limitation of a future interest to arise on a contingency is void, unless the contingency is such that it must happen, if it happens at all, within the period of a life or lives in being and twenty-one years after.

It is clear that the rule of perpetuities goes back through the centuries. The first time that it arose was in 1685, and although it was evolved by the courts over a long period during which family settlements were taking shape, it was the Duke of Norfolk's case in 1685 which is generally regarded as forming the foundation of the rule. But it was not until 1833 when the rule was completed by a decision of the House of Lords in Cadell v. Palmer, that the period of 21 years was an absolute period and had no necessary connection with any actual minority. So, as I mentioned earlier, we know how old this rule is in its application.

In its study of this rule, the Law Reform Subcommittee considered that not merely was it necessary to have it applied to trusts but it was necessary to institute a law so that the law of perpetuity so far as this State is concerned will have a general application in law if this Bill passes.

It will be found in the notes of the subcommittee that when it started to consider the rule against perpetuities as it affected interests arising under trusts, it became aware of the need for reform of the rule in this State; and it became aware of the fact that it was undesirable to restrict reform to the field of trusts, but that any reform of the rule should have general application. The members of the subcommittee said—

> We therefore recommend that the reform of the rule be contained in a Bill separate from the Trustee Bill, which would apply to all types of interests in all types of property.

That is the purpose they have served in submitting to the Government this Bill which has the general application in addition to the application of perpetuities as affecting trusts. So it becomes a recommendation on this very ancient rule of law expressed in terms, I submit, that help all of us, as lay people, to understand the principles that are involved. In addition to specifying the perpetuity period or limitation, other extremely interesting limitations are found in various clauses in the Bill; and clause 6 is a case in point.

In the clause dealing with exemptions from the rules we find that such entities as superannuations and things which can be regarded as going on in perpetuity, are permissible and are well considered and protected.

In the part of the Bill which deals with succession, the very ancient law, I think of 1837, which deals with wills—and I have a copy of the Statute dealing with wills in the ancient laws of England, which I have because of the kindliness of the Clerk of this Parliament—will have, if this Bill passes, a very important alteration. It is at the moment an age-old law that a will is revoked by marriage, but that will not be the case if this Bill passes.

The committee made a very careful analysis of that situation. It is obvious that there have been experiences where wills have been made prior to marriage to ensure that there would be certain settlements and entitlements made which the very marriage shortly following revoked. This principle under this Bill will be altered. Wills to be made from now on —not in retrospect—will have the provision in this Bill applying.

I would refer members to part III of the Bill which, in its various clauses, deals with all of those things associated with the making of wills and a description of what is meant in the terminology associated with wills. In my earlier remarks I endeavoured to make clear the purpose of continuing as statute law what is at present an age-old rule in law against perpetuities—against continuing something which shall not go on and on, and which, in dealing with vast sums of money, has been found to be intolerable and impossible even during the earlier days of our British history where bequests were made of certain specified sums which, left in perpetuity, would have been so colossal as to have been impracticable and impossible.

So that this rule of law in becoming statute law will serve, in the view of the Law Reform Subcommittee, equity and justice to everyone associated with the specifying of what shall be a continuing inheritance; and also specifying the limitation of the succession of inheritance if the person in being—that is the person alive—or the persons associated with him at that time can be benefactors and limited under this rule of perpetuity.

As I mentioned earlier, it will not only relate to trusts and how long they may continue, but it will relate also to all of those things which may be continued and for the term that they may be continued in so far as a limiting period affects them.

I think this is an involved legal matter which we, as lay people, are obliged, before it becomes law to try to understand. It has been the subject of the strictest search and research by the Law Reform Subcommittee, and we would be well advised to support the Minister by passing this Bill which is the recommendation of that subcommittee.

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

ADOPTION OF CHILDREN ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 16th August, on the following motion by The Hon. A. F. Griffith (Minister for Mines):—

That the Bill be now read a second time.

THE HON. R. F. HUTCHISON (Suburban) [8.13 p.m.]: This is another Bill consequential on the Trustees Bill, and I rise to support it. So far as I can make out it seems to be just and right. It is to provide a small amendment to the principal Act so that the proviso in section 7 catches the children of an adopted child. This is necessary if the provisions of clause 6 of the Law Reform (Property, Perpetuities, and Succession) Bill are to work.

In other words, the purpose of the amendment proposed in clause 2 of this Bill is to make effective the presumptions introduced in clause 6 of the Law Reform (Property, Perpetuities, and Succession) Bill concerning inability to procreate or bear children. There is no point in presuming, for example, that a woman is past the age of child-bearing if she might still adopt a child who will be qualified to take under a limitation to her children.

However, section 7 of the Adoption of Children Act prevents adopted children taking under instruments which were made prior to the date of their adoption, unless there is a statement to the contrary in the instrument. This deals adequately with the situation where there is a gift to the children, but if the children are not themselves beneficiaries, but merely the measuring lives for gifts to their own issue, the difficulty would still arise.

The points in the measure that I do not understand will probably be picked up by some other member. I support the Bill.

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

SIMULTANEOUS DEATHS ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 16th August, on the following motion by The Hon. A. F. Griffith (Minister for Justice):—

That the Bill be now read a second time.

THE HON. F. J. S. WISE (North—Leader of the Opposition) [8.16 p.m.]: This is a very short measure and is consequential upon the provisions of clause 21 of the Law Reform (Property, Perpetuities, and Succession) Bill. Indeed, a complete description of this measure will be found in clause 21 of that Bill.

This measure makes the following provision by adding a new paragraph (fa):—

> where, by any will or other testamentary instrument, any property is devised or bequeathed or appointed to the survivor of two or more of the testator's children or other issue within the meaning of section twenty-one of the Law Reform (Property, Perpetuities, and Succession) Act, 1962, and all or the last survivors of those children or issue are persons so dying, section twenty-one of the Law Reform (Property, Perpetuities, and Succession) Act, 1962, (where it applies) takes effect as if the devise or bequest or appointment were in equal shares to those of them who so die and leave a child or children living at the death of the testator.

So it can be seen that where a person named in a will has issue alive, but the person so named is dead, in the case of two equally interested beneficiaries, this will take effect under the Simultaneous Deaths Act.

Members will recall that the Simultaneous Deaths Act of 1960 which was introduced by The Hon. Arthur Watts made provision for a very delicate point in law whereby it was nearly impossible to state which of two people who had died at about the same time predeceased the other.

This measure has become important because it is complementary, as I have mentioned, to the provision in the Law Reform (Property, Perpetuities, and Succession) Bill which refers to those who are in succession at the time of another person's death. I support the Bill.

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

BUSH FIRES ACT AMENDMENT BILL

Second Reading

Debate resumed, from the 20th 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. F. D. WILLMOTT (South-West) [8.19 p.m.]: I rise to support the second reading of the Bill. Many of its clauses are very necessary and will make for the better and more effective working of the bushfire prevention set-up in this State. I absolutely agree with many of the provisions in the measure, but I entirely disagree with others. The Bill provides for the reimposition of prohibited burning times if it is considered by the local authority that it is necessary owing to a change in weather conditions. I am very much in favour of that provision.

There is also the provision which requires the lodgment of applications for permits to burn by the 1st September. I have heard some criticism of this, and I would like to hear more about it from members representing other areas. My own view is that it is quite O.K. it will be of great assistance to brigades in planning their fire operations if they have some warning, and if they have the applications for the various permits for burning for development purposes, which I think is how the Bill reads, on the 1st September because that will allow the brigades, the adjoining owners, the forestry officers, and others, to make provision well ahead in respect of the burn which it is expected will take place later in the season. There is no reason why this provision should be objected to, although I have heard some criticism of it.

I would just like to make it clear that some of the criticism of the Bill which I shall offer will be as a result of a meeting which I was invited to attend last Friday —a meeting of several shire councils held at Bridgetown for the purpose of considering this measure. Representatives of the shires of Balingup, Greenbushes, Bridgetown, Nannup, and Manjimup attended that meeting; and members will realise that those shires cover a very large proportion of the forest areas of the State.

The meeting lasted for some three hours, so members will readily understand that the Bill was not given short consideration but was dealt with at considerable length. Many of the criticisms levelled against it in the early stages of the meeting were, after discussion, withdrawn because it was agreed that they were reasonable, taking into consideration the whole set-up.

The few remaining objections I have to the Bill I propose to deal with through my amendments which appear on the notice paper. But I just wanted to make the point that the amendments are as a result of the meeting at Bridgetown; and I might say that I am 100 per cent. in agreement with those decisions; and I have some knowledge of the working of the Bush Fires Act, having been mixed up with it ever since it has been on the statute book.

In respect of applications for permits being in by the 1st September, there is a provision in the Bill for applications to be made and permits to be granted at a later date if it is considered that the applications are O.K. in all respects. Previously, although it has been a serious offence to set any fire during a declared emergency period—an emergency period declared by the Minister—no penalty has been provided. Some people wonder why a penalty is provided now; but I think the explanation is fairly clear.

In the past the Minister's means of letting his knowledge be spread over the country were very limited. That was before there was adequate radio coverage and that sort of thing. Today, however, I think there is little excuse for persons not to be aware of a declared emergency period; because anyone interested in starting burning operations at any time should, and would, I think, naturally pay more than ordinary attention to broadcasts in regard to the fire hazard in the area. So there would, I believe, be very little excuse for a person today being unaware of the declaration of an emergency period. I would say that in all probability the reason why, in the past, no specific penalty was provided was the inadequacy of the means of letting the public know.

There is a good deal of variation in the penalty provided in the Bill, because it reads—

> Penalty: A fine of not less than ten pounds or more than two hundred pounds, or to imprisonment for a term of six months, or to both the fine and imprisonment.

So it will be left pretty much to the magistrate to decide how bad the offence is, and to say whether the person concerned was genuinely unaware of the fact that an emergency period had been declared by the Minister. In such a case, no doubt the magistrate would impose the smallest fine of £10. So I feel it is quite reasonable for that penalty to be included.

Another point that was raised, dealt with, and agreed to at the Bridgetown meeting was that concerning the restriction on the lighting of fires for camping and cooking purposes during the time of a dangerous fire hazard. Any country dweller realises the danger that exists from the careless lighting of camping and cooking fires; although there are times when they can be lit and the persons lighting them are unaware of the fact that a dangerous fire hazard has been declared for the particular day.

Another instance that comes to mind of people who would be unaware of the position is that of persons travelling with livestock; because under this provision they could not light a fire except between the hours of 6 p.m. and 11 p.m. They would have to obtain a permit from the local authority; and, of course, when travelling with stock they might be 60 or 70 miles away from the local authority's office, and they would be tied to their stock. However because of the very few times that such an eventuality would be likely to arise I think it is only reasonable that the provision should remain in the Bill.

The Hon. G. C. MacKinnon: How does that affect the camping areas along the Busselton coast.

The Hon. F. D. WILLMOTT: In the main I do not think fires in camping areas would be considered as being lit in the open, because they would be lit in fireplaces.

The Hon. F. R. H. Lavery: Provision is made for them.

The Hon. F. D. WILLMOTT: Yes; and they would be covered by this clause.

The Hon. G. C. MacKinnon: No provision is made around Walpole.

The Hon. F. D. WILLMOTT: I think there is now; I think the honourable member will find that in nearly all camping areas, such as Walpole, provision is made for fires; and if it is not, it will be very quickly made by the local authority.

The Hon. G. Bennetts: The same thing applies right through the Eastern States.

The Hon. F. D. WILLMOTT: Yes. Because of the very great danger that does arise from the indiscriminate lighting of fires, it is only reasonable that the provision should remain in the Bill; and that was the decision of the meeting at Bridgetown after the question had been discussed.

Another provision in the Bill deals with something which is provided in the Act at the moment in a very peculiar way; and I refer to the provision where a landowner has a common boundary with a Crown reserve. The way the Act reads at the moment the owner could enter the Crown reserve and completely clear for any distance up to 10 chains from the common boundary—and I mean completely clear it.

That of course was never intended by the Act; and it has been tidied up to mean what it was meant to mean, namely, that an owner could put in a 10 ft. break at a distance from the common boundary for the purpose of creating a 10 chain break. It was never intended that he should completely clear 10 chains; and I think it is very necessary that that provision should be cleaned up. For those parts of the Bill I have mentioned, and for many others which I do not think it is necessary to mention, I feel the Bill is, in many ways, a very good and necessary measure.

There are, however, some provisions with which I do disagree. As I have already pointed out these provisions were considered at great length by a meeting of local authorities in Bridgetown. My first objection is to the provision to declare the seniority of all fire control officers.

The Hon. F. R. H. Lavery: Would you kindly name the page?

The Hon. F. D. WILLMOTT: The provision to which I refer appears on page 11; and it is an amendment to section 38 of the Act. It proposes that the local authority shall determine the seniority of the bushfire control officers appointed by it, the first and second in seniority of such officers to be respectively the chief bushfire control officer and the deputy bushfire control officer.

There was objection taken to that. I would add, however, that there was no objection to the appointment of the chief bushfire control officer or the deputy bushfire control officer.

The Hon. L. A. Logan: What is the difference?

The Hon. F. D. WILLMOTT: The provision I have just quoted seeks the authority to declare the seniority of every other bushfire control officer. Let us take Bridgetown, as an example; though this provision applies to all the local authorities which attended the meeting there. Each one of them said that they had applied the same principle. They appoint bushfire control officers, and have done so for a long time, in a way which, I notice, is recommended by the Royal Commissioner's report of 1961.

There the bushfire control officers—that is, apart from the chief bushfire control officer and the deputy—are also captains of their brigades. I am sure that anyone who knows anything about this matter will

realise the value of that; because it is the bushfire control officer who issues the permit in the area where the fire is about to take place; and, being the captain of the brigade of that area, he is also responsible to see that burning is carried out in the proper manner, and to ensure that the fire does not get away.

So it is easy to see why this was mentioned in the Royal Commissioner's report. All the local authorities to which I have referred as having met at Bridgetown applied that method of appointment, with the exception of Manjimup which signified that without doubt it intended in the future to apply that principle, because it would help it overcome difficulties in its area.

The difficulty that was put up as a supposititous case by Manjimup was this: Suppose there was a fire in the Walpole area, which is 70 miles from Manjimup, which is the seat of the local authority. In the way those shire councils have been operating, and under the method of their appointment of fire control officers, the captain of the brigade would be the man in supreme command of the fire at that time. That is how they have been operating. The local authority at Manjimup said that if what was contained in the Bill were applied it might make things difficult. For example, suppose under the provisions of the Bill the captain of the brigade had been declared at Northcliffe which is 40 miles from Walpole, and he was senior to the man at Walpole where he had gone to assist at a fire, then because he had been declared the senior officer he would have to take over control from the local man at Walpole. This of course would be absurd, because the man from Northcliffe would not know the country as well as the local man. Anybody who knows anything about bushfires knows how important it is to have some knowledge of the country in which the fire is raging. These fires are most awe-inspiring, and it could mean, if a man had no knowledge of the country, that he could lose control of his equipment and so on.

The Hon. G. Bennetts: The local man would have a better knowledge, and would be the better man to control the fire.

The Hon. F. D. WILLMOTT: It might be argued that the man from the visiting brigade could say, "You continue in control"; but that is not the point of the question that crops up, because the man from Northcliffe would still be the senior man, and if something went wrong, he would have to pay the piper.

The Hon. L. A. Logan: You are still appointing your chief officer and deputy chief officer.

The Hon. F. D. WILLMOTT: There is no objection to that; but the provision goes on to say that they shall determine the seniority of the bushfire control officers appointed by them—that is, by the board.

The Hon. C. R. Abbey: That is the practise of a lot of shires.

The Hon. F. D. WILLMOTT: It might be; but the shires I have mentioned appoint as the senior the man in whose area the fire is burning at the time. That works very well. Members who know anything about the operation of bushfire brigades will realise the value of that.

The Hon. J. Murray: The rule of commonsense.

The Hon. F. D. WILLMOTT: That is so. I repeat that over a long period the shires I have mentioned have applied the principle to which I have referred; and Manjimup has indicated that it will also apply that principle in future, because it makes for commonsense and easy working.

There is another provision in the Bill to which strong objection was raised by the local authority; and I refer to proposed new section 68, which appears right at the end of the Bill on page 16. I do not propose to deal fully with the objections at this stage, because it would only mean repetition. I will have something more to say on this matter in the Committee stage. But very great objection is taken by local authorities to this provision, because they say there is ample authority for the Bushfires Board to take action under the present Act. I agree with them in that. However, I will go into that matter more fully in the Committee stage, because I agree that the local authorities are right. They claim that this could be used to take control completely, or almost completely, out of the hands of local authorities; and again I agree with them.

As a matter of fact, and not to make too fine a point of this, I think the proposed new section is nothing more nor less than an insult to the local authorities.

The Hon. L. A. Logan: The local authorities drafted this.

The Hon. F. D. WILLMOTT: They did not.

The Hon. L. A. Logan: I represented the local authorities on this.

The Hon. F. D. WILLMOTT: That might be so; but I will read later the submission given to me at the meeting of which I have spoken. One of the great objections raised by the local authorities was the fact that this will have a great bearing on local authorities and they knew nothing about it. They claim that the local authorities' association executive at least should have known something about it; and one of the members of that executive was present at the meeting, and he said they had never heard anything about it. I agree that the local authorities had representation on the Bushfires Board. I do not disagree with the Minister on that. But I can assure members the local authorities know very little about this Bill. They have never

seen this provision, and they have said so quite bluntly. As soon as the local authorities found out about it a scream went up.

I can assure the Minister the shires I have mentioned will not be the only ones to raise objection; most of the shires of the State will do so when they realise what is in the Bill. I will deal with that aspect more fully in the Committee stage.

I would now like to make a few general comments about this legislation. In the first place there appears to be a tendency for panic thinking in regard to the Bush Fires Act; though I have no doubt that this is engendered to a large extent by the disastrous fires we have had from time to time.

As a matter of fact sometimes we get to the stage where we expect anything by way of legislation, merely because it relates to bushfires. In support of that argument I would draw the attention of the House to section 30 of the Bushfires Act. This interested me so much that I tried to find out the origin of it. Section 30 states—

> Between the first day of October and the next following thirtieth day of April in any yearly period—
>
> (a) a person shall not, in connection with a gun, rifle, pistol, or other firearm carry or use any wadding made of paper, cotton, linen or other ignitible substance.
>
> Penalty—Fifty pounds.
>
> (b) the owner or occupier of land or the servant of the owner or occupier who finds a person using or carrying a gun, rifle, pistol, or other firearm on the land may seize and examine the gun, rifle, pistol, or other firearm, and all ammunition and material which is carried by the person for the purpose of ascertaining the nature of the wadding being carried or used;
>
> (c) a person to whom paragraph (b) of this section relates who—
>
> (i) refuses to allow the seizure and examination authorised by the provisions of paragraph (b) of this section;
>
> (ii) refuses to disclose his name and address to the person demanding it; or
>
> (iii) gives a false name and address to the person demanding his name and address.
>
> is guilty of an offence.
>
> Penalty—Fifty pounds.

If those provisions were contained in another Act for the purpose of curtailing some of the indiscriminate shooting which is all too prevalent they might find more favour in my eyes. Not so long ago a Bill was before this House, and when the same suggestion was made voices were raised in a hurry to the effect that no-one other than a policeman should ask a man's name and address. However, it is in this Act, and it not only applies to every owner or occupier, but to any servant who may be working for the owner or occupier. It has been in this Act for many years.

In an attempt to discover why that provision was inserted into the Act I have gone back quite a long way to 1937 when the original bush fires legislation was before Parliament—the measure that was the parent of the present Act and the first one to set up bushfire brigades under the control of local authorities. That provision was inserted in the Act at that time and what was said makes illuminating reading. I intend to quote from one speech which appears in *Hansard* of 1937 on page 1628.

The Hon. F. J. S. Wise: Who introduced it, Mr. Troy?

The Hon. F. D. WILLMOTT: Yes; he was the Minister at the time. The Hon. C. G. Latham had this to say—

> The comments by the member for Kalgoorlie (Mr. Styants) were pertinent—

Mr. Styants had had something to say about this matter previously. Continuing—

> —inasmuch as a provision has been taken from the old Act and included in the Bill. That provision was all right in the days of the old muzzle-loading guns, when all sorts of material was stuffed into the guns when they were loaded. You, Mr. Speaker, and I can remember the days when we stole the guns from behind the kitchen door and grabbed a flask of powder and shot in order that we might enjoy some shooting. We always took some paper with us to ram the charge home and to separate the shot from the powder. In those days the paper was likely to smoulder. Irrespective of what the member for Kalgoorlie may say regarding fire not being caused through the discharge of firearms, I have frequently seen paper smouldering for some time after the discharge of a gun. In the days I speak of, such a provision as we are discussing was quite necessary, but with up to date ammunition there is no danger from the discharge of a rifle. The days of the old muzzle loader are gone, and I do not think any member could

now buy a gun of that type. It is a pity this particular provision was included in the Bill.

And the Minister for Lands said by interjection—

I am not keen on it either.

However, it remained there.

The Hon. G. Bennetts: Any saltpetre there?

The PRESIDENT (The Hon. L. C. Diver): Order!

The Hon. F. D. WILLMOTT: I only instance that to demonstrate what I said earlier, that it seems some people are of the opinion that we must accept anything in regard to this measure because it happens to be the Bush Fires Act. I do not intend to do anything about that provision as I have never heard of any difficulty caused by it. Nevertheless that does not alter the fact that it is in the Act.

The Hon. J. Murray: A pity it was not removed.

The Hon. F. D. WILLMOTT: It is a pity it was not lifted from this Act and inserted where it could be made use of. I well remember what was said when it was suggested that that provision be included in another measure; but it has been accepted in this Act without any qualms for many years.

The Hon. L. A. Logan: You want it to apply to mushrooms?

The Hon. F. D. WILLMOTT: If I remember rightly, the mushroom business may have come up during the debate I have in mind.

The PRESIDENT (The Hon. L. C. Diver): I would like the honourable member to address himself to the Bill under discussion.

The Hon. F. D. WILLMOTT: Yes; I will do that. Thank you, Sir. That has helped me out of a reply to that interjection. I appreciate that. In regard to the legislation before us at the moment, there seems to be a tendency on the part of the Bush Fires Board to try to squeeze everything into one mould, if I may put it that way. I do not think one can apply exactly the same thinking to all parts of the State. My views are borne out by the report of the Select Committee which dealt with bushfires in 1948 and of which Sir Charles Latham was chairman. His recommendation number 7 was as follows:—

> It would be very difficult to set up a standard throughout the State for bushfire brigades due to the different conditions prevailing, but no doubt it will be possible for the Minister to vary the standard suitable to the locality.

I could not agree more than I do with that statement. I repeat: There is a tendency today on the part of the Bush Fires Board to try to squeeze all brigades and all local authorities into the one mould. This is not going to work because we must draw on the knowledge of local bushfire brigades. The members of these brigades know local conditions and they are practical fire fighters who know how to go about coping with a fire.

As a matter of fact, the recent Royal Commissioner had something to say on this matter, because on page 42 of his report he said this—

> The senior executive staff needs a sound knowledge of fire control operations as well as administrative ability. The necessary knowledge is not obtained by visiting meetings of bush fire brigades or even by attending fires in a supervisory capacity. It can only be obtained by actually taking part in firefighting operations and in their direction.

Again, I am in complete agreement with that statement, which is overlooked by the Bush Fires Board at the present moment.

The Hon. L. A. Logan: He recommended these amendments.

The Hon. F. D. WILLMOTT: Who?

The Hon. L. A. Logan: The Royal Commissioner.

The Hon. F. D. WILLMOTT: We will take that up later. He did not do that completely.

The Hon. L. A. Logan: You will find he did.

The Hon. F. D. WILLMOTT: You will find that he did not when we get onto the job.

The Hon. J. Murray: Someone else's interpretation.

The Hon. F. D. WILLMOTT: This is the crux of the whole thing: The Bush Fires Act is not worth two bob without the bushfires brigades, as the members of these brigades are the people who carry out the provisions of the Act. They come under the control of local authorities which, in the main, have set up advisory committees comprising captains and other officers of the bushfire brigades to advise the respective local authorities. I cannot think of a better method. In fact, the Royal Commissioner mentioned that very point, and I will endeavour to find it because it is pertinent. On page 45 of the report he says—

> In those shires where the local community was sufficiently interested to form bush fire brigades and bush fire brigade associations, it was difficult to see any direction in which the position could have been improved by legislation.

That surely is plain enough. Therefore, I come back to the point where the whole thing hinges on the bushfire brigades and the local authorities. We are entirely

dependent on voluntary workers. Without them we would be finished and would have no force to fight bushfires.

Many years ago when the old press gangs operated in England there was a saying in the Navy that one volunteer was worth 10 pressed men; and that certainly applies in the matter of bushfires. I have seen these brigades in operation far too often not to know that they are efficient and well organised: and in the carrying out of their operations they have no trouble.

I would like to make this point: In spite of things I have heard said by some members of the Bush Fires Board, in the five shires I have instanced where they have the brigades set up and the advisory committees, there has not been one instance of a major fire disaster, although there have been serious fires in adjoining shires. There was a bad fire at Nannup, or at Willow Springs, when some men lost their lives, but that had nothing to do with the bushfire brigades because it was entirely a forest fire. The same thing applied to a fire which occurred in the forest out at Shannon last summer or the summer before. However, there have been many fires which could have been disastrous, but the bushfire brigades have coped with them on every occasion.

At the meeting at Bridgetown, which I mentioned previously, that was held last Friday one of the shire councillors prepared a statement which was tabled at the meeting. It was studied and agreed to completely. For the information of members and with your permission, Sir, I will read it—

> The Bush Fires Act, 1937, which can for practical purposes be viewed as the beginnings of the Act as we now know it, formed the foundations of our present organisation, and established a legal basis for the organisation and operation of Bush Fire brigades. This Act also established Local Authority control of District activities, and gave Councils a right to determine certain issues, which as a local control they could do with a degree of certainty, due to local knowledge. Foremost in these issues was the right to determine firebreaks, appointing Fire Control Officers, commencing burning dates, etc. etc., all of which from any practical viewpoint can only be reasonably determined by a Local Authority. To co-ordinate State and intra-Local Authority activity, the Bush Fires Board previously known as the Rural Bush Fires and Advisory Committee, was given official status in 1954, together with various other amendments. It should be remembered that this Committee was originally appointed to do solely what the name implies, and its members functioned without any reward whatsoever.

This set-up was undoubtedly working well, as evidenced in a lecture delivered by the Secretary of the Bush Fires Board at Point Walter:—

> During the 20 years since the passage of the 1937 Act, it is considered that a tremendous amount has been accomplished.

Then there developed in the state a set of circumstances which the Royal Commissioners described as "an almost absolute summer drought" following a "wet summer and autumn" which created unprecedented fuel beds, which together with "well above average temperatures" produced the calamitous fires of Dwellingup and Denmark. Both of these fires were mainly in state forest. After a lengthy hearing, the Royal Commissioner made 27 recommendations, from which it is understood the present Bill has its origin. Some research, however, discloses that this is not entirely the case. A government Committee, when commenting on the various recommendations concerning local government recommended outright eight clauses, commented on seven, and disagreed with one. Two of these recommendations were—

> (1) Local authorities prosecute in all cases of deliberate breaches of the provisions of the Bush Fires Act, and that failing this the Bush Fires Board take appropriate action to initiate such prosecutions.

There does not appear to be any particular objection made to existing procedure, other than a suggestion that the Board should act if a local authority does not. The Commissioner does not suggest that the Board prosecute councils. The government committee did not say that councils should be prosecuted by the Board.

> (2) The other dealt with the determination of seniority of Fire Control officers. "The relative seniority of bush fire control officers be determined with a view to appointing group leaders as chief fire control officers".

This provision has also been included in the Bill on page 11, line 28, with an addition that if the Council does not do so, the Board may.

Notwithstanding the preceding, however, there is a more sinister development which causes a great deal of concern, and deals with the provision of firebreaks.

In January, 1962, the Secretary of the Bush Fires Board wrote:

> Arising from the Royal Commissioner's Report on Bush Fires, it has been decided "that the provis-

ion of adequate firebreaks in all Districts will be enforced next season."

The continuation of the letter makes it quite clear that the decision was made by the Bush Fires Board. Reference to the Commissioner's report concerning the matter reveals only one recommendation, which in any way refers to breaks, which reads as follows:

(25) local authorities, and if necessary the Minister take active steps to enforce the removal of fire hazards from the vicinity of buildings in rural areas; and that special attention be given to the removal of dead trees on the edges of pasture land, and on firebreaks in timbered country.

The Council has issued an order concerning the first paragraph in connection with buildings, and is seeking the co-operation of brigades and the Forests Department in the second matter.

The Board however, now requires the Council to order the provision of breaks "six feet wide where cleared or part cleared pasture abuts formed roads". Nowhere in the Commissioner's recommendations is need for more firebreaks mentioned. Indeed it would appear that the present breaks are sufficient, and that the Commissioner is prepared to continue to allow local authority discretion to apply. Can it be assumed that the Board considers the Royal Commissioner did not effectively enquire into the matter? Discussions with the South West representative on the Board makes it clear that this decision to prosecute is from the Board itself. The Crown Law Department was asked to draft legislation to enable the Board to prosecute, and the facts are therefore (a) The Board wants more firebreaks and (b) they will prosecute to get them, regardless of the Government's opinion and the Royal Commissioner's Report.

There are however, further issues involved of a more serious nature. Under the act there are numerous clauses wherein a local authority may act. In fact Divisions 1 and 2 of Part IV deal almost entirely with the functions of Local Government. These items require local knowledge, and what is more important—reconciliation with the various brigades and the individual members. It should not be forgotten that the Act stands on a voluntary basis. If there are no officers forthcoming there are no brigades, and if there are no brigades the Act is meaningless. Our task is both complex and simple—Encouragement of District effort and punishment of breaches of common sense, which to date have been the provisions of the Act. If this function is to be superseded by a Board, albeit comprising 50 per cent. local authority representation, then the structure of voluntary brigades is in serious danger.

One final point. This legislation and its proposals have not been referred to the Country Shire Councils Association Executive. Its progress through the House has been rapid, and were it not for the action of The Hon. John Hearman, Councils would have heard nothing until the proposals were law. The comments of all local authorities would be most interesting in this particular matter.

That was submitted to the various councils. I have read it out in order that members might give some consideration to it. I think that in the main the proposals are pretty much on the ball. I do not wish to consume any more time and I will leave other matters until the Committee stage of the Bill. I support the second reading.

THE HON. F. R. H. LAVERY (West) [9.7 p.m.]: In supporting this Bill, I would like to say that I was very pleased with the speech made by Mr. Willmott. I am concerned about those areas of the State where bushfires occurred last Easter. They have taken a great toll of property and have involved much cost to the Education Department, although we have as yet heard nothing about that.

I would ask the Minister whether it is possible for penalties to be imposed upon motorists who cast lighted cigarettes on to the highways. I have a specific incident in mind. Last year, during the heat of February, I drove along the back road to Bunbury accompanied by another member. A driver who was in front of us threw out a lighted cigarette. We were about 250 yards behind him. That cigarette set alight to some grass on the side of the road, and we were able to put out the fire. I did not get the number of the car, nor did I attempt to.

Since then, I have seen it happen repeatedly when I have driven from Fremantle to King's Park. Motorists often flick a cigarette over the sides of their cars. I am wondering whether there is any means by which such offenders could be apprehended under this Bill.

It seems to me that farmers, shire councils, and everybody else concerned are having all kinds of restrictive regulations placed upon them by the proposed new board. The proposed new board is a good thing—I am not denying that. We are clearing enormous areas of land and putting in crops; and fire hazards in the State

involve heavy costs. A schoolteacher was trying to clear an area around his school building this year; and look what happened to the Cherry's Pool area. It seems that we have to have this type of legislation. I am wondering whether legislation could be brought before this House which would not be restrictive to those people who are connected with the industries of this State. I would like to see legislation in their favour rather than their constantly being prohibited from doing certain things. I support the Bill.

THE HON. S. T. J. THOMPSON (South) [9.11 p.m.]: I rise to support the Bill in principle. Our aim is to protect the rights of local authorities, but there are some aspects of the Bill which require a little thought.

I would like to say at the outset that we have built up a wonderful organisation of voluntary fire brigades in country areas. As Mr. Willmott pointed out, we are dependent on our bushfire brigades, and local authorities are also dependent on them. We appreciate the work they are doing, and we should do everything we can to endeavour to let them retain whatever authority they can in their own areas.

Although there has been the suggestion that this Bill perhaps takes away some of that authority, I do not think it really does when we come to analyse it thoroughly. I would like clarification on one or two points. One concerns applications for permits being made by the 1st September. Admittedly there is the provision for applications to be made at a later date; and local authorities have the power to issue such permits. That being so, I cannot see any value in that provision. We might just as well leave it as it is in the original legislation. The following clause puts the matter back where it was before. If I do not make application by the 1st September, I can still make application in February, as was the arrangement in years gone by, and the local authority has the power to issue me with that permit.

The question of the harvesting ban is a matter on which I would like clarification as it is one of vital importance to farmers. We had, at the outset, the spectacle of the whole of the country being controlled from Perth, and a ban was issued on harvesting. As the previous speaker pointed out, this is a very vast State. To formulate a policy which will adequately embrace the whole of the State is utterly impossible. One night a few years ago we had seven inches of rain. The next day a total ban was placed on burning for the whole of the State. I cannot imagine a greater farce than that.

However, we are anxious to retain that right, and to see it written into the Act that shire councils have the power to authorise a ban on harvesting. The harvesting ban is very important. On some days it is an absolute crime to take a tractor out in densely grassed agricultural areas.

Everything is functioning very smoothly in view of the spirit of co-operation which exists between the bushfire brigades and the shire councils. However, despite that fact we do have fires. There was a disastrous one at Katanning last year; and we will continue to have fires from time to time—there is no question about that. The main thing which bushfire brigades and shire councils are seeking to do is not so much to put the fires out but to try to prevent them from starting. With a bad day it is utterly impossible to put a fire out within a short space of time, particularly a fire such as we had at Katanning last year. Because of the heavy grass and stubble it was impossible to control it.

I think perhaps more attention should be given, and amendments could be made, to the Act in regard to the question of timber and rubbish along the roads. We should do something to make it easier for settlers to destroy this rubbish, but actually they are prohibited by law from destroying trees outside the 3 ft. limit of the roadway. Throughout the agricultural areas, and particularly on the western side of the Great Southern line, many of the roads are an absolute curse so far as a bushfire hazard is concerned. A fire in grasslands can be readily controlled, if the wind is not too strong, but when the fire starts to move along the edges of the road it gets away very quickly and is quite a different proposition.

As regards the question of appointing bushfire brigade officers, it is the custom, and has been the custom for some time in most shires, to appoint a fire control officer and a deputy control officer; and then there is a captain for each brigade. In our shire we have six brigades with a captain for each, and we have lieutenants and so on down the line. As a matter of fact the position is almost the same as that envisaged by the Bill. We have that seniority, and although it has never been mentioned it has always been there. In the event of a captain not being at a fire the lieutenant takes over, and so on.

The Hon. F. D. Willmott: This is asking for more than that.

The Hon. S. T. J. THOMPSON: Apparently the fact that seniority is mentioned is upsetting things a little.

The Hon. F. D. Willmott: It is the seniority between members of the brigade.

The Hon. S. T. J. THOMPSON: That is correct.

The Hon. L. A. Logan: They are not always there, you know.

The Hon. S. T. J. THOMPSON: I will support Mr. Willmott's proposition if he thinks the Bill is going to interfere with the co-operation which we have at present.

The Hon. L. A. Logan: Who is the senior man if neither the chief officer nor the deputy are present.

The Hon. S. T. J. THOMPSON: The captain of the brigade.

The Hon. L. A. Logan: Under your present set-up?

The Hon. S. T. J. THOMPSON: I have been the control officer for a number of years, and with the six captains that we have it has always been my policy, when a fire is burning in a particular captain's area, to allow him to give the orders, and I accept those orders. I do this because of his knowledge of the district; and I carry out any instructions he may give in regard to the fire unless there is some question of policy involved when it would require some overriding authority. We have found that this system has worked out very well. Someone mentioned that it is a matter of commonsense prevailing, and we believe that this is the commonsense way of doing things.

Brigades in country areas are very highly organised now, and they give the shire councils no trouble at all; as a matter of fact in a number of respects they give the shire councils orders, and we are happy to take them. If Mr. Willmott feels that the question of seniority is being objected to in his area I will support him in having it removed, because I feel that under the existing set-up we have got along very well, and we will continue to do so.

I think that Mr. Willmott left off reading page 30 of the principal Act too soon when he was speaking to the Bill.

The Hon. F. D. Willmott: I had to leave something for you to do.

The Hon. S. T. J. THOMPSON: The honourable member should have carried on a little further because he had quite an audience upstairs at that stage. I think what follows on page 30 is far more important because it says that a person shall not dispose of a burning cigarette, cigar, tobacco or match, and so on. It gives a list of the circumstances, and I think they are very appropriate at the moment.

The Hon. F. D. Willmott: I was making a different point.

The Hon. L. A. Logan: That is the one that Mr. Lavery mentioned.

The Hon. G. C. MacKinnon: The difficulty, of course, is to catch them.

The Hon. S. T. J. THOMPSON: As Mr. MacKinnon has pointed out, the difficulty, of course, is to catch people, but it is possible to catch them on occasions. However, we are not out to catch people, but we are out to educate them not to light fires; and that is what this legislation sets out to do.

We had an unfortunate situation in our district in regard to the linesmen. Country people will know that linesmen always boil their billy twice a day on the side of the road to make their tea when they are working on the lines. We appealed to them time and again, and asked the department to issue its men with some other means of making their tea, but all our requests were refused. Ultimately they lit a fire in our district and we sued them and got a conviction against them. The department promptly stopped the practice. We do not want to have to do that sort of thing, but these people learnt the hard way, and consequently we do not expect others to carry on the same practice.

I believe that all these amendments will improve the principal Act, and we can discuss Mr. Willmott's amendments when we come to them in Committee. With those few remarks I support the Bill.

Debate adjourned, on motion by The Hon. L. A. Logan (Minister for Local Government).

House adjourned at 9.22 p.m.

Legislative Assembly

Wednesday, the 26th September, 1962

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