ADJOURNMENT OF THE HOUSE: SPECIAL

MR. BRAND (Greenough—Premier) [11.1 p.m.]: I move—

That the House at its rising adjourn until 2.30 p.m. tomorrow (Thursday).

Question put and passed.

House adjourned at 11.2 p.m.

Legislative Council

Thursday, the 19th September, 1968

The PRESIDENT (The Hon. L. C. Diver) took the Chair at 2.30 p.m., and read prayers.

QUESTIONS (6): ON NOTICE

TRAFFIC ACCIDENTS

Head-on Collisions

1. The Hon R. H. C. STUBBS asked the Minister for Mines:
   (1) How many motor vehicle accidents have been attributed to head-on collisions in each of the last three years?
   (2) Where did they occur?
   (3) What time of the day did they happen?
   (4) Were white guide lines in use in the centre of the road at the actual place of the accident when the accidents occurred?

   The Hon. A. F. GRIFFITH replied:
   (1) to (4) This information is not available as the accident statistical form does not call for such detail classification.

RAILWAYS

Losses on Passenger Services

2. The Hon. H. C. STRICKLAND asked the Minister for Mines:
   What was the profit or loss for the year 1967-68 on the following railway passenger services:—
   (a) Fremantle—Bellevue;
   (b) East Perth—Armadale;
   (c) Perth—Kalgoorlie:
   (d) *Westland* Express;
   (e) Perth—Albany; and
   (f) Perth—Bunbury?

   The Hon. A. F. GRIFFITH replied:
   (a) and (b) These figures for the year ended the 30th June, 1968, are not yet available, but the information will be forwarded as soon as possible.
   (c) to (f) These particulars are not normally extracted, and cannot be provided without lengthy and costly research.

WESTERN AUSTRALIA

Boundary with Northern Territory

3. The Hon. F. J. S. WISE asked the Minister for Mines:
   (1) When was the boundary between the Northern Territory and Western Australia surveyed southwards from the north coast of Australia?
   (2) By whom was this work carried out?
   (3) How far southwards did the survey end, and how many pillars were erected in the line?
   (4) Is it practicable to have the boundary line clearly marked to facilitate construction of fencing on the actual boundary between the Northern Territory and Western Australia in the case of such properties as Rosewood, Mistake Creek, Gordon Downs, and Balgo Hills Mission?
   (5) Have sufficient geodetic points been fixed on either side of the boundary between Western Australia and the Northern Territory to enable the line to be determined, and if so, would this facilitate the survey of the line on the boundary of Balgo Hills Mission?
   (6) Does the Minister agree that it is of great importance to have the fencing lines on the exact boundary if possible?
   (7) If the requisite surveys are practicable, when may they be carried out?
   (8) Is the work the responsibility of both the State and the Commonwealth?

   The Hon. A. F. GRIFFITH replied:
   (1) During the years 1935, 1936, and 1937.
   (2) Surveyors H. C. Barclay, S. J. Stokes, H. Spigl, staff surveyors of the Western Australian Department of Lands and Surveys.
   (3) The survey extended 293 miles and 70 chains south from Joseph Bonaparte Gulf ending in the vicinity of the Gardiner Range (approximately 19 degrees 20 minutes). Marks were placed every mile and at the terminal points of the line. In all, 296 permanent marks were left.
   (4) The practicability of the project is at present being examined by the Surveyor-General of Western Australia in conjunction with the Surveyor-General of the Northern Territory.

(5) The geodetic survey of Australia has provided what is considered sufficient geodetic points to facilitate the work.

(6) Yes.

(7) On present indications, it would appear the work will be possible during the years 1969 and 1970.

(8) Yes. As the Northern Territory is Commonwealth-controlled, responsibility would be shared.

BUTCHERS

Penalties

4. The Hon. R. H. C. STUBBS asked the Minister for Health:

What is the maximum penalty that can be imposed on butchers who refuse to—

(a) sell meat to a health inspector for analysis;

(b) permit a sample of meat to be seized for analysis?

The Hon. G. C. MacKINNON replied:

(a) and (b) Section 361 of the Health Act sets out the maximum pecuniary penalty for these offences at $200.

MINES DEPARTMENT

Income from Goldfields

5. The Hon. R. H. C. STUBBS asked the Minister for Mines:

For each of the years 1965-66, 1966-67, and 1967-68, what income has the Mines Department received in each goldfield of Western Australia in payment for claims for nickel and associated minerals?

The Hon. A. F. GRIFFITH replied:

Rents and registration fees received in payment for mineral claims are not segregated into individual minerals in the Mines Department records and those for nickel and associated minerals are accordingly not available.

The only other income received by the department for nickel and associated minerals was payment of royalties totalling $19,912,27 in the year 1967-68 from Kambalda nickel concentrates produced in the Coolgardie goldfield.

6. *This question was postponed.*

EDUCATION ACT AMENDMENT BILL

Second Reading

THE HON. G. C. MacKINNON (Lower West—Minister for Health) [2.41 p.m.]: I move—

That the Bill be now read a second time.

The main provisions in this Bill have been formulated to effectuate the undertaking given by the Premier, in his policy speech, to increase certain school subsidies.

Prior to the recent election the Government undertook to subsidise textbooks for all secondary students. This subsidy is provided for in this measure and will become effective as from the 1st January next. It is to be payable on the basis of $5 a year for students up to the third year, and $10 a year for students in the fourth and fifth years.

A further promise by the Government was for a subsidy in respect of reading and reference books for matriculation students. The payment of this subsidy will be made from the beginning of the present financial year. The purpose in providing these subsidies is to relieve parents of secondary students of some of their financial commitments for textbooks. The subsidies will apply equally to Government and non-Government secondary students and the only exception will be in respect of Commonwealth secondary scholarship holders, as they are already in receipt of $50 a year from the Federal Government for the purchase of textbooks. Students whose homes are outside the State but who are studying in Western Australia, will not be eligible for these subsidies, and the exclusions will be effected by regulation.

In the allocation of textbook subsidies, a scheme will be devised to ensure that correct use is made of the subsidy. The matriculation reference book subsidy will be payable direct to the school and not to the individual. The payment of these subsidies to Government schools and students will be authorised by amending the relevant regulations, but in the case of independent schools it is necessary to amend the Act before the subsidies may be paid.

Increased library book subsidies were also promised to all schools, in addition to the extension of the subsidy system to the purchase of a wide range of teaching aids and equipment. These subsidies will apply equally to Government and non-Government schools, but as existing provisions already enable this to be done in respect of independent schools—unlike the textbook subsidies—no amendment to the Act will be necessary. These subsidies are apart from the Federal Government's secondary school library subsidies recently announced, and they will make a major impact on the standards of secondary school libraries.

The funds will be available for the erection, alteration, or extension of library buildings and for the provision of furniture, equipment, and the basic stock of reference books and materials for a secondary school library.

Funds allocated by the Commonwealth for the three-year period, 1968-69 to 1970-71, will total $27,000,000. This State's average annual entitlement will be $677,200, composed of $503,200 for Government schools and $174,000 for non-Government schools. That is on a *per capita* basis of secondary students.

The Minister for Education, when introducing this measure in another place, pointed out that the steadily increasing costs of education, together with the necessity for primary denominational schools to employ a greater percentage of lay teachers, was placing a very severe strain on those responsible for financing those schools, and the Government had become concerned that their standards may be forced down below an acceptable minimum, solely through lack of finance.

The Minister mentioned that the pupils attending non-Government schools were also citizens of the State and their future contributions would play a major part in its development. It was essential, therefore, to ensure that those children are not penalised for the reason that their parents wish them to receive a certain type of education.

It was for this reason that the Government introduced, last session, a Bill to provide an annual subsidy of $10 for each primary pupil attending all efficient primary schools. That amendment became effective as from the 1st January, 1967, and relieved, in varying degrees, the financial hardship to which some of those schools were being subjected.

Having again looked closely into the position early this year, the Government announced that if re-elected it would increase the $10 per annum subsidy to $20 per annum. This Bill will amend the existing provisions in the Act to enable this additional $10 per student per annum, to be paid as from the 1st January, 1969.

Another amendment deals with the compulsory attendance provisions in the Act. These are limited to children of less than nine years of age, living within two miles of the school, or, if satisfactory transport is available, living within one mile of such transport; and to children not less than nine years of age, living within three miles of a school, or, if satisfactory transport is available, living within two miles of such transport.

For children living at greater distances than those but who are unable, for some reason, to take direct advantage of school facilities, the Education Department's boarding allowance, or in the case of native children, the hostel accommodation provided at a cost parents can afford, correspondence lessons are available. However, these are not compulsory.

Circumstances arise where some parents deliberately avoid the responsibility of ensuring that their children receive an efficient education, though the parents' action remains within the letter of the law.

The Minister for Education has been disturbed by recent reports that such practices are being deliberately employed by a group of parents and despite the department's best endeavours there has been no way of insisting that the children concerned obtain a formal education. This Bill contains a provision which will overcome the problem, by authorising the Minister, where he is of the opinion that a child is not receiving an efficient and suitable education, to cause the parents of that child to send it to a Government or efficient school. For those reasons I commend the Bill to the House.

Debate adjourned, on motion by The Hon. R. F. Claughton.

CHILD WELFARE ACT AMENDMENT BILL

Second Reading

THE HON. L. A. LOGAN (Upper West —Minister for Child Welfare) [2.49 p.m.]: I move—

> That the Bill be now read a second time.

In presenting this Bill, I have to say that it has been my policy as Minister for Child Welfare to review progressively the legislative basis of the department so that its work should reflect the most modern and the most practical concepts of child care. At the same time I have tried to ensure that the physical facilities and the staff necessary are both available to carry the improved legislation into effect.

In considering amendments to the Child Welfare Act, one has to remember that the basic Act dates from 1907, and that the circumstances which then dictated its provisions have changed completely. Some of these changes derive from a better understanding of children and their parents, which indicate better ways to assist them; and some derive from changed social conditions. It can be expected that even more rapid change in both these elements will make further amendments to child welfare legislation necessary in the future.

The most important amendments now proposed are, firstly, that a children's court, in addition to its present powers, shall, in future, have authority to fine a child or to place him on his own bond as alternatives to imprisonment.

This amendment is the outcome both of better understanding of people and of social change. In 1907, at the time of the framing of section 34 of the Act, young people had so little personal income that fines and bonds would have been impractical. Because young people now have substantial cash incomes, both are practical and we know that even the irresponsible young can be persuaded through their pockets to be more responsible.

The second amendment to which I would like to refer affects the authority of the Children's Court to deal with adult offenders accused of any one of a specified list of sexual offences against a child. This authority was conferred on the court in 1957 by section 20B; because the then Government accepted the view—and I think rightly—that children of tender years who had been the victims, or the witnesses, of very unpleasant sexual assaults should not have to suffer the tense atmosphere and the rigorous cross-examination by counsel in the adult courts. The children so involved were protected by the hearing of these matters in children's courts, unless the special magistrate referred the matter to a higher court, or the accused chose to go before a jury.

There are a number of reasons to review this piece of legislation now. The first and simplest reason is that certain sections had to be inserted into the Act in 1957 only in order to validate proceedings which stood part-heard at the time of the insertion of section 20B. These sections are now completely redundant and should be repealed.

A second reason for review is that the Criminal Code, from which the list of specified offences was taken, has been amended in the past 10 years, and the original agreement of section 20B with the code has been disturbed both in the definition of the offences and in the way in which offenders may be dealt with.

A third reason is that sections 19, 20, 20A, and 20B of the Child Welfare Act, which establish children's courts and give them their specific areas of jurisdiction, can be more simply expressed while the other amendments already referred to are being accomplished. I will describe those amendments in detail at a later stage.

Another important amendment referring to section 108 of the Act is designed to extend the Minister's control over the use of children for advertising purposes.

To date the existing legislation has generally protected children in this State from exploitation in entertainment and in street trading. This has been achieved by forbidding the employment of children under the age of 16 years in public entertainment or in street trading except by license granted by the Minister. Such a license sets out the conditions and precautions which are to be taken during the child's employment.

A new avenue for the employment of children is rapidly developing in the advertising field by their use in the preparation of TV commercials and in photographed newspaper advertisements.

I want it to be quite clear that the Child Welfare Department has no objection to children being used in the advertisement of children's requisites, or even in adult programmes. Its anxiety is to ensure that the conditions under which children participate are not injurious to their health, their education, or their general social development. This is best done through a legislative insistence that such a use of children for gain or reward to themselves or to anyone else can take place only by ministerial license.

Another and important matter refers to the regulations made under the Child Welfare Act. These were framed many years ago and were designed to ensure the minimum physical standards under which children should be kept, rather than the ways in which they should be managed. Because of the responsibility this House gave the department last year to supervise and license child minding centres, a new chapter has been addded to the regulations for that purpose. This experience in drafting new regulations for a specific area of child welfare work, in which a number of people and organisations have already been operating, has shown the necessity to confer some discretion on the department in applying its regulations. Examples of this need occur in many of the long existing child minding centres which would comply with the new regulations to a very large extent, but not completely.

It would not be sensible or desirable to close them until they comply completely, but rather to permit them to operate and insist that, within a limited time, they improve or alter their premises and arrangements.

The Child Welfare Act, however, gives the department no such discretion in the application of its regulations in this or any other field. It is now suggested that, with the extention of its operations and to secure a more flexible and human approach to those who work with it, the department be given a discretion to use its regulations more flexibly.

The remaining clauses in the Bill are of lesser significance and will be referred to at the appropriate stage in the consideration of the Bill.

Dealing with the clauses now, the first one is merely machinery. Clause 2 repeals section 9 which empowers the Minister to appoint persons to form "boarding-out committees." Those persons had the responsibility for finding boarding and foster homes for wards of the department and for supervising those homes. The "boarding-out committee" has not functioned for this or any purpose for the past 10 years. The responsibilities it had originally are now part of the duties of permanent placement officers and family welfare officers of the department. A tribute should be paid to the past work of that committee, of which Mrs. R. Fuhrmann, J.P., of Subiaco, was a leading and valued member. It is suggested that this section be now repealed as redundant.

Clause 3 amends section 10. This section sets out the general powers of the Director of the Child Welfare Department and the ways in which the director may deal with children committed to departmental care. In doing this, the section really sets the boundaries of proper departmental action within the framework of the Act. That framework does not include any preventive activity against delinquency, nor does it authorise any positive action to promote the welfare of children who are not wards.

In fact, the department is often approached by parents representing the whole range of the community for help and advice in the care and management of their, or others', children. This help and advice is given at the highest level of competence within the staff, but those officers have no legislative authority for their actions, nor has the department as a whole any mandate to attempt the prevention of delinquency.

This defect in the Act will be remedied by the insertion in section 10 of an authority to do those things "reasonably necessary for promoting the welfare of a child, whether a ward or not."

In the basic Child Welfare Act of 1907, section 19 laid the foundation for the establishment in Western Australia of children's courts and the appointment of special magistrates to preside over them, while section 20 conferred upon them the exclusive jurisdiction to deal with children, except in cases of wilful murder, murder, manslaughter, or treason.

Minor amendments were made to these sections at different times, but a major addition to the powers and procedures of children's courts was made in 1957 when, because of pressures from psychiatrists, social workers, and women's organisations, children's courts were given authority to hear cases in which adults were accused of committing certain specified offences against a child or children. The specified offences were generally of a sexual nature, and the reason prompting the 1957 amendment was to spare the child victim, or the child witnesses, of the offence, or offences, the psychological damage likely to result from rigorous cross-examination in the tense atmosphere of the adult criminal court. At the same time, it was recognised that this psychological protection of the child should not be purchased at the expense of the accused by depriving him of his legal right to be tried before a jury. A compromise was therefore inserted in the Child Welfare Act in section 20B, by which an accused is given an election as to whether he will be tried summarily in the Children's Court—where there is no jury—before a stipendiary magistrate, or by the adult court before a jury.

Experience has shown that the great majority of offenders pleading guilty to one or other of the offences specified in section 20B elect to be tried summarily before a stipendiary magistrate in the Children's Court, and that the right to be tried before their peers is rarely chosen. The legislation has, in effect, achieved its two-fold purpose of protecting children from psychological harm while preserving the right of the adult to trial by jury.

The insertion of section 20B into the Act, and the necessity for a validating and limiting provision in 20A to facilitate that insertion, has, together with other minor amendments, made sections 19, 20, 20A, and 20B an involved, clumsy, and partly outdated basis for the establishment and functioning of children's courts.

Because of changes in the Criminal Code referring to one of the listed offences under section 20B, it is now necessary to amend the section once again. Rather than complicate the sections still further by this amendment, it is now proposed that the content of sections 19, 20, 20A, and 20B be rewitten to simplify, clarify, and up-date them by the enactment of clauses 4, 5, 6, 7, and 8 of the present Bill.

Clause 4 proposes—

(a) That subsections (1a) and (1b) of section 19 be repealed. These two subsections were inserted into section 19 in 1957 to facilitate the implementation of section 20B. These sections had no other purpose and have been redundant for 10 years. They should now be repealed.

(b) That subsection (3) be repealed and re-enacted. The purpose here is to clarify how a children's court shall be constituted in all possible circumstances. Children's courts hearing children's cases can be constituted by—

(i) a special magistrate sitting alone;

(ii) a special magistrate sitting with one member;

(iii) two members sitting together.

Children's courts hearing adult cases under section 20B can be constituted by a stipendiary magistrate, who is also a special magistrate, sitting alone, or by such a magistrate accompanied by one member. At present subsection (3) does not summarise these possibilities, nor does it refer to section 20B. It is proposed that clause 4 (b), if re-enacted, will properly summarise the situation.

(c) That subsection (6) be amended in its outdated reference to a "police magistrate" by substituting the term "stipendiary magistrate." The amended section will then also confer on special magistrates the

> powers available to stipendiary magistrates under the Justices Act—with the exception of those powers relevant to stipendiary magistrates dealing with charges against adults under sections 20B and 20C of the Act.

As already described, section 20 originally outlined the jurisdiction of children's courts, but that outline has been complicated by later amendments and additions. It is now proposed to repeal section 20 and re-enact it to set out more succinctly the functions of children's courts in their jurisdiction over children.

Members will notice that the rewritten section makes no reference to the Guardianship of Infants Act or to the Interstate Maintenance Recovery Act. The matters to which these Acts refer are now dealt with under the Married Persons and Children (Summary Relief) Act and are not the concern of the Child Welfare Department.

The rewritten section includes an added power in the last paragraph; namely, subsection (4) of new section 20. This refers to the situation that, for certain regulation traffic offences committed by adults, there has long been a procedure by which the regulating authority gives the offender the opportunity to pay a predetermined fine without court appearance. The offender who ignores or rejects that opportunity is then brought before the appropriate court. This procedure has not been available to juveniles, and it has been possible that, if a father and son broke the same regulation, the father, paying his statutory fine of $2, is much more lightly treated than his son appearing before a children's court.

It is now suggested by subsection (4) of new section 20 that the optional procedure be also applied to juveniles as it applies to adults.

Clause 6 provides for the repeal of section 20A. This was the implementing section necessary—with section 19 (1a) and (1b)—to bring section 20B into operation on a proclaimed day and to facilitate the finalisation of part-heard cases at that time, as already described. It is now completely redundant and should be repealed.

Section 20B was the substantial addition in 1957 to the jurisdiction of children's courts by bringing before them adults accused of certain offences against children, as already described.

It is now suggested that these purposes be achieved in more direct fashion by repealing subsections (1), (2), (3), and (3a) of section 20B and replacing them with new subsections (1), (2), and (3). The new subsection (1) empowers a children's court presided over by a special magistrate, who is also a stipendiary magistrate, to hear and determine complaints against adults involving any of the specified offences against a child. The list of specified offences is removed from the body of the Act and is made a schedule to it under clause 18.

New subsection (2) is suggested for the following reason:—

> We must remember that the purpose of hearing these "specified offences" in a children's court was to protect children of tender years—that is very young children—from appearing, as victims or witnesses of the commoner sexual offences against children in adult courts.

Examination of the list of the eight offences which are to be heard in a children's court—I refer members to page 9 of the Bill—reveals that in three of them no age limit of the victim is specified—that is, in items 1, 5 (4), and 8. In the remaining five offences the specified ages of the victim range from 13 years to 17 years. It is now proposed that children's courts shall only have jurisdiction when the age of the victim in any of these offences is under 16 years.

In effect, paragraph (a) (2) defines "a child of tender years" as a child under the age of 16 years. This will have the effect of simplifying the procedures of children's courts and of removing the inevitable anomalies now arising from the variety of ages listed in the schedule of offences.

Paragraph (a) (3) fixes the penalty for summary conviction under this section at imprisonment with hard labour for 18 months.

Paragraph (b), subparagraphs (i), (ii), (iii), (iv), and (v), in spite of its apparent complexity, really has the simple effect of substituting the word "court" for the word "magistrate." This is desirable because children's courts are sometimes constituted, for this purpose, of a stipendiary magistrate plus a member, and not by a magistrate alone. This is a grammatical and not a legal alteration.

Since the original framing of section 20B of the Child Welfare Act, a significant change has taken place in the Criminal Code by Act No. 89 of 1966. This Act now requires a consequential amendment.

The Child Welfare Act in section 20B gives the person accused of an assault on a girl under the age of 18 years an election to be tried before a jury.

The Criminal Code now requires that assaults on women and on children under 17 years are to be regarded as aggravated assaults, and under the Code they may be dealt with summarily. This creates one anomaly between the Criminal Code and the Child Welfare Act. This anomaly can be rectified by giving the stipendiary magistrate in the Children's Court the power to proceed summarily if the child

victim is under 16 years of age. This is proposed in subsection (1) of proposed new section 20C.

If, however, in the course of evidence of a common assault it becomes clear that that offence was accompanied by an attempt to commit a crime, and a more serious charge should therefore be laid, it is necessary to have machinery by which a newly and differently constituted court can hear that more serious charge. Subsection (2) (a) and (b) of new section 20C provides such machinery.

Section 22 of the Act sets out that a children's court shall be held within the City of Perth and in such other places as the Governor may direct, and in some building approved or appointed by the Minister, "but not in any police or other courthouse," provided that "if a courthouse or magistrate's office is so approved of, the hearing shall not take place at an hour when ordinary court business is being transacted."

The original purpose was to keep adults and children's courts quite separate, and this can still be achieved by holding them at different times. There is, however, no purpose in providing everywhere two separate courthouses, one for adults and another for children. Common sense has long prevailed in this and the power implied in the last paragraph of section 22 has been used by Ministers to approve adult court premises for children's courts, so long as they are usable at different times. It is now suggested that this common-sense attitude be regularised by enacting clause 9.

Last year Parliament approved of the conception that no child should be regarded as incorrigible or uncontrollable in the full sense of those words, but rather that a child may be uncontrolled at a particular time. The word "uncontrolled" was substituted for "incorrigible and uncontrollable" in all sections of the Act except section 29, and should have been altered there, also. It is suggested that this change be made now, and it is made in clause 10.

Section 34 sets out the ways in which a children's court may deal with a child guilty of an offence ordinarily punishable by imprisonment.

Curiously, the powers to place a child on his own recognisance or to fine him are not listed among the alternatives to imprisonment. Perhaps at the time of the original framing of the Act, children had so little money that fines and bonds were impractical. Today, however, when the young have very considerable personal incomes, fines and bonds are completely practical and also very potent persuaders. They should be available to special magistrates as instruments of punishment and persuasion. Clause 11 will have this effect.

The main intention of section 108 of the Child Welfare Act is to control the performing of children in public for gain or reward to themselves or to any other person except by license of the Minister. This is the section which is used to prevent the exploitation of children by the promotion of entertainments for profit.

Experience indicates the increasing use of infants and children for advertising purposes on TV, on radio, and in preparation of printed advertisements. The department does not believe that the use of children should be completely precluded from advertising media, because they are obviously necessary to the display of children's requisites. The department does believe, however, that the conditions under which the children are used should be controlled, so that the hours of employment and the material conditions under which they are used can be controlled by license.

Clause 12 (i) repeats the present substance of section 108 (c). Clause 12 (ii) provides for the licensing of the use of children under 16 in the preparation and presentation of commercial advertising by radio, TV, or newspaper by license.

Section 139, inserted in the Child Welfare Act of 1907, provided free railway travel to and from school for wards of the department and for children committed to the care of approved private societies under part VI of the Act. Part VI of the Act has now been repealed and free rail transport for wards to and from school has not been available for many years. If it is necessary to subsidise or to provide travelling expenses for a ward, that is done, and will continue to be done. Section 139 is outdated and should be repealed. This is done by clause 13.

Section 142 provides in subsection (1) that any person who defaults in compliance with the provisions of the Child Welfare Act shall be guilty of an offence against the Act. Subsection (2) fixes a maximum penalty for persons guilty of offences against the Act. That maximum is at present $60. The amendment in clause 14 suggests that this maximum penalty be raised to $100.

Section 146A (1) provides that a justice, satisfied by information on oath that there is reasonable ground for suspecting that a destitute or neglected child is residing at an address, may grant an order authorising departmental officers to enter those premises at reasonable times to inspect them. This is the machinery used when a complaint is received that children are destitute or neglected and the householder refuses entry to the department's visiting officer. As it stands, the householder can be forced by an order to allow an officer to enter, but he then has no power to investigate or inquire into the complaint.

It is now proposed, by clause 15, to add the powers to investigate and to inquire into complaints.

Section 146C is designed to protect the Minister and all officers of the department against civil action arising from the effects of their actions taken within the scope of the Act. They still remain vulnerable, however, to civil action arising from action for the sake of children—however well-intentioned and wise it may be—which is taken beyond the ambit of the Act. The main sorts of action so involved arise from requests for advice or action to prevent children falling into neglect and/or delinquency. These preventive actions have not been, until now, envisaged by the Act. The insertion of the content of clause 3 of this Bill in the Act remedies this defect and clause 16 will extend the protection of section 146C to officers engaged in preventive action.

Section 149 of the principal Act confers on the Governor the power to make, repeal, alter, and vary regulations covering most of the actions and occasions referred to in the body of the Act. Sections 116 and 118, respectively, confer power on the Governor to make regulations referring to boarding and foster homes for children, and to the management of child care centres.

By their nature, regulations tend to be mandatory, specific, and inflexible in their wording and operation. By the nature of child welfare work, however, there is a need for flexibility and discretion in the management of people and institutions affected by the regulations. This is especially so where standards in buildings, equipment, and methods of caring for children are constantly arising.

At present there is no power in the Act to apply the regulations other than inflexibly. Clause 17, which is modelled on a similar section in the Local Government Act, will permit the use of departmental discretion in the application of regulations to people and to situations under the notice of the department, and will allow a common-sense, humane, and progressive development of relationships between people affected by and participating in the department's work.

Clause 18 refers to the substance of clause 7. You will recall, Sir, that clause 7 authorises a children's court, constituted of a special magistrate who is also a stipendiary magistrate, to deal with adults accused of any one or more of a specified list of offences against a child.

The principal Act includes that list of offences within the body of the Act and thereby obscures the meaning of section 20B to some extent. In the interest of clarity only, the list of offences is, by clause 18, made a schedule and added to the Act.

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

PUBLIC TRUSTEE ACT AMENDMENT BILL

Second Reading

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Justice) [3.17 p.m.]: I move—

That the Bill be now read a second time.

Two matters have made it necessary to submit this Bill for consideration. Firstly, there is the need to provide assistance to people in distress; and, secondly, to amend and give further powers to the Public Trustee to enable him to provide a better service to those persons who elect to use the facilities provided by the Public Trust Office.

In recent years my attention has been drawn to the difficulties and distress being experienced by next-of-kin who are unable to deal with the assets of a person where it is necessary to take legal action to have their death presumed. Members are aware of cases such as where fishermen are drowned and their bodies are not recovered. As a result, the Public Trustee was directed to make inquiries regarding the position outside Western Australia. He was able to advise that in some other States, the Public Trustee has been empowered to apply to the court seeking an order authorising the Public Trustee to act on such terms and conditions as is considered advisable in the interests of the owner of the property, or any other person.

In practice, after being approached by some interested person, the Public Trustee, under order of the court, may undertake the management of the property and, if authorised, provide for the maintenance of dependants, and the care of wasting assets, or livestock, pending the granting of probate or administration.

The proposed amendment will also cover uncared-for property, where the owner cannot be located, but where it is necessary for some action to be taken in respect of wasting assets. An example may be given of the market gardener who was believed to have been burnt to death. There was no legal authority for disposal of livestock, which caused the Police Department some concern. Under the legislation now before Parliament, an application to the court would have provided legal authority for the disposal of the livestock.

The Public Trustee also directed attention to powers given to his counterparts relating to the management of the infirm person. There is need for similar powers in this State. The Public Trustee receives, weekly, a number of requests for assistance, mainly in regard to the affairs of persons who, because of senility, are no longer capable of managing their own affairs.

Applications for the appointment of managers may be made under the provisions of the Mental Health Act. Apart from the cost involved, there is a reluctance on the part of children to take the action under the Mental Health Act, notwithstanding that they are informed such matters are not dealt with in open court.

The procedure proposed in the amendment follows that in operation in Victoria. It is a simple one and has safeguards necessary to protect the interests of the person concerned. The Public Trustee, after being approached by an interested party, and having obtained the necessary independent medical certificates, signs a certificate that the person is an infirm person. Such person, or one of the next-of-kin of that person, may apply in a summary way to a judge in chambers for an order to direct the Public Trustee to sign the prescribed certificate that the person is not an infirm person for the purpose of this Act.

The Public Trustee of Victoria has advised the power to deal with the affairs of infirm persons is only used when next-of-kin are in agreement. In cases where it is necessary to have an examination, take, or require evidence, it is the policy not to deal with the case under the Public Trustee Act but to require an application under the Mental Treatment Act; that is, of Victoria.

Control of the affairs of infirm persons, such as those confined to "C"-class hospitals, has been the subject of frequent discussion between the officers of the Chief Secretary's Department and the Public Trustee. They support the amendment because of difficulties experienced by welfare officers endeavouring to assist patients with next-of-kin who are either unavailable, or unwilling to assist. It is emphasised the Public Trustee does not seek to use these powers unnecessarily, and the safeguards are sufficient to prevent his doing so.

The proposed powers dealing with uncared-for property and the affairs of infirm persons are necessary to enable benefit to some sections of the community in need of assistance. In recent years the work of the Public Trust Office has increased making it desirable to amend and give further powers to continue to maintain the standard of service available to those persons who desire to avail themselves of the facilities.

Provision must be made for the appointment of a deputy public trustee who will have authority to act as Public Trustee during the absence, or during a vacancy in the office of Public Trustee. At the present time an Executive Council appointment is required each time the Public Trustee is absent on leave or carrying out other duties. It is proposed that the Public Trustee may delegate to the deputy public trustee any powers, duties, and functions of the Public Trustee. Such delegation is essential to the efficient working of the office.

Section 14 of the Public Trustee Act presently empowers the Public Trustee to elect to administer an estate without the formality of a grant of probate or administration where the value of an estate does not exceed $1,000. This amount has been unchanged since 1941 and, therefore, an amendment to $5,000 is considered reasonable, having regard to the increase in money values—or the decrease, which is probably more correct.

Power is given to revoke such an election in cases where assets outside the State are subsequently discovered. The revocation will allow an application for a formal grant by the court so that reseal which cannot be done with an election will be possible.

The administration of estates frequently requires the specific investment of trust moneys. Investment on first mortgage offers the best form of security, but there is often difficulty in obtaining an application for the exact amount available. This difficulty can be overcome by authorising the Public Trustee to combine the available funds of more than one trust and to invest in a common mortgage, and to distribute the interest earned between the respective trusts from which the funds are provided. Private trustee companies have had this power for many years and there is no reason for the same avenue of investment not being available to the Public Trustee. The conflict of interest, which might happen in the case of private trustees cannot arise, as the Public Trustee has no private interest in these investments.

Where a mental patient dies with an estate not estimated to exceed $200, the Public Trustee may deal informally with the estate by disposing of the property to any person claiming to be entitled to it. Having regard to recent legislation which enables banks to deal informally with bank accounts not exceeding $1,200, it is proposed to increase the prescribed value from $200 to $1,200. This will be a benefit to persons who have experienced some degree of distress.

The Public Trust Office now offers a service which is accepted by the community. In addition to those persons who elect to use the facilities, there must be a statutory officer to undertake such duties as management of the affairs of incapable patients' court and workers' compensation trusts, and other matters which the Government considers is part of its function to safeguard the interests of the people.

Since being established in 1941 the office has been located in four different office buildings and consideration is necessary now to provide additional accommodation. The Public Service Accommodation Committee recently decided it would be a feasible proposition for the Public Trustee to

erect a building for his own use with provision for future needs. Any available accommodation not immediately required could be occupied by other Government offices.

It is proposed, therefore, with the approval of the Minister, that the Public Trustee may be authorised to invest portion of the moneys in his common fund for the purpose of acquiring land and erecting a building thereon. There should be no need to elaborate on the soundness of investment in city property. Similar legislation has been approved by Parliament in respect of the Superannuation Board.

The Bill is submitted for consideration. The proposals contained are in the interest of all persons who, of their own free will, instruct the Public Trustee to handle their affairs, and those persons for whom the State has a responsibility.

Debate adjourned, on motion by The Hon. F. J. S. Wise.

ADMINISTRATION ACT AMENDMENT BILL

Second Reading

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Justice) [3.29 p.m.]: I move—

That the Bill be now read a second time.

This is a small Bill to provide that bequests made to the Service Canteens Trust Fund will be exempt from payment of probate duty. Such bequests are exempt already from Commonwealth estate duties.

The funds are used mainly to provide educational assistanse to the orphan children of ex-servicemen. However the trustees advise that the increasing demands for funds are exceeding the amount available. The more important specific needs caused by the curtailment are—

1. Orphans where the father's death has not been accepted as being due to war service—

(a) The educational assistance given in previous years was $140 per year. This we have had to reduce to $95 per year. In the poor circumstances in which these children are placed this assistance should be retained at its former level if a way can be found to finance it. The amount required per annum to enable this to be done is $90,000.

(b) In the past educational assistance has been given to these orphans from 12 years when they enter secondary education and the educational expenses become heavy. It has been necessary to eliminate all assistance for these children in their twelfth and thirteenth years. This assistance is most important. The cost of retaining it would be $140,000 per annum.

(c) In the past, applications for educational assistance have been accepted throughout the year for orphans immediately following the death of an ex-serviceman occurring after the closing date—the 15th October. It will no longer be possible to do this. Yet this assistance has been tremendously valuable to the newly-bereaved widow. To continue this assistance would cost $17,000 per annum.

2. Orphans where the father's death has been accepted as due to war service and the children get an education allowance from the Department of Repatriation: The fund granted a small allowance of $28 per annum for each child. This allowance was paid at the beginning of the year to assist the mother to buy books and clothing for the return of the child to school. This assistance is to be discontinued even though it has proved to be most valuable to the mother. The amount required to continue this assistance is $57,000 per annum.

3. Young craftsmen: The trustees have been granting assistance to one young craftsman in each State each year to enable him to proceed overseas to gain experience in his trade so that he might bring back to Australia a knowledge of developments and techniques in his trade in other countries. We have paid the fares and the craftsman has maintained himself from wages received in his overseas employment. These awards will have to be discontinued. The craftsmen who have been granted this assistance have been very successful overseas and they will without any doubt make substantial contributions to their trades in Australia in the years to come. To keep these awards going it would require $6,000 per annum.

These amounts certainly add up, and in an attempt to encourage people to make bequests to this fund—as I said in the first instance—it is proposed to exempt the bequests from State probate duty. I commend the Bill to the House.

Debate adjourned, on motion by The Hon. F. J. S. Wise.

OFFENDERS PROBATION AND PAROLE ACT AMENDMENT BILL

Second Reading

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Justice) [3.35 p.m.]: I move—

That the Bill be now read a second time.

For the purpose of explanation, the provisions of the Bill may be divided into two groups. Firstly, there are those which are designed to resolve various doubts and difficulties that have been encountered in putting into practice the provisions of the existing Act. Secondly, there are those which are designed to implement an agreement between all States and the Commonwealth for the enactment in all Australian jurisdictions of provisions which will serve to maintain proper control of probationers and parolees, who are resident in some Australian jurisdiction other than the one where they were granted probation, or, as the case may be, parole.

I will deal firstly with those provisions of the Bill which are designed to overcome existing doubts and difficulties. I refer first to clause 16 of the Bill. It is now provided that where a person is sentenced to imprisonment for less than 12 months, the court may fix a minimum term. Where the sentence is 12 months or more, the court shall fix a minimum term subject to specific qualifications and discretions.

At present, an anomalous situation exists in that some prisoners, with cumulative sentences totalling 12 months or more, are denied the fixing of a minimum term because their separate sentences, none of which is as much as 12 months, were imposed at different times. The amendments now proposed to section 37 of the Act will permit minimum sentences to be fixed in such cases.

Clause 16 also deals with another matter. On occasion, lower courts fail, unintentionally, to fix a minimum term. The procedure now laid down, whereby the Comptroller-General of Prisons may ask the Supreme Court to fix a minimum term in such cases, involves spending quite a lot of time and effort on what is basically a formal procedure. What is now proposed is that, where a court of petty sessions imposes a sentence, in respect of which the court would normally be required to fix a minimum term, but does not, it will, if the reason for such omission is because of the exercise of the discretion now given it by section 37(2)(a) of the Act, endorse that fact on the record. In the absence of any such endorsement, the failure to fix a minimum shall be deemed due to inadvertance and a minimum term of one-half of the period of imprisonment imposed shall automatically apply.

The idea of clause 17 of the Bill is to make it clear that, where a parolee is sentenced to a further term of imprisonment whilst on parole, the latter term is to be served cumulatively on the unexpired portion of his original sentence, unless the sentencing court makes an order to the contrary.

Clause 18 is aimed at rectifying the situation which can now exist where a prisoner, who has been denied parole by the Parole Board, must serve the full term of imprisonment imposed on him, but another prisoner—possibly of worse character and record—serving a term of imprisonment in respect of which no minimum term has been fixed, is eligible to have up to one-quarter of his sentence remitted for ordinary good behaviour. In this connection, it must be remembered that, even where a minimum term has been fixed, parole is not automatic, but entirely a matter for the discretion of the board.

It is felt that, in those cases where the board withholds parole, considerations of prison discipline require that the prisoner should remain in a position where he knows that good behaviour will earn him tangible reward.

Clause 19 proposes amendments to section 40 of the Act, which will have the effect of permitting the Comptroller-General to ask the Supreme Court to fix a minimum term in respect of the sort of situation I mentioned when discussing clause 16; namely, where the eligibility for a minimum term has arisen only as the result of the cumulation of two or more sentences imposed at different times, each such sentence being for a term of imprisonment of less than 12 months.

Clause 20 has a twofold aim. Firstly, it is to permit a prisoner, who has been sentenced to a finite term with a minimum, and also to an indeterminate term, to be paroled in respect of both terms as from the expiry of the said minimum term, with the proviso that if he has been declared an habitual criminal, the Governor's consent will be required if he is to be paroled within two years of the expiration of the said minimum.

Secondly, it is to permit the Parole Board to make a parole order subject to any condition that it considers necessary; at present, its powers in this regard are limited to the particular conditions set out in the regulations.

The next clause I would like to mention is clause 22. Several "lifers" have already been released under section 42. In one instance, a native prisoner, so released, left his employment, started drinking and generally behaving in such a manner as to leave no reasonable hope of his eventual rehabilitation. The board considered it expedient to cancel his parole and return him to prison, with the idea of reparoling him after a month or so if employment in a suitable locality could be found. However, doubts have arisen whether it is within the competence of the board to reparole such a prisoner without a further order by the Governor. The proposed amendment will make it clear that the board has this power.

Clause 24 would give a power to suspend parole as an alternative to cancellation. Unlike cancellation, suspension would not

leave the prisoner to serve the entire period of the sentence in excess of the minimum term—that is, it would leave him "in credit" with regard to the time already served on parole.

The same clause would also make it possible, in the case of reparole after cancellation, for the board to order that all or any of the period already served on parole should be regarded as time served under the sentence concerned.

Yet another amendment proposed by this clause is one which would make it possible for the board, in the event of cancellation, to authorise the prisoner to be brought before it, rather than returned to prison.

Clause 25 proposes an amendment to section 47. Subsection (3) of this section authorises the board to release on parole any prisoner who, at the time of the Act coming into force, had less than 12 months to serve. A number of prisoners were released under this provision and some doubt and difficulty has now arisen with regard to the legal position of some of them. The doubt arises when we try to equate the position of such parolees with that of other parolees who are released in the normal way, after serving a specified minimum term. What is the term of the parole? Does it continue until such time as the full term of the parolee's sentence has expired, or is it to be reduced in accordance with the remission regulations? That is, is the parolee to be released from parole when, subject to good conduct, he would have been released from prison? It was always the intention that the parole period would run for the remainder of the full sentence. The amendment now proposed will make this quite clear.

Then, there is the anomaly which can arise when a person, who has been paroled under this provision, is convicted of a crime committed during the parole period and is sentenced to a further term of imprisonment, with a minimum term being fixed.

By reason of the fact that no minimum term was fixed in respect of his original sentence, he is obliged to serve the full remainder of that sentence before he begins to serve the minimum term fixed in respect of the subsequent sentence. On the other hand, the parolee who errs in the same way, but whose parole commenced from the expiration of a minimum term, commences to serve his new minimum term immediately.

The proposal is to remove this distinction by deeming the person who has been released pursuant to section 47 (3) to have been released after the expiration of a minimum term. It is logical that these anomalies have come to hand from the light of experience and we are now endeavouring to sort them out.

So much for those provisions of the Bill which are designed to circumvent difficulties that have arisen in the application of the present Act. I now come to the other provisions designed to implement the agreement between the States and the Commonwealth, to which I referred earlier.

The general idea is that persons on probation or parole should remain in the State or Territory where the probation or parole was granted. This Bill postulates that general rule. However, it can be understood that circumstances frequently arise when the legitimate interest of the probationer or parolee requires that he be permitted to travel to, and possibly reside in, another part of Australia—the last-mentioned provisions of the Bill provide for permission to do this.

When a probationer or parolee does move to another State or Territory, it is obviously desirable that the parole and probation authorities, and the courts, of that other State or Territory should be in a position to exercise the same sort of control over him as could have been exercised by the same authorities and courts of his home State, had he remained there.

In April, 1963, the Standing Committee of the Commonwealth and State Attorneys-General took up a suggestion, made by Queensland, that all States and the Commonwealth, in respect of its Territories, should legislate to establish these desirable controls.

At the request of the Standing Committee, Queensland prepared a draft Bill in which were set out the necessary proposals for uniform legislation. This Bill has since been discussed by the Attorneys-General and their officers and has been commented on by all Australian parole and probation authorities. Wherever feasible, the Bill has been amended to make it conform to the ideas of the parole and probation authorities.

The Standing Committee has now agreed on the form of the uniform Bill and the relevant provisions of our present Bill are consistent with what was so agreed. The probation and parole authorities in this State have expressed themselves as being satisfied with the proposed new measures.

Queensland has already implemented the provisions of the uniform Bill by legislation, and the other States and the Commonwealth are expected to follow suit in due course.

The relevant part of the present Bill commences at clause 26 and contemplates putting into our Act a whole new part; namely, part IIIA.

Sitting suspended from 3.49 to 4.2 p.m.

The Hon. A. F. GRIFFITH: The proposed new part comprises 23 clauses. It is quite substantial and I do not propose to go

through it in detail at this stage, but simply to outline the scheme which it provides.

Provision is made that where a probationer or parolee from another part of Australia comes to this State, he must report to the proper authority in this State. A probation or parole officer of this State may be assigned to effect the normal supervision.

With the probationer, a court in this State, having jurisdiction similar to the court in the State or Territory which made the probation order, may discharge the order or amend it. Provision is made for the communication to the home State or Territory of the news of any such discharge or amendment.

Where a probationer is in breach of his probation, otherwise than by conviction, he is deemed guilty of an offence and, in addition to being fined for that offence, may be returned to his home State or Territory, or dealt with here by our courts, in respect of the conviction on which the probation was granted, in any way that he might have been dealt with by the courts of his home State or Territory, had such a breach occurred there.

However, it is provided that such a defaulter shall not be dealt with by our courts in respect of the conviction on which the probation was granted, unless the appropriate court or authority in his home State or Territory has indicated that it does not want him sent back. Similar provisions exist with regard to a breach of probation by conviction.

So far as the parolee is concerned, our Parole Board may cancel, suspend, or vary the parole, giving appropriate advice to its opposite numbers in the home State or Territory.

Where the parole is cancelled, whether by our board, the Parole Board in the other State or Territory, or automatically on conviction, the parolee may be returned to his home State or Territory, or, provided he is not wanted back home, may be imprisoned here for the remainder of his term. Reparole may be granted in appropriate cases after cancellation. There is also provision for punishing parolees for breaches of parole otherwise than by cancelling their parole.

There is much detail of a procedural and enabling kind which I have not mentioned, but I think what I have said is sufficient to give members an idea of the general scope of the proposed new part.

Before I conclude I would like to take the opportunity to say that this legislation, which members will recollect was introduced in 1963, has now had a reasonable time in which to be tested—if I can put it that way—and I say without hesitation that by and large it has worked very well. The members of the board have certainly worked well and the officers of the parole service have assisted very greatly in bringing the legislation to fulfilment. Therefore I think it appropriate to take the opportunity to thank all those concerned with the legislation for the efforts they have made.

The Bill contains amendments which have been found to be necessary as a result of experience and I would venture to suggest that as time goes by we will find further amendments are necessary. The Bill is presented to the House with the idea of improving the legislation and I commend it to members.

Debate adjourned, on motion by The Hon. F. R. H. Lavery.

ADJOURNMENT OF THE HOUSE: SPECIAL

THE HON. A. F. GRIFFITH (North Metropolitan—Minister for Mines) [4.6 p.m.]: I move—

That the House at its rising adjourn until Tuesday, the 1st October.

Question put and passed.

House adjourned at 4.7 p.m.

Legislative Assembly

Thursday, the 19th September, 1968

The DEPUTY SPEAKER (Mr. W. A. Manning) took the Chair at 2.30 p.m., and read prayers.

QUESTIONS (30): ON NOTICE

FISHING

Crayfish Bait: Netting

1. Mr. FLETCHER asked the Minister representing the Minister for Fisheries:

   (1) Am I correctly informed—

   (a) by certain Fremantle fishermen that only those subject to permission can net salmon in season in certain areas adjacent to Fremantle;

   (b) that permission to catch is associated with an undertaking to sell the catch to Tropical Traders, Fremantle;

   (c) that a fisherman from Mandurah, for example, can catch them in any area on the coast, including the area barred to Fremantle fishermen?

   (2) What areas under the Fremantle Port Authority jurisdiction are—

   (a) open for such fishing;

   (b) closed for such fishing?