Legislative Council

Thursday, 22nd August, 1957.

CONTENTS.

The PRESIDENT took the Chair at 2.30 p.m., and read prayers.

QUESTIONS.

EDUCATION.

New Schoolrooms for Wanneroo.

Hon. N. E. BAXTER asked the Minister for Railways:

(1) Have any plans been drawn for the new school rooms for Wanneroo which the Minister for Education promised would be built this financial year?

(2) If the answer is "Yes," when is it anticipated building will commence?

The MINISTER replied:

(1) Plans have been drawn for the erection of two classrooms on the new site.

(2) It is hoped that a commencement will be made in three months' time.

PERTH DENTAL HOSPITAL.

Treatment for Pensioners.

Hon. A. F. GRIFFITH asked the Minister for Railways:

In connection with the dental treatment of age pensioners at the Perth Dental Hospital, will he advise—

(1) Upon what basis do age pensioners receive treatment at the Perth Dental Hospital?

(2) What is the waiting time for dentures for age pensioners?

(3) What is the waiting time for dental treatment for age pensioners?

(4) What is the waiting time for patients paying the required full hospital fees?

The MINISTER replied:

(1) All patients are assessed on income for eligibility and payment of fees, the extent rather than the source of income being the main factor guiding the assessor; and, therefore, no special rate applies for pensioners as such. However, in the case of patients receiving no income apart from age or invalid pension, the patient would be required to pay 25 per cent. of the fees provided in the hospital's scale—for example, the fee for full upper and lower dentures would be £4.

(2) Waiting time for all patients—three to four months.

(3) and (4) Extractions—nil. Operative treatment—five to six months.

PERSONAL EXPLANATION.

Hon. F. D. Willmott and Heading in "The West Australian."

Hon. F. D. WILLMOTT: I wish to draw the attention of the House to the heading given to an article appearing in the country edition of "The West Australian" of the 22nd August, 1957, dealing with the report of the Honorary Royal Commission on the War Service Land Settlement Scheme, which report was tabled on the 21st August, 1957. The heading "Commission Hits at Bad Farming"—is not in accordance with the findings and report of the commission and no mention is made of the commissioners in the article.

In view of the fact that, in the metropolitan edition of that newspaper, the heading had been changed to "Commission Hits at Land Scheme" and the commissioners' names shown, the members of the commission request that the necessary correction be made in the next issue of the country edition of "The West Australian."

BILLS (3)—THIRD READING.

1, Bills of Sale Act Amendment.
Returned to the Assembly with amendments.

2, Rents and Tenancies Emergency Provisions Act Continuance.
Returned to the Assembly with an amendment.

3, Honey Pool Act Amendment.
Transmitted to the Assembly.

BILL—OCCUPATIONAL THERAPISTS.

Report of Committee adopted.

BILL—JURIES.

Second Reading.

HON. E. M. HEENAN (North-East) [2.37] in moving the second reading said: I am introducing this Bill on behalf of the Chief Secretary. It seeks to repeal the present Jury Act; and, if passed by Parliament, the new measure will be brought into operation on a date to be proclaimed. Members will recall that last year a select committee—consisting of Hon. A. F. Griffith, who was chairman; Hon. Sir Chas. Latham, and Hon. J. D. Teahan—was appointed to inquire into the operations of the existing Jury Act and to submit a report to the House.

The committee was charged with considering and examining the Jury Act and with recommending such amendments as were considered necessary or desirable in the light of present-day conditions and requirements, particularly in regard to the qualification, disqualification and exemption of jurors, and the service of women on juries. In the preparation of the Bill now being introduced, the advice was obtained of the judiciary, the Acting Commissioner of Police, the Master of the Supreme Court, the Solicitor General and the Chief Crown Prosecutor.

The Bill provides for the enrolment, as jurors, of all men and women who have attained the age of 21 years and who are less than 65 years and whose names are on the Legislative Assembly rolls. Under the Bill, no person can serve as a juror if he or she is not a natural born or naturalised British subject, has been convicted of a crime or misdemeanour, is an undischarged bankrupt, or cannot write or read the English language. The present qualification for a juror is that he must be a man between 21 and 60 years of age who has real estate of the value of £50, or personal estate of £150.

The proposal in the Bill is very similar to that made by the select committee, which recommended that all persons between 21 and 60 years of age who were included on Legislative Assembly rolls should be eligible. However, the proposal in the Bill for a maximum age of 65 years is supported by the judiciary, and the Acting Commissioner of Police, who point out that many men retire from exempted positions at 60 years of age and are still quite capable of jury service. Sir Patrick Devlin, the eminent British judge, has stated that the maximum age of 60 years came into operation when the average age of the population was much lower than it is today, and that this limit in these days excluded many men and women of vigorous intelligence.

In Great Britain the limit was extended to 65 years as a war measure, and a recent suggestion that it revert to 60 years was declared by the Home Secretary to be unacceptable. The maximum age in most American States is 65 years. Again quoting Sir Patrick Devlin, he has said that the insistence in England on a juror being a property-owner or a householder and under 60 years of age, and with the prevailing exemptions, resulted in juries being predominantly male, middle-aged, middle-class and middle-minded.

The Bill proposes that those persons shown in the Second Schedule shall be exempted from jury service. The select committee reported that it had given a lot of attention to the question of exemptions, and had come to the conclusion that the extent of exemptions prevented juries from being made up of a sufficient cross-section of the community. The committee suggested that town clerks, journalists, bank managers and Public Service and railway employees no longer have exemption; but that owing to their shortage, qualified veterinarians should be exempted.

The Government has agreed to this proposal, with the exception that town clerks are still included in the exemption list. These officials are a most essential part of the organisation of their municipal districts; and it would not facilitate the administration of a district for the town clerk to be absent on other occasions than when he is on leave or away on municipal business.

The Solicitor General raised the point that the absence from office on jury service for several days of permanent heads and key professional men could be disrupting to Government services. The Master of the Supreme Court and the Chief Crown Prosecutor agree that the only public servants, apart from magistrates and law officers, who should be exempted are those whose duties are of sufficient importance to warrant exemption.

The Bill, therefore, in Clause 6 (2) proposes to give the Governor the power to exempt any officer, or those in any class of office, from liability for jury service. It might be found advisable, for instance, to exempt all permanent heads, or those in certain senior grades in the Public Service. Members will notice that Part II of the Second Schedule exempts Commonwealth public servants, the reason being that these officers, by Commonwealth legislation, are exempted from jury service in State courts.

In the Bill the right of all women from 21 to 65 years to serve as jurors is recognised. The select committee was of the opinion that jury service was an obligation for all citizens, but that women with family and other valid responsibilities should be exempted if they advanced those reasons as a plea for exemption. The Bill proposes that any woman may, in writing, cancel her liability to serve. Such a cancellation will then exist for at least two years, after which the woman concerned

may apply for reinstatement on the jury list. Under the Bill no woman can submit her cancellation after she has been summoned to attend as a juror at any session or sitting of the court.

Under the existing Jury Act the resident or police magistrate for each district, or some other person appointed by the Governor, is required, on or after the 1st January each year, to prepare a suitable number of lists of all persons qualified to serve as jurors. These, within three days of preparation, must be affixed in conspicuous places, together with a notice that the justices of the peace of the district, at a special session held for the purpose, will hear all objections to the lists. The justices examine and settle the lists, certify them as correct and transmit them to the sheriff for entry in the jurors book.

In regard to the annual compilation of the jury list the Bill follows the procedure set out in the Victorian Juries Act of 1956. This provides for the sheriff, early in each November, to notify the Chief Electoral Officer of the number of jurors required for the draft roll for each jury district, which will correspond as much as possible to the Legislative Assembly district.

The Chief Electoral Officer will then select by ballot, from the appropriate electoral rolls, the required number of jurors. The Bill requires that, so far as is practicable, and, as the enrolment of the sexes permits, the juries shall be evenly divided between men and women.

Hon. A. F. Griffith: How is that to be brought about?

Hon. E. M. HEENAN: The Bill stipulates that, so far as is practicable, and, as the enrolment of the sexes permits, the jury shall be evenly divided between men and women. In Great Britain the sheriff is required to see that the proportion of women to men on the panel is the same as the proportion on the lists from which the panel is selected. At present jurors in Western Australia are summoned according to the order in which their names appear in the jurors book—that is, alphabetically—until every person has been empanelled and summoned in his turn. The select committee was in favour of selection by ballot.

Hon. J. M. A. Cunningham: Do you consider that the findings of the select committee were fair and reasonable?

Hon. E. M. HEENAN: The committee was appointed by this House and took evidence. Its report should be given due consideration. Apparently the Government also takes that view. The committee was composed of men of standing in this House, and I think that we can all agree that they applied themselves to the work conscientiously and examined a number of witnesses.

Hon. Sir Charles Latham: I agree.

Hon. E. M. HEENAN: And apparently they made an impression on the Government.

Hon. Sir Charles Latham: The only time they ever did!

Hon. A. F. Griffith: I would like more often to be able to make an impression on the Government.

Hon. E. M. HEENAN: At the present time a jury for civil trials consists of 12 persons, or, at the option of the person requiring the jury (unless the court or a judge otherwise orders) of six persons. A jury for assessment of damages is of only six persons, and a jury summoned by a coroner for an inquest can have from three to six members. In criminal trials the jury consists of 12 persons. The proposal in the Bill is 12 persons for a criminal trial jury, and six for civil trials.

The Bill does not provide for special juries, which the select committee and the judiciary both consider to be unecessary. In passing, I would, in deference to this remarkable select committee, point out that it and the judiciary seem to think alike on this aspect.

Hon. Sir Charles Latham: That is a very important fact.

Hon. E. M. HEENAN: This type of jury has not been used in Western Australia for many years. The present Jury Act provides that a jury's verdict in a criminal case must be unanimous; but that, in civil cases, a two-thirds majority is acceptable if all jurors cannot agree after three hours of deliberation. If after six hours a two-thirds majority cannot be obtained, the jury is discharged. The select committee recommended retention of unanimous decisions for capital offences, but considered a five-sixths majority could be accepted in other criminal trials after the jury had deliberated for three hours.

This is the provision in the Bill, which also provides for the discharge of the jury, if, after three hours, 10 jurors have not agreed, unless the judge or chairman considers it desirable to continue deliberation.

The judges agree that the time has arrived when provision should be made for the acceptance of a majority verdict in criminal cases. Disagreements by a jury involve a new trial, which causes considerable extra expense to the community; inconvenience to witnesses, who are once again forced to leave their normal avocations and attend the court; and hardship to the accused, who has to pay increased legal fees. It appears that disagreements are usually caused by one or two stubborn persons who can never become amenable to reasonable argument. I am glad we have not got any of them in this House.

Hon. Sir Charles Latham: Vociferous cheers!

Hon. E. M. HEENAN: There is the fact, too, that no system of jury selection can avoid the possibility of a friend or relative of an accused person being on the jury. Sir Patrick Devlin has said that the man who—often in compensation for his social ineffectiveness—delights in the power of veto, is a nuisance; and that there can be no doubt that every now and again he turns up on a jury.

Clause 58 of the Bill proposes to make it an offence for a newspaper, firstly, to publish the names or photographs of any juror called up to serve in a criminal trial; and, secondly, to publish anything concerning the evidence given in a case where a person might be committed for criminal trial. Under the Bill, such offences will be regarded as either contempt of the Supreme Court, and punishable by the court, or liable to a penalty of from £20 to £200 which shall be paid to any person, who, with the authority of the Minister, applies to the court for the penalty.

Hon. Sir Charles Latham: The start of the control of newspapers, thank goodness!

Hon. E. M. HEENAN: I thought that provision would please Sir Charles. Such a person would be one who would have been injured as a result of the newspaper publicity, and who would therefore be entitled to receive as damages any penalty imposed. I would emphasise that before a person could take such action, which would be in a civil court, the permission of the Minister would have to be obtained. This should prevent any unnecessary or mischievous proceedings. It must be remembered that invariably the accused person does not give evidence at the committal proceedings. It is usual for him to reserve his defence.

Hon. A. F. Griffith: Is it invariable that he does not give evidence?

Hon. E. M. HEENAN: Not invariable; but in nine cases out of ten, at least, I should think.

Hon. G. C. MacKinnon: It would always be at his own wish if he did.

Hon. E. M. HEENAN: Yes; he has the right to reserve his defence.

Hon. Sir Charles Latham: It strengthens him by doing that.

Hon. E. M. HEENAN: Instead of stating his case and committing himself at that early stage he reserves his defence, so that he has more time to prepare it. As a result, any publication of the proceedings could only refer to the prosecution's evidence, and this could prove embarrassing to a person who might be found not guilty.

The select committee was of the opinion that in many cases the Press acted in a manner prejudicial to a fair trial by highlighting evidence so as to build up a good story. The committee considered this applied particularly to preliminary trials, the Press publicity of which could exercise some influence on a potential juror.

The select committee felt that while the Press could attend a preliminary trial they should not publish any report if the defendant was sent for trial. If, on the other hand, he were discharged in the lower court, or acquitted, it would be quite in order to publish the proceedings.

It has been said that the present laws give adequate protection to citizens accused of crime. The Supreme Court has an inherent jurisdiction to deal with any contempt, such as comments on matters that are sub judice; or a newspaper investigation into a crime with articles reporting its progress; or a publication purported to forecast what the defence of an accused person would be; or publishing allegations about other offences with which an accused is said to have been concerned; or any other inflammatory matter.

However, it would be most difficult early in a case for a court to decide whether or not it would be in the interests of justice to prevent publication of preliminary proceedings. At that stage the court would have an open mind; and if an order were given for the restriction of publication of proceedings, prejudice might be suggested. In a recent case proceedings were published from day to day, and it would have been too late at the end of the case to make any order of restriction.

There are a few other small matters in the Bill, but I feel that they are such that they can be discussed, if necessary, in Committee. It will be obvious from these remarks that the Government has followed largely the recommendations of the select committee. It has departed from them by extending the age to 65 as distinct from the committee's recommendation of 60. That was done for the reasons outlined which seemed to justify the age of 65. I move—

That the Bill be now read a second time.

On motion by Hon. A. F. Griffith, debate adjourned.

BILLS (2)—FIRST READING.

1, Public Service.

2, Traffic Act Amendment (Hon. F. D. Willmott in charge).

Received from the Assembly.

BILL—COAL MINERS' WELFARE ACT AMENDMENT.

Second Reading.

THE MINISTER FOR RAILWAYS (Hon. H. C. Strickland—North) [3.2] in moving the second reading said: The object of this Bill is to amend the Act which

was passed in 1947, to provide amenities for the coalminers and other employees in the coalmining industry at Collie. The position now is that 1½d. per ton of coal produced is paid into the fund by the coal companies to provide amenities on the coalfield, and the Bill provides that the payments shall be made quarterly instead of every six months as at present. The mining companies, the miners themselves, and all concerned are desirous that that amendment should be made to the Act.

That is the purpose of the Bill. I repeat that the amendment is a simple one, and I would point out that the Government does not contribute in any way to the fund. The board controlling the fund is appointed by the Governor, and a report and financial statement is required to be laid on the table of both Houses of Parliament each year after the Auditor General has perused the accounts and approved of the expenditure and contributions. The legislation has worked most successfully during the 10 years since it was brought into operation, and I commend the measure to the House. I move—

That the Bill be now read a second time.

On motion by Hon. G. C. MacKinnon, debate adjourned.

BILL—COUNTRY AREAS WATER SUPPLY ACT AMENDMENT.

Second Reading.

Debate resumed from the previou day.

HON. F. D. WILLMOTT (South-West) [3.5]: I do not think there is any necessity for me to delay the House on this small measure, which is exactly as was explained when it was introduced to the House. The Bill seeks simply to bring the Act into line with what has been practised by the department since 1911; and the only other amendment contained in it gives authority for the raising of pipes and drains as well as the lowering of them. The Act previously gave authority only for the lowering of drains and pipes and none for raising them, which was absurd. I commend the Bill to the House.

On motion by Hon. Sir Charles Latham, debate adjourned.

BILL—HEALTH ACT AMENDMENT.

Second Reading.

Debate resumed from the previous day.

THE MINISTER FOR RAILWAYS (Hon. H. C. Strickland—North—in reply) [3.7]: I believe the remarks of both Mr. MacKinnon and Dr. Hislop in connection with this measure could be more properly dealt with in Committee; but there are a few explanations which it might be better to make at this stage.

In regard to septic tank fees and the proposed amendments, Mr. MacKinnon was not correctly informed in saying that the local authority does all the work but receives only half the fee. A considerable volume of work on every such installation is done by officers of the Department of Public Health in ensuring that the proposed fittings, drainage plans, levels, capacity and disposal methods are such that the apparatus will function satisfactorily when used correctly.

Although Dr. Hislop is not present, in order to clear up his query relating to Clause 11, I would point out that the provision has been framed in elastic fashion as the variety of situations that could arise is extensive. The nature of the situations which the clause is designed to cover has already been explained. It is envisaged that the persons who would be likely to be called upon to notify a condition of health, such as impairment of sight below a certain level, would be medical practitioners, and perhaps selected hospital authorities. The exact requirements would have to appear in regulations with which members will have an opportunity to deal when they are tabled.

Hon. G. C. MacKinnon: Would not opticians come into it?

The MINISTER FOR RAILWAYS: Qualified opticians could. Their opinion would no doubt be taken into consideration. Notification would be to the Commissioner of Public Health in every case, and information obtained in this manner would be treated in the same confidential way as notification of infectious disease. Dr. Hislop queried what the intention of notifying cancer to the authority might be. It is merely to keep a statistical register of the cases, and there would be an obligation on the medical practitioner to notify the department. The patient would know nothing about it, as it would simply be another requirement of hospitals and the medical profession generally.

The other points raised during the debate deal mostly with proposed amendments. Mr. Mattiske has some objection to the proposal to enable the builder to be prosecuted, rather than the owner of public buildings, for certain offences. Those matters could be much better dealt with in Committee.

Question put and passed.

Bill read a second time.

In Committee.

Hon. W. R. Hall in the Chair; the Minister for Railways in charge of the Bill.

Clauses 1 to 7—agreed to.

Clause 8—Section 174A added:

Hon. R. C. MATTISKE: I move an amendment—

> That all the words after the word "and" in line 32, page 3, down to and including the word "proprietor" in line 38, be struck out.

To refresh the memories of members, I would say that the building contractor has nothing to do with the arranging, passing or putting into operation of the plans during the course of construction. It would be unjust to penalise him for a variation in the plans that might occur during construction.

The MINISTER FOR RAILWAYS: This is the beginning of a series of amendments which would take the meat out of this clause. It would negative the proposal to prosecute a builder who did not comply with his contract. I would like to read the following note to the Committee:—

> The persons for whom a public building is being erected frequently know nothing about the technical side of building. They are therefore unable to supervise construction and are dependent upon the builder faithfully and honestly adhering to approved plans and specifications. No person is obliged to engage an architect, and frequently voluntary groups, such as small church and youth organisations, are so limited financially that they prefer to avoid expenditure on architects' fees. In such cases the builder is responsible for what is done, although under the present law, in the event of an offence committed by the builder, the owner or group for whom the builder is executing the work can be prosecuted. In many cases a builder is in a favourable position to take advantage of the owner's ignorance.
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> Departmental officers who are responsible for checking the construction of public buildings to ensure public safety have had a great deal of experience in these matters. They endeavour to perform their duties with judgment and in keeping with a sense of justice. If they, with their knowledge of the circumstances in any particular case, are aware that a builder has disregarded specifications which have a bearing on public safety, and that the owner is not responsible, it is only just that they be given authority to deal with the guilty party. Failure to comply with specifications is not always accidental. Work is almost invariably "under" specification standards rather than "over." At times this represents extra money in the builder's pocket without the owner's knowledge. The owner should not be held responsible but the builder should be dealt with when public safety is involved.

That explains the position. The Bill proposes to catch up with builders who deliberately curtail their specifications for the purpose of making more profit. I understand cases have been admitted, particularly in respect to toilet facilities, which have been cut down below specification, when there has been no architect or other supervisor.

Hon. A. F. Griffith: The builder is liable for breach of contract.

Hon. J. D. Teahan: Who is to say?

The MINISTER FOR RAILWAYS: He could be; but he should be made liable as is the ignorant owner. The owner may know nothing about it. Why should a public body be responsible and be prosecuted? It is those who do these things who should be prosecuted.

Hon. R. C. MATTISKE: I take strong exception to the sweeping statement made by the Minister that builders do not comply with specifications in most cases. It reflects strongly not only on reputable builders but also on architects.

Hon. F. R. H. Lavery: No one said "in most cases."

Hon. R. C. MATTISKE: These architects, and the question of church halls, etc., will be covered by the Builders' Registration Act. Every builder must be registered before he can do work exceeding £5,000 in value. If there is any fault in his work he is called upon by the Builders' Registration Board to show cause why his registration should not be cancelled. The Builders' Registration Board has competent inspectors, and they are fully aware of the normal requirements of building practice. They inspect the job on which a complaint has been made and report to the Builders' Registration Board.

Hon. Sir Charles Latham: But nobody knows about the complaint until the health inspector from the department sees the place.

Hon. R. C. MATTISKE: It does not matter when the complaint is made. It can be made when the building is occupied; and if the work is found wanting, the Builders' Registration Board takes action against the builder.

Hon. A. R. Jones: What if he has died?

Hon. R. C. MATTISKE: That is one of the complications that must be further considered. Any building of any size must have an architect. Whether it is a local hall, or anything else, there is generally an honorary architect associated with it. I have been associated with several of these halls, etc. It is unfair to impose a penalty on a builder as proposed in this measure. If we are going to do this, it should be competent for us to make amendments to the Licensing Act to impose penalties on

various individuals other than the hotel proprietor for misdemeanours that may occur.

The MINISTER FOR RAILWAYS: The hon. member omitted to say that the Builders' Registration Act applies only in the metropolitan area; it does not affect towns outside that area. It is possible that some of the smart boys may not short-cut while building in the city, but they would have an open go outside the metropolitan area. I do not think the inspectors of the Builders' Registration Board inspect buildings outside the metropolitan area; I do not know of any. They are short of funds and need a few more inspectors, I understand. The principle contained in the Bill is to make the culprit pay—the one who is responsible for these malpractices—and I see no reason why this provision should not be retained.

Hon. Sir CHARLES LATHAM: This Bill also makes the contractor responsible and the proprietor of the building is brought in under proposed new Section 174A. I would not like members to think that country halls, especially wooden ones, have architects to supervise their erection. The local people decide on the hall, and it is built. It is possible that the brick buildings erected by local authorities do have architects. It does throw the responsibility on the builder who is qualified to know what he should and should not do.

There is an instance in Perth of a man who had a house built; and it was eventually discovered that even though the minimum height for a ceiling is set down as 8ft., the ceiling of his house is only 7ft. 6in. He is now in trouble with the Health Department. That man did not know anything about it, and could not be expected to know. Surely it was up to the builder to tell him that the ceiling was less than 8ft. from the floor.

Hon. R. C. Mattiske: His plans had to be approved.

Hon. Sir CHARLES LATHAM: That may have been so.

Hon. R. C. MATTISKE: There is a right of legal action.

Hon. Sir CHARLES LATHAM: A lot of people have not the money to take such action. I know people who have built their houses and bought their timber on deferred payments. The man to whom I referred is in a good deal of trouble. Mr. Mattiske would know how difficult it is to alter the height of a ceiling. The first responsibility in these cases is with the architects; and the second, with the owners or proprietors. If the person building has no qualifications, or does not know anything about the Health Act, it should be the responsibility of the builder himself. We have so many laws and regulations that a man would need to be a walking encyclopaedia to keep up to date; so it would be better if we could share that responsibility. I hope the provision will be left in.

Hon. R. C. MATTISKE: Reflecting on arguments advanced against this proposed amendment, I can see certain points in a different light from when I framed it. However, it strikes me that the amendment may be improved. During the construction of a building it frequently happens, where there is an architect, that the owner will change his mind and instruct the architect to alter the plan. The architect, having done that, then instructs the builder to carry out the work in accordance with the amended plans. Even though the builder may think it is incorrect building practice, he must abide by the wishes or instructions of the architect; otherwise he is leaving himself open to action by the architect, and will find difficulty in getting payment for his work.

I suggest to the Minister that he postpone this clause with a view to an amendment being framed to provide that if an architect is engaged on the job he be held responsible; and if there be not architect, then the building contractor be responsible.

The MINISTER FOR RAILWAYS: I could not say that it would suit requirements until I saw the actual amendment on the notice paper. However, I have no objection to postponing the clause for further consideration.

Hon. R. C. MATTISKE: In view of that, I ask for leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Hon. G. C. MacKINNON: I move an amendment—

> That after the word "or" in line 12, page 4, the words "within six months" be inserted.

At present there is no time limit embodied in the measure, so that if something showed up 10 years later—taking an extreme case—it could be charged against the builder. So I suggest that some time limit should be imposed. As to whether it should be three months, six months or 12 months, I would not have any fixed ideas. But the threat of prosecution should not hang over a builder for ever and ever.

Amendment put and passed.

Hon. R. C. MATTISKE: I move an amendment—

> That after the word "is" in line 30, page 4, the word "correctly" be inserted.

The reason for this amendment is that if there should be any legal irregularity in connection with the serving, or if the notice should be served on a person incorrectly through some other means, it

would be unjust for him to be subject to a penalty as high as that provided for in this subclause.

Amendment put and passed; the clause as amended, agreed to.

Clause 9—Section 179 amended:

Hon. R. C. MATTISKE: I move an amendment—

That the words "one hundred" in lines 40 and 41, page 4, be struck out and the word "twenty-five" inserted in lieu.

The fee of £100 for the inspection and passing of plans, even though they be of a complicated nature, is quite a substantial one. I also feel that the fee is not designed to cover the costs of administration of the department and therefore have submitted the arbitrary alternative figure of £25. If other members consider it might be desirable to fix the fees on a sliding scale, as provided for in the Inspection of Scaffolding Act, I will be willing to withdraw my amendment in favour of that. However, I feel the clause should be given further consideration.

The MINISTER FOR RAILWAYS: Under the existing Act the fee is 5s. per 100ft., with a maximum of £5 for inspections. These inspections cover quite a lot, particularly in a city. They could, for instance, cover a place like a new picture theatre, and the fee for inspection would be £5 under the existing Act. In these days of rising costs and modern buildings, very minute inspections are required.

Hon. Sir Charles Latham: It is not for inspections, it is only for checking plans and specifications.

The MINISTER FOR RAILWAYS: There is a very minute inspection of the plans of a building, and the fee covers quite a lot. Mr. Mattiske felt that it should not be looked upon as a charge for the approving of these plans or inspecting them. However, I do not think that every Government department should be called upon to provide services at a loss to the public. If the amount is left at £100, it will provide for elaborate plans and substantial buildings for many years to come. However, I would have no objection to the amount being £50.

Hon. A. R. JONES: Do I understand the Minister to say that the charge is 5s. for 100ft.? Does this mean 100ft. of measurement?

The Minister for Railways: Of floor space.

Hon. A. R. JONES: If this limit were provided, it would meet the situation. If a maximum of £100 is fixed, it will work on a sliding scale up to that amount.

Hon. R. C. MATTISKE: The only point is that buildings vary in nature. We could have a comparatively small building with a high degree of complicated work in it; or we could have a large building with a lot of open space which would require considerably less effort to pass the plans and specification. If the maximum were reduced from £100 to £50 it would be more reasonable, and would cover the different types of building. I ask leave to substitute for the word "twenty-five" in my amendment the word "fifty."

Leave granted.

Amendment, as altered, put and passed; the clause, as amended, agreed to.

Sitting suspended from 3.48 to 4.5 p.m.

Clause 10—Section 241A added:

The MINISTER FOR RAILWAYS: I move an amendment—

That the word "one" in line 2, page 5, be struck out.

Mr. MacKinnon drew members' attention to this mistake. "Penalties" is the heading of Section 241 and therefore the clause should read "after Section two hundred and forty" and not "Section two hundred and forty-one." That is why this amendment has been moved.

Amendment put and passed.

The MINISTER FOR RAILWAYS: I move an amendment—

That the figures and letter "241A" in line 4, page 5, be struck out and the figures and letter "240A" inserted in lieu.

This amendment is necessary for the same reason.

Amendment put and passed; the clause, as amended, agreed to.

Clauses 11 and 12—agreed to.

Clause 13—Section 361A added:

Hon. G. C. MacKINNON: When speaking to the second reading, I mentioned the difficulties that have been encountered by nearly all health inspectors in the control of certain matters relating to the health of the community. It is largely as a result of the increased efficiency of our health inspectors, through measures which have been put on the statute book for the control of hygiene, that many epidemics such as typhoid have been virtually eliminated in this State. This section is a most important one, because it has to do with the health of the community; and yet the Government is endeavouring to remove the minimum penalty and increase the maximum to £20 from an absurdly low £10.

Whilst I am loth to talk about migrants who have come to this country, many restaurant proprietors in this State have only recently arrived here. They have come from Europe and such places where they have operated under laws quite different from those which we have. Maybe their standard of hygiene is higher than ours, or vice versa. However, they do not understand our laws, and I think we should

give serious consideration to the matter before we decide what the penalty shall be. Up to date the minimum has been one-tenth of the prescribed maximum.

I propose to move an amendment to increase the penalty from £20 to £40. I think the penalty has been £10 for approximately 40 years. Considering money values today, it would be reasonable to increase the penalty to £40. After we have been afforded a fair amount of protection from various diseases over a long period, we tend to lose the natural protective forces against disease. So the necessity to maintain a high degree of hygiene does not diminish but increases. We should strive to keep a high standard of hygiene. Only the other week I read a Press statement concerning the health standards of some restaurants of the city. I move an amendment—

> That after the word "of" in line 19, page 7, the word "twenty" be struck out and the word "forty" inserted in lieu.

The MINISTER FOR RAILWAYS: It is considered that the maximum of £20 will be the maximum in all cases if the Bill as printed is accepted. The object of the clause is that where the maximum is under £20 it will be raised to £20, but the minimum will no longer be provided. The minimum provided in the Act is one-tenth of the maximum. For a minor offence it is considered that £20 is sufficient and the same consideration also applies to the maximum penalty. Therefore I do not think there is any need to increase the penalty, and I oppose the amendment.

Hon. G. C. MacKINNON: There is some peculiar drafting in this legislation. The wording of Section 361 of the Health Act is reasonable enough; but instead of the Bill seeking to delete that, it leaves the section as it is and seeks to add a proposed new section. If paragraph (b) of proposed new Section 361A is not haywire drafting, then I am haywire. In the Act there is a section that provides a minimum penalty, and the Bill seeks to take that out. But instead of a clause to provide a minimum penalty, there is one to insert this proposed new section.

If an Act requires amending, one usually gets in touch with the various departments and the officers put forward amendments that are reasonable. I would be extremely interested to hear the Commissioner of Public Health say that he was happy with the provision in this Bill, because he would be the only person that would be happy with it. I have yet to meet a health officer who is happy with it; and health officers are the men carrying out the work of detecting offenders against the Health Act. It appears to me that the clause has been prepared in a hasty manner. The amendment that is obviously required is to strike out Section 361 of the Act. But instead of that, we have to go through all this flapdoodle. The wishes of those people who are appointed to safeguard the health of this State would be better served if the penalty were increased to £40, and Section 361 were allowed to stand by the deletion of paragraph (b) in this proposed new subsection. Perhaps the Minister would like the Parliamentary Draftsman to have another look at the Bill.

The MINISTER FOR RAILWAYS: Whilst I admit that the drafting is of such a nature that it requires reading and rereading by a layman, we know what the intention is. I am sure that a health inspector would understand it. The Bill provides that where a maximum penalty is less than £20, it will be increased to £20, and there will be no minimum. The object is to leave the discretion to the courts which should decide whether an offence is of such a nature as to require a caution or the imposition of the maximum penalty. Where the penalty is less than £20 it will stand.

To suit only a couple of cases, the hon. member wants to increase the maximum penalty to £40 and delete the minimum penalty. That would mean that a penalty of one-tenth of the maximum would stand, so that in any case there would be a minimum penalty of £4 which must arbitrarily be imposed by any court upon a medical officer, say, who had overlooked the provisions of the Act concerned in the notification of a certain disease.

The penalty now is £5 for such an offence, or there is a fixed minimum of one-tenth of the maximum. It is proposed by the Bill that the maximum should be £20, and that there should be no minimum. The justice or the magistrate would decide what the penalty should be. I suggest that it would be most unfair for a person to be fined if it were found that for some reason he had been unable to carry out the provisions of the Act. I suggest that the Bill be left as it is, with the court having the power to prescribe what the penalty will be up to the maximum.

Hon. G. C. MacKINNON: There is some commonsense in what the Minister has said. However, it does bear out that the amendments have been drafted in haste and somewhat carelessly. The Minister has said that we know what the Bill intends to do. His attitude is: It is hard to interpret, but let us get on with it, anyway. If a carpenter has pride in his work, surely we should have pride in ours. To pass a clause of this nature is not wise. It is too much of a blanket clause. Yesterday I quoted figures showing that magistrates have developed a habit of asking what the costs will be in any case, and they then add on the penalty costs of £2, or some figure of that nature. A man can make that sum in a night by diluting milk.

Also, it is the retailer who pays the fine, and not the man who puts the can under the tap.

All families expect milk to be of good standard. Some members might say that they should buy their milk in bottles; but there have been many cases where sealed bottles of pasteurised milk have been tampered with, and people are to get away with committing such an offence with a fine of only £5 or £6. I feel we should be strict and should be more careful in framing clauses such as these.

Hon. J. G. HISLOP: The Government decided to provide minimum penalties for some sections of the Traffic Act. But now it seeks to do away with a minimum penalty in the Bill. I presume that it considers that property is more valuable than life.

The Minister for Railways: It is Government policy to do away with minimum penalties.

Hon. J. G. HISLOP: The Government introduced minimum penalties in the Traffic Act so that the magistrates would recognise that the offences were considered by the Government to be serious.

The Minister for Railways: For offences after the first, or for recurring offences.

Hon. J. G. HISLOP: The Government seems to consider property more valuable than life. I oppose the provision of one penalty for all offences. Each offence should be looked at in its own light. It is absurb to provide the same penalty for a medical practitioner who fails to notify a certain disease, as for a person who adulterates milk. Various offences are defined in the Bill, and I suggest each should be looked at separately. The existing Act should be left as it is at least for this year. We should not have to agree to a Bill such as this, which contains poor draftsmanship. I suggest it would be much simpler to delete the relevant section from the Act.

Amendment put and negatived.

Hon. G. C. MacKINNON: I move an amendment—

> That paragraph (b), in lines 29 to 35, page 7, be struck out.

The effect will be to increase the maximum penalty to £20 and to provide for a minimum penalty of one-tenth of that amount. In addition, Section 361 of the Act will be retained.

The MINISTER FOR RAILWAYS: If the amendment is agreed to the minimum penalty will be one-tenth of the £20 maximum. But quite frequently people are fined the minimum for minor offences which have been committed through oversight. Magistrates have at times expressed regret at having to impose the minimum penalty. The policy of the Government is to do away with minimum penalties, and to leave the matter to the discretion of the court.

Hon. H. K. WATSON: I trust that the Government will pursue the policy of doing away with minimum penalties and giving a discretion to the court in all legislation, and not have minimum penalties prescribed in some Acts. I would prefer to see paragraph (b) left in the Bill. On principle I am against the amendment; but as it merely prescribes a minimum penalty of £2, which is no greater than any fine imposed by a magistrate, the practical effect of the amendment is not very material.

Hon. G. C. MacKINNON: I would refer to other sections of the Health Act which prescribe penalties for offences. For an offence under Section 310, the maximum penalty is £50; and the minimum will be one-tenth, or £5. In the case of a medical practitioner neglecting or refusing to examine or treat any person, the maximum penalty is £5; and the minimum would be one-tenth of that, or 10s. On principle, I am opposed to the provision of minimum penalties; but they have been found to be very necessary not only in this State, but throughout the world. I maintain that this Act is one of the few containing a minimum penalty which acts as a deterrent in such a vital matter as health. For that reason it should be retained in the Act, especially as it is to be one-tenth of the maximum.

Hon. N. E. BAXTER: The amendment will affect a great number of the electors in the South-West Province, particularly the milk producers. For instance, if a health inspector prosecutes a milk producer for having substandard milk, below the solids-not-fat content, the minimum penalty will be £2 under this Bill. As everyone will realise, such offenders are not directly responsible for the substandard condition of the milk they produce. They are not aware of this until they receive a summons alleging that the milk is substandard. By moving this amendment, Mr. MacKinnon will penalise the electors in his province, in that a minimum penalty will have to be imposed for an offence of this nature.

Hon. G. C. MacKINNON: I was aware of that. I consider that Section 361 should not be amended but deleted. Mr. Baxter illustrated the case where a milk producer can be prosecuted and fined a minimum for having substandard milk. I suggest that the reference to substandard milk and the penalty therefor should be removed from the measure. The minimum penalty should not be removed, because it acts as a deterrent against people who dilute milk by watering, such as managers of restaurants or milk vendors.

Hon. J. G. HISLOP: I would like to know whether it will be in order for me to vote against this amendment; and then, if it is defeated, to move that Section 361 be deleted. By that means the bad drafting

in the Bill would be overcome and the objective of the Minister to do away with a minimum penalty would be achieved.

The CHAIRMAN: The proposal would be out of order. The amendment would not come within the scope of the Bill.

Hon. H. K. WATSON: To adopt the proposal of Dr. Hislop would be like travelling from here to Victoria Park, then to Fremantle, in order to go to Subiaco. There is no reason why the Bill should contain paragraph (b); there should be a straightout repeal of Section 361. The Bill proposes this position: Until such time as the Act is proclaimed the existing section of the Act and penalties will apply. But as soon as the Act is proclaimed, that section shall cease to apply. I think we may as well leave it as it is.

Amendment put and negatived.

Clause put and passed.

Title—agreed to.

Bill reported with amendments.

BILL—NOLLAMARA LAND VESTING.

Second Reading.

Debate resumed from the previous day.

HON. W. F. WILLESEE (North—in reply) [4.47]: In his second reading speech, Mr. Griffith commented on what he regarded as the unusual procedure of the Housing Commission in connection with this Nollamara land. In response to his request, I made inquiries and found that there were precedents for the commission's action.

In 1954 the Canning Lands Revestment Bill was passed. That had to do with some land at Bentley Park near East Victoria Park. The title of that measure was "An Act relating to the Re-subdivision of Certain Land in the Canning District etc." Later, in 1955, the Swan Lands Revestment Bill was passed in connection with some land at Ashfield, near Bassendean. The title of the measure was "An Act to facilitate Re-subdivision of Certain Land for the purposes of the State Housing Act, 1946."

The present Bill is in all respects similar to the measures I have mentioned except for the situation which has arisen with regard to the caveat. I have further details in connection with that matter, but they merely ratify the situation, which is that the land will be taken over and re-subdivided, and the title will be given back to Mrs. Okley and the caveat honoured in the title.

Mrs. Okley was agreeable to the re-subdivision of the land, and she actually gains a little area out of it. It was her two sons who objected and would not deal with the State Housing Commission's inspectors in any way in regard to the matter. Therefore this action was taken to bring the whole of the area into line.

Question put and passed.

Bill read a second time.

In Committee.

Hon. W. R. Hall in the Chair; Hon. W. F. Willesee in charge of the Bill.

Clauses 1 to 3—agreed to.

Clause 4—Objects of this Act:

Hon. A. F. GRIFFITH: I happened to leave the Chamber for a minute or two and did not hear the explanation given by Mr. Willesee as to the necessity for this Bill. I understand it was said that there was a precedent for it. Could I hear what the precedent is?

Hon. W. F. WILLESEE: I think I did use the word "precedent." In making inquiries in response to Mr. Griffith's request, I ascertained that there were two similar Bills—one passed in 1954 and the other passed in 1955. The wording of the measures is similar except with regard to the caveat in connection with the Nollamara land. That is all the information I was able to secure; but I thought it was of interest to know that there have been similar types of legislation instituted by the Housing Commission previously. I did not have that information when I introduced this Bill.

Clause put and passed.

Clauses 5 and 6, Title—agreed to.

Bill reported without amendment and the report adopted.

ADJOURNMENT—SPECIAL.

THE MINISTER FOR RAILWAYS (Hon. H. C. Strickland—North): I move—

That the House at its rising adjourn till Tuesday the 3rd September.

Question put and passed.

House adjourned at 4.55 p.m.