Mr. BRAND: Yes; I think I can say at this point of time that we will not be sitting during Show week.

Mr. Graham: Hear, hear!

Mr. BRAND: We did not sit last year and I think it was a break in the session. It may mean we will be here for a few extra days; nevertheless, it seems to me some members like to remain here for the extra time. Last year that arrangement worked out very satisfactorily, and it did not unnecessarily delay the end of the session. As I say, it is the intention of the Government not to sit during Show week.

I would like to thank those members who did support the Government and say a cheery word about its achievements. When I introduce the Loan Estimates and the General Estimates members will see what real progress is being made in Western Australia; because it all gets back to stability in the economy, and the Estimates will surely prove this, as members will see.

Mr. Fletcher: Three cheers for us!

Question put and passed; the Address-in-Reply thus adopted.

BILLS (14): INTRODUCTION AND FIRST READING

1. Vermin Act Amendment Bill.
   Bill introduced, on motion by Mr. Nalder (Minister for Agriculture), and read a first time.
2. Fire Brigades Act Amendment Bill.
   Bill introduced, on motion by Mr. Ross Hutchinson (Chief Secretary), and read a first time.
3. Forests Act Amendment Bill.
   Bill introduced, on motion by Mr. Bovell (Minister for Forests), and read a first time.
4. Inquiry Agents Licensing Act Amendment Bill.
   Bill introduced, on motion by Mr. Craig (Minister for Police), and read a first time.
5. Alsatian Dog Act Amendment Bill.
   Bill introduced, on motion by Mr. Nalder (Minister for Agriculture), and read a first time.
6. Anzac Day Act Amendment Bill.
   Bill introduced, on motion by Mr. Brand (Treasurer), and read a first time.
7. Agricultural Products Act Amendment Bill.
8. Brands Act Amendment Bill.
   Bills introduced, on motions by Mr. Nalder (Minister for Agriculture), and read a first time.
9. Radioactive Substances Act Amendment Bill.
10. Chiropractors Bill.
    Bills introduced, on motions by Mr. Ross Hutchinson (Minister for Health), and read a first time.
11. Supreme Court Act Amendment Bill.
    Bill introduced, on motion by Mr. Evans, and read a first time.
12. Death Penalty Abolition Bill.
    Bill introduced, on motion by Mr. Graham, and read a first time.
13. Door to Door (Sales) Bill.
    Bill introduced, on motion by Mr. D. G. May, and read a first time.
14. Painters' Registration Act Amendment Bill.
    Bill introduced, on motion by Mr. Graham, and read a first time.

House adjourned at 11.10 p.m.

Legislative Council

Thursday, the 27th August, 1964

CONTENTS

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

QUESTIONS ON NOTICE

1. *This question was postponed.*

MALCOLM-LAVERTON RAILWAY LINE

Deferment of Removal

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

As the Hunt Oil Company is drilling and exploring for oil in the Warburton area, and a Canadian company is making a geological survey of the Leonora-Laverton area, will the Minister defer the removal of the Malcolm-Laverton railway line for at least another 12 months?

The Hon. A. F. GRIFFITH replied:

Service on the Malcolm-Laverton line was suspended on the 24th June, 1957. Parliament authorised the closure of the line by Act No. 76 of 1960, Railways (Cue-Big Bell and other Railways) Discontinuance. At the request of the Closure of Lines Committee, proclamation of the closure was issued on the 30th March, 1964, and the committee let a contract for the sale of the rails. The contractor has already lifted approximately 1,000 tons of rail and some 250 tons are now in transit to the coast. In the circumstances, the honourable member's request cannot be acceded to. Before proclamation action was taken, the possible future need of the railway was reassessed.

COMPREHENSIVE WATER SCHEME

Increased Extension to Dalwallinu Shire

3. The Hon. J. HEITMAN asked the Minister for Mines:

As the rising salt water tables are causing dams and well-water supplies to become salty and useless for stock in the Dalwallinu Shire, will the Government extend the comprehensive water scheme to serve the whole of this area?

The Hon. A. F. GRIFFITH replied:

No undertaking can be given to extend the comprehensive water scheme to the whole of the Dalwallinu Shire, which is approximately 3,500,000 acres in extent. The scheme recently considered by the Commonwealth Government covers an area of approximately 3,700,000 acres at an estimated cost of £10,500,000 and embraces approximately 320,000 acres within the Dalwallinu Shire area.

STATE SCHOOLS

Items Provided by Parents and Citizens' Associations

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

With reference to my question on Wednesday, the 19th August, 1964, relating to items provided to schools by parents and citizens' associations, will the Minister supply an itemised list of articles and apparatus or equipment that are subsidised by the Education Department, indicating the percentage of subsidy in each case?

The Hon. A. F. GRIFFITH replied:

Approved items of visual education equipment—50 per cent. of total cost. Permanent Oslo lunch fittings—50 per cent. of total cost up to a maximum of £50 per annum. Library books—50 per cent. of total cost with a maximum ranging from £40 to £60 per annum according to the class of school. The following library grants are also made: £10 per annum to junior high schools and three-year high schools; £20 per annum to senior high schools. Radios and sound amplifying equipment—50 per cent. of total cost. Pianos and repairs—50 per cent. of total cost. Physical education equipment—50 per cent. of total cost with a maximum varying from £5 to £25 per annum according to class of school. Duplicators—50 per cent. of total cost with a maximum varying from £40 to £80 per annum according to class of school. Brass band instruments—50 per cent. of total cost up to a maximum of £100 per annum for three years.

FLASHING LIGHTS

Installation at Ramsay Street Level Crossing, Norseman

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

(1) Has any decision been arrived at regarding the installation of flashing lights at the Ramsay Street level crossing at Norseman?

(2) If a favourable decision has been reached, when can it be expected that the level crossing will be equipped with flashing light apparatus?

The Hon. A. F. GRIFFITH replied:

(1) This crossing was discussed at the last meeting of the Railway Crossing Flashlights Committee

but was not recommended for flashing lights. However, there have been further inspections and correspondence with the local authority and the position is to be reviewed at the next committee meeting to be held shortly.

(2) Answered by No. (1).

CLAY DEPOSITS

Availability at Esperance

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

Are there any known clay deposits reasonably adjacent to Esperance that would be suitable for brickmaking?

The Hon. A. F. GRIFFITH replied:

The nearest known clay which may be suitable is at Dalyup River, 20 miles west of Esperance, but no detailed search has been made by the department.

QUESTION WITHOUT NOTICE

FLOODING IN WOLSELEY STREET, MORLEY

Relief for Affected Residents

The Hon. R. F. HUTCHISON asked the Minister for Mines:

(1) As one of the three representatives for Morley in the Legislative Council, will the Minister use his influence both at Government and local shire level to have something done immediately to bring relief to the people in Wolseley Street, Morley, who are in a desperate position through flood waters now surrounding the houses?

(2) Will the Minister, as a representative of these people, inquire if these tenants will be eligible for flood relief from the funds of the public appeal now being conducted?

The PRESIDENT (The Hon. L. C. Diver): I would draw the attention of the honourable member to the fact that I propose to allow this question to be asked without notice; but under Standing Order No. 60 it will be noticed that the question is really out of order.

The Hon. R. F. HUTCHISON: I understood I was in order.

The Hon. A. F. GRIFFITH replied:

(1) and (2) I received scant notice of this question which is being asked without notice. As a Minister I have no influence with the local shire council. I think the honourable member had better put the question on the notice paper in order that I can give a considered reply.

ELECTORAL ACT AMENDMENT BILL

Standing Orders Suspension

THE HON. A. F. GRIFFITH (Suburban —Minister for Justice) [2.38 p.m.]: I move, without notice—

That so much of the Standing Orders be suspended as to enable the second reading of the Electoral Act Amendment Bill to be moved at this sitting.

THE PRESIDENT (The Hon. L. C. Diver): This motion requires the concurrence of an absolute majority.

THE HON. F. J. S. WISE (North—Leader of the Opposition) [2.40 p.m.]: I wish to speak to this motion. I would like to say I have no objection to it, because I understand the circumstances requiring its introduction at this point; and that is to allow a lapse of time to give us a chance to examine the Bill. I do not wish to make a speech, but would not like a "No" to be called, that being my view of the situation.

THE HON. A. F. GRIFFITH (Suburban —Minister for Justice) [2.41 p.m.]: I think the House is entitled to an explanation as to why I have moved this motion. I am grateful to Mr. Wise for his words on the matter. For some reason, possibly because I did not count time, I did not realise I should have given notice of my intention on Tuesday so that I could have moved the motion yesterday and proceeded to the second reading today. In view of the imminence of an occurrence which will cause us to adjourn next week, by taking this action it simply affords me the opportunity of making the second reading speech and having the Bill circulated to members in order that they might have ample opportunity to consider what is in it. The second reading speech that I will shortly give will amplify the situation in regard to the contents of the Bill.

Question put.

THE PRESIDENT (The Hon. L. C. Diver): As I said previously, this motion requires the concurrence of an absolute majority. I have counted the House; and there being an absolute majority present and no dissentient voice, I declare the motion carried.

Question thus passed.

CONSTITUTION ACTS AMENDMENT ACT (No. 2) 1963, (POSTPONEMENT) BILL

Standing Orders Suspension

THE HON. A. F. GRIFFITH (Suburban —Minister for Justice) [2.42 p.m.]: I move, without notice—

That so much of the Standing Orders be suspended as to enable the second reading of the Constitution

Acts Amendment Act (No. 2) 1963, (Postponement) Bill to be moved at this sitting.

Question put.

THE PRESIDENT (The Hon. L. C. Diver): To be carried, this motion requires an absolute majority. I have counted the House; and, there being an absolute majority present and no dissentient voice, I declare the motion carried.

Question thus passed.

ELECTORAL ACT AMENDMENT BILL

Introduction and First Reading

Bill introduced, on motion by The Hon. A. F. Griffith (Minister for Justice), and read a first time.

Second Reading

THE HON. A. F. GRIFFITH (Suburban —Minister for Justice) [2.43 p.m.]: I move—

That the Bill be now read a second time.

I would like to express my appreciation to the House for allowing the suspension of Standing Orders in order that this Bill might be dealt with. This is not a matter of urgency, but rather a matter of convenience; because now that this Bill has been circulated, members will have an opportunity during the next week to examine its contents.

Last session, when introducing the Electoral Districts Act Amendment Bill, which provided for the redivision of the State into 15 provinces instead of the existing 10, I foreshadowed in my remarks the pending amendments to the Constitution Acts Amendment Act—which were subsequently passed—and stated that amendments to the Electoral Act would not be introduced in the 1963 session.

The reason given for this was that, in addition to making provision for adult franchise, other amendments would be required and the opportunity would be taken to closely examine the Electoral Act to give effect to all the necessary amendments.

The proposed amendments contained in this Bill provide for adult franchise, compulsory enrolment and compulsory voting for the Legislative Council, and they have been prepared on the basis that there will be a registrar for each Legislative Assembly district who will also be the registrar for the corresponding district of a province. Under these amendments, only one claim card will be required and the one roll will be used for both Legislative Assembly and Legislative Council elections.

The Bill, which contains a provision that it will not become operative until a date to be proclaimed, includes amendments considered essential to follow the amendments to the Constitution Acts Amendment Act of 1963. Though of considerable length, this Bill may be regarded as a purely formal measure, so I think it would be desirable to give some brief comment on the clauses seriatim.

The proclamation in clause 2 would coincide with the date of the proclamation under the Electoral Districts Act bringing the 15 new provinces into existence between the 10th and the 31st December of this year. The next is a consequential amendment.

The interpretation of "conjoint election" in paragraph (a) will cover the holding of two general elections on the one day where considered desirable. Other amendments in clause 4 are either consequential or are now included in the Interpretation Act. Clause 5 provides for each Legislative Assembly registrar to be the registrar for the corresponding district of the province, obviating the necessity for a separate registrar for a province.

Clause 6 refers to the qualification of electors, and the wording in the amendment extends the qualification provisions to include electors for both the Legislative Assembly and the Legislative Council. Provision is also included for the enrolment of a member of the Council and his wife for a district of the province which he represents. This extends the corresponding existing provision of the Act which applies only to a Legislative Assembly member and his wife.

Clause 7 refers to electoral rolls and entitlement to vote, and the amendments anticipate the use of one roll for both Houses and confirm the entitlement of each elector whose name appears on a Legislative Assembly roll to vote for a Legislative Council election for the province of which the Assembly district forms part.

The amendment to clause 8, relating to the keeping of rolls by the registrar, is consequential to clause 7. Clause 9 contains a consequential amendment, as the qualification of Legislative Council electors will no longer be required to be shown on the rolls. Clause 10 contains a recasting of the provisions in respect of copies of rolls being available for public inspection and is again consequential to the provisions in clause 7.

The next five clauses are of a consequential nature or corrections of title and require no further elucidation at this time; which brings us to clause 16, which is consequential to the introduction of adult franchise and will remove mention of "qualifying property" from the section of the Act dealing with the essential particulars of a claim. A claim for enrolment for the Council would be made on the same card as for the Assembly. No particular comment is considered necessary at the

moment with respect to clauses 17 to 22 as, in the main, they are consequential or corrections of title, but in clause 23 is contained the important provision for triennial elections in the Legislative Council instead of biennial elections.

The amendment in clause 24, which follows upon the adult franchise provisions, extends to Legislative Council general elections the same provisions as apply to Legislative Assembly general elections in that polling day will be on the same day in each province.

Clause 25 has particular reference to the North Province. For the purpose of this clause the north-west area, which previously comprised the North Province only, will now also include the Murchison Electoral District, and will embrace two provinces.

Under clause 26, which is also consequential, the Clerk of the Writs' notice of intention to issue a writ will be sent to each registrar in the province. Clause 27 is also consequential, and the amendments contained in clause 28 give uniformity to postal voting in elections for both Houses instead of the separate provisions contained in the existing section 90. In the case of a conjoint election, one application from an elector will suffice for the two general elections. In a similar manner, under clause 29, one declaration will suffice from the one elector in a conjoint election.

The next amendment, clause 30, is consequential upon the concept that an elector voting at a polling place other than one in the district for which he is enrolled will be required to make an absent vote for a Council or an Assembly election. This is similar to the requirements in the Victorian and Commonwealth Acts.

Clause 31 makes uniform the provisions for recording votes in a mobile portable ballot box for Assembly and Council elections. In Council elections up to the present, with non-compulsory voting, the mobile portable ballot box has been taken to a Council voter only after he has sent a message to the presiding officer requesting he be afforded the right to vote.

The new section 102A introduced through clause 32 deals with conjoint elections, and the provisions now to be incorporated in the parent Act have been culled from the Victorian Act. They clarify the position of returning officers and staff at a conjoint election. The new section also gives the Chief Electoral Officer authority to issue such directions as he considers expedient to implement the proper and efficient conduct of any election.

Under clause 34, either the registrar or the Chief Electoral Officer will be enabled to sign and date printed rolls for use in polling places for an election. Delay which may have occurred in the dispatch of rolls to a remote place when, under existing conditions, they would have to be sent first to a country registrar for signature, will thus be avoided.

The next amendment, clause 35, will, with adult franchise, give a uniformity not at present possible to the questions to be asked of electors attending to vote. Again, it will obviate the necessity for two declarations being requested of an elector at a conjoint election.

Clause 36 deals with section 122A voting. Under this clause a claimant for a section 122A vote may apply for a vote only in the district in which he is, or should be, enrolled. As with postal voting and absentee voting, the amendment provides for one declaration only in a conjoint election.

The amendment in clause 37, though brief, is important for it will make the provisions under division 7 relative to compulsory voting applicable to both Legislative Assembly and Legislative Council elections. It will be seen also that under clause 38 all the compulsory voting provisions of section 156 will apply to both Legislative Council and Legislative Assembly elections.

The final amendment is a purely formal one providing for the repeal of the subsection covering the gazettal and tabling of regulations as this procedure is covered by the Interpretation Act.

In concluding this brief summary of the provisions contained in this measure, Mr. President, I would point out that they can come into operation when the State is divided into 15 elector provinces, some time between the 10th and the 31st December next. Should there be any points on which members may desire further information, I shall be pleased to clarify them as the debate proceeds.

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

CONSTITUTION ACTS AMENDMENT ACT (No. 2) 1963, (POSTPONEMENT) BILL

Introduction and First Reading

Bill introduced, on motion by The Hon. A. F. Griffith (Minister for Justice), and read a first time.

Second Reading

THE HON. A. F. GRIFFITH (Suburban —Minister for Justice) [2.57 p.m.]: I move—

That the Bill be now read a second time.

I wish to say that I appreciate the attitude of the House in permitting me to use the method I have employed in order to move the second reading of the Bill. Having the two Bills introduced together will enable members to see the processes that have been employed to put into effect the wishes of Parliament that were expressed last year.

As we are all aware, the Government introduced in this Chamber last session the first stage of a legislative scheme for

the redistribution of the 50 Legislative Assembly districts into 15 electoral provinces containing complete and contiguous Legislative Assembly districts, and for the conduct of the Legislative Council elections upon the basis of adult franchise with compulsory enrolment and compulsory voting.

Certain legislation to effect this result was passed last year and consisted of an amendment to the Electoral Districts Act, 1947-1955, and an amendment to the Constitution Acts Amendment Act, 1899-1963, and I explained to members it would not be necessary in that session of Parliament to bring down any further complementary legislation, particularly as the Government desired to have the opportunity of closely examining relevant Acts. The introduction during this session, therefore, of appropriate amendments to the Electoral Act, 1907-1962, and of this Bill, hinges on the indications previously given to the House.

I think it is desirable now that we have reached the present stage in the transition from one system with respect to the Legislative Council to another to review briefly the progress which has been made up to date. In order to give a clear indication to members of the processes which are involved, we might look upon the Electoral Districts Act Amendment Act, 1963, as consisting of two distinct parts, though not clearly defined as such, as are some pieces of legislation which consist of divisions and parts.

The first part of the Electoral Districts Act Amendment Act, 1963, provided for the appointment of electoral commissioners, defined clearly their duties to divide the State into 15 electoral provinces comprising complete and contiguous Legislative Assembly districts, and to report to the Governor. This action was to be taken upon the proclamation of the amending Act. The Act was proclaimed on the 28th February last, the commissioners were appointed, and the redistribution proceeded with.

The second part of the amending Act required the Governor, as soon as practicable after the receipt by him from the electoral commissioners of their report and the map, to publish these in the *Government Gazette*. This was done on the 29th May, 1964. On a day to be fixed by proclamation, which day under the Act was not to be earlier than the tenth day or later than the thirty-first day of December, 1964, the 15 new electoral provinces shall by virtue of the proclamation and, notwithstanding any other provisions in any other Act, be the electoral provinces in the State for the Legislative Council and shall have the names and boundaries assigned to them in the report instead of the 10 electoral provinces existing before the appointed day, which is the 28th February, 1964.

It will be appreciated then that the Electoral Districts Act Amendment Act, 1963, made provision for two proclamations—firstly, the general proclamation of the Act itself; and, secondly, and quite distinctly, the proclamation by the Governor of the day for the new boundaries to come into operation. In a somewhat similar manner, the amendment to the Constitution Acts Amendment Act (No. 2) of 1963, passed last session, covers two distinct phases of which a brief description is thought to be desirable.

The first phase covers the immediate requirements in regard to sitting members, and these provisions are contained in sections 1, 2, 5, 6, 7 and 11 of the Act. Sections 1 and 2 are formalities; section 5 makes provision for the extension and limitation of terms of service of certain members, retirement of members periodically, and times for issue and return of writ. Section 6 provides for the determination of members whose terms are extended or limited. Section 7 deals with the allocation of electoral provinces to sitting members, and section 11 is merely a consequential amendment.

The second part consisting of the remaining sections concerns matters authorised last year but dependent for their implementation upon future amendments to the Electoral Act, 1907-62. They are as follows:—

> The provision in section 3 that the State shall have 15 electoral provinces with two members representing each province;
>
> section 4, which alters the qualification of members of the Legislative Council, the period of residence from two years to one year and the age of members from 30 to 21 years;
>
> section 8, which varies the qualification and disqualification of electors;
>
> section 9, which repeals the provisions entitling joint owners and occupiers to be registered as electors; and, lastly,
>
> section 10, which removes the disqualification of electors from the Legislative Council.

It will be appreciated by members that last year's Bill to amend the Constitution Acts Amendment Act, 1899-1963, was not to come into operation until proclaimed.

As previously explained, a similar requirement was contained in the Electoral Districts Act Amendment Act, 1963. The Constitution Acts Amendment Act (No. 2), 1963, was proclaimed to come into operation on the 26th March last. Early proclamation was essential in order to provide for the urgent contingencies arising out of the extension and limitation of terms of service of certain members, the method of allocation of electoral provinces to sitting members, and so forth; but, until the Governor makes his proclamation, which must be some time between the 10th

and the 31st December next, the other provisions relating to the 15 new electoral provinces, varied enrolment qualifications, etc., must necessarily be postponed, and that is the purpose of this Bill which I am now introducing to the House.

There is only one other small point in the Bill calling for explanation, and that is the amendment to correct a typographical error contained in clause 3 which provides for a substitution of the word "or" for the word "of." This amendment is necessary in the new section 8B which deals with the allocation of electoral provinces to sitting members. Subsection (4) of section 8B states that nothing in this section prevents any one of the 15 members referred to in subsection (1) of the section from applying to sit for any one of a number of electoral provinces. It will be obvious that what was meant was that nothing in the section would prevent any of the 15 members from applying to sit for any one of a number of electoral provinces, for a member may well desire to apply for more than one province.

I trust the foregoing explanation of the purpose of this measure, when taken in conjunction with the review of progress made in the scheme of legislation, will be sufficient to clarify in the minds of members the necessity for its introduction at this point of time. It will be appreciated of course, that the main force of the legislative procedures necessary to give effect to the changes in regard to Legislative Council elections is contained in a Bill to amend the Electoral Act, 1907-62, which I have introduced this afternoon. The Bill will provide the machinery for implementing the authorities contained in other complementary legislation.

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

ADMINISTRATION ACT AMENDMENT BILL

Second Reading

THE HON. A. F. GRIFFITH (Suburban —Minister for Justice) [3.7 p.m.]: I move—

That the Bill be now read a second time.

This Bill concerns us mainly in relation to administrative procedures. Its passing would assist greatly in facilitating the administration of estates. Section 28 of the Administration Act allows sureties to administration bonds to be dispensed with in certain cases. One of the circumstances which applies in that regard is in the case of a person who dies leaving property not exceeding £1,000 in value with administration being granted to the husband or widow of the deceased.

The effect of the amendment appearing in the second clause of this Bill is to dispense with the necessity to enter into sureties in respect of an administration bond in such circumstances, though the property left is of a value up to £2,500. This also is the statutory amount a surviving spouse is now entitled to under section 14 of the Act. The exemption of £1,000 was determined 20 years ago and, with the depreciation in value of the pound, it is suggested the figure of £2,500 in present-day money is reasonable.

Section 62 sets out that the seal of the court shall not be affixed to any foreign probate or administration papers until the specified duties and fees have been paid, as would have been payable or required if such had been originally granted by the court, and bond entered into by the executor, administrator, or attorney.

It would appear on the strict construction of this section that a probate or administration should not be resealed unless the duty has actually been paid. It would seem on the strength of this section that the provision for the securing of duty to the satisfaction of the commissioner has no effect in the case of a resealing. It has been recommended, therefore, that the section be amended to provide for the cases in which duty is secured or part paid and in part secured as indicated in subsections (2) and (4) of section 71. The purpose of the amendment in clause 3 is to make such provision.

The next amendment is to permit the appointment of a deputy to the Commissioner of Probate Duties. This is proposed in clause 4 by the insertion of a new section numbered 65B. Although appointments may be made from time to time under the Interpretations Act to cover foreseeable absences of the commissioner on leave, etc., it is considered preferable to provide in the Administration Act itself for the appointment of a person as deputy of the commissioner who can act forthwith in the absence of the commissioner.

The next section to be amended deals with the filing of statements by an executor or administrator. As the section reads at present, persons are required to lodge the statement of assets and liabilities in the office of the commissioner. In actual fact, they are filed in the probate office of the court, being supported by affidavit. The amendment in clause 5 consequently effects a procedural alteration relative to the filing of duty statements to conform to the existing practice.

Section 67 as it stands at present permits the court to order the filing of a statement in respect of the estate of a deceased person if the commissioner is dissatisfied with it; and, in that event, the commissioner is empowered to assess the duty payable on the estate. This section is to be repealed and re-enacted with amendments.

The section empowers the court to order a statement to be filed, but does not provide for any order in regard to a statement with which the commissioner is dissatisfied. One of the problems overcome by the proposals in clauses 6 and 10 of this Bill, with respect to sections 67 and 125, respectively, is the power to enforce answers to requisitions. It is considered such powers would be better placed under section 125. This is being done; and this permits the portion of section 67 dealing with unsatisfactory statements to be deleted.

Under the existing provisions of subsection (2) of section 71, probate or letters of administration may not be issued until the duty is paid. But there is contained in section 69A power to remit or postpone payment of duty in certain cases of estates when the finally assessed balance does not exceed £10,000. As a consequence, it is necessary to provide in section 71 that the probate or letters of administration can issue where duty has been deferred in accordance with the provisions of section 69A. This consequential amendment appears in clause 7 of the Bill.

The next amendment, namely, clause 8 amending section 108 permits an increase in the rate of interest on unpaid duty from 4 per cent. to such rate not exceeding 10 per cent. per annum as the Treasurer may from time to time declare. This is the interest which shall be charged on all duty payable under the Act from and after the expiration of three months from the time when the duty first becomes chargeable until the duty is paid. It is in fact regarded as part of the duty imposed by the Act.

However, it is pointed out that interest is not charged on deferred duty during the period of deferment. Furthermore, the commissioner has discretionary power in the postponement of the date from which interest shall be charged. The statutory rate of 4 per cent. enacted in 1934 is considered inadequate for the purpose of the section, which is to prevent undue delay in payment of duty.

On the other hand, the high rate of 10 per cent. operative in some other States and effective in some cases from the date of death is considered not warranted here. The present practice of computing it three months after the date of assessment is more reasonable. Nevertheless, the rate of 4 per cent. is now inadequate compared with the current much higher rates which a trustee can receive from investments. As a consequence of the low rate now charged, it is sometimes considered by those concerned in the administration of estates to be to the advantage of estates to defer payment of duty despite the application of the penalty rate. It should be readily appreciated that such deferment is detrimental to all reasonable requirements necessary to facilitating the administration of estates.

Clause 9 contains an amendment lifting from £200 to £1,000 the duty free value of any shares in the name of a deceased person, stock debentures, money on fixed deposit, etc., policy of life assurance together with any bonus or benefits payable thereunder.

This section was incorporated in the parent Act in 1934 to prevent custodians from transferring assets of a deceased estate to a nominee or other person without sighting a certificate from the probate office. From the 1st January, 1935, estates under the value of £200 were exempted from duty. It is submitted that £1,000 today would be a fair equivalent of £200 in 1935 for the purposes of duty assessment. The proposal in this Bill to increase the figure from £200 to £1,000 is somewhat parallel to the recent amendment to the Death Duties Taxing Act. Those exemptions from duty now range from £1,000 to £2,500.

The purpose of the next amendment was mentioned when explaining clause 6 amending section 67. The amendment to section 125 in clause 10 has been inserted in the Bill to extend the effective powers of the commissioner to ascertain ownership and any pertinent facts necessary for him to carry out the provisions of that part of the Act relating to duties on deceased persons' estates.

It is considered that the overall powers of inspection of land, buildings, and documents laid down is one which should be used only in extreme circumstances. However, there are always some persons who are dilatory in replying to requests, and, as a consequence, the additional work caused by this minority section impedes the administration of these estates and other estates also. The re-enacted section, while retaining the full powers of inspection, makes the further provision by which the commissioner may require any person by written notice to furnish such information as required under penalty of a £200 fine.

Under section 139 of the parent Act, deposits not exceeding £50 in any bank may be paid to the widow or next of kin without probate or administration. There is provision for a tentative period of three months' delay, together with notification to the Public Trustee—presumably because on death a person's estate vests in the Public Trustee and he might be required to administer the estate.

The purpose of the amendment appearing in clause 11 is to increase from £50 to £200 the amount of deposit which may be paid out by a bank after three months' delay if no probate or administration is produced during that period. This amount again reflects the reduced purchasing power of the pound. Further it has been considered wise in the interests of protecting revenue from death duties to require banks to submit to the Commissioner of Probate monthly returns of such payments.

Section 140 sets out details of the records to be kept by the Master of the Supreme Court, such as grants of probate, administration, and orders, etc. The addition of a new subsection as proposed in clause 12 will enable the issue under seal of office copy grants with or without the relevant will annexed. Such grant copies will constitute sufficient evidence of the grant for all purposes without further proof.

Under certain Acts, the uniform Companies Act for instance, it is necessary to produce evidence of grants of probate. A simple copy of the grant without words of the will is all that would be required since a company is only concerned with legal titles and not with the trusts of a will. At present it is not possible to obtain a copy of a grant of probate in this State without the whole of the words of the will being attached. The fee for such a document is often relatively substantial. It is considered desirable for reasons of convenience, expedition, and economy to include this new authority to issue copy grants.

The final amendment in this Bill—that set out in clause 13—affects section 144 governing the rules of court as set out in the third schedule of the Act. Under this section, judges of the Supreme Court may make rules prescribing, subject to limitation, what part of the business which may be transacted and of the jurisdiction which may be exercised by a judge in chambers or may be transacted or exercised by the master or other officer of the court. The removal of the restriction as proposed in clause 13 would bring the procedures into line with those in other States.

As indicated in my introductory remarks, this Bill has as its objective the smoothing out of procedural difficulties in the administration of estates, and it is hoped they will be facilitated by the passing of this measure.

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

PUBLIC TRUSTEE ACT AMENDMENT BILL

Second Reading

THE HON. A. F. GRIFFITH (Suburban—Minister for Justice) [3.20 p.m.]: I move—

> That the Bill be now read a second time.

Section 40 of the Public Trustee Act provides that all capital moneys vested in the Public Trustee shall, unless otherwise directed to be invested, become one common fund. The Act provides also that investments made from the fund shall not be made on account of or belong to any particular trust or estate. It is further provided that interest earned by such investments shall be paid into the common fund.

There is contained in subsection (4) of this section the manner by which the estates whose moneys form the common fund shall benefit. The subsection reads as follows:—

> The interest payable to the respective estates, the moneys of which are held in the common fund, shall be at a rate from time to time fixed by the Public Trustee with the approval of the Minister.

Interest is credited half-yearly without charge or fee in respect of such credits.

Subsection (5) makes provision for moneys to be invested as expressly directed otherwise than in the common fund and those moneys do not form part of the common fund. Practically all common fund investments are in Commonwealth and S.E.C. inscribed stock, the balance being on mortgage and advances to estates.

Prior to 1953, interest was credited at a uniform rate to all estates and trusts including deceased persons' estates in the course of administration. On the 1st May, 1953, rates were fixed with the approval of the then Minister to credit various classes of estates with interest at different percentages as follows:—

> Estates of mental patients, 2 per cent.; deceased estates in course of administration, 1 per cent.; minors, 2½ per cent.; agent or attorney, 2½ per cent.; and court trusts and others not otherwise prescribed, 2 per cent.

The gradual upward trend in earnings permitted revision of rates to be made in April, 1955; July, 1956; January, 1959; October, 1961; and October, 1962. The prevailing rates of interest credited to estates as at the 15th June last were as follows:—

> Mental estates and agency trusts, 4 per cent.; deceased persons' estates in course of administration, 1 per cent.; and court trusts, minor trusts, deceased (in state of trusteeship), Workers' Compensation, and others not otherwise prescribed, 4½ per cent.

The common fund provisions at present existing were extracted from the Acts of the Public Trustee of Queensland, New Zealand, and Tasmania (South Australia also had a form of common fund) in 1941. New South Wales and Victoria have adopted the common fund principle, surplus earnings, after credits are made to the estates, being passed direct to revenue or to the Public Trust Office to assist in meeting the costs of administration of the Public Trust Office.

Without the surplus earnings of the common fund, our Public Trust Office, as would be the case with those of the other States, would be a severe drain on the Treasury; for it is to a great extent a social service doing considerable unprofitable work such as small estates of deceased persons, mental estates, investment of workers' compensation money, and so forth.

Commissions earned are alone insufficient to cover expenses of private companies operating in this sphere of activities, but rents and interest, presumably from the companies' capital investments, meet their needs, as do the surplus earnings of the common fund of the Public Trust Office.

Nevertheless, there is no express provision in the Public Trustee Act in this State authorising the payment to the Consolidated Revenue Fund of the undistributed portion of the interest earned by investments from the fund, and the absence of such authority has attracted the attention of the Auditor-General. Nor is there any provision for differentiating rates of interest. There is therefore no authority for the present practice, which has operated from the 1st May, 1953, of declaring differential rates of interest at such a figure as to leave a surplus in the fund which, since that time, has been regularly paid into the Consolidated Revenue Fund.

As previously indicated, the practice now in operation here is similar to that existing in other States; and indeed the New South Wales and Victoria Acts specifically provide that any surplus may be used to assist in meeting the costs of administration. The Public Trust Office here would become a heavy liability on the State without the common fund surplus. Nor would there be any advantage from the State's point of view in incurring the expense of operating such a fund.

Unless the present practice be permitted to continue, the expense of operating the Public Trust Office would impose an annual burden on the Consolidated Revenue Fund, and this situation must be avoided. However, the greater part of the surplus interest arises from investment of moneys held in course of administration. It is during this period that much work is done in ascertaining and getting in the estate. Testators appointing the Public Trustee as executor, and other executors and beneficiaries handing estates to the Public Trustee for administration, are fully aware of prevailing charges and conditions, including interest credits under which trusts are accepted. It can therefore be assumed that the present rate of interest is acceptable to those concerned.

It is accordingly apparent that if the Public Trust Office is to operate without the Treasury being required to contribute towards the cost of administration, the present practice must be allowed to continue. An increase in the rate of corpus commission would not provide the answer, as the added burden on the widow and children beneficiaries of small estates must cause a reduction in the number of persons who entrust administration of deceased estates to the office. This result would eventually lead to the position which operated prior to the enactment of the Public Trustee Act, when affairs of mental patients and other statutory trusts were handled at a substantial cost to the Treasury.

The operation of a common fund confers the advantages of steady and continuous interest returns, security of Government guarantee, and ready availability of funds for the estates participating. The current rates of interest paid in this State compare more than favourably with the rates paid under similar circumstances in other States, and no commission is charged on these interest payments by the Public Trustee.

In order to legalise the practice which has been followed for some years now, it has been decided to introduce this Bill to amend the Public Trustee Act to provide for the payment of surplus interest earned on investments made from common fund money to the Consolidated Revenue Fund and to provide also for payment of differential rates of interest to the various classes of trusts.

In order to protect all interested parties in respect of the practices which have been in operation since 1951, there is contained in this measure a provision for retroactivity of the amendments to the date of the commencement of the parent Act.

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

WILLS (FORMAL VALIDITY) BILL

Second Reading

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

> That the Bill be now read a second time.

To put it briefly, the main purpose of this Bill is to introduce a higher degree of uniformity throughout Australia in the laws affecting the formal validity of wills. Objectively, it is desirable that a will treated as valid in one country may be treated as valid in others. This Bill will permit of many more of the wills executed in other countries being accepted as valid in Western Australia than is at present possible. The measure deals also with wills executed on board vessels or aircraft, and it removes a technicality from formal requirements of wills exercising a power of appointment. It may be helpful if I outline the present law in Western Australia concerning the validity and construction of wills.

The law of the country in which the deceased was domiciled at the time of his death regulates the decision as to what constitutes his last will and as to whether and how far it is valid without regard to the place of his birth or of his death or to the situation of his movable property or, it might be added—

(a) the place where it was executed;

(b) the place where at the time of its execution he was domiciled; or

(c) the country of the testator's nationality or habitual residence at either of those times.

The proposed legislation admits compliance with any of the places mentioned in (a) to (c) as sufficient to validate the will.

Shortly, the position with respect to a will of an Australian national married to a foreigner is as follows: The existing law in Western Australia is that for such a will to be valid, the will would have to satisfy the formal requirements of the law of the testator's domicile at the time of his death, e.g., if at that time the testator was domiciled in Western Australia, Western Australian law would apply; if in France, French law would apply, with the exception that a will disposing of land had to comply with the law of the country where the land was situated. Western Australian internal law at present requires that a will be executed in writing and signed both by the testator and by two attesting witnesses (subject to certain exceptions, e.g., wills made by members of the Armed Forces on active service, etc.).

The effect of the Bill on the will of such a national, is to relieve and enlarge the cases in which the will will be held to be validly executed in Western Australia, as regards form. In other words, if such a will would be so valid in certain circumstances in Western Australia before the passing of the Bill, it would be so valid in like circumstances thereafter; but will also be so valid if it complies with the requirements of the internal law in force of—

(a) the place where it was executed; or

(b) the place where at the time of its execution or the testator's death he was domiciled; or

(c) the country of the testator's nationality or habitual residence at either of those times; or

(d) in so far as it disposes of land, the place where the land is situated.

With regard to the construction of a document accepted as being a will, the general rule is that a will of movables should be construed in accordance with the law of the testator's last domicile; or, possibly, if his domicile changes between the date of the will and the date of his death, then in accordance with the law of his domicile at the date of the will. The provision in the Bill should remove a doubt in that regard.

A great deal of consideration has been given to smoothing out the laws affecting the validity of wills on an international basis in this country for several years past. Problems affecting the validity of wills, such as the place of the testator's domicile, his habitual residence, or nationality, have come into prominence in Australia particularly by reason of the considerable influx of migrants.

Though a comparatively small Bill, its contents are of a complex and technical nature, more easily followed in application by those whose responsibility it is to sort out complexities of formalities which could affect the validity of documents apparently suffering some technical imperfections.

It may be stated that the principle underlying any law requiring wills to be executed with certain formalities would assert that those documents should be accepted as valid only when it can be upheld with reasonable certainty that they were executed by the testator with the intention of disposing of his assets after his death or, on the other hand, of revoking any previous dispositions of that nature.

It is essential that any document which fulfils those conditions should be, on principle, accepted as valid, and equally essential that we have suitable laws to facilitate such acceptance. The law is unquestionably defective if such a document must be excluded because of some technical imperfections of which the testator might reasonably have been unaware. This Bill is an endeavour on an Australia-wide basis to rectify some of the imperfections and disabilities of the existing law.

For instance, should a testator in executing his will comply with the formal requirements of any system of law which he might reasonably assume in the circumstances to be applicable, that will should be treated as valid. As previously mentioned, it is plainly desirable that as far as possible a will treated as valid in one country should equally be treated as valid in another since the testator may have had assets in several countries.

It was with these objects in view that the Hague Conference on private international law formulated rules set out in the Hague Convention on the "Conflicts of Laws Relating to the Form of Testamentary Dispositions" in 1961.

It is of interest to relate that the terms of the Hague Convention were based largely on the fourth report of the British Lord Chancellor's Private International Law Committee, which had been invited by the Lord Chancellor, Lord Kilmuir, in 1957, to "Recommend what alterations, if any, are desirable in the rules of the private international law of the United Kingdom relating to the formal validity of wills."

It transpired that the British Parliament passed an appropriate Bill last year to repeal the Wills Act of 1861 by making new provisions to enable the United

Kingdom to ratify the Hague Convention. Britain signed the Convention on the 13th February, 1962.

As early as 1960, the Law Reform Committee of the Law Society of Western Australia reported on the inadequacy of our laws, and about that time the Victorian Chief Justice's Law Reform Committee was actively pursuing the subject of reform of laws dealing with the validity of wills. The Queensland Parliament enacted legislation in 1962. It was based on Ontario legislation and, at the meeting of Attorneys-General in Brisbane on the 7th September, 1962, the conference accepted in principle the recommendations of the fourth report of the British Private International Law Committee (the Wynn Parry Committee), supporting uniformity among nations, thus giving the green light to uniformity in legislation amongst the Commonwealth and States.

About that time also a new Wills Ordinance was in the advanced stage of preparation for the Australian Capital Territory and for the Northern Territory. The 1962 report of the Western Australian Law Reform Committee was available at the meeting of Attorneys-General in Melbourne in April, 1963. Victoria was then preparing draft legislation and, in the light of the particular submissions made by the Chief Justice of Western Australia, draft uniform legislation evolved.

This Bill conforms with the uniform legislation but remains as a separate Statute to be read as one with the 1837 Wills Act adopted from Imperial Statutes. The Bill will provide in effect as follows:—

(a) That a will is to be treated in W.A. as properly executed if it is executed in accordance with the formal requirements of the internal law of the place of execution or of the testator's domicile, habitual residence, or nationality;

(b) certain additional rules under which a will executed on board ship or in an aircraft or a will disposing of immovable property, revoking a previous will or exercising a power of appointment is to be treated as properly executed;

(c) that a will exercising a power of appointment is not to be treated as improperly executed solely because its execution does not comply with the formalities required by the instrument creating the power;

(d) that a requirement of any foreign law which testators of a particular description are to observe, special formalities or attesting witnesses to possess certain qualifications, is to be treated as a matter of form;

(e) that the construction of a will is not to be affected by a subsequent change in the testator's domicile;

(f) describing rules for selecting the appropriate system of law where there is more than one system of law in force in the country in question;

(g) that it is the formal requirements in force at the time of execution of a will which are to be taken into account, subject to any subsequent change in the relevant law under which the will is retrospectively validated.

It was agreed at the meeting of the State Attorneys-General held at Canberra on the 17th April last that each State and Territory of the Commonwealth would introduce this Bill and then Australia would be in a position to accede to the convention.

The proposals written into this measure have been examined by the chief justices and judges of the various State supreme courts, and by law councils, and law societies, and have gained their approval. The Law Society of Western Australia is also in agreement. His Honour, the Chief Justice of Western Australia, agrees with the principles, and I commend the Bill to members.

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

ADJOURNMENT OF THE HOUSE: SPECIAL

THE HON. A. F. GRIFFITH (Suburban —Minister for Mines) [3.39 p.m.]: I move—

That the House at its rising adjourn until Tuesday, the 8th September.

Question put and passed.

House adjourned at 3.40 p.m.

Legislative Assembly

Thursday, the 27th August, 1964

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